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1520 H Street, N.W.
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ILLUSTRATIVE RULES GOVERNING COMPLAINTS OF JUDICIAL MISCONDUCT AND DISABILITY

With Commentary

Prepared by a Special Committee of the Conference of Chief Judges of the United States Courts of Appeals

James R. Browning, Chief Judge, Ninth Circuit, Chairman
Collins J. Seitz, Chief Judge Emeritus, Third Circuit
Charles Clark, Chief Judge, Fifth Circuit

Anthony Partridge, Federal Judicial Center, Reporter

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CONTENTS

INTRODUCTION TO THE RULES AND COMMENTARY vii

PREFACE TO THE RULES 1

CHAPTER I: FILING A COMPLAINT 3

Rule 1. When to Use the Complaint Procedure 3
  (a) Purpose of the Procedure 3
  (b) What May Be Complained About 3
  (c) Who May Be Complained About 3
  (d) Time for Filing Complaints 4
  (e) Limitations on Use of the Procedure 4

Rule 2. How to File a Complaint 7
  (a) Form 7
  (b) Statement of Facts 7
  (c) Legibility 8
  (d) Submission of Documents 8
  (e) Number of Copies 8
  (f) Signature and Oath 8
  (g) Anonymous Complaints 8
  (h) Where to File 8
  (i) No Fee Required ....

Rule 3. Action by Clerk of Court of Appeals upon Receipt of a Complaint 11
  (a) Receipt of Complaint in Proper Form 11
  (b) Receipt of Complaint About Official Other than a Judge or Magistrate of the ____th Circuit 12
  (c) Receipt of Complaint About a Judge or Magistrate of the ____th Circuit and Another Official 12
  (d) Receipt of Complaint Not in Proper Form 12

CHAPTER II: REVIEW OF A COMPLAINT BY THE CHIEF JUDGE 15

Rule 4. Review by the Chief Judge 15
  (a) Purpose of Chief Judge's Review 15
  (b) Inquiry by Chief Judge 15
  (c) Dismissal 15
  (d) Corrective Action 16
  (e) Appointment of Special Committee 16
  (f) Notice of Chief Judge's Action 16
  (g) Public Availability of Chief Judge's Decision 17
  (h) Report to Judicial Council 17

CHAPTER III: REVIEW OF CHIEF JUDGE'S DISPOSITION OF A COMPLAINT 21

Rule 5. Petition for Review of Chief Judge's Disposition 21

Rule 6. How to Petition for Review of a Disposition by the Chief Judge 22
  (a) Time 22
  (b) Form 22
  (c) Legibility 22
  (d) Number of Copies 23
  (e) Statement of Grounds for Petition 23
  (f) Signature 23
  (g) Where to File 23
  (h) No Fee Required 23

Rule 7. Action by Clerk of Court of Appeals upon Receipt of a Petition for Review 24
  (a) Receipt of Timely Petition in Proper Form 24
  (b) Receipt of Untimely Petition 24
  (c) Receipt of Timely Petition Not in Proper Form 24

Rule 8. Review by the Judicial Council of a Chief Judge's Order 25
  (a) Mail Ballot 25
  (b) Availability of Documents 26
  (c) Vote at Meeting of Judicial Council 26
  (d) Rights of Judge or Magistrate Complained About 26
  (e) Notice of Council Decision 26
  (f) Public Availability of Council Decision 27

CHAPTER IV. INVESTIGATION AND RECOMMENDATION BY SPECIAL COMMITTEE 29

Rule 9. Appointment of Special Committee 29
  (a) Membership 29
  (b) Presiding Officer 29
  (c) Bankruptcy Judge or Magistrate as Adviser 29
  (d) Provision of Documents 29
  (e) Continuing Qualification of Committee Members 30
  (f) Inability of Committee Member to Complete Service 30

Rule 10. Conduct of an Investigation 32
  (a) Extent and Methods to Be Determined by Committee 32
  (b) Criminal Matters 32
  (c) Staff 33
  (d) Delegation 33
  (e) Report 33
  (f) Voting 33

Rule 11. Conduct of Hearings by Special Committee 35
  (a) Purpose of Hearings 35
  (b) Notice to Judge or Magistrate Complained About 35

(c) Committee Witnesses 35
(d) Witnesses Called by the Judge or Magistrate 36
(e) Witness Fees 36
(f) Rules of Evidence; Oath 36
(g) Record and Transcript 36

Rule 12. Rights of Judge or Magistrate in Investigation 37
(a) Notice 37
(b) Presentation of Evidence 38
(c) Presentation of Argument 38
(d) Attendance at Hearings 38
(e) Receipt of Committee's Report 38
(f) Representation by Counsel 38

Rule 13. Rights of Complainant in Investigation 39
(a) Notice 39
(b) Opportunity to Provide Evidence 39
(c) Presentation of Argument 39
(d) Representation by Counsel 39

CHAPTER V: JUDICIAL COUNCIL CONSIDERATION OF RECOMMENDATIONS OF SPECIAL COMMITTEE 41

Rule 14. Action by Judicial Council 41
(a) Purpose of Judicial Council Consideration 41
(b) Basis of Council Action 41
(c) Dismissal 41
(d) Conclusion of the Proceeding on the Basis of Corrective Action Taken 42
(e) Referral to Judicial Conference of the United States 42
(f) Order of Corrective Action 42
(g) Combination of Actions 43
(h) Recommendation About Fees 43
(i) Notice of Action of Judicial Council 43
(j) Public Availability of Council Action 44

Rule 15. Procedures for Judicial Council Consideration of a Special Committee's Report 46
(a) Rights of Judge or Magistrate Complained About 46
(b) Conduct of Additional Investigation by the Council 47
(c) Voting 47

CHAPTER VI: MISCELLANEOUS RULES 49

Rule 16. Confidentiality 49
(a) General Rule 49
(b) Files 49
(c) Disclosure in Memoranda of Reasons 49
(d) Availability to Judicial Conference 49
(e) Availability to District Court 50
(f) Impeachment Proceedings 50
(g) Consent of Judge or Magistrate Complained About 50

(h) Disclosure by Judicial Council in Special Circumstances... 50
(i) Disclosure of Identity by Judge or Magistrate Complained About ... 50

Rule 17. Public Availability of Decisions ... 52
(a) General Rule ... 52
(b) Manner of Making Public ... 53
(c) Decisions of Judicial Conference Standing Committee ... 53
(d) Special Rule for Decisions of Judicial Council ... 54
(e) Complaints Referred to the Judicial Conference of the United States ... 54

Rule 18. Disqualification ... 57
(a) Complainant ... 57
(b) Judge Complained About ... 57
(c) Disqualification of Chief Judge on Consideration of a Petition for Review of a Chief Judge's Order ... 57
(d) Member of Special Committee Not Disqualified ... 58
(e) Judge or Magistrate Under Investigation ... 58
(f) Substitute for Disqualified Chief Judge ... 58

Rule 19. Withdrawal of Complaints and Petitions for Review ... 60
(a) Complaint Pending Before Chief Judge ... 60
(b) Complaint Pending Before Special Committee or Judicial Council ... 61
(c) Petition for Review of Chief Judge's Disposition ... 61

Rule 20. Availability of Other Procedures ... 62

Rule 21. Availability of Rules and Forms ... 62

Rule 22. Effective Date ... 63

APPENDIX: COMPLAINT FORM ... 65

Introduction to the Rules and Commentary

In November of 1983 the chief judges of the circuits and of national courts within the scope of 28 U.S.C. § 372(c) met in Chicago to consider various aspects of the implementation of this statute. The chief judges agreed that a committee should be constituted from among them to "consider whether uniformity of rules and procedures among the circuits is a desirable goal, and if so to what extent and in what ways uniformity might be pursued." At the same time the chief judges "recognized, however, that at least arguably the statute itself indicates that uniformity is not envisioned, since (c)(11) provides that 'each judicial council . . . may prescribe such rules for the conduct of proceedings, including the processing of petitions for review, as each considers to be appropriate.' "

Pursuant to this direction, Chief Judge John C. Godbold, then chairman of the Conference of Chief Judges of the Circuits, constituted the present committee on February 10, 1984, requesting the committee to consider "whether there should be any goal of uniformity among the circuits and, if so, in what areas and in what manner such uniformity should be sought," and to make its recommendation to the September 1984 meeting of the conference. After consideration, the committee recommended to the chief judges as follows:

> The committee is unanimously of the view that complete uniformity, and particularly compulsory uniformity, would not be desirable. The statute confers upon the judicial councils authority to prescribe rules for the conduct of proceedings under section 372(c), and we think of no substantial reason for requiring that these rules be identical. On the contrary, we believe there is value in preserving the authority of the councils to develop their own procedures and change them as experience dictates.
>
> On the other hand, we believe all of the judicial councils would benefit from a systematic sharing of ideas and information, and that such an exchange might well produce uniformity among the circuit rules to the extent that uniformity may be desirable. As a first and major step we recommend that a committee of the Conference of Chief Judges of the Circuits be designated to develop and issue a set of model rules for consideration by the judicial councils, as well as an interpretive commentary on the statute. In developing model rules, the committee could consider the relative importance of uniformity with respect to various matters, and

> might in some cases recommend that certain rules should be uniform.

The chief judges were advised of the committee's recommendations and, based upon their responses, Chief Judge Godbold instructed the committee to undertake the described task. The committee requested the Federal Judicial Center to provide assistance, and the Center agreed to do so. William B. Eldridge, director of the Research Division, and Anthony Partridge, associate director, assumed personal responsibility for the project.

Between July 1984 and September 1985 Mr. Eldridge and Mr. Partridge conducted an exhaustive study of available material, including an extensive field examination of the manner in which the circuits were actually processing complaints of judicial misconduct under the statute. They then prepared a first draft of proposed illustrative rules. The committee examined and revised the draft and several subsequent drafts in detail.

On December 16, 1985, the revised draft was sent to over two thousand judges, lawyers, legislators, and scholars, soliciting their comments and suggestions. A large number of helpful responses were received. These were considered by the committee and a final version of the illustrative rules prepared. It is distributed by the committee pursuant to the mandate placed upon it.

The committee calls its work to the attention of the councils of the circuits and the national courts subject to 28 U.S.C. § 372(c) for such consideration as each council or court may wish to give it in responding to the statutory obligation to adopt rules for handling of complaints. Verbatim adoption of this set of rules is not urged upon any council or court since local conditions may require varied treatment. In only one instance does the committee call for a uniform response. See commentary, p. 6. Experimentation with varied approaches is desirable, and comports with the intention of Congress. It is the hope of the committee that these illustrative rules may prove a useful reference for those working on revision of local rules as this experimentation continues.

The commentary following each rule is included to provide some explanation of the choices made by the committee and the reasons for them. If a council determines to adopt some or all of the rules the council may, of course, elect to publish no comment at all or to publish comments that express the particular council's reasons for adopting the rules it selects.

The illustrative rules reflect the view that section 372(c) should be regarded primarily as a means of reinforcing the mandate of 28 U.S.C. § 332(d)(1), that each judicial council make orders "for the effective and expeditious administration of justice" within the circuit. Some features of 28 U.S.C. § 372(c) seem more consistent with the view that the private concerns of complainants are the matter of primary concern. For example, a petition for review of a chief judge's or judicial council's order dismissing a complaint may be filed by the complainant but review cannot be initiated by the reviewing body, a scheme that seems to imply that the purposes of the statute are satisfied if the complainant is satisfied. Nevertheless, it is clear that the dominant thrust of the statute is otherwise. The law gives the complainant no right to control the course of an investigation (only the "right" to appear at proceedings *if* the investigating panel concludes that the complainant could offer substantial information); in this respect, the complainant's role is more like that of a complaining witness than that of a litigant. More important, the judicial council is instructed, if misconduct is found, to take action "appropriate to ensure the effective and expeditious administration of the courts," and the enumerated examples of orders that might be appropriate include none that would give a complainant any personal benefit. Accordingly, these illustrative rules reflect an administrative perspective—one that focuses less on satisfying complainants than on improving the functioning of the courts. This perspective is evident at many points in both the rules and the commentary.

We are, however, sensitive to the fact that the basic statutory mechanism is a citizen complaint procedure, and that a strong secondary goal must be to provide a reasonable response to citizens who invoke it. These rules are intended to serve that goal as well. Indeed, in developing the rules, we have been conscious of the fact that the complaint procedure was intended to be available for citizens to use without the necessity of obtaining the assistance of a lawyer. Accordingly, we have made a special effort to avoid legal jargon in the rules themselves. Because the commentary is addressed primarily to a legal audience, a similar effort has not been made there.

Judge Collins J. Seitz
Judge Charles Clark
Judge James R. Browning, Chairman

RULES OF THE JUDICIAL COUNCIL OF THE ___TH CIRCUIT GOVERNING COMPLAINTS OF JUDICIAL MISCONDUCT OR DISABILITY

Preface to the Rules

Section 372(c) of title 28 of the United States Code provides a way for any person to complain about a federal judge or magistrate who the person believes "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or "is unable to discharge all the duties of office by reason of mental or physical disability." It also permits the judicial councils of the circuits to adopt rules for the consideration of these complaints. These rules have been adopted under that authority.

Complaints are filed with the clerk of the court of appeals on a form that has been developed for that purpose. Each complaint is referred first to the chief judge of the circuit, who decides whether the complaint raises an issue that should be investigated. (If the complaint is about the chief judge, another judge will make this decision; see rule 18(f).)

The chief judge will dismiss a complaint if it does not properly raise a problem that is appropriate for consideration under section 372(c). The chief judge may also conclude the complaint proceeding if the problem has been corrected. If the complaint is not disposed of in either of these two ways, the chief judge will appoint a special committee to investigate the complaint. The special committee makes its report to the judicial council of the circuit, which decides what action, if any, should be taken. The judicial council is a body that consists of

_________ judges of the court of appeals and _________ district judges.

The rules provide, in some circumstances, for review of decisions of the chief judge or the judicial council.

Chapter I: Filing a Complaint

RULE 1. WHEN TO USE THE COMPLAINT PROCEDURE

(a) **Purpose of the procedure.** The purpose of the complaint procedure is to improve the administration of justice in the federal courts by taking action when judges or magistrates have engaged in conduct that does not meet the standards expected of federal judicial officers or are physically or mentally unable to perform their duties. The law's purpose is essentially forward-looking and not punitive. The emphasis is on correction of conditions that interfere with the proper administration of justice in the courts.

(b) **What may be complained about.** The law authorizes complaints about judges or magistrates who have "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or who are "unable to discharge all the duties of office by reason of mental or physical disability."

"Conduct prejudicial to the effective and expeditious administration of the business of the courts" is not a precise term. It includes such things as use of the judge's office to obtain special treatment for friends and relatives, acceptance of bribes, improperly engaging in discussions with lawyers or parties to cases in the absence of representatives of opposing parties, and other abuses of judicial office. It does not include making wrong decisions—even very wrong decisions—in cases. The law provides that a complaint may be dismissed if it is "directly related to the merits of a decision or procedural ruling."

"Mental or physical disability" may include temporary conditions as well as permanent disability.

(c) **Who may be complained about.** The complaint procedure applies to judges of the United States courts of appeals, judges of United States district courts, judges of United States bankruptcy courts, and United States magistrates. These rules apply, in particular, only to judges of the Court of Appeals for the ____th Circuit and to district judges, bankruptcy judges, and magistrates of federal courts within the circuit. The circuit includes [list states and other jurisdictions].

Complaints about other officials of federal courts should be made to their supervisors in the various courts. If such a complaint cannot be satisfactorily resolved at lower levels, it may be referred to the chief judge of the court in which the official is employed. The circuit executive, whose address is ____________, is sometimes able to provide assistance in resolving such complaints.

(d) **Time for filing complaints.** Complaints should be filed promptly. A complaint may be dismissed if it is filed so long after the events in question that the delay will make fair consideration of the matter impossible. A complaint may also be dismissed if it does not indicate the existence of a current problem with the administration of the business of the courts.

(e) **Limitations on use of the procedure.** The complaint procedure is not intended to provide a means of obtaining review of a judge or magistrate's decision or ruling in a case. The judicial council of the circuit, the body that takes action under the complaint procedure, does not have the power to change a decision or ruling. Only a court can do that.

The complaint procedure may not be used to have a judge or magistrate disqualified from sitting on a particular case. A motion for disqualification should be made in the case.

Also, the complaint procedure may not be used to force a ruling on a particular motion or other matter that has been before the judge or magistrate too long. A petition for mandamus can sometimes be used for that purpose.

Commentary on Rule 1

Advice to Prospective Complainants on Use of the Complaint Procedure

As at least some members of Congress anticipated, a great many of the complaints that have been filed under section 372(c) have been filed by litigants disappointed in the outcomes of their cases.[1] Some complaints allege nothing more than that the decision was in violation of established legal principles. Many of them allege that the judges are members of conspiracies to deprive the complainants of their rights, and offer the substance of the judicial decision as the only evidence of the conspiratorial behavior. A great many of the complaints seek various forms of relief in the underlying litigation.

Rule 1 is intended to provide prospective complainants with guidance about the appropriate uses of the complaint procedure. Paragraph (b) discusses cognizable subject matters, and paragraph (c) discusses cognizable persons. Paragraph (e) discusses remedies, and attempts to make it clear that the circuit council will not provide relief from a ruling or judgment of a court. It is hoped that such guidance will reduce the number of complaints filed that seek relief that cannot be given under the statute or deal with matters that are plainly not cognizable. However, we recognize that many who should be deterred will not be.

The last two paragraphs in rule 1(e), dealing with complaints alleging bias and those alleging undue delay, are in accord with judicial council decisions in some circuits. Where actions of the council have settled questions about the use of the complaint procedure in these situations, it seems appropriate to use the rules to inform prospective complainants about what they may expect.

The use of the complaint procedure is not limited to cases in which a judge or magistrate has committed an impropriety. The phrase "conduct prejudicial to the effective and expeditious administration of the business of the courts" is derived from 28 U.S.C. § 332(d)(1), and we do not understand the phrase to be limited to conduct that is unethical or corrupt. While we have not made an effort to define the phrase with any precision, we note that habitual failure to decide matters in a timely fashion is widely regarded as the proper subject of a complaint.

---

[1] *See* 125 Cong. Rec. 30,093-94 (1979) (remarks of Sen. Bellmon); 126 Cong. Rec. 28,091 (1980) (remarks of Sen. DeConcini); H.R. Rep. No. 1313, 96th Cong., 2d Sess. 18-19 (1980).

Venue

Rule 1(c) states that the complaint procedure applies to judges and magistrates "of federal courts within the circuit." This language is intended to make it clear that the circuit in which a judge or magistrate holds office is the appropriate circuit in which to file a complaint.

The rules of several circuits apply to judges and magistrates "serving in the circuit." It is not clear whether this language was intended by its draftsmen to allow a complaint based on alleged misconduct of a visiting judge to be filed in the circuit in which the conduct occurred. In any event, rule 1(c) reflects the view that complaints should be filed in the circuits in which judges hold office, regardless of where any alleged misconduct took place.

This is an issue on which uniformity of circuit rules is probably more important than the particular result reached: If a complaint is based on the conduct of a judge who is visiting outside the home circuit, one and only one circuit chief judge should be authorized to consider the complaint. The absence of uniformity on this issue raises the possibility that neither chief judge would accept responsibility or, at the other extreme, both would.

Our preference for putting venue in the circuit in which the judge holds office is largely based on the administrative perspective of the act. If it were regarded as appropriate for a litigant to seek relief through the complaint procedure from alleged bias or from allegedly undue delay in handling a particular matter (as contrasted with habitual failure to make timely decisions), the case would be strong for putting venue in the circuit in which the litigation is located. From the administrative viewpoint, however, with its emphasis on the future conduct of the business of the courts, the circuit in which the judge holds office is clearly more appropriate. That circuit is much more likely to be able to influence a judge's future behavior in constructive ways. While there is some logic in saying that a particular circuit council is the appropriate body for considering complaints about the administration of justice in that circuit, that logic is outweighed by the greater opportunity of the home circuit to fashion appropriate remedies.

Complaints Against Other Officials

The second paragraph of rule 1(c) reflects a concern that the public be given some guidance about how to pursue grievances about court officials other than judges or magistrates. A circuit council may wish to modify this paragraph to make it conform with the circuit's own internal procedures, but there should be some guidance about where such a complaint may be taken.

The invitation in the last sentence of the paragraph to seek assistance from the circuit executive is, of course, related to the circuit executive's special relationship with the circuit council, which under 28 U.S.C. § 332(d)(1) would have authority to act on evidence of improper behavior by a court employee. We note in this connection that some complaints have been filed under section 372(c) in which a chief judge is complained against for failing to take action to correct deficiencies of subordinate personnel. Assuming that they cannot get satisfaction in the court in which someone is employed, it seems preferable that people take complaints about nonjudicial personnel directly to the circuit executive.

Time Limitation

In deference to those who have argued that a time limitation on the filing of complaints is beyond the rulemaking authority, these rules do not contain such a time limit. However, rule 1(d) indicates that a complaint may be dismissed, for reasons analogous to laches, if the delay in filing the complaint would prejudice the ability of the judicial council to give fair consideration to the matter.

RULE 2. HOW TO FILE A COMPLAINT

(a) Form. Complaints should be filed on the official form for filing complaints in the ____th Circuit, which is reproduced in the appendix to these rules. Forms may be obtained by writing or telephoning the clerk of the Court of Appeals for the ____th Circuit, [address and telephone number]. Forms may be picked up in person at the office of the clerk of the court of appeals or any district court or bankruptcy court within the circuit.

(b) Statement of facts. A statement should be attached to the complaint form, setting forth with particularity the facts that the claim of misconduct or disability is based on. The statement should not be longer than five pages (five sides), and the paper size should not be larger than the paper the form is printed on. Normally, the statement of facts will include—

(1) A statement of what occurred;

(2) The time and place of the occurrence or occurrences;

(3) Any other information that would assist an investigator in checking the facts, such as the presence of a court reporter or other witness and their names and addresses.

(c) **Legibility.** Complaints should be typewritten if possible. If not typewritten, they must be legible.

(d) **Submission of documents.** Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears.

(e) **Number of copies.** If the complaint is about a single judge of the court of appeals, three copies of the complaint form, the statement of facts, and any documents submitted must be filed. If it is about a single district judge or magistrate, four copies must be filed; if about a single bankruptcy judge, five copies. If the complaint is about more than one judge or magistrate, enough copies must be filed to provide one for the clerk of the court, one for the chief judge of the circuit, one for each judge or magistrate complained about, and one for each judge to whom the clerk must send a copy under rule 3(a)(2).

(f) **Signature and oath.** The form must be signed and the truth of the statements verified in writing under oath. As an alternative to taking an oath, the complainant may declare under penalty of perjury that the statements are true. The complainant's address must also be provided.

(g) **Anonymous complaints.** Anonymous complaints are not handled under these rules. However, anonymous complaints received by the clerk will be forwarded to the chief judge of the circuit for such action as the chief judge considers appropriate. See rule 20.

(h) **Where to file.** Complaints should be sent to

Clerk, United States Court of Appeals [address].

The envelope should be marked "Complaint of Misconduct" or "Complaint of Disability." The name of the judge or magistrate complained about should *not* appear on the envelope.

(i) No fee required. There is no filing fee for complaints of misconduct or disability.

Commentary on Rule 2

Use of Complaint Form

Paragraph (a) of rule 2 provides that complaints be filed on a form. Use of a complaint form is proposed for two reasons.

First, a complaint form provides a simple means of eliciting some fairly standard information that is helpful in administering the act.

Second, the use of a complaint form will resolve ambiguities that sometimes arise about whether the author of a complaining letter intends to invoke the procedures of section 372(c). With the use of the form, the 372(c) procedure will be used only if the complainant clearly invokes it.

Limitation on Length of Complaint

Paragraph (b) of rule 2 provides a five-page limit on the statement of facts. Paragraph (d), however, does not restrict the volume of documents that may be submitted as evidence of the behavior complained about.

The existing rules of most circuits do not contain restrictions on the length of complaints other than a reference to the statutory "brief statement of the facts." However, circuits that prescribe complaint forms require that the statement of facts fit on the form. They permit the use of reverse sides of the pages of the form but do not permit additional pages, and their rules state that consideration will ordinarily be given only to "those matters . . . set forth on the forms provided" and that incorporating other documents by reference may result in dismissal of the complaint.

Rule 2(b) attempts to steer a middle course. On the one hand, it is hoped that a five-page limit will get rid of the long, rambling complaints that do not clearly identify the conduct complained of. On the other hand, it is hoped that such a limit will not unduly restrict the ability to communicate the facts supporting a complaint. In that connection, we are conscious of the fact that the statute calls for fact pleading rather than notice pleading, and that adequate space must be permitted for a complainant to make a factual presentation about a pattern of alleged misconduct.

The provision allowing submission of documentary evidence is partly motivated by our concern that a complainant not be unduly restricted in presenting the factual basis of the complaint, but also reflects a sense that prohibiting the submission of documents with the complaint tends to make the procedure unnecessarily complex. In many cases, a chief judge will have to ask for documents if they haven't been submitted. In a complaint about abusive conduct on the bench, for example, it is hard to imagine that the chief judge would not wish to see the transcript.

Complaints Against More than One Judicial Officer

Although some circuits require a separate complaint for each judicial officer complained about, we are not persuaded of the desirability of that approach. The basic justification for it appears to be that it may force a prospective complainant to focus on the need to address the conduct of each particular judicial officer separately. We doubt that any impact it may have along these lines would justify the increase in paperwork.

Oath or Declaration

Rule 2(f) includes a requirement that complaints be signed and verified under oath or declaration. While this requirement is probably not of the greatest importance, it may deter occasional abuse of the complaint process. In view of the ease with which a complainant can make a declaration under penalty of perjury, the requirement should not be burdensome. As is indicated below, we have independently concluded that anonymous complaints should not be handled under the section 372(c) procedure; the requirement of an oath or declaration would be inconsistent with a policy of accepting such complaints.

Under 28 U.S.C. § 1746, any statement required by rule to be made under an oath in writing may be subscribed instead with a written declaration under penalty of perjury that the statement is true and correct. 18 U.S.C. § 1621 includes in the definition of perjury a willfully false statement subscribed pursuant to 18 U.S.C. § 1746. There is some question about the authority of a circuit council simply to require a declaration under penalty of perjury, not made in lieu of an oath. To avoid this technical problem, rule 2(f) prescribes an oath but informs prospective complainants of the availability of the alternative. The complaint form permits either method.

Anonymous Complaints

Whether an anonymous complaint should be accepted is a question of some difficulty. On the one hand, section 372(c) clearly contemplates a complainant whose identity and address are known and who therefore can receive notice of decisions taken, be offered the opportunity to appear at proceedings of a special committee, and be accorded the opportunity to petition for review if dissatisfied with the disposition of the complaint. On the other hand, a prohibition against anonymous complaints may effectively bar complaints from the two groups of citizens most likely to have knowledge of serious problems in the administration of justice: lawyers and court employees.

The resolution reflected in rule 2(g) is to require that complaints under section 372(c) be signed but to make it clear that chief judges, as chairmen of the circuit judicial councils, can, just as they always have, consider information from any source, anonymous or otherwise. This solution is consistent with congressional expressions of intention that informal methods of resolving problems, traditionally used under section 332, should continue to be used in many cases.[2] Hence, under these rules, the formalities of the statute would not be invoked by an anonymous complaint, but the chief judge and the circuit council may nevertheless consider it.

RULE 3. ACTION BY CLERK OF COURT OF APPEALS UPON RECEIPT OF A COMPLAINT

(a) Receipt of complaint in proper form.

(1) Upon receipt of a complaint against a judge or magistrate filed in proper form under these rules, the clerk of the court of appeals will open a file, assign a docket number, and acknowledge receipt of the complaint. The clerk will promptly send copies of the complaint to the chief judge of the circuit (or the judge authorized to act as chief judge under rule 18(f))

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[2] *See* S. Rep. No. 362, 96th Cong., 1st Sess. 3-4, 6 (1979); 126 Cong. Rec. 28,092 (1980) (remarks of Sen. DeConcini on final passage).

and to each judge or magistrate whose conduct is the subject of the complaint. The original of the complaint will be retained by the clerk.

(2) If a district judge or magistrate is complained about, the clerk will also send a copy of the complaint to the chief judge of the district court in which the judge or magistrate holds his or her appointment. If a bankruptcy judge is complained about, the clerk will send copies to the chief judges of the district court and the bankruptcy court. However, if the chief judge of a district court or bankruptcy court is a subject of the complaint, the chief judge's copy will be sent to the judge of such court in regular active service who is most senior in date of commission among those who are not subjects of the complaint.

(b) Receipt of complaint about official other than a judge or magistrate of the ____th Circuit. If the clerk receives a complaint about an official other than a judge or magistrate of the ____th Circuit, the clerk will not accept the complaint for filing and will advise the complainant in writing of the procedure for processing such complaints.

(c) Receipt of complaint about a judge or magistrate of the ____th Circuit and another official. If a complaint is received about a judge or magistrate of the ____th Circuit and another official, the clerk will accept the complaint for filing only with regard to the judge or magistrate, and will advise the complainant accordingly.

(d) Receipt of complaint not in proper form. If the clerk receives a complaint against a judge or magistrate of this circuit that uses the complaint form but does not comply with the requirements of rule 2, the clerk will normally not accept the complaint for filing and will advise the complainant of the appropriate procedures. If a complaint against a judge or magistrate is received in letter form, the clerk will normally not accept the letter for filing as a complaint, will advise the writer of the right to file a formal complaint under these rules, and will enclose a copy of these rules and the accompanying forms.

Commentary on Rule 3

Role of Staff Other than the Clerk

Rule 2(h) follows the statutory language and provides that complaints are to be filed with the clerk of the court of appeals. The statute also directs the clerk to transmit copies of a complaint to the chief judge and to the judge or magistrate complained of (reflected in rule 3(a)) and states that certain council orders will be made public through the clerk's office.

Except for these limited provisions, the statute does not allocate responsibilities among clerks and other personnel, and the circuits are free to assign tasks as they see fit. While these rules are based on the assumption that the clerk will continue to maintain the files, will receive petitions for review of chief judge orders, and perform similar functions, individual circuits may wish to make other assignments. In that case, rule 3 could be modified to instruct the clerk to transmit the file to the circuit executive or other official after having performed the statutorily mandated duties.

Distribution of Complaint to Chief Judge of District Court or Bankruptcy Court

The statute requires that the complaint be transmitted to the chief judge of the circuit and the judge or magistrate complained about. If the complaint is about a district judge, bankruptcy judge, or magistrate, rule 3(a)(2) requires in addition that a copy be transmitted to the chief judge of the district court and, where a bankruptcy judge is the subject, the chief judge of the bankruptcy court. This provision is included in recognition of the responsibility of every chief judge for the administration of his or her court.

Chapter II: Review of a Complaint by the Chief Judge

RULE 4. REVIEW BY THE CHIEF JUDGE

(a) Purpose of chief judge's review. When a complaint in proper form is sent to the chief judge by the clerk's office, the chief judge will review the complaint to determine whether it should be (1) dismissed, (2) concluded on the ground that corrective action has been taken, or (3) referred to a special committee.

(b) Inquiry by chief judge. In determining what action to take, the chief judge may conduct a limited inquiry for the purpose of determining (1) whether appropriate corrective action has been or can be taken without the necessity for a formal investigation, and (2) whether the facts stated in the complaint are either plainly untrue or are incapable of being established through investigation. For this purpose, the chief judge may request the judge or magistrate whose conduct is complained of to file a written response to the complaint. The chief judge may also communicate orally or in writing with the complainant, the judge or magistrate whose conduct is complained of, and other people who may have knowledge of the matter, and may review any transcripts or other relevant documents. The chief judge will not undertake to make findings of fact about any matter that is reasonably in dispute.

(c) Dismissal. A complaint will be dismissed if the chief judge concludes—

(1) that the claimed conduct, even if the claim is true, is not "conduct prejudicial to the effective and expeditious administration of the business of the courts" and does not indicate a mental or physical disability resulting in inability to discharge the duties of office;

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(2) that the complaint is directly related to the merits of a decision or procedural ruling;

(3) that the complaint is frivolous, a term that includes making charges that are wholly unsupported; or

(4) that, under the statute, the complaint is otherwise not appropriate for consideration.

(d) Corrective action. The complaint proceeding will be concluded if the chief judge determines that appropriate action has been taken to remedy the problem raised by the complaint.

(e) Appointment of special committee. If the complaint is not dismissed or concluded, the chief judge will promptly appoint a special committee, constituted as provided in rule 9, to investigate the complaint and make recommendations to the judicial council. However, ordinarily a special committee will not be appointed until the judge or magistrate complained about has been invited to respond to the complaint and has been allowed a reasonable time to do so. In the discretion of the chief judge, separate complaints may be joined and assigned to a single special committee; similarly, a single complaint about more than one judge or magistrate may be severed and more than one special committee appointed.

(f) Notice of chief judge's action.

(1) If the complaint is dismissed or the proceeding concluded on the basis of corrective action taken, the chief judge will prepare a supporting memorandum that sets forth the allegations of the complaint and the reasons for the disposition. The memorandum will not include the name of the complainant or of the judge or magistrate whose conduct was complained of. The order and the supporting memorandum will be provided to the complainant, the judge or magistrate, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2). The complainant will be notified of the right to petition the judicial council

for review of the decision and of the deadline for filing a petition.

(2) If a special committee is appointed, the chief judge will notify the complainant, the judge or magistrate whose conduct is complained of, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2) that the matter has been referred, and will inform them of the membership of the committee.

(g) Public availability of chief judge's decision. Materials related to the chief judge's decision will be made public at the time and in the manner set forth in rule 17.

(h) Report to judicial council. The chief judge will from time to time report to the judicial council of the circuit on actions taken under this rule.

Commentary on Rule 4

Expeditious Review

The statute requires the chief judge to review a complaint "expeditiously." Although it does not seem necessary to repeat this language in a rule, we take note of the fact that chief judges differ substantially in the speed with which they act on complaints. In our view, it should be a rare case in which more than a month is permitted to elapse from the filing of the complaint to the chief judge's action on it.

Purpose of Chief Judge's Review

Although the statute permits the chief judge to conclude the proceeding "if he finds that" appropriate corrective action has been taken, it seems clear that the chief judge, in cases in which a complaint appears to have merit, should make every effort to determine whether it is possible to fashion a remedy without the necessity of appointing a special committee. The formal investigatory procedures are to be regarded as a last resort; the remedial purposes of the statute are on the whole better and more promptly served if an informal solution can be found that will correct the problem giving rise to a complaint.

Inquiry by Chief Judge

It seems clear under the statute that the chief judge is not required to act solely on the face of the complaint. The power to conclude a complaint proceeding on the basis that corrective action has been taken implies some power to determine whether the facts alleged are true. But the boundary line of that power—the point at which a chief judge invades the territory reserved for special committees—is unclear. Rule 4(b) addresses that issue by stating that the chief judge may conduct a limited inquiry to determine whether the facts of the complaint are "either plainly untrue or are incapable of being established through investigation," and that the chief judge "will not undertake to make findings of fact about any matter that is reasonably in dispute." Admittedly, this formulation may do little more than state the obvious, leaving the most difficult questions unanswered. Offered here, as commentary, are some suggestions to our fellow chief judges about the implementation of this principle. A number of examples, all but the first based on actual cases, illustrate the problem:

> (1) The complainant alleges an impropriety and asserts that he knows of it because his voices told him. It would appear clearly appropriate to treat such a complaint as frivolous.
>
> (2) The complainant alleges an impropriety and asserts that he knows of it because it was observed and reported to him by a person whom the complainant is not free to identify. The judge or magistrate denies that the event occurred. In some instances similar to this, chief judges have dismissed the complaint, reasoning that there is nothing to fuel an investigation. The statutory basis for the dismissal does not seem strong, but the result seems eminently sensible unless one thinks (and we do not) that it is appropriate for a special committee to subpoena the complainant and insist on the identity of the source. On balance, it would appear that the complaint should be dismissed as frivolous in such a case.
>
> (3) The complainant alleges an impropriety and asserts that he knows of it because it was observed and reported to him by a person who is identified. The judge or magistrate denies that the event occurred. When contacted, the source also denies it. In such a case, the chief judge's proper course of action may well turn on whether the source had any role in the allegedly improper conduct. If the complaint were based on a lawyer's statement that he had had an improper ex parte contact with a judge, the lawyer's denial of the impropriety might not be taken as wholly persuasive, and it

seems appropriate to conclude that a real factual issue is raised. On the other hand, if the complaint quoted a disinterested third party and the disinterested party denied that the statement had been made, there would not appear to be any value in opening a formal investigation. In such a case, it would seem appropriate to dismiss the complaint as frivolous on the basis that there is no support for the allegation of misconduct.

(4) The complainant alleges an impropriety and alleges that he observed it and there were no other witnesses; the judge or magistrate denies that the event occurred. This situation presents the possibility of a simple credibility conflict. Unless the complainant's allegations are wholly implausible, it would appear that a special committee must be appointed because there is a factual question that is reasonably in dispute.

Grounds for Dismissal of Complaints

Rule 4(c)(4) provides that a complaint may be dismissed as "otherwise not appropriate for consideration." This language is intended to accommodate dismissals of complaints for reasons such as untimeliness (see rule 1(d)) or mootness.

Opportunity of Judge or Magistrate to Respond

Rule 4(e) states that a judge or magistrate will ordinarily be invited to respond to the complaint before a special committee is appointed.

Judges and magistrates, of course, receive copies of complaints at the same time that they are referred to the chief judge, and they are free to volunteer responses to them. Under rule 4(b), the chief judge may request a response if it is thought necessary. However, many complaints are clear candidates for dismissal even if their allegations are accepted as true, and there is no need for the judge or magistrate complained about to devote time to a defense. By stating that a special committee will not ordinarily be appointed unless an invitation to respond has been issued by the chief judge, the rule should encourage officials not to respond unnecessarily.

Notification to Complainant and Judge or Magistrate

Section 372(c)(3) requires that the order dismissing a complaint or concluding the proceeding contain a statement of reasons and that a copy of the order be sent to the complainant. It appears that in most circuits it is the practice to prepare a formal order disposing of the complaint and a separate memorandum of reasons. In such a case, both the order and the memorandum are provided to the complainant. Rule 4(f) would accept that practice. Rule 17, dealing with availability of information to the public, contemplates that the memorandum would be made public, usually without disclosing the names of the complainant or the judge or magistrate involved. If desired for administrative purposes, more identifying information can be included on the formal order.

When complaints are disposed of by chief judges, the nature of the explanations provided to complainants varies considerably among the circuits. We believe that the statutory purposes are best served by providing the complainant with a relatively expansive explanation. See also the discussion of rule 17, dealing with public availability.

Rule 4(f) also provides that the complainant will be notified, in the case of a disposition by the chief judge, of the right to petition the judicial council for review. That appears not to be a common practice today. Although the complainant should in all cases have a copy of the circuit rules at the time the complaint is filed, it seems appropriate to provide a reminder at the time of dismissal of the complaint.

Chapter III: Review of Chief Judge's Disposition of a Complaint

RULE 5. PETITION FOR REVIEW OF CHIEF JUDGE'S DISPOSITION

If the chief judge dismisses a complaint or concludes the proceeding on the ground that corrective action has been taken, a petition for review may be addressed to the judicial council of the circuit. The judicial council may affirm the order of the chief judge, return the matter to the chief judge for further action, or, in exceptional cases, take other appropriate action.

Commentary on Rule 5

Petition to the Judicial Council for Review

Section 372(c)(10) provides that a complainant, judge, or magistrate aggrieved by a chief judge's order dismissing a complaint or concluding a proceeding on the basis of corrective action may "petition the judicial council for review thereof."

There is some suggestion in the legislative history that the draftsmen contemplated a two-step procedure, under which the council would first determine whether to grant or deny review and would then, if the petition were granted, proceed to the merits. Senator DeConcini, explaining the bill just before final Senate passage, said that "the judicial council may exercise its discretion in granting . . . review."[3] Moreover, the "petition . . . for review" formulation was used in the very next sentence of the legislation to describe the procedure for obtaining Judicial Conference review of an order of a judicial council, and in that context congressional leaders indicated that they contemplated a procedure analogous to the certiorari procedure in the Supreme Court.[4]

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[3] 126 Cong. Rec. 28,086 (1980).

[4] *Id.* at 28,092-93 (remarks of Sen. DeConcini); *id.* at 28,616 (remarks of Rep. Kastenmeier).

The analogy to the writ of certiorari raises more questions than it answers, however. The essence of the certiorari procedure is that the standards used for deciding whether to hear a case are different from the standards used for deciding a case on the merits. In the context of the petition for review to the judicial council from a chief judge's disposition of a complaint, it is not at all clear what different standards might apply to decisions whether or not to grant review. Indeed, Senator DeConcini, immediately after stating that the judicial council would have discretion, said, "It is to be expected that it is only in those rare cases where the chief judge has not recognized the merit of a complaint, that the council will reexamine a dismissed complaint about the conduct of a judge."[5] That statement seems to imply that the decision whether to grant review is to be a decision on the merits.

In our view, therefore, the council should ordinarily review the decision of the chief judge on the merits, treating the petition for review for all practical purposes as an appeal. This view has been carried into the rules, which state that the circuit council may respond to a petition by affirming the chief judge's order, remanding the matter, or, in exceptional cases, taking other appropriate action. The "exceptional cases" language would permit the council to deny review rather than affirm in a case in which the process was obviously being abused.

RULE 6. HOW TO PETITION FOR REVIEW OF A DISPOSITION BY THE CHIEF JUDGE

(a) Time. A petition for review must be received in the office of the clerk of the court of appeals within 30 days of the date of the clerk's letter to the complainant transmitting the chief judge's order.

(b) Form. A petition should be in the form of a letter, addressed to the clerk of the court of appeals, beginning "I hereby petition the judicial council for review of the chief judge's order . . . ." There is no need to enclose a copy of the original complaint.

(c) Legibility. Petitions should be typewritten if possible. If not typewritten, they must be legible.

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[5] *Id.* at 28,086.

(d) **Number of copies.** Only an original is required.

(e) **Statement of grounds for petition.** The letter should set forth a *brief* statement of the reasons why the petitioner believes that the chief judge should not have dismissed the complaint or concluded the proceeding. It should not repeat the complaint; the complaint will be available to members of the circuit council considering the petition.

(f) **Signature.** The letter must be signed.

(g) **Where to file.** Petition letters should be sent to

Clerk, United States Court of Appeals [address].

The envelope should be marked "Misconduct Petition" or "Disability Petition." The name of the judge or magistrate complained about should *not* appear on the envelope.

(h) **No fee required.** There is no fee for filing a petition under this procedure.

Commentary on Rule 6

Time for Filing Petition for Review

The three national courts and half the circuits have no time limit on the filing of a petition for review. The other half of the circuits have time limits of twenty or thirty days. Rule 6(a) contains a limit of thirty days.

It seems appropriate that there should be some time limit on petitions for review of chief judges' dispositions in order to provide finality to the process. If the complaint requires an investigation, the investigation should proceed; if it does not, the judge or magistrate complained about should know at some point that the matter is closed. On the other hand, the time limit should be relatively generous in recognition of the fact that most complainants are unrepresented and many are not well organized to maintain the discipline of court deadlines. The thirty-day limit is included with these considerations in mind.

In accordance with this generous approach, rule 7(c) of the rules provides for an automatic extension of the time if a person files a petition that is rejected for failure to comply with formal requirements.

RULE 7. ACTION BY CLERK OF COURT OF APPEALS UPON RECEIPT OF A PETITION FOR REVIEW

(a) Receipt of timely petition in proper form. Upon receipt of a petition for review filed within the time allowed and in proper form under these rules, the clerk of the court of appeals will acknowledge receipt of the petition. The clerk will promptly send to each member of the judicial council, except for any member disqualified under rule 18, copies of (1) the complaint form and statement of facts, (2) any response filed by the judge or magistrate, (3) any record of information received by the chief judge in connection with the chief judge's consideration of the complaint, (4) the chief judge's order disposing of the complaint, (5) any memorandum in support of the chief judge's order, (6) the petition for review, (7) any other documents in the files of the clerk that appear to be relevant and material to the petition, (8) a list of any documents in the clerk's files that are not being sent because they are not considered relevant and material, and (9) a ballot that conforms with rule 8(a). The clerk will also send the same materials, except for the ballot, to the chief judge of the circuit, the circuit executive, and each judge or magistrate whose conduct is at issue, except that materials previously sent to a person may be omitted.

(b) Receipt of untimely petition. The clerk will refuse to accept a petition that is received after the deadline set forth in rule 6(a).

(c) Receipt of timely petition not in proper form. Upon receipt of a petition filed within the time allowed but not in proper form under these rules (including a document that is ambiguous about whether a petition for review is intended), the clerk will acknowledge receipt of the petition, call the petitioner's attention to the deficiencies, and give the petitioner the opportunity to correct the deficiencies within fifteen days of the date of the clerk's letter or within the original deadline for filing the petition, whichever is later. If the deficiencies are corrected within the time allowed, the clerk will proceed in accordance with paragraph (a) of this rule. If the deficiencies are not corrected, the clerk will reject the petition.

Commentary on Rule 7

Transmittal of Documents by Clerk

The rules include no limit on the volume of documents that may be submitted in support of a complaint. One of the problems created by this liberality is that some complaint files may get very thick with attachments. Hence, it was thought appropriate that the clerk have some discretion to decide what portions of the file should be duplicated and transmitted to the members of the circuit council. Rule 7(a) provides such discretion but requires the clerk to furnish a list of the documents not transmitted. Rule 8(b) enables each member of the council, as well as the judge or magistrate complained about, to obtain a copy of any document not originally transmitted by the clerk.

RULE 8. REVIEW BY THE JUDICIAL COUNCIL OF A CHIEF JUDGE'S ORDER

(a) Mail ballot. Each member of the judicial council to whom a ballot was sent will return a signed ballot, or otherwise communicate the member's vote, to the [clerk of the court of appeals] [circuit executive]. The ballot form will provide opportunities to vote to (1) affirm the chief judge's disposition, or (2) place the petition on the agenda of a meeting of the judicial council. The form will also provide an opportunity for members to indicate that they have disqualified themselves from participating in consideration of the petition.

Votes will be tabulated when all members of the judicial council to whom ballots were sent have either voted or indicated that they are disqualified. After 20 days from the date the petition and related materials were sent to members of the judicial council, votes may be tabulated if they have been cast by at least two-thirds of the members to whom ballots were sent. Members who have disqualified themselves will be treated for this purpose as if ballots had not been sent to them.

If all of the votes cast should be for affirmance, the chief judge's order will be affirmed. If any of the members votes to place the petition on the agenda of a council meeting, that will be done.

(b) Availability of documents. Upon request, the clerk will make available to any member of the judicial council or to the judge or magistrate complained about any document from the files that was not sent to the council members pursuant to rule 7(a).

(c) Vote at meeting of judicial council. If a petition is placed on the agenda of a meeting of the judicial council, council action may be taken by a majority of the members present and voting.

(d) Rights of judge or magistrate complained about.

(1) At any time after the filing of a petition for review by a complainant, the judge or magistrate complained about may file a written response with the clerk of the court of appeals. The clerk will promptly distribute copies of the response to each member of the judicial council who is not disqualified, to the chief judge, and to the complainant. The judge or magistrate may not communicate with individual council members about the matter, either orally or in writing.

(2) The judge or magistrate complained about will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant.

(e) Notice of council decision.

(1) The order of the judicial council, together with any accompanying memorandum in support of the order, will be provided to the complainant, the judge

or magistrate, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2).

(2) If the decision is unfavorable to the complainant, the complainant will be notified that the law provides for no further review of the decision.

(3) A memorandum supporting a council order will not include the name of the complainant or the judge or magistrate whose conduct was complained of. If the order of the council affirms the chief judge's disposition, a supporting memorandum will be prepared only if the judicial council concludes that there is a need to supplement the chief judge's explanation.

(f) Public availability of council decision. Materials related to the council's decision will be made public at the time and in the manner set forth in rule 17.

Commentary on Rule 8

Voting Procedures

The use of mail ballots on petitions for review appears to be common practice. Rule 8(a) adopts the procedure but modifies it to assure that there will be full discussion in the council if any member believes that summary affirmance may not be appropriate: Any member of the council may cause the question to be placed on the agenda of a council meeting.

It should be emphasized that the "rule of one" on the mail ballot is not intended to invoke the analogy of the Supreme Court's certiorari jurisdiction. A vote to affirm on the mail ballot is intended to be a vote on the merits. The "rule of one" is intended to guarantee an opportunity for discussion and a vote following discussion if any member of the council is uncomfortable with a summary affirmance.

Chapter IV: Investigation and Recommendation by Special Committee

RULE 9. APPOINTMENT OF SPECIAL COMMITTEE

(a) Membership. A special committee appointed pursuant to rule 4(e) will consist of the chief judge of the circuit and equal numbers of circuit and district judges. If the complaint is about a district judge, bankruptcy judge, or magistrate, the district judge members of the committee will be from districts other than the district of the judge or magistrate complained about.

(b) Presiding officer. At the time of appointing the committee, the chief judge will designate one of its members (who may be the chief judge) as the presiding officer. When designating another member of the committee as the presiding officer, the chief judge may also delegate to such member the authority to direct the clerk of the court of appeals to issue subpoenas related to proceedings of the committee.

(c) Bankruptcy judge or magistrate as adviser. If the judicial officer complained about is a bankruptcy judge or magistrate, the chief judge may designate a bankruptcy judge or magistrate, as the case may be, to serve as an adviser to the committee. The chief judge will designate such an adviser if, within ten days of notification of the appointment of the committee, the bankruptcy judge or magistrate complained about requests that an adviser be designated. The adviser will be from a district other than the district of the judge or magistrate complained about. The adviser will not vote but will have the other privileges of a member of the committee.

(d) Provision of documents. The chief judge will certify to each other member of the committee and to the adviser, if any, copies of (1) the complaint form and statement of facts, and (2) any other documents on file

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pertaining to the complaint (or to that portion of the complaint referred to the special committee).

(e) Continuing qualification of committee members. A member of a special committee who was qualified at the time of appointment may continue to serve on the committee even though the member relinquishes the position of chief judge, circuit judge, or district judge, as the case may be, but only if the member continues to hold office under article III, section 1, of the Constitution of the United States.

(f) Inability of committee member to complete service. In the event that a member of a special committee can no longer serve because of death, disability, disqualification, or other reason, the chief judge of the circuit will determine whether to appoint a replacement member. However, no special committee appointed under these rules will function with only a single member, and the quorum and voting requirements for a two-member committee will be applied as if the committee had three members.

Commentary on Rule 9

Membership and Presiding Officer

Rule 9 leaves the size of a special committee flexible, to be determined on a case-by-case basis.

In our view, there is good reason to preserve the statutory flexibility in this regard. The question of committee size is one that should be weighed with some care in view of the potential for consuming the members' time; a large committee should be appointed only if there is a special reason to do so.

Although the statute requires that the chief judge be a member of each special committee, it does not require that the chief judge preside.[6] Once again, the rules leave the decision for case-by-case determination at the time the committee is appointed.

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[6] *See* H.R. Rep. No. 1313, 96th Cong., 2d Sess. 11 (1980) (chief judge may appoint another judge as presiding officer).

Section 372(c)(9)(A) provides that a special committee will have subpoena powers as provided in 28 U.S.C. § 332(d). The latter section provides that subpoenas shall be issued on behalf of circuit councils by the clerk of the court of appeals "at the direction of the chief judge of the circuit or his designee." While it might be regarded as implicit that a special committee can exercise its subpoena power through it own presiding officer, strict compliance with the letter of section 332(d) would appear to be the safer course. Rule 9(b) therefore invites the chief judge, when designating someone else as presiding officer, to make an explicit delegation of the authority to direct the issuance of subpoenas related to committee proceedings.

It may be noted that we have not specifically addressed the case in which, because of disqualification of the chief judge, another judge is exercising the powers of the chief judge in the section 372(c) proceeding. Caution might suggest that the designation to direct the issuance of subpoenas should nevertheless come from the chief judge.

Bankruptcy Judge or Magistrate as Adviser

The rules of three circuits provide that, if a bankruptcy judge or magistrate is the judicial officer complained about, a bankruptcy judge or magistrate, respectively, will be named as an adviser to the special committee. Rule 9(c) adopts that provision with a modification: Instead of mandating the appointment of such an adviser, it provides that the chief judge may appoint an adviser sua sponte and will do so upon request of the judge or magistrate complained about.

The rule provides that the adviser will have all the privileges of a member of a committee except the franchise. That would include participating in all deliberations of the committee, questioning witnesses at hearings, and even writing a separate statement to accompany the report of the special committee to the judicial council.

Continuing Qualification

Rule 9(e) provides that a member of a special committee who remains an article III judge may continue to serve on the committee even though the member's status changes. Thus, a committee that originally consisted of the chief judge and an equal number of circuit and district judges, as required by the law, may continue to function even though changes of status alter that composition. This provision reflects the belief that stability of membership will make an important contribution to the quality of the work of such committees.

Inability of Committee Member to Complete Service

Stability of membership is also the principal concern animating rule 9(f), which deals with the case in which a special committee loses a member before its work is complete. The rule would permit the chief judge to determine whether a replacement member should be appointed. It is our view generally that appointment of a replacement member is desirable in these situations unless the committee has conducted evidentiary hearings before the vacancy occurs. However, other cases may also arise in which a committee is in the late stages of its work, and in which it would be difficult for a new member to play a meaningful role. The rule protects the collegial character of the committee process by prohibiting a single surviving member from serving as a committee and by providing that a committee of two surviving members will, in essence, operate under a unanimity rule.

RULE 10. CONDUCT OF AN INVESTIGATION

(a) Extent and methods to be determined by committee. Each special committee will determine the extent of the investigation and the methods of conducting it that are appropriate in the light of the allegations of the complaint. If, in the course of the investigation, the committee develops reason to believe that the judge or magistrate may have engaged in misconduct that is beyond the scope of the complaint, the committee may, with written notice to the judge or magistrate, expand the scope of the investigation to encompass such misconduct.

(b) Criminal matters. In the event that the complaint alleges criminal conduct on the part of a judge or magistrate, or in the event that the committee becomes aware of possible criminal conduct, the committee will consult with the appropriate prosecuting authorities to the extent permitted by 28 U.S.C. § 372(c)(14) in an effort to avoid compromising any criminal investigation.

However, the committee will make its own determination about the timing of its activities, having in mind the importance of ensuring the proper administration of the business of the courts.

(c) **Staff.** The committee may arrange for staff assistance in the conduct of the investigation. It may use existing staff of the judicial branch or may arrange, through the Administrative Office of the United States Courts, for the hiring of special staff to assist in the investigation.

(d) **Delegation.** The committee may delegate duties in its discretion to subcommittees, to staff members, to individual committee members, or to an adviser designated under rule 9(c). The authority to exercise the committee's subpoena powers may be delegated only to the presiding officer.

(e) **Report.** The committee will file with the judicial council a comprehensive report of its investigation, including findings of the investigation and the committee's recommendations for council action. Any findings adverse to the judge or magistrate will be based on evidence in the record. The report will be accompanied by a statement of the vote by which it was adopted, any separate or dissenting statements of committee members, and the record of any hearings held pursuant to rule 11.

(f) **Voting.** All actions of the committee will be by vote of a majority of all of the members of the committee.

Commentary on Rule 10

Nature of the Process

Rule 10 and the three rules that follow are all concerned with the way in which a special committee carries out its mission. They reflect the view that a special committee has what are generally regarded in our jurisprudence as two distinct roles. The committee will often be performing an investigative role of the kind that is characteristically given to executive branch agencies in our system of justice and, in some stages, a more formalized fact-finding role. Even though the same body has responsibility for both roles under section 372(c), it is important to distinguish between them in order to ensure that due process rights are afforded at appropriate times to the judge or magistrate complained about.

Criminal Matters

One of the difficult questions that can arise under the judicial discipline statute is the relationship between proceedings under this statute and criminal investigations. Rule 10(b) assigns coordinating responsibility to the special committee in cases in which criminal conduct is suspected and gives the committee the authority to decide what the appropriate pace of its activity should be in light of any criminal investigation. We do not mean to suggest, however, that a special committee should abdicate its responsibility by assenting to indefinite deferral of its own work.

It is noted that a special committee may be barred from disclosing some information to a prosecutor or grand jury under 28 U.S.C. § 372(c)(14). This provision is discussed in the commentary under rule 16.

Delegation

Rule 10(d) permits the committee, in its discretion, to delegate any of its duties to subcommittees, individual committee members, or staff. This is consistent with the general principle, expressed in rule 10(a), that each special committee will determine the methods of conducting the investigation that are appropriate in the light of the allegations of the complaint. It is, of course, not contemplated that the ultimate duty of adopting a report would be delegable.

Judge Seitz regards it as inappropriate to delegate the function of conducting hearings, and believes that the rule should explicitly prohibit such delegation.

Rule 9(b) suggests that, where the chief judge designates someone else as presiding officer of a special committee, the presiding officer also be delegated the authority to direct the clerk of the court of appeals to issue subpoenas related to committee proceedings. That is not intended to imply, however, that the decision to direct the issuance of a subpoena is necessarily exercisable by the presiding officer alone. Under rule 10(d), it is up to the committee to decide whether to delegate that decision-making authority.

Basis of Findings

Rule 10(e) requires that findings adverse to the judge or magistrate complained about be based on evidence in the record. There is no similar requirement in the rules for determinations favorable to the judge or magistrate. We contemplate that a committee may, in some circumstances, recommend dismissal of a complaint on the ground that preliminary investigation reveals no basis for going forward with hearings on the record.

Voting in the Special Committee

Rule 10(f) provides that actions of a special committee will be by vote of a majority of all the members. It seems reasonable to expect that, almost always, all the members of a committee will participate in committee decisions. In that circumstance, it seems reasonable to require that committee decisions be made by a majority of the membership, rather than a majority of some smaller quorum.

RULE 11. CONDUCT OF HEARINGS BY SPECIAL COMMITTEE

(a) Purpose of hearings. The committee may hold hearings to take testimony and receive other evidence, to hear argument, or both. If the committee is investigating allegations against more than one judge or magistrate it may, in its discretion, hold joint hearings or separate hearings.

(b) Notice to judge or magistrate complained about. The judge or magistrate complained about will be given adequate notice in writing of any hearing held, its purposes, the names of any witnesses whom the committee intends to call, and the text of any statements that have been taken from such witnesses. The judge or magistrate may at any time suggest additional witnesses to the committee.

(c) Committee witnesses. All persons who are believed to have substantial information to offer will be called as committee witnesses. Such witnesses may include the complainant and the judge or magistrate complained about. The witnesses will be questioned by committee members, staff, or both. The judge or magistrate will be afforded the opportunity to cross-examine committee witnesses, personally or through counsel.

(d) **Witnesses called by the judge or magistrate.** The judge or magistrate complained about may also call witnesses and may examine them personally or through counsel. Such witnesses may also be examined by committee members, staff, or both.

(e) **Witness fees.** Witness fees will be paid as provided in 28 U.S.C. § 1821.

(f) **Rules of evidence; oath.** The Federal Rules of Evidence will apply to any evidentiary hearing except to the extent that departures from the adversarial format of a trial make them inappropriate. All testimony taken at such a hearing will be given under oath or affirmation.

(g) **Record and transcript.** A record and transcript will be made of any hearing held.

Commentary on Rule 11

The Role of Hearings in the Investigation Process

It has already been observed that the roles of a special committee include an investigative role and a fact-finding role. In conformity with this concept of roles, we would expect hearings to be held only after the investigative work has been done and the committee has concluded that there is sufficient evidence to warrant a formal fact-finding proceeding. Rule 11 is concerned only with the conduct of hearings, and does not govern the earlier, investigative stages of a special committee's work.

Inevitably, a hearing will have something of an adversary character. The judge or magistrate who has been complained about will surely feel threatened if the matter has reached this stage. We believe, nevertheless, that these tendencies should be moderated to the extent possible. Even though we have suggested that there are two roles and that an investigation will commonly have two distinct stages, we do not mean to imply that committee members should regard themselves as prosecutors one day and judges the next. Their duty—and that of their staff—is at all times to be impartial.

In conformity with this view, rule 11(c) contemplates that witnesses at hearings should generally be called as committee witnesses, regardless of whether their testimony will be favorable or unfavorable to the judge or magistrate complained about. Staff or others who are organizing the hearings should regard it as their role to present the entire picture, and not to act as prosecutors. Even the judge or magistrate complained about should normally be called as a committee witness. Although rule 11(d) preserves the statutory right of the judge or magistrate to call witnesses on his or her own behalf, we believe that this should not often be necessary.

Testimony of Judge or Magistrate

As noted above, we believe that it is appropriate to call the complainee judge or magistrate as a committee witness. We assume that the judge or magistrate would wish to testify in most cases, and we believe that the special committee should be the sponsor of that testimony as well as other testimony favorable to the judge or magistrate. We recognize, however, that cases may arise in which the judge or magistrate will not testify voluntarily. In such cases, subpoena power appears to be available, subject to the normal testimonial privileges.

Applicability of Rules of Evidence

Rule 11(f) provides that the Federal Rules of Evidence will apply to evidentiary hearings conducted by special committees "except to the extent that departures from the adversarial format of a trial make them inappropriate."

RULE 12. RIGHTS OF JUDGE OR MAGISTRATE IN INVESTIGATION

(a) Notice. The judge or magistrate complained about is entitled to written notice of the investigation (rule 4(f)), to written notice of expansion of the scope of an investigation (rule 10(a)), and to written notice of any hearing (rule 11(b)).

(b) **Presentation of evidence.** The judge or magistrate is entitled to a hearing, and has the right to present evidence and to compel the attendance of witnesses and the production of documents at the hearing. Upon request of the judge or magistrate, the chief judge or his designee will direct the clerk of the court of appeals to issue a subpoena in accordance with 28 U.S.C. § 332(d)(1).

(c) **Presentation of argument.** The judge or magistrate may submit written argument to the special committee at any time, and will be given a reasonable opportunity to present oral argument at an appropriate stage of the investigation.

(d) **Attendance at hearings.** The judge or magistrate will have the right to attend any hearing held by the special committee and to receive copies of the transcript and any documents introduced, as well as to receive copies of any written arguments submitted by the complainant to the committee.

(e) **Receipt of committee's report.** The judge or magistrate will have the right to receive the report of the special committee at the time it is filed with the judicial council.

(f) **Representation by counsel.** The judge or magistrate may be represented by counsel in the exercise of any of the rights enumerated in this rule. The costs of such representation may be borne by the United States as provided in rule 14(h).

Commentary on Rule 12

Right to Attend Hearings

The statute states that rules adopted by judicial councils shall contain provisions requiring that "the judge or magistrate whose conduct is the subject of the complaint be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the investigating panel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing." To implement this provision, rule 12(d) gives the judge or magistrate the right to attend any hearing held by the committee. The word "hearings" is used in the rules to include sessions held for the purpose of receiving evidence of record or hearing argument.

We do not read the statute as requiring that the judge or magistrate be permitted to attend *all* proceedings of the special committee. Hence, the rules do not accord a right to attend such proceedings as meetings at which the committee is engaged in investigative activity (such as interviewing a possible witness or examining documents delivered pursuant to a subpoena duces tecum to determine if they contain relevant evidence) or meetings at which the committee is deliberating on the evidence.

RULE 13. RIGHTS OF COMPLAINANT IN INVESTIGATION

(a) Notice. The complainant is entitled to written notice of the investigation as provided in rule 4(f). Upon the filing of the special committee's report to the judicial council, the complainant will be notified that the report has been filed and is before the council for decision.

(b) Opportunity to provide evidence. The complainant is entitled to be interviewed by a representative of the committee. If it is believed that the complainant has substantial information to offer, the complainant will be called as a witness at a hearing.

(c) Presentation of argument. The complainant may submit written argument to the special committee at any time. In the discretion of the special committee, the complainant may be permitted to offer oral argument.

(d) Representation by counsel. A complainant permitted to offer oral argument may do so through counsel.

Commentary on Rule 13

In accordance with the view of the process as fundamentally administrative, these rules do not give the complainant the rights of a party to litigation, and leave the complainant's role largely within the discretion of the special committee. However, rule 13(b) promises complainants that, where a special committee has been appointed, the complainant will at a minimum be interviewed by a representative of the committee. Such an interview may, of course, be in person or by telephone, and the representative of the committee may be either a member or staff. In almost every case, such an interview would be regarded by the committee as essential in the performance of its task. We believe, nevertheless, that it is helpful to provide the assurance in the rules that complainants will have an opportunity to tell their stories orally.

Rule 13 does not contemplate that the complainant will be permitted to attend proceedings of the special committee except when testifying or presenting argument. Nor does it contemplate that the complainant will be given access to the special committee's report to the judicial council. A majority of the drafting committee believe that opening the proceedings to the complainant or providing a copy of the special committee's report would be inconsistent with the statutory mandate of confidentiality, 28 U.S.C. § 372(c)(14). Judge Seitz does not read 28 U.S.C. § 372(c)(14) as preventing the special committee from exercising its discretion under 28 U.S.C. § 372(c)(11)(C) to permit the complainant to be present at its proceedings. Nor does he believe that 28 U.S.C. § 372(c)(14) prohibits the delivery of a copy of the special committee's report to the complainant—the entity which instituted the proceedings. He believes that the council may, under its rule-making power, adopt a rule requiring the delivery of a copy of a special committee's report to the complainant. He further believes that such a rule should be adopted.

Chapter V: Judicial Council Consideration of Recommendations of Special Committee

RULE 14. ACTION BY JUDICIAL COUNCIL

(a) Purpose of judicial council consideration. After receipt of a report of a special committee, the judicial council will determine whether to dismiss the complaint, conclude the proceeding on the ground that corrective action has been taken, refer the complaint to the Judicial Conference of the United States, or order corrective action.

(b) Basis of council action. Subject to the rights of the judge or magistrate to submit argument to the council as provided in rule 15(a), the council may take action on the basis of the report of the special committee and the record of any hearings held. If the council finds that the report and record provide an inadequate basis for decision, it may (1) order further investigation and a further report by the special committee or (2) conduct such additional investigation as it deems appropriate.

(c) Dismissal. The council will dismiss a complaint if it concludes—

(1) that the claimed conduct, even if the claim is true, is not "conduct prejudicial to the effective and expeditious administration of the business of the courts" and does not indicate a mental or physical disability resulting in inability to discharge the duties of office;

(2) that the complaint is directly related to the merits of a decision or procedural ruling;

(3) that the facts on which the complaint is based have not been demonstrated; or

(4) that, under the statute, the complaint is otherwise not appropriate for consideration.

(d) Conclusion of the proceeding on the basis of corrective action taken. The council will conclude the complaint proceeding if it determines that appropriate action has already been taken to remedy the problem identified in the complaint.

(e) **Referral to Judicial Conference of the United States.** The judicial council may, in its discretion, refer a complaint to the Judicial Conference of the United States with the council's recommendations for action. It is required to refer such a complaint to the Judicial Conference of the United States if the council determines that a circuit judge or district judge has engaged in conduct—

(1) that might constitute ground for impeachment; or

(2) that, in the interest of justice, is not amenable to resolution by the judicial council.

(f) **Order of corrective action.** If the complaint is not disposed of under paragraphs (c) through (e) of this rule, the judicial council will take other action to assure the effective and expeditious administration of the business of the courts. Such action may include, among other measures—

(1) Censuring or reprimanding the judge or magistrate, either by private communication or by public announcement;

(2) Ordering that, for a fixed temporary period, no new cases be assigned to the judge or magistrate;

(3) In the case of a magistrate, ordering the chief judge of the district court to take action specified by the council, including the initiation of removal proceedings pursuant to 28 U.S.C. § 631(i);

(4) In the case of a bankruptcy judge, removing the judge from office pursuant to 28 U.S.C. § 152;

(5) In the case of a circuit or district judge, requesting the judge to retire voluntarily with the provision (if necessary) that ordinary length-of-service requirements will be waived;

(6) In the case of a circuit or district judge who is eligible to retire but does not do so, certifying the disability of the judge under 28 U.S.C. § 372(b) so that an additional judge may be appointed.

(g) Combination of actions. Referral of a complaint to the Judicial Conference of the United States under paragraph (e) or to a district court under paragraph (f)(3) of this rule will not preclude the council from simultaneously taking such other action under paragraph (f) as is within its power.

(h) Recommendation about fees. At the time of taking action under this rule, the judicial council will consider whether to recommend to the director of the Administrative Office of the United States Courts that the reasonable attorneys' fees, witness fees, and other expenses incurred by the judge or magistrate complained about in connection with the complaint be paid from funds of the United States. The council will normally make such a recommendation only if the judge or magistrate has been substantially exonerated.

(i) Notice of action of judicial council. Council action will be by written order. Unless the council finds that, for extraordinary reasons, it would be contrary to the interests of justice, the order will be accompanied by a memorandum setting forth the factual determinations on which it is based and the reasons for the council action. The memorandum will not include the name of the complainant or of the judge or magistrate whose conduct was complained about. The order and the supporting memorandum will be provided to the complainant, the judge or magistrate, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2). However, if the complaint has been referred to the Judicial Conference of the United States pursuant to paragraph (e) of this rule and the council determines that disclosure would be contrary to the interests of justice, such disclosure need not be made. The complainant and the judge or magistrate will be notified of any right to seek review of the judicial council's decision by the Judicial Conference of the United States and of the procedure for filing a petition for review.

(j) Public availability of council action. Materials related to the council's action will be made public at the time and in the manner set forth in rule 17.

Commentary on Rule 14

Basis of Council Action

Section 372(c)(6)(A) states that, upon receipt of a report from a special committee, the judicial council may conduct any additional investigation that it considers to be necessary. While the statute does not explicitly refer to an authority to ask the special committee to do further work and file a supplemental report, it appears to us that such a procedure is so inherently a part of a committee process that the authority for it may safely be assumed. In our view, an investigation of any magnitude by the entire judicial council would be warranted in only the rarest cases, since it would constitute a substantial drain on judicial resources of the circuit. There may be some cases, however, in which a loose end can be tied up without the necessity of a remand.

Council Action

Paragraphs (6)(B) and (7) of section 372(c) enumerate actions that the council may take after receipt of the report of a special committee and the conduct of any additional investigation that it deems necessary. There are two notable omissions from this statutory enumeration: dismissal of the complaint and conclusion of the proceedings on the ground that corrective action has been taken. Moreover, the authority to take these actions does not easily fit into the catch-all clause of paragraph (6)(B)(vii) ("ordering such other action as it considers appropriate under the circumstances"), since the general introductory language of paragraph (6)(B) seems to assume that a finding of misconduct or disability has been made. That language authorizes the judicial council to "take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit." We nevertheless conclude that dismissal of the complaint and conclusion of the proceeding on the basis of corrective action taken must be action permitted under paragraph (6)(B)(vii). In these rules, they are included in the enumerated alternatives for council action.

Combination of Actions

Rule 14(g) states that referral of a complaint to the Judicial Conference of the United States, or to a district court in a case involving a magistrate, will not preclude the judicial council from simultaneously taking other action to assure the effective and expeditious administration of the business of the courts.

Referral to the Judicial Conference of the United States may take place under either clause (A) or clause (B) of section 372(c)(7). Clause (A) states that, "[i]n addition to the authority [to take appropriate action] granted under paragraph (6)," judicial councils may, in their discretion, refer matters to the Judicial Conference of the United States with recommendations for action by the Conference. Clause (B) mandates judicial council referral of complaints to the Judicial Conference in certain circumstances; it is not introduced with the phrase, "In addition to the authority granted under paragraph (6)." We do not believe that this distinction in the introductory language was intended to suggest a difference in the authority of the judicial council to take corrective action simultaneously with referral of a matter to the Conference. We read "In addition to" in clause (A) as saying no more than that referral is another action within the council's authority, in addition to those actions listed in paragraph (6).

Attorneys' Fees

Although the statute contains no explicit provision for the payment of the attorneys' fees of judges or magistrates who are the subjects of investigations, the general counsel of the Administrative Office has concluded that 28 U.S.C. § 604(h) gives the director discretion, upon request of a circuit judicial council, to cover the expenses of the legal representation of a judicial officer in a proceeding under section 372(c).

Rule 14(h) states that the council will consider whether to recommend the payment of expenses incurred by the judge or magistrate in the section 372(c) proceedings, and also states that the council will normally recommend payment only if the judge or magistrate has been substantially exonerated. In a somewhat analogous situation, 28 U.S.C. § 593(g) authorizes the reimbursement of attorneys' fees for a government official who is the subject of an investigation by a special counsel, but only if no indictment is brought.

Notice of Council Action

Rule 14(i) requires that council action normally be supported with a memorandum of factual determinations and reasons and that notice of the action be given to the complainant and the judge or magistrate complained about. The two "interests of justice" exceptions are derived from 28 U.S.C. § 372(c)(7)(C) and (c)(15). It is not easy to imagine cases in which they would be applicable.

Right to Petition for Review of Judicial Council Action

Rule 14(i) requires that the notification to the complainant and the judge or magistrate complained about include notice of any right to petition the Judicial Conference of the United States for review of the council's decision.

It is noted that the right to petition for review is limited to orders under paragraph (6) of section 372(c). A decision of the council to refer a matter to the Judicial Conference under paragraph (7) is not reviewable.

It is also noted that there may be some doubt about the right of a complainant to petition for review of a council order dismissing the complaint. If, as we have suggested, the authority to dismiss is found in paragraph (6)(B)(vii), a dismissal order is reviewable. It might be argued, however, that the authority to dismiss is implied by the statutory scheme but not found in any particular provision; in that event, since only orders under paragraph (6) are reviewable, there would be no possibility of review. This outcome would not be without rationality, since it is clear that there is no review when a judicial council upholds a dismissal by a chief judge.

For the same reason that we believe there should be a time limit for petitioning for review of a chief judge's order, we believe that there should be a time limit for filing a petition with the Judicial Conference Committee for review of a decision of the judicial council. We have not included such a limit in these rules, however. We believe that it would more appropriately be included in rules prescribed by the Judicial Conference governing petitions for review addressed to its standing committee.

RULE 15. PROCEDURES FOR JUDICIAL COUNCIL CONSIDERATION OF A SPECIAL COMMITTEE'S REPORT

(a) Rights of judge or magistrate complained about. Within ten days after the filing of the report of a special committee, the judge or magistrate complained about may address a written response to all of the members of the judicial council. The judge or magistrate will also be given an opportunity to present oral argument to the council, personally or through counsel. The judge or magistrate may not communicate with individual council members about the matter, either orally or in writing.

(b) **Conduct of additional investigation by the council.** If the judicial council decides to conduct additional investigation, the judge or magistrate complained about will be given adequate prior notice in writing of that decision and of the general scope and purpose of the additional investigation. The conduct of the investigation will be generally in accordance with the procedures set forth in rules 10 through 13 for the conduct of an investigation by a special committee. However, if hearings are held, the council may limit testimony to avoid unnecessary repetition of testimony presented before the special committee.

(c) **Voting.** Council action will be taken by a majority of those members of the council who are not disqualified, except that a decision to remove a bankruptcy judge from office requires a majority of all the members of the council.

Commentary on Rule 15

Voting

Section 372(c)(6)(B)(7) requires that removal of a bankruptcy judge be in accordance with 28 U.S.C. § 152. Subsection (e) of that section requires the concurrence of a majority of all the members of the council in the order of removal. We do not think it is appropriate to apply a similar rule to the less severe actions that a judicial council may take under the act. If some members of the council are disqualified in the matter, their disqualification should not be given the effect of a vote against council action.

Chapter VI: Miscellaneous Rules

RULE 16. CONFIDENTIALITY

(a) **General rule.** Consideration of a complaint by the chief judge, a special committee, or the judicial council will be treated as confidential business, and information about such consideration will not be disclosed by any judge, magistrate, or employee of the judicial branch or any person who records or transcribes testimony except in accordance with these rules.

(b) **Files.** All files related to complaints of misconduct or disability, whether maintained by the clerk, the chief judge, members of a special committee, members of the judicial council, or staff, and whether or not the complaint was accepted for filing, will be maintained separate and apart from all other files and records, with appropriate security precautions to ensure confidentiality.

(c) **Disclosure in memoranda of reasons.** Memoranda supporting orders of the chief judge or the judicial council, and dissenting opinions or separate statements of members of the council, may contain such information and exhibits as the authors deem appropriate, and such information and exhibits may be made public pursuant to rule 17.

(d) **Availability to Judicial Conference.** In the event that a complaint is referred under rule 14(e) to the Judicial Conference of the United States, the clerk will provide the Judicial Conference with copies of the report of the special committee and any other documents and records that were before the judicial council at the time of its determination. Upon request of the Judicial Conference or its Committee to Review Circuit Council Conduct and Disability Orders, in connection with their consideration of a referred complaint or a petition under 28 U.S.C. § 372(c)(10) for review of a council

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order, the clerk will furnish any other records related to the investigation.

(e) **Availability to district court.** In the event that the judicial council directs the initiation of proceedings for removal of a magistrate under rule 14(f)(3), the clerk will provide to the chief judge of the district court copies of the report of the special committee and any other documents and records that were before the judicial council at the time of its determination. Upon request of the chief judge of the district court, the judicial council may authorize release of any other records relating to the investigation.

(f) **Impeachment proceedings.** The judicial council may release to the legislative branch any materials that are believed necessary to an impeachment investigation of a judge or a trial on articles of impeachment.

(g) **Consent of judge or magistrate complained about.** Any materials from the files may be disclosed to any person upon the written consent of both the judge or magistrate complained about and the chief judge of the circuit. The chief judge may require that the identity of the complainant be shielded in any materials disclosed.

(h) **Disclosure by judicial council in special circumstances.** The judicial council may authorize disclosure of information about the consideration of a complaint, including the papers, documents, and transcripts relating to the investigation, to the extent that the council concludes that such disclosure is justified by special circumstances and is not prohibited by 28 U.S.C. § 372(c)(14).

(i) **Disclosure of identity by judge or magistrate complained about.** Nothing in this rule will preclude the judge or magistrate complained about from acknowledging that he or she is the judge or magistrate referred to in documents made public pursuant to rule 17.

Commentary on Rule 16

Scope of Confidentiality Requirement

Section 372(c)(14) applies a rule of confidentiality to "papers, documents, and records of proceedings related to investigations conducted under this subsection" and states that they shall not be disclosed "by any person in any proceeding," with enumerated exceptions. Three questions arise: Who is bound by the confidentiality rule, what proceedings are subject to the rule, and who is within the circle of people who may have access to information without breaching the rule?

With regard to the first question, rule 16(a) provides that judges, magistrates, employees of the judicial branch, and people involved in recording proceedings and preparing transcripts are obliged to respect the confidentiality requirement. This of course includes judges and magistrates who may be the subjects of complaints.

With regard to the second question, the reference to "investigations" suggests that section 372(c)(14) technically applies only in cases in which a special committee has been appointed. However, rule 16(a) applies the rule of confidentiality more broadly, covering consideration of a complaint at any stage.

With regard to the third question, it seems clear that there is no barrier of confidentiality between a judicial council and the Judicial Conference, and that members of the Judicial Conference or its standing committee may have access to any of the confidential records for use in their consideration of a referred matter or a petition for review. We regard it as implicit that a district court may have similar access if the judicial council orders in response to a complaint that the district court initiate proceedings to remove a magistrate from office, and rule 16(e) so provides. It would be absurd if the district court were in this circumstance denied access to the evidence on which the order was based.

On the other hand, the statute makes it clear that there is a barrier of confidentiality between the judicial branch and the legislative; it provides, as an exception to the rule of confidentiality, that material is to be disclosed to Congress only if it is "believed necessary to an impeachment investigation or trial of a judge under article I."

Exceptions to Confidentiality Rule

With regard to the exception for impeachment proceedings, rule 16(f) tracks the statutory language, and deliberately preserves the ambiguity about who must believe that disclosure is necessary to an impeachment investigation or trial. There is some possibility of conflict between the legislative and judicial branches about this issue. It may never arise in fact, and it does not seem appropriate to try to resolve it in advance by rule.

Another exception to the rule of confidentiality is provided by section 372(c)(14)(B), which states that confidential materials may be disclosed if authorized in writing by the judge or magistrate complained about and by the chief judge of the circuit.

Rule 16 also recognizes that there must be some implicit exceptions to the confidentiality requirement. For example, 28 U.S.C. § 372(c)(15) requires that certain orders and the reasons for them shall be made public; it would be a barren collection of reasons that could not refer to the evidence. Rule 16(c) thus makes it explicit that memoranda supporting chief judge and council orders, as well as dissenting opinions and separate statements, may contain references to information that would otherwise be confidential and that such information may be made public.

Rule 16(h) permits disclosure of additional information by order of the council in circumstances not enumerated. Unfortunately, the statutory language does not explicitly authorize exceptions, so many cases will present issues of statutory interpretation. A strong case could be made for disclosure to permit a prosecution for perjury based on testimony given before a special committee. A more difficult case would be presented if a special committee turned up evidence of criminal conduct by a judge or magistrate and wanted to refer the matter to a grand jury. The rule refers to the statutory prohibition but does not attempt to resolve such questions.

RULE 17. PUBLIC AVAILABILITY OF DECISIONS

(a) General rule. A docket-sheet record of orders of the chief judge and the judicial council and the texts of any memoranda supporting such orders and any dissenting opinions or separate statements by members of the judicial council will be made public when final action on the complaint has been taken and is no longer subject to review.

(1) If the complaint is finally disposed of without appointment of a special committee, or if it is disposed of by council order dismissing the complaint for

reasons other than mootness, the publicly available materials will not disclose the name of the judge or magistrate complained about without his or her consent.

(2) If the complaint is finally disposed of by censure or reprimand by means of private communication, the publicly available materials will not disclose either the name of the judge or magistrate complained about or the text of the reprimand.

(3) If the complaint is finally disposed of by any other action taken pursuant to rule 14(d) or (f), the text of the dispositive order will be included in the materials made public, and the name of the judge or magistrate will be disclosed.

(4) If the complaint is dismissed as moot at any time after the appointment of a special committee, the judicial council will determine whether the name of the judge or magistrate is to be disclosed. The name of the complainant will not be disclosed in materials made public under this rule unless the chief judge orders such disclosure.

(b) **Manner of making public.** The records referred to in paragraph (a) will be made public by placing them in a publicly accessible file in the office of the clerk of the court of appeals at [address]. The clerk will send copies of the publicly available materials to the Federal Judicial Center, 1520 H Street, N.W., Washington DC 20005, where such materials will also be available for public inspection. In cases in which memoranda appear to have precedential value, the chief judge may cause them to be published.

(c) **Decisions of Judicial Conference standing committee.** To the extent consistent with the policy of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, opinions of that commmittee about complaints arising from this circuit will also be made available to the public in the office of the clerk of the court of appeals.

(d) Special rule for decisions of judicial council. When the judicial council has taken final action on the basis of a report of a special committee, and no petition for review has been filed with the Judicial Conference within thirty days of the council's action, the materials referred to in paragraph (a) will be made public in accordance with this rule as if there were no further right of review.

(e) Complaints referred to the Judicial Conference of the United States. If a complaint is referred to the Judicial Conference of the United States pursuant to rule 14(e), materials relating to the complaint will be made public only as may be ordered by the Judicial Conference.

Commentary on Rule 17

Section 372(c)(15) provides that "[e]ach written order to implement any action under paragraph (6)(B) of this subsection" shall be made publicly available and that, "[u]nless contrary to the interest of justice," each such order shall be accompanied by written reasons. Section 327(c)(14) states that "papers, documents, and records of proceedings related to investigations" shall be confidential. Section 372(c)(6)(B) lists, among possible council actions following an investigation, censure or reprimand "by means of private communication" or "by means of public announcement." These three provisions exhaust the statutory guidance with respect to public availability of decisions on complaints.

The practice in most of the circuits appears to be that council orders following an investigation are made public, with the name of the judge or magistrate included, and that these are the only documents made public at the circuit level. The Judicial Conference Committee to Review Judicial Council Conduct and Disability Orders has treated its decisions as available to the public; until recently, the judge or magistrate was identified, but in one recent opinion (involving a private reprimand) the identity was not disclosed.

With regard to dispositions by the chief judge, the more general practice is apparently not to permit public access. However, several circuits do make the chief judges' dismissal orders publicly available, in some cases with the name of the judge or magistrate shielded.

The statute and its legislative history exhibit a strong policy goal of protecting judges and magistrates from the damage that could be done by publicizing unfounded allegations of misconduct. Except in cases in which the proposed Court on Judicial Conduct and Disability held a de novo hearing, the Senate-passed bill specifically provided for confidentiality at all stages of the complaint procedure "unless final adverse action is taken against a judge, not including an order of dismissal."[7] Although the language of the final legislation is derived from the House bill[8] and is limited to materials "related to investigations," there is no indication that nonconfidential treatment of other materials was contemplated.

We believe that it is consistent with the congressional intent to protect a judge or magistrate from public disclosure of a complaint, both while it is pending and after it has been dismissed if that should be the outcome. On the other hand, the goal of assuring the public that the disciplinary mechanism is operating satisfactorily is better served by making the process more open. Perhaps even more important, publication of some of the chief judges' dismissal orders—as contrasted with mere public availability—would surely improve the operation of the mechanism. For the most part, the fifteen chief judges with responsibility under this statute have been making decisions about issues under the statute quite unaware of how the same or similar issues have been treated in other circuits and without the benefit that flows from scholarly critique. A body of published precedent can only be helpful to us all.

Rule 17 attempts to accommodate these conflicting interests. It provides for public availability of decisions of the chief judge and the judicial council, and the texts of any memoranda supporting their orders, together with any dissenting opinions or separate statements by members of the judicial council. However, these orders and memoranda are to be made public only when final action on the complaint has been taken and any right of review has been exhausted. Whether the name of the judge or magistrate is disclosed will then depend upon the nature of the final action. If the final action is an order predicated on a finding of misconduct or disability (other than censure or reprimand by means of private communication) the name of the judge or magistrate will be made public. If the final action is dismissal of the complaint, or a conclusion of the proceeding by the chief judge on the basis of corrective action taken, the name of the judge or magistrate will not be disclosed.

---

[7] S. 1873, 96th Cong., 1st Sess. § 2(a) (1979) (proposed 28 U.S.C. § 372(n)(1)(C)); *see* S. Rep. No. 362, 96th Cong., 1st Sess. 16 (1979).

[8] H.R. 7974, 96th Cong., 2d Sess. § 3(a) (1980) (proposed 28 U.S.C. § 372(c)(14)).

If a complaint is dismissed as moot after appointment of a special committee, rule 17(a)(4) leaves it to the judicial council to determine whether the judge or magistrate will be identified. In such a case, no final decision has been reached on the merits, but it may be in the public interest—particularly if a judicial officer resigns in the course of an investigation—to make the identity of the judge or magistrate known.

It should be noted that rule 17 provides for apparently inconsistent treatment where a proceeding is concluded on the basis of corrective action taken. If a chief judge concludes a proceeding on that basis, rule 17(a)(1) provides that the name of the judge or magistrate will not be disclosed. Shielding the name of the judge or magistrate in this circumstance should contribute to the frequency of this kind of informal disposition. Once a special committee has been appointed, and a proceeding is concluded by the full council on the basis of corrective action taken, rule 17(a)(3) provides for disclosure of the name of the judge or magistrate. An "informal" resolution of the complaint at this stage is likely to look very much like any other council order, and should be disclosed in the same manner.

The proposal that decisions be made public only after final action has been taken is designed in part to avoid disclosure of the existence of pending proceedings. Because the Judicial Conference has not established a deadline for filing petitions for review with the Committee to Review Judicial Council Conduct and Disability Orders, rule 17(d) provides for making decisions public if thirty days have elapsed without the filing of a petition for review.

We note that public availability of orders under 28 U.S.C. § 372(c)(6)(B) is a statutory requirement. The statute does not prescribe the time at which these orders must be made public, and it might be thought implicit that it should be without delay. Similarly, the statute does not state whether the name of the judge or magistrate must be disclosed, but it could be argued that such disclosure is implicit. In view of the legislative interest in protecting a judge or magistrate from public airing of unfounded charges, we think the law is reasonably interpreted as permitting nondisclosure of the identity of a judicial officer who is ultimately exonerated and also permitting delay in disclosure until the ultimate outcome is known. We note in this connection that congressional leaders described the public availability requirement as applying to "sanctioning orders."[9]

Finally, the rule provides that the identity of the complainant will be disclosed only if the chief judge so orders. Identifying the complainant when the judge or magistrate is not identified would of course increase the likelihood that the identity of the judge or magistrate would become publicly known, thus thwarting the policy of nondisclosure. If the identity of the complainant is not to be made public in such cases, we see no particular reason to change the rule and make it public routinely in cases in which the judge or magistrate is identified. However, it may not always be practicable to shield the complainant's identity while making public disclosure of the judicial council's order and supporting memoranda; in some circumstances, moreover, the complainant may consent to public identification.

RULE 18. DISQUALIFICATION

(a) **Complainant.** If the complaint is filed by a judge, that judge will be disqualified from participation in any consideration of the complaint except to the extent that these rules provide for participation by a complainant.

(b) **Judge complained about.** A judge whose conduct is the subject of a complaint will be disqualified from participating in any consideration of the complaint except to the extent that these rules provide for participation by a judge or magistrate who is complained about.

(c) **Disqualification of chief judge on consideration of a petition for review of a chief judge's order.** If a petition for review of a chief judge's order dismissing a complaint or concluding a proceeding is filed with the judicial council pursuant to rule 5, the chief judge will not participate in the council's consideration of the petition. In such a case, the chief judge may address a written communication to all of the members of the judicial council, with copies provided to the complainant and to the judge or magistrate complained about. The chief judge may not communicate with individual council members about the matter, either orally or in writing.

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[9] 126 Cong. Rec. 28,093 (1980) (remarks of Sen. DeConcini); *id.* at 28,617 (remarks of Rep. Kastenmeier).

(d) Member of special committee not disqualified. A member of the judicial council who is appointed to a special committee will not be disqualified from participating in council consideration of the committee's report.

(e) Judge or magistrate under investigation. Upon appointment of a special committee, the judge or magistrate complained about will automatically be disqualified from serving on (1) any special committee appointed under rule 4(e), (2) the judicial council of the circuit, (3) the Judicial Conference of the United States, and (4) the Committee to Review Circuit Council Conduct and Disability Orders of the Judicial Conference of the United States. The disqualification will continue until all proceedings regarding the complaint are finally terminated, with no further right of review. The proceedings will be deemed terminated thirty days after the final action of the judicial council if no petition for review has at that time been filed with the Judicial Conference.

(f) Substitute for disqualified chief judge. If the chief judge of the circuit is disqualified from participating in consideration of the complaint, the duties and responsibilities of the chief judge under these rules will be assigned to the circuit judge in regular active service who is the most senior in date of commission of those who are not disqualified.

Commentary on Rule 18

Disqualification of Chief Judge on Review of Chief Judge's Order

Whether the chief judge should participate in decisions on petitions to the circuit council is a question that has engendered some disagreement. Rule 18(c) would bar such participation. We believe that such a policy is best calculated to assure complainants that their petitions will receive fair consideration.

Disqualification of Judge or Magistrate Under Investigation

28 U.S.C. § 372(c)(12) states that a judge or magistrate under investigation will be disqualified from certain activities "until all related proceedings under this subsection have been finally terminated." In the absence of Judicial Conference rules regulating the time within which a petition for review must be filed, rule 18(e) provides that the proceedings will be deemed terminated if no petition for review is filed within thirty days after the final action of the judicial council. We believe it would be preferable for the Judicial Conference to promulgate a rule to deal with this issue.

Substitute for Disqualified Chief Judge

Under 28 U.S.C. § 372(c)(2), a complaint against the chief judge is to be handled by "that circuit judge in regular active service next senior in date of commission." This language is read in some circuits as requiring that the substitute judge be junior "in date of commission" to the chief judge; in others it is read as simply a statement that seniority among judges other than the chief is to be determined by date of commission, with the result that complaints against the chief judge may be routed to a former chief judge or other judge who was appointed earlier than the chief judge. Although the former interpretation probably has a slight grammatical edge, rule 18(f) adopts the latter. We are aware of no evidence that Congress intended to depart from the normal order of precedence.

Disqualification When Multiple Judges Are Complained Against

Sometimes a single complaint is filed against a large group of judges. Complaints have been filed against all the members of the court of appeals and at least one has been filed against all circuit and district court judges of the circuit. If the normal disqualification rules are observed in the former case, no court of appeals judge can serve as acting chief judge of the circuit, and the judicial council will be without appellate members. In the latter case—where the complaint is against all circuit and district judges—no member of the judicial council can perform the duties assigned to the council under the statute.

A similar problem is created by successive complaints arising out of the same underlying grievance. For example, a complainant files a complaint against a district judge based on alleged misconduct, and the complaint is dismissed by the chief judge under the statute. The complainant may then file a complaint against the chief judge for dismissing the first complaint, and when that complaint is dismissed by the next senior judge, still a third complaint is filed. The threat is that the complainant will bump down the seniority ladder until, once again, there is no member of the court of appeals who can serve as acting chief judge for the purpose of the next complaint. In somewhat similar circumstances, the Judicial Council of the Third Circuit, with barely a quorum of qualified judges, ordered a complainant to show cause why he should not be enjoined from filing repetitive and frivolous complaints.[10]

After considering a number of possible solutions to this problem, and with recognition that these multiple-judge complaints are virtually always meritless, we have concluded that the appearance of justice is best served by adherence to traditional principles that matters should be decided by disinterested judges. If no circuit judge is available to serve as acting chief judge of the circuit, intercircuit assignment procedures under 28 U.S.C. § 291(a) can be used to assign a circuit judge from another circuit to perform the statutory duties of the chief judge. If a quorum of the judicial council cannot be obtained to act on a petition for review of a chief judge's order, there is no evident statutory vehicle for assigning the matter to another body, but we believe it would be appropriate to do so. Among other alternatives, the council might ask the judicial council of another circuit to consider the petition or might ask the Chief Justice to assign the matter to either the judicial council of another circuit or the Judicial Conference Committee to Review Judicial Conduct and Disability Orders. In the unlikely event that a quorum of the judicial council cannot be obtained to consider the report of a special committee, there is legislative history suggesting that the council should use the authority provided in section 372(c)(7)(A) to refer the complaint to the Judicial Conference for consideration.[11]

RULE 19. WITHDRAWAL OF COMPLAINTS AND PETITIONS FOR REVIEW

(a) Complaint pending before chief judge. A complaint that is before the chief judge for a decision under rule 4 may be withdrawn by the complainant with the consent of the chief judge.

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[10] *In re* Silo (3d Cir. Jud. Council Aug. 18, 1983).

[11] H.R. Rep. No. 1313, 96th Cong., 2d Sess. 12 (1980).

(b) Complaint pending before special committee or judicial council. After a complaint has been referred to a special committee for investigation, the complaint may be withdrawn by the complainant only with the consent of both (1) the judge or magistrate complained about and (2) the special committee (before its report has been filed) or the judicial council.

(c) Petition for review of chief judge's disposition. A petition to the judicial council for review of the chief judge's disposition of a complaint may be withdrawn by the petitioner at any time before the judicial council acts on the petition.

Commentary on Rule 19

Rule 19 treats the complaint proceeding, once begun, as a matter of public business rather than as the property of the complainant. The complainant is denied the unrestricted power to terminate the proceeding by withdrawing the complaint.

Under rule 19(a), a complaint pending before the chief judge may be withdrawn if the chief judge consents. In appropriate cases, the chief judge may accordingly be saved the burden of preparing a formal order and supporting memorandum.

If the chief judge appoints a special committee, however, rule 19(b) provides that the complaint may be withdrawn only with the consent of both the body before which it is pending (the special committee or the judicial council) and the judge or magistrate complained about. Once a complaint has reached the stage of appointment of a special committee, the complainee is thus given the right to insist that the matter be resolved on the merits, thereby escaping the ambiguity that might remain if the proceeding were terminated by withdrawal of the complaint.

With regard to petitions for judicial council review, rule 19(c) grants the petitioner unrestricted authority to withdraw the petition. It is thought that the public's interest in the proceeding is adequately protected, since there will necessarily have been a decision by the chief judge in such a case.

RULE 20. AVAILABILITY OF OTHER PROCEDURES

The availability of the complaint procedure under these rules and 28 U.S.C. § 372(c) will not preclude the chief judge of the circuit or the judicial council of the circuit from considering any information that may come to their attention suggesting that a judge or magistrate has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts or is unable to discharge all the duties of office by reason of disability.

Commentary on Rule 20

Rule 20 reflects the fact that the enactment of section 372(c) was not intended to displace the historic functions of the chief judge and the circuit judicial council to respond to problems that come to their attention. As stated by Senator DeConcini in his remarks upon final Senate passage of the 1980 act, "the informal, collegial resolution of the great majority of meritorious disability or disciplinary matters is to be the rule rather than the exception. Only in the rare case will it be deemed necessary to invoke the formal statutory procedures and sanctions provided for in the act."[12]

RULE 21. AVAILABILITY OF RULES AND FORMS

These rules and copies of the complaint form prescribed by rule 2 will be available without charge in the office of the clerk of the court of appeals [address] and in each office of the clerk of a district court or bankruptcy court within this circuit.

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[12] 126 Cong. Rec. 28,092 (1980).

RULE 22. EFFECTIVE DATE

These rules apply to complaints filed on or after ____[date]____. The handling of complaints filed before that date will be governed by the rules previously in effect.

APPENDIX

Complaint Form

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APPENDIX: COMPLAINT FORM

[The complaint form follows. It is to be two pages, printed on one side only.]

JUDICIAL COUNCIL OF THE __TH CIRCUIT

COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

MAIL THIS FORM TO THE CLERK, UNITED STATES COURT OF APPEALS, [ADDRESS]. MARK THE ENVELOPE "JUDICIAL MISCONDUCT COMPLAINT" OR "JUDICIAL DISABILITY COMPLAINT." DO NOT PUT THE NAME OF THE JUDGE OR MAGISTRATE ON THE ENVELOPE.

SEE RULE 2(e) FOR THE NUMBER OF COPIES REQUIRED.

1. Complainant's name: ______________________________

   Address: ______________________________

   ____

   Daytime telephone: (   )

2. Judge or magistrate complained about:

   Name: ______________________________

   Court: ______________________________

3. Does this complaint concern the behavior of the judge or magistrate in a particular lawsuit or lawsuits?

   [ ] Yes   [ ] No

   If "yes," give the following information about each lawsuit (use the reverse side if there is more than one):

   Court:

   Docket number:

   Are (were) you a party or lawyer in the lawsuit?

   [ ] Party   [ ] Lawyer   [ ] Neither

   If a party, give the name, address, and telephone number of your lawyer:

   Docket numbers of any appeals to the __th Circuit:

Preceding page blank

4. Have you filed any lawsuits against the judge or magistrate?

☐ Yes ☐ No

If "yes," give the following information about each lawsuit (use the reverse side if there is more than one):

Court:

Docket number:

Present status of suit:

Name, address, and telephone number of your lawyer:

Court to which any appeal has been taken:

Docket number of the appeal:

Present status of appeal:

5. On separate sheets of paper, not larger than the paper this form is printed on, describe the conduct or the evidence of disability that is the subject of this complaint. See rule 2(b) and 2(d). Do not use more than 5 pages (5 sides). Most complaints do not require that much.

6. You should either
(1) check the first box below and sign this form in the presence of a notary public; or
(2) check the second box and sign the form. You do not need a notary public if you check the second box.

☐ I swear (affirm) that--
☐ I declare under penalty of perjury that--
(1) I have read rules 1 and 2 of the Rules of the Judicial Council of the __th Circuit Governing Complaints of Judicial Misconduct or Disability, and
(2) The statements made in this complaint are true and correct to the best of my knowledge.

____
(Signature)

Executed on __________
(Date)

Sworn and subscribed
to before me ________________
(Date)

____
(Notary Public)
My commission expires:

THE FEDERAL JUDICIAL CENTER

The Federal Judicial Center is the research, development, and training arm of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620-629), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States is chairman of the Center's Board, which also includes the Director of the Administrative Office of the United States Courts and six judges elected by the Judicial Conference.

The Center's **Continuing Education and Training Division** provides educational programs and services for all third branch personnel. These include orientation seminars, regional workshops, on-site training for support personnel, and tuition support.

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IRREGULARITIES IN AMTRAK HANDLING OF MANAGEMENT CRIME

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON

GOVERNMENT OPERATIONS

HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

JUNE 5 AND 6, 1985

or the use of the Committee on Government Operations

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CONTENTS

Hearings held on: Page
- June 5 ... 1
- June 6 ... 89

Statement of:
- Almaguer, Arthur, senior machinist, maintenance shop, Amtrak ... 43
- Boyd, Charles, laborer, maintenance shop, Amtrak ... 44
- Claytor, W. Graham, Jr., president and chairman of the board of directors, Amtrak, accompanied by Thomas Hackney, executive vice president and chief operating officer; Eugene Eden, vice president of passenger and operating services; Joseph Crawford, president and chief mechanical officer; and Harold R. Henderson, general counsel ... 138
- Collins, Hon. Cardiss, a Representative in Congress from the State of Illinois, and chairwoman, Government Activities and Transportation Subcommittee: Opening statement ... 1
- Danby, William, district chairman, Brotherhood of Railway and Airline Clerks, and vice general chairman, Amtrak Division ... 126
- Eden, Eugene, vice president of passenger and operating services, and former assistant vice president, material management, Amtrak ... 112
- Elza, Orville, former material requirements administrator for western region, Chicago ... 72
- Henderson, Harold R., general counsel, National Railroad Passenger Corporation, Amtrak ... 32, 113
- Ingalls, Raymond, chief of police, Amtrak, accompanied by Faith Doonan, special agent; Edward Rhodes, special agent; Joseph Crawford, assistant vice president and chief mechanical officer; William Branan, auditor; Peter W. Steil, chief inspector, systems, Amtrak Police Department; Joanna Moorhead, counsel; and Harold R. Henderson, general counsel ... 5, 91
- Johnson, Kenneth, machinist technician, paint shop, Amtrak ... 62
- Mitchell, Michael, Chicago manager of material control, Amtrak ... 109
- Pitts, James, machinist, maintenance shop, Amtrak ... 43
- Zanders, Kelly, former Amtrak EEO representative, Chicago ... 119

Letters, statements, etc., submitted for the record by:
- DeLay, Hon. Thomas D. (Tom), a Representative in Congress from the State of Texas: Opening statements ... 37, 90
- Elza, Orville, former material requirements administrator for western region, Chicago: Explanation of graph depicting reaction motor usage ... 75–76
- Henderson, Harold R., general counsel, National Railroad Passenger Corporation, Amtrak:
  - June 3, 1985, letter to subcommittee concerning confidential attorney/client communications and information which is the work product of an attorney ... 115–118
  - Letters concerning employee reprisals ... 150–158
- Ingalls, Raymond, chief of police, Amtrak: Prepared statement ... 12–23

APPENDIXES

- Appendix 1 ... 177
- Appendix 2 ... 179
- Appendix 3 ... 181
- Appendix 4 ... 224
- Appendix 5 ... 250
- Appendix 6 ... 261
- Appendix 7 ... 289

IRREGULARITIES IN AMTRAK HANDLING OF MANAGEMENT CRIME

WEDNESDAY, JUNE 5, 1985

House of Representatives,
Government Activities and
Transportation Subcommittee
of the Committee on Government Operations,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Cardiss Collins (chairwoman of the subcommittee) presiding.

Present: Representatives Cardiss Collins, Major R. Owens, Tom Lantos, Gerald D. Kleczka, Matthew G. Martinez, Alfred A. (Al) McCandless, Patrick L. Swindall, and Thomas D. (Tom) DeLay.

Also present: Representative Sidney R. Yates.

Staff present: Myron Zeitz, counsel; Cecelia Morton, clerk; and Brian Lockwood, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF CHAIRWOMAN COLLINS

Mrs. Collins. Good morning. This hearing of the Government Operations Subcommittee on Government Activities and Transportation will come to order.

Today's hearing on Amtrak concerns its corporate handling of financial fraud and misconduct by company officials.

I am a friend of Amtrak; make no mistake about that. I am committed to intercity passenger rail service. Amtrak has always been an important employer in my district. The hub of its transcontinental system lies in the heart of my district.

East meets west at Union Station in downtown Chicago which I have the privilege to represent. Every member of this subcommittee can travel from his city or State to mine by Amtrak. I am proud of our record in Congress for having nurtured Amtrak while firmly seeking to wean it from Federal subsidies.

But I am not as committed to perpetuating Amtrak's current management team. Amtrak President Claytor has made a valiant, commendable effort to save Amtrak. It is now time for him to review his management team.

[See app. 1.]

Mrs. Collins. We are concerned, today and tomorrow, with Mr. Claytor's efforts beyond saving Amtrak from the administration's budget cuts. We are discussing the management of this national asset, since eroding Amtrak from within is an even greater threat than OMB could ever pose.

Testimony presented at our hearing will show a corporate cancer of indifference to official misconduct at Amtrak. These are the structural and leadership problems demanding solutions if Amtrak is to survive.

I have selected several cases to discuss at this hearing. As we dissect these cases over the next 2 days, we will see emerging a corporation apparently incapable of solving long-existing problems. The leadership isn't there. The accountability is also missing.

Another shocking aspect of this investigation is the apparent double standard approach to employee misconduct. There is apparently one set of rules for unionized employees and another set of rules for management employees.

It appears a unionized employee is terminated if there is any evidence to show guilt. On the other hand, management abuse is excused if there is any evidence of innocence. I have no quarrel with Amtrak being extremely firm with dishonesty, as long as all dishonesty is treated equally.

These hearings concern two major types of dishonesty: procurement and payroll. Today we will discuss procurement.

In our example, a Chicago shop manager converted an expedited procurement system into a slush fund and his shop into a private repair facility. With the slush fund, he financed the purchase of automotive parts used to repair private vehicles.

The slush fund was created by getting an Amtrak supplier to bill Amtrak for parts never delivered and then supplying expensive substitutes like stereos, air-conditioners, premium paint, replacement car engines, and heaven knows what else.

Some questions raised by this hearing will never be answered. It is my view that irregularities abound. Sworn affidavits already in our subcommittee's control indicate that employees in the diesel facility labored for years in a repressive work environment where their manager called the shots.

If you didn't play ball with Manager Brown, you didn't last long. The word got out: Don't mess with Brown. Employees even believed Mr. Claytor couldn't control Mr. Brown. Hence, most employees never stepped forward to talk.

To prevent documentation of these cases, evidence has absolutely disappeared. Records documenting abuse were stolen and in some cases never created.

Our review thus far indicates that inventory control systems are poor to nonexistent. As a result, employees appear able to literally walk off with tools and equipment in the presence of eyewitnesses with complete impunity.

Threats have been reported to several witnesses with Amtrak proclaiming its perennial disbelief.

Amtrak is a publicly created and financed corporation. This subcommittee is required to oversee Amtrak. Virtually every transaction of Amtrak involves Federal dollars. We will hear today about a manager who had so much financial leeway that he could equip private tool collections, conduct an auto repair enterprise, supply unauthorized AM–FM cassette stereos to a fleet of corporate vehicles, and purchase expensive equipment which he used as toys.

These incidents are deeply disturbing to us in Congress and shameful for Amtrak.

An important panel of Amtrak corporate representatives will testify tomorrow, and I urge them not to respond to these hearings as they have done in the past. The prevailing tendency at Amtrak is to deny, deny, deny.

I am afraid Amtrak officials will describe its employees who testify as disgruntled employees making mere allegations. Such an attitude will not solve any problems.

I urge the corporation to begin to deal with its management problems, rather than to continue deflecting them by blaming others. I will now yield to my distinguished colleague from California for any opening statement he may wish to make, Mr. McCandless.

Mr. McCANDLESS. Thank you, Madam Chairwoman.

The allegations of wasted assets, of thefts and fraud and of gross management, mismanagement greatly concern me with respect to Amtrak.

If true, Federal tax dollars are being squandered, in which case, I am frankly outraged. If true, Amtrak is taking the American people for a different sort of ride.

However, I urge caution. We have the allegations, sworn they may be, but they are still allegations. In court proceedings, complaints may be made under oath, but a person is not found guilty or held liable until a verdict based upon all of the evidence is reached.

Similarly, we act responsibly only if we make conclusions at the end of our investigation. While the allegations trouble me, I am more concerned with examining the base policies, practices and procedures which have been established by Amtrak's top management.

We must examine their efficacy, for if they are faulty, Amtrak will never be self-supporting. For example, does Amtrak have in place mechanisms to prevent employee theft, fraud and gross mismanagement?

Are there mechanisms designed to detect these activities when they occur? Such procedures are essential to prudent management of any corporation, and another fundamental question is how Amtrak responds when it becomes aware of possible misconduct.

Does it investigate vigorously or does it ignore such allegations? We must also explore how the company proceeds when an investigation indicates actual wrongdoing. Are employees penalized commensurate with their misconduct?

As with any employer, it is in Amtrak's best interest to be fair but firm. If employee misconduct is not penalized, other employees will lose faith in the system, causing morale to decline.

In addition to how Amtrak deals with those guilty of wrongdoing, we have to examine whether Amtrak management modifies its operating procedures in light of experience. For example, if an investigation indicates that recordkeeping is bad, does Amtrak management address the problem?

There are indications that poor recordkeeping and inventory control existed in Chicago, hampering Amtrak's own investigation. If this was the case, I want to know if Amtrak has improved its procedures.

Finally, the subcommittee should investigate into whether Amtrak protects those of its employees who care enough about the company to report wrongdoing, even reporting the wrongful activities of their own supervisors or managers. If employees fear retribution, valuable communication will be less likely to occur.

On behalf of the American taxpayer, it is our responsibility to seek answers to these questions. We must be able to assure the country that as long as it funds Amtrak, the company will employ sound business practices and make the best use of their resources.

Thank you, Madam Chairwoman.

Mrs. COLLINS. Thank you.

Mr. Kleczka.

Mr. KLECZKA. Madam Chair, we have heard a lot in the news lately about fairness. Between the President's pitch for tax reform and Congress' struggle with the budget, fairness has become the rallying cry in the attempt to allocate scarce resources.

Madam Chair, I believe that rail travel has a place in America, and was pleased to support the House budget resolution calling for a manageable 10-percent cut in Amtrak's subsidy. Given the huge budget deficit, I believe this is a fair compromise. But if the American taxpayer is to continue to subsidize Amtrak, fairness dictates that Amtrak hold to its end of the bargain, by making every effort to achieve a leaner, more efficient and more productive company.

The subcommittee's continuing investigation raises serious questions as to whether these goals are being met. Call it theft or call it mismanagement, testimony we will hear today suggests that hundreds of thousands of dollars worth of fraud and waste have occurred at the Chicago locomotive facility alone; valuable scrap metal has disappeared, dozens of expensive traction motors are unaccounted for, employees have spent months rebuilding custom cars for the facility manager, and the list goes on. No company, including Amtrak, will survive if it allows these types of activities to occur.

The chairman of Amtrak has stated his resolve to make Amtrak a better company. I would suggest that there is no better place to start than with a fundamental reform of Amtrak's audit and control capabilities, and with a hard look at the complacent middle management that has allowed these abuses to occur.

The fairness issue goes beyond funding. In our September hearing, I was disturbed to discover an Amtrak disciplinary process practiced as an assault on union employees who didn't "play ball" with management.

At my request, the subcommittee staff has reviewed additional disciplinary cases involving union employees. Here are some typical cases:

In 1982, an El Paso ticket agent is found guilty of working and claiming 2 hours of overtime deemed unnecessary. Result: Termination.

In 1982, an Amtrak worker's cousin is found in possession of 10 Amtrak towels. Result: Termination of the worker.

In 1984, an Amtrak steward is found guilty of defrauding the company of $2.50 in connection with an altered meal ticket. Result: Termination.

Madam Chair, I applaud Amtrak's efforts to root out fraud and dishonesty. If they can fire every employee guilty of stealing $2.50, more power to them. But if management is not held to standards at least as high as the standards for union employees, the disciplinary process is a sham.

I fear a complete double standard exists in the disciplinary process, and I expect today's testimony to bear this out. Madam Chair, I want very much to continue to support Amtrak in its quest for a fair budget. This support depends, however, on Amtrak's progress toward fair play and responsible management.

Thank you.

Mrs. COLLINS. Thank you.

Let us move along here. Our first panel this morning will be employees from Amtrak. Will they come forward, please? Raymond Ingalls, chief of police; Faith Doonan, special agent; Edward Rhodes, special agent; and Joseph Crawford, assistant vice president and chief mechanical officer; and William Branan, auditor.

Please come around. We are going to swear in all witnesses this morning, so if you will raise your right hand, and if you can't raise your right hand, your left hand.

[The witnesses Ingalls, Doonan, Rhodes, Crawford, Branan, and Steil were sworn.]

Mrs. COLLINS. I notice Pete Steil.

Who else do you have with you?

Mr. INGALLS. That is Mr. Branan.

Mrs. COLLINS. Has this panel requested counsel?

Mr. INGALLS. Yes, it has. Counsel is Ms. Joanna Moorhead, seated to the right of Mr. Steil.

Mrs. COLLINS. I understand you have a written statement. You can present it any way you wish.

STATEMENT OF RAYMOND INGALLS, CHIEF OF POLICE, AMTRAK, ACCOMPANIED BY FAITH DOONAN, SPECIAL AGENT; EDWARD RHODES, SPECIAL AGENT; JOSEPH CRAWFORD, ASSISTANT VICE PRESIDENT AND CHIEF MECHANICAL OFFICER; WILLIAM BRANAN, AUDITOR; PETER W. STEIL, CHIEF INSPECTOR, SYSTEMS, AMTRAK POLICE DEPARTMENT; AND JOANNA MOORHEAD, COUNSEL

Mr. INGALLS. Thank you, Madam Chairwoman and members of the subcommittee. My name is Ray Ingalls, and I am the chief of police for Amtrak. You have asked me here to discuss the investigation my department conducted concerning allegations of fraud and other criminal conduct at Amtrak's Locomotive Maintenance Facility at Chicago, IL.

Pursuant to your request, I will summarize the Amtrak Police Department's activities concerning that investigation.

At the outset——

Mr. MCCANDLESS. These speakers are very direct. Could you pull that a little closer to you?

Mr. INGALLS. Is that better?

Mr. McCANDLESS. Thank you.

Mr. INGALLS. I would like to make a few brief points:

First, the investigation was thorough and professionally handled.

Second, every reasonable effort was made to obtain prosecution, and there was no coverup.

Third, the decision not to prosecute was made by the prosecutor who conducted the grand jury investigation, Thomas Smith. Mr. Smith, however, was extremely complimentary as to how the investigation was handled.

Fourth, management was kept fully informed throughout the investigation, and later disciplined those employees involved in wrongful conduct.

On May 22, 1984, the Amtrak Police Department initiated a criminal investigation based on an allegation by an employee named K.A. Johnson, who was assigned to the Chicago locomotive maintenance facility, that certain Amtrak employees assigned to that facility were involved in a contract fraud.

The fraud purportedly involved the manipulation of a blanket purchase agreement between Amtrak and a Chicago automotive parts firm trading as Mutual Truck Parts, Inc. [MTP]. The blanket purchase agreement in question was one which allowed certain employees of the facility to purchase automotive parts and supplies on an as-needed basis for a specified period of time.

Upon receipt of the complaint, Chief Inspector P.W. Steil was assigned to conduct a preliminary inquiry. In addition, Mr. W. Graham Claytor, president, and Mr. T.P. Hackney, executive vice president and chief operating officer, were advised of the complaint. Mr. Claytor instructed me to get to the bottom of it, and Mr. Hackney requested that he be kept abreast of the matter.

Based on the information gathered in the initial inquiry, Chief Inspector Steil determined that the matter warranted further investigation. He assigned Special Agent Faith Doonan to conduct the investigation.

Miss Doonan and other agents interviewed cooperative witnesses who were employees of the maintenance facility. The investigators were told that vehicles owned by Amtrak employees were being repaired in the automotive repair shop of the maintenance facility.

They also were advised that parts used in the repair of these privately owned vehicles were obtained through Amtrak's blanket purchase agreement with Mutual Truck Parts.

It was purported that John Durst, foreman of the automotive shop, obtained the parts for the privately owned vehicles and that James Brown, manager of locomotive maintenance, approved the repairs, including the purchase of parts.

In addition, substantial repairs were allegedly made on a vehicle owned by Mr. William Rodgers, assistant manager, locomotive maintenance. Investigators were also informed that stereo cassette radios were obtained through Mutual Truck Parts, and installed in not only company vehicles, but in a vehicle owned by Foreman John Durst.

The employees related additional information concerning time stealing, and the theft of small hand and power tools, automotive supplies, a battery charger and a snowblower, by John Durst. The additional allegations were incorporated into the contract fraud investigation involving Mutual Truck Parts.

It became clear to us that, because of animosity between those making the allegations and Brown and Durst, all allegations had to be thoroughly and carefully investigated.

Moreover, one of those persons had been arrested for theft and possession of stolen property and had pleaded guilty to a reduced charge of criminal conversion.

Amtrak investigators then sought to interview other witnesses and to view pertinent documents. However, three witnesses, two of whom were potential suspects, were uncooperative and refused to be interviewed.

In addition, James Brown, manager of the facility, told the investigators that his employees were not to be interviewed unless he was present. Moreover, Mutual Truck Parts denied the investigators access to its records. It had become evident that the matter could not be resolved unless the investigators could resort to subpoena.

Consequently, the investigation could not progress to any significant degree without the aid of a prosecutor. An assistant U.S. attorney had refused to accept the case, citing lack of jurisdiction, and relating an opinion that the evidence presented was insufficient to constitute a criminal offense.

The police department then sought assistance from Amtrak's government affairs department, which contacted a key subordinate of the attorney general for the State of Illinois.

As a result, a meeting was arranged between our investigators and a prosecutor from the attorney general's office. He refused to accept the case and recommended referring the matter to the Cook County State attorney's office.

The Cook County State attorney's office was persuaded to pursue the investigation through the grand jury. Subsequently, grand jury subpoenas were issued for all uncooperative witnesses, MTP, and various other vendors with whom MTP conducted business.

Over the next 2 months, further interviews were conducted and some individuals were reinterviewed. The investigators reviewed relevant Amtrak documents and other records which had been obtained through grand jury subpoena of Mutual Truck Parts, other entities, or individuals. They also performed visual inspections of facilities and automobiles which were alleged to have been involved in the matter.

The acquired information was divided into three categories and evaluated in the following manner: The three categories were; one, provable criminal offenses; two, possible criminal offenses on which the prosecutor had stated he would take action if additional evidence was developed; and three, alleged activities which were a result of mismanagement or abusive practices and not deemed prosecutable.

Financial workups were done on the first two categories, both of which involved Mutual Truck Parts transactions. Evidence which fell in the third category did not enhance the prosecutive merit of the case. Consequently, no computations were made on instances of mismanagement or abuse.

Using this criteria, the investigators determined that as a result of provable criminal acts, Amtrak incurred a financial loss in the amount of $3,541.45. This figure included the cost of parts, employee labor, and overhead, which were traced specifically to Amtrak employees' privately owned vehicles.

The blanket purchase agreement between Mutual Truck Parts and Amtrak was manipulated in the following manner: Durst would receive Brown's approval to obtain parts for installation in private vehicles, or material to be used in the same fashion.

Durst would then fill out a material requisition form and have it signed by Baker, Rodgers, or Brown, depending upon the dollar amount of the transaction. If Mutual Truck Parts did not carry the desired commodity, MTP ordered it from another firm.

Durst would be contacted and he would pick up the item at MTP or another firm. If the item was obtained from another vendor, Mutual Truck Parts would pay for the item, then bill Amtrak in the same manner as if the part had come from Mutual Truck Parts.

If the part or material was such that its appearance on an invoice would raise questions, the invoice would be disguised by substituting normally procured items at a similar price.

The invoice would then be processed through normal channels, causing payment to be made to Mutual Truck Parts.

The employees who benefited and had knowledge of the scheme were: John Durst, foreman II, locomotive maintenance, a union employee who received custom automotive paint and associated items valued at $840.59; James Brown, manager, locomotive maintenance, a management employee who received repairs to his private vehicle, with the labor valued at $30.77; William Rodgers, assistant manager, locomotive maintenance, a management employee, who received repairs to his private vehicle with material and labor valued at $2,297.99; Gary Baker, general foreman, locomotive maintenance, a management employee, who received repairs to his private vehicle with material and labor valued at $197.37; Claire Zuckley, industrial nurse, human resources department, a management employee, who received repairs to her private vehicle, with material and labor valued at $146.65; and Linda Watson, personnel supervisor, human resources, a management employee, who received repairs to her private vehicle, with labor valued at $27.98.

In addition, $3,001.94 in unaccounted assorted automotive parts was procured through Mutual Truck Parts. This figure was derived from Mutual Truck Parts' invoices which reflected materials purchased that did not appear to be for Amtrak equipment, or the inability of the investigators to trace the parts to an Amtrak vehicle.

The figure constituted the second category described as possible criminal offenses. Both the method and the rationale for arriving at the aforementioned determinations were thoroughly discussed with the prosecutor.

Various employees alleged that John Durst was guilty of time stealing, in that he never worked a 40-hour week or often left work early, and that this activity was ongoing.

The time records from April through mid-June of 1984 were examined for discrepancies. In an interview with Durst's supervisor, James Brown, stated that he allowed Durst compensatory time for unpaid overtime, when Durst purportedly worked on weekends or evenings.

He also related that Durst's wife was suffering from terminal cancer, so Brown allowed Durst to adjust his work schedule to accommodate his wife's chemotherapy and other medical treatments. The prosecutor was informed of this allegation and advised there was no criminal complaint due to Brown's discretion as a manager.

Employees also alleged the theft of Amtrak-owned tools by John Durst for his personal use. Durst denied the tool thefts. The tools were not inventoried or marked as Amtrak equipment, and there were no warranties on the tools.

The prosecutor was apprised of this allegation and stated there was insufficient probable cause to issue a search warrant for Durst's residence since Amtrak could not prove ownership of any tools that might be located there.

It was alleged that Durst loaded a battery charger into a company vehicle and drove off Amtrak premises. The battery charger had been brought to the 16th Street facility when the Amtrak shop facility at Brighton Park closed in 1982.

Durst admitted that during 1982 or 1983, he had placed a battery charger, which came from Brighton Park, into the company vehicle used by Brown, at Brown's request.

Durst further related that he never saw the battery charger again. The prosecutor was notified of this information and advised that because the battery charger had not been located and could not be traced back to Amtrak, there was insufficient evidence to file criminal charges against Durst or Brown.

Employees also alleged the theft of a snowblower by John Durst which had been delivered to the 16th Street facility from Brighton Park. Durst admitted that in 1982 he had transported a snowblower to Brown's residence at Brown's request.

The prosecutor stated that there was insufficient probable cause to issue a search warrant for Brown's residence due to a lack of documentary evidence proving Amtrak's ownership of the snowblower or battery charger.

Allegations of theft and of miscellaneous parts, such as cases of rust treatment and motor oil, were also made by Amtrak employees against John Durst. The prosecutor stated that the allegations were not substantiated and, therefore, no criminal complaint would be issued.

It was further alleged that an Amtrak-owned 1973 Chevrolet Suburban vehicle had undergone extensive rebuilding during 1983, including engine, transmission and various body repairs, together with the installation of a snowplow and associated equipment.

The investigation and related interviews disclosed various repairs had, in fact, been accomplished by members of Durst's staff. When questioned about this matter, Brown related he had authorized reconditioning of the vehicle for use as a shop or errand vehicle, and as a training aid for the mechanical staff.

We also confirmed from various employees that this vehicle was in fact used to plow snow at the facility as required. The prosecutor was informed of the findings and advised the situation did not contain the elements necessary for criminal prosecution.

The acquisition of AM–FM stereo radios through Mutual Truck Parts, through disguised invoicing, was found to have been accomplished with the approval of Brown. We identified six Amtrak vehicles in which these units had been installed by Mr. R.D. Johnson, an employee electrician.

The prosecutor, when informed of these findings, advised us that since the items remained in Amtrak's possession, no crime had been committed and the activity was not prosecutable.

There was also an allegation that Johnson installed one of the radios in Durst's private vehicle. When questioned about the matter, Johnson denied installing any radios or making repairs to any privately owned vehicles.

An examination of Durst's vehicles revealed that the radio contained therein was a standard factory equipment AM–FM stereo radio. When questioned, Durst stated the radio in his vehicle was in the car when he purchased it.

The investigators contacted the dealer from whom Durst had purchased the vehicle, and confirmed that the radio in the vehicle at the time of our examination was standard factory installed equipment.

Lacking sufficient corroborating testimony, or physical evidence, the prosecutor advised us that no criminal complaint would be issued.

Concerning the allegation that tires were acquired for Brown's privately owned Lincoln and Jeep at Amtrak's expense by Durst, investigators reviewed documents acquired from Mutual Truck Parts by subpoena and documents acquired from another vendor, Central Delta Tire Co.

These firms had been identified by certain employees as the source from whom Durst obtained the tires for both Brown's Lincoln and Jeep. A review of the records of those companies reflected only purchases of oversize tires which were compatible to forklifts used in the shop and the 1973 Chevrolet Suburban.

We were unable to identify any purchases of tires which would fit Brown's Lincoln.

When questioned, Durst denied any purchases of tires for Brown's vehicles and stated that any oversize tire purchases were for the shop forklifts and the 1973 Chevrolet Suburban. Brown stated he had purchased the Jeep in question from a private owner who he refused to identify in 1980, but the Cooper tires on it when purchased were the same as when he sold the Jeep to another person in 1981.

Brown related this person had since moved to the Seattle area, and refused to identify the purchaser. Lacking any further substantive information, the investigators were unable to trace the Jeep or the current owner.

Our examination of the tires installed on Brown's Lincoln revealed they were Michelin self-sealant tires for which he produced the Michelin tire warranty when requested. He stated that the tires were on the vehicle when he purchased it in 1983.

The tread wear on these tires appeared consistent with the vehicle mileage at the time of our examination. Our investigators also questioned the dealer from whom Brown purchased the vehicle, and determined the tires on the vehicle were apparently on the car when Brown purchased it.

When informed of these findings, the prosecutor advised the allegations were not substantiated and no criminal complaint would be issued.

By the end of August, Amtrak investigators had fully developed all pertinent leads. At this time, Amtrak investigators sought a prosecutive determination from Assistant State's Attorney Thomas Smith, the prosecutor assigned this case.

The prosecutor noted that the investigation was thorough and competent, but declined to prosecute, citing insufficient monetary loss to advance the case through the criminal justice system.

I am confident that Mr. Smith, if called by the subcommittee, would continue to compliment the method in which the investigation was handled, and would reiterate his reasons for declining prosecution. Collection of restitution was pursued when the decision not to prosecute was made.

Frankly, we are disappointed by his decision not to prosecute, since a great deal of work had gone into the case. Miss Doonan had devoted approximately 97 days on the case, and Mr. Steil had spent 20 to 25 days. The investigation had indeed been very thorough.

To summarize, all criminal aspects of the investigation, with the exception of information obtained through the use of grand jury subpoenas, were reported to Mr. T.P. Hackney. Highlights of the criminal aspects of the case and allegations of abuse or mismanagement were reported to Mr. F.D. Abate during a series of individual and collective briefings.

Evidence of noncriminal abuses were forwarded to management in accordance with an Executive order for proper action. In the initial stages of the investigation, these briefings were held approximately once a week. As the flow of information increased, as many as three briefings a week were held.

At the conclusion of the case, a final meeting was held and the police department's findings were presented to Mr. T.P. Hackney, Mr. F.D. Abate, and Mr. Joe Crawford, chief mechanical officer.

Thank you.

[The prepared statement of Mr. Ingalls follows:]

June 4, 1985

STATEMENT

Madam Chairwoman and members of the Subcommittee: My name is Ray Ingalls and I am the Chief of Police for Amtrak. You have asked me here to discuss the investigation my department conducted concerning allegations of fraud and other criminal conduct at Amtrak's Locomotive Maintenance Facility in Chicago, Illinois. Pursuant to your request, I will summarize the Amtrak Police Department's activities concerning that investigation.

At the outset, ① I would like to make ~~several~~ a few brief points:

1. The investigation was thorough and professionally handled.

2. Every reasonable effort was made to obtain prosecution, and there was no cover-up.

3. The decision not to prosecute was made by the prosecutor who conducted the Grand Jury investigation, Thomas Smith. Mr. Smith, however, was extremely complimentary as to how the investigation was handled.

4. Management was kept fully informed throughout the investigation, and later disciplined those employees ~~found culpable of~~ involved in wrongful conduct.

On May 22, 1984, the Amtrak Police Department initiated a criminal investigation based on an allegation by an employee named K. A. Johnson who was assigned to the Chicago Locomotive Maintenance facility, that certain Amtrak employees assigned to that facility were involved in a contract fraud. The fraud purportedly involved the manipulation of a blanket purchase agreement between Amtrak and a Chicago automotive parts firm trading as Mutual Truck Parts, Inc. (MTP). The blanket purchase agreement in question was one which allowed certain employees of the facility to purchase automotive parts and supplies on an as needed basis for a specified period of time.

Upon receipt of the complaint, Chief Inspector P. W. Steil was assigned to conduct a preliminary inquiry. In addition, Mr. W. Graham Claytor, President, and Mr. T. P. Hackney, Executive Vice President and Chief Operating Officer, were advised of the complaint. Mr. Claytor instructed me to "get to the bottom of it," and Mr. Hackney requested that he be kept abreast of the matter.

Based on the information gathered in his initial inquiry, Chief Inspector Steil determined that the matter warranted further investigation. He assigned Special Agent Faith Doonan to conduct the investigation. Miss Doonan and other agents interviewed several cooperative witnesses who were employees of the Maintenance Facility. The investigators were told that vehicles owned by Amtrak employees were being repaired in the Automotive Repair Shop of the Maintenance

Facility. They also were advised that parts used in the repair of these privately-owned vehicles were obtained through Amtrak's blanket purchase agreement with Mutual Truck Parts. It was purported that John Durst, Foreman of the Automotive Shop, obtained the parts for the privately owned vehicles and that James Brown, Manager of Locomotive Maintenance, approved the repairs, including the purchase of parts. In addition, substantial repairs were allegedly made on a vehicle owned by Mr. William Rodgers, Assistant Manager, Locomotive Maintenance. Investigators were also informed that stereo cassette radios were obtained through Mutual Truck Parts, and installed in not only company vehicles, but in a vehicle owned by Foreman John Durst. The employees related additional information concerning time stealing, and the theft of small hand and power tools, automotive supplies, a battery charger, and a snowblower, by John Durst. The additional allegations were incorporated into the contract fraud investigation involving Mutual Truck Parts. It became clear to us that, because of animosity between those making the allegations and Brown and Durst, all allegations had to be thoroughly and carefully investigated. Moreover, one of those persons had been arrested for theft and possession of stolen property and had pled guilty to a reduced charge of criminal conversion.

Amtrak investigators then sought to interview other witnesses and to view pertinent documents. However, three witnesses, two whom were potential suspects, were uncooperative and refused to be interviewed. In addition, James Brown, Manager of the facility, told the investigators that his employees were not to be interviewed unless he was present. Moreover, Mutual Truck Parts denied the investigators access to its records. It had become evident that the matter could not be resolved unless the investigators could resort to subpoena.

Consequently, the investigation could not progress to any significant degree without the aid of a prosecutor. An Assistant U.S. Attorney had refused to accept the case, citing lack of jurisdiction, and relating an opinion that the evidence presented was insufficient to constitute a criminal offense. The Police Department then sought assistance from Amtrak's Government Affairs Department, which contacted a key subordinate of the Attorney General for the State of Illinois. As a result, a meeting was arranged between our investigators and a prosecutor from the Attorney General's Office. He refused to accept the case and recommended referring the matter to the Cook County State's Attorney's Office. The Cook County State's Attorney's Office was persuaded to pursue the investigation through the Grand Jury. Subsequently, Grand Jury subpoenas were issued for all uncooperative witnesses, MTP, and various other vendors with whom MTP conducted business.

Over the next two months, further interviews were conducted and some individuals were reinterviewed. The investigators reviewed relevant Amtrak documents and other records which had been obtained through Grand Jury subpoena of Mutual Truck Parts, other entities or individuals. They also performed visual inspections of facilities and automobiles which were alleged to have been involved in the matter.

The acquired information was divided into three categories and evaluated in the following manner. The three categories were: one, provable criminal offenses; two, possible criminal offenses on which the prosecutor had stated he would take action if additional evidence was developed; and three, alleged activities which were a result of mismanagement or abusive practices and not deemed prosecutable. Financial workups were done on the first two categories, both of which involved Mutual Truck Parts transactions. Evidence which fell in the third category did not enhance the prosecutive merit of the case. Consequently, no computations were made on instances of mismanagement or abuse.

Using this criteria, the investigators determined that as a result of provable criminal acts, Amtrak incurred a financial loss in the amount of $3,541.45. This figure included the cost of parts, employee labor, and overhead, which were traced specifically to Amtrak employees' privately-owned vehicles.

The blanket purchase agreement between Mutual Truck Parts and Amtrak was manipulated in the following manner. Durst would receive Brown's approval to obtain parts for installation in private vehicles, or material to be used in the same fashion. Durst would then fill out a material requisition form and have it signed by Baker, Rodgers, or Brown, depending upon the dollar amount of the transaction. If

Mutual Truck Parts did not carry the desired commodity, MTP ordered it from another firm. Durst would be contacted and he would pick up the item at MTP or another firm. If the item was obtained from another vendor, Mutual Truck Parts would pay for the item, then bill Amtrak in the same manner as if the part had come from Mutual Truck Parts. If the part or material was such that its appearance on an invoice would raise questions, the invoice would be disguised by substituting normally procured items at a similar price. The invoice would then be processed through normal channels, causing payment to be made to Mutual Truck Parts.

The employees who benefited and had knowledge of the scheme were: John Durst, Foreman II, Locomotive Maintenance, a Union employee who received custom automotive paint and associated items valued at $840.59; James Brown, Manager, Locomotive Maintenance, a management employee who received repairs to his private vehicle, with the labor valued at $30.77; William Rodgers, Assistant Manager, Locomotive Maintenance, a management employee, who received repairs to his private vehicle with material and labor valued at $2,297.99; Gary Baker, General Foreman, Locomotive Maintenance, a management employee, who received repairs to his private vehicle with material and labor valued at $197.37; Claire Zuckley, Industrial Nurse, Human Resources Department, a management employee, who received repairs to her private vehicle, with material and labor valued at $146.65; and Linda Watson, Personnel Supervisor, Human Resources, a management employee, who received repairs to her private-vehicle, with labor valued at $27.98.

In addition, $3,001.94 in unaccounted assorted automotive parts was procured through Mutual Truck Parts. This figure was derived from Mutual Truck Parts' invoices which reflected materials purchased that did not appear to be for Amtrak equipment, or the inability of the investigators to trace the parts to an Amtrak vehicle. This figure constituted the second category described as possible criminal offenses. Both the method and the rationale for arriving at the aforementioned determinations were thoroughly discussed with the prosecutor.

Various employees alleged that John Durst was guilty of time stealing, in that he never worked a 40-hour week or often left work early, and that this activity was ongoing. The time records from April through mid-June of 1984 were examined for discrepancies. In an interview Durst's supervisor, James Brown, stated that he allowed Durst compensatory time for unpaid overtime, which Durst purportedly worked on weekends ~~and~~ or evenings. He also related that Durst's wife was suffering from terminal cancer, so Brown allowed Durst to adjust his work schedule to accommodate his wife's chemotherapy and other medical treatments. The prosecutor was informed of this allegation and advised there was no criminal complaint due to Brown's discretion as a manager.

Employees also alleged the theft of Amtrak-owned tools by John Durst for his personal use. Durst denied the tool thefts. The tools were not inventoried or marked as Amtrak equipment, and there were no warranties on the tools. The prosecutor was apprised of this allegation and stated there was insufficient probable cause to issue a search warrant for Durst's residence since Amtrak could not prove ownership of any tools that might be located there.

It was alleged that Durst loaded a battery charger into a company vehicle and drove off Amtrak premises. The battery charger had been brought to the 16th Street Facility when the Amtrak Shop Facility at Brighton Park closed in 1982. Durst admitted that during 1982 or 1983, he had placed a battery charger, which came from Brighton Park, into the company vehicle used by Brown, at Brown's request. Durst further related that he never saw the battery charger again. The prosecutor was notified of this information and advised that because the battery charger had not been located and could not be traced to Amtrak, there was insufficient evidence to file criminal charges against Durst or Brown. Employees also alleged the theft of a snowblower by John Durst which had been delivered to the 16th Street Facility from Brighton Park. Durst admitted that in 1982 he had transported a snowblower to Brown's residence at Brown's request. The prosecutor stated that there was insufficient probable cause to issue a search warrant for Brown's residence due to a lack of documentary evidence proving Amtrak's ownership of the snowblower or battery charger.

Allegations of theft and of miscellaneous parts, such as cases of rust treatment and motor oil, were also made by Amtrak employees against John Durst. The prosecutor stated that the allegations were not substantiated and, therefore, no criminal complaint would be issued.

It was further alleged that an Amtrak-owned 1973 Chevrolet Suburban vehicle had undergone extensive rebuilding during 1983, including engine, transmission and various body repairs, together with the installation of a snowplow and associated equipment. The investigation and related interviews disclosed various repairs had, in fact, been accomplished by members of Durst's staff. When questioned about this matter, Brown related he had authorized reconditioning of the vehicle for use as a shop or errand vehicle, and as a "training aid" for the mechanical staff. We also confirmed from various employees that this vehicle was in fact used to plow snow at the facility as required. The prosecutor was informed of the findings and advised the situation did not contain the elements necessary for criminal prosecution.

The acquisition of AM/FM stereo radios through Mutual Truck Parts, through disguised invoicing, was found to have been accomplished with the approval of Brown. We identified six Amtrak vehicles in which these units had been installed by Mr. R. D. Johnson, an employee electrician. The prosecutor, when informed of these findings advised us that since the items remained in Amtrak's possession, no crime had been committed and the activity was not prosecutable. There was also an allegation that Johnson installed one of the radios in Durst's private vehicle. When questioned about the matter, Johnson denied installing any radios or making repairs to any privately owned vehicles. An examination of Durst's vehicle revealed that the radio contained therein was a standard factory equipment AM/FM stereo radio. When questioned, Durst stated the radio in his vehicle was in the car when he purchased it. The investigators contacted the dealer from whom Durst had purchased the vehicle, and confirmed that the radio in the vehicle at the time of our examination was standard factory installed equipment. Lacking sufficient corroborating testimony, or physical evidence, the prosecutor advised us that no criminal complaint would be issued.

Concerning the allegation that tires were acquired for Brown's privately-owned Lincoln and Jeep at Amtrak's expense by Durst, investigators reviewed documents acquired from Mutual Truck Parts by subpoena and documents from another vendor, Central Delta Tire Co. These firms had been identified by certain employees as the source from whom Durst obtained the tires for both Brown's Lincoln and Jeep. A review of the records of those companies reflected only purchases of oversize tires which were compatible to forklifts used in the shop and the 1973 Chevrolet Suburban. We were unable to identify any purchases of tires which would fit Brown's Lincoln. When questioned, Durst denied any purchases of tires for Brown's vehicles and stated that any oversize tire purchases were for the shop forklifts and the 1973 Chevrolet Suburban. Brown stated he had purchased the Jeep in question from a private owner whom he refused to identify in 1980, but the Cooper tires on it when purchased were the same as when he sold the Jeep to another person in 1981. Brown related this person had since moved to the Seattle area, and refused to identify the purchaser. Lacking any further substantive information, the investigators were unable to trace the Jeep or the current owner. Our examination of the tires installed on Brown's

Lincoln revealed they were Michelin Self-Sealant tires for which he produced the Michelin tire warranty when requested. He stated that the tires were on the vehicle when he purchased it in 1983. The tread wear on these tires appeared consistent with the vehicle mileage at the time of our examination. Our investigators also questioned the dealer from whom Brown purchased the vehicle, and determined the tires on the vehicle were apparently on the car when Brown purchased it. When informed of these findings, the prosecutor advised the allegations were not substantiated and no criminal complaint would be issued.

~~The information regarding mismanagement or abuse which included information of a non-criminal nature, was imparted to Mr. T. P. Hackney and Mr. E. D. Abate, Vice President Operations and Maintenance, through briefings conducted during the course of the investigation. These briefings were in line with Amtrak Policy, Executive Order No. 2, Section 4, Subsection D, which states that misconduct of this nature is routinely reported to and dealt with by management, as it was in this instance. Early efforts by management to seek restitution from employees found to have had repairs done on their vehicles were ceased at the request of the prosecutor for suspects in the criminal investigation.~~

By the end of August, Amtrak investigators had fully developed all pertinent leads. At this time, Amtrak investigators sought a prosecutive determination from Assistant State's Attorney, Thomas Smith, the prosecutor assigned this case. The prosecutor noted that investigation was "thorough and competent," but declined to prosecute, citing insufficient monetary loss to advance the case through the criminal justice system. I am confident that Mr. Smith, if called by the Subcommittee, would continue to compliment the method in which the investigation was handled, and would reiterate his reasons for declining prosecution. Collection of restitution was pursued when the decision not to prosecute was made.

Frankly, we ~~were~~ are disappointed by his decision not to prosecute, since a great deal of work had gone into the case. Miss Doonan had devoted approximately 97 days on the case, and Mr. Steil had spent 20 to 25 days. The investigation had indeed been very thorough.

summarize,

All criminal aspects of the investigation, with the exception of information obtained through the use of Grand Jury subpoenas, were reported to Mr. T. P. Hackney. Highlights of the criminal aspects of the case and allegations of abuse or mismanagement were reported to Mr. F. D. Abate during a series of individual and collective briefings. Evidence of non-criminal abuses were forwarded to management in accordance with an Executive Order [illegible] for proper action. In the initial stages of the investigation, these briefings were held approximately once a week. As the flow of information increased, as many as three briefings a week were held. At the conclusion of the case, a final meeting was held and the Police Department's findings were presented to Mr. T. P. Hackney, Mr. F. D. Abate and Mr. Joe Crawford, Chief Mechanical Officer. ②

Mrs. Collins. Thank you very much, Mr. Ingalls. On page 11 of your written testimony, you omitted the second paragraph. Was that because you did not want it in the full record?

Mr. Ingalls. No, ma'am. It was somewhat redundant in the summary, and I felt I could cut my statement short, I felt.

Mrs. Collins. Fine, thank you very much.

Were there other statements here? No other statements, is that right?

Mr. Ingalls. No, ma'am.

Mrs. Collins. Will you give us your name and position for the record, please?

Mr. Steil. Peter W. Steil, chief inspector, systems, Amtrak Police Department, Washington, DC.

Mrs. Collins. Mr. Ingalls, after Assistant State's Attorney Thomas Smith declined to prosecute employers Rodgers, Brown, and Durst under the Illinois felony law, did your department seek to prosecute under the State's misdemeanor theft law for thefts under $300?

Mr. Ingalls. I missed the last part of the question.

Mrs. Collins. Sorry. I said that inasmuch as the State's attorney refused to, or could not prosecute under the Illinois felony law, which requires a theft of over $300, did your department seek to prosecute under the State misdemeanor theft law for thefts under $300?

Mr. Ingalls. No, ma'am, we did not. The prosecutor was not limited to prosecuting the case under the felony laws of the State of Illinois. He could have chosen to take the misdemeanor route, but he arrived at a conclusion that it was not to go through the criminal justice system.

Mrs. Collins. The thing that worries me, there was a recurring theme in your statement, and I seem to sense that the prosecutors and others were frustrated by the lack of records which at one time had been there, but were no longer there.

This appears to me to be almost an open invitation for people to engage in other schemes of this sort in the future, because they think all you have to do is get rid of the records, there is no evidence. There will be no prosecution.

Where were your thoughts when you started looking at this and found so much of the evidence was not there? Or Mr. Steil, either of you?

Mr. Ingalls. We found that the inventory system in Chicago—we do not believe it was necessarily a procedural problem. We thought it was a people problem. Mr. Durst was in charge of the tool program, in charge of the inventories.

Mr. Durst is also alleged to have stolen a number of tools from the inventory system.

Mrs. Collins. Let me ask this question: Did you make recommendations that changes be made in the internal control system or did you find this to be unusual?

Is this the usual practice at Amtrak? Special inspectors, you go all over Amtrak, right?

Miss Doonan, wouldn't you go all over Amtrak, and is this a problem that is pervasive throughout the entire Amtrak system, that they don't have good internal controls on equipment, et cetera?

Ms. DOONAN. I can only speak to the Chicago issue because I have not been investigating this throughout the system. In Chicago, it was a problem. There was a lack of inventory records, but I don't know about, I don't know if it is systemwide.

Mrs. COLLINS. Do any of you know whether or not this is systemwide?

Mr. INGALLS. Perhaps Mr. Crawford, our chief mechanical officer could answer that.

Mr. CRAWFORD. Joseph S. Crawford, chief mechanical officer for Amtrak in Washington, DC.

Mrs. COLLINS. I am having trouble hearing you.

Mr. CRAWFORD. I am Joseph S. Crawford, Jr., chief mechanical officer for Amtrak in Washington, DC. To my knowledge, the specific inventory problem we are referring to has to do with tools.

The fact is, we did not keep records in an inventory procedure at that time throughout the system on tools, because of its minor nature. The total mechanical budget department budget at Amtrak is $290 million, and the approximate small tools budget is below $500,000.

Since that time, there has been initiated a tool inventory within the facilities, specifically the 16th Street facility in Chicago does have a tool inventory at that location, and that will be done annually.

Mrs. COLLINS. Mr. Branan, as an auditor, do you think it is good not to have any kind of internal controls on tools, that you have the same person buying the tools, using the tools and all of this?

Isn't that a little strange?

Mr. BRANAN. The tools bought under the BPA were not authorized under that BPA. That was for automotive parts only.

Mrs. COLLINS. Well, that wasn't my question. Do you think this is a good—a system under which the things were being run?

Mr. BRANAN. I agree with Mr. Crawford, due to the dollar value in tools, extensive control on them would cost more than the equipment you are protecting.

Mrs. COLLINS. What about the cumulative effect of those?

Mr. BRANAN. Over the entire system?

Mrs. COLLINS. Over the entire system, would it be worthwhile?

Mr. BRANAN. I work primarily in the Midwest area, so I am not that familiar with what would be going on in other areas of the country.

Mrs. COLLINS. Even though you work primarily in the Chicago area, do you sometimes have meetings and meet with other people within other installations throughout the country and discuss how they are doing things?

Mr. BRANAN. Those levels of meetings are above my position.

Mrs. COLLINS. I am aware of a case where an employee was prosecuted by an Amtrak policeman for stealing, really a misdemeanor, 10 or 12 flashlights and the main evidence was a statement of an alleged accomplice.

How could something like this happen?

Mr. INGALLS. I am not familiar with the case.

Mrs. COLLINS. You are not familiar with the case?

Mr. INGALLS. No.

Mrs. COLLINS. Even if you are not familiar with the case, how could an employee have been prosecuted, and I think that Mr. Kleczka pointed out that there was a fraud of something like $2.50, and an employee was fired, and yet, here is a case where there was more money involved and nothing ever happened?

How can that happen? Is there justice in this system or blindness on the part of those who are in management or what?

Mr. INGALLS. First, I think you would have to look at where the offense took place. Part of the reason for my statement is, that I am unfamiliar with the case. In different areas of the country, different environments, the criminal justice system has lower thresholds for prosecution.

Also, it may have been an on-site arrest or an on-view arrest, and the object of any arrest is to arrive at a successful prosecution.

In our investigation of the Chicago locomotive facility, we had already been informed by the prosecutor that there would not be prosecution for the criminal acts we uncovered.

Mrs. COLLINS. You were informed early on that there would not be prosecution?

Mr. INGALLS. No; you were asking why we did not make arrests immediately.

Mrs. COLLINS. I understand the case I had reference to was in Chicago. Did you examine any of the invoices for any other Amtrak employers, I mean suppliers?

Mr. BRANAN. I was concerned primarily with invoices from MTP during this investigation.

Mrs. COLLINS. You say primarily. You did not examine any of the others?

Mr. BRANAN. The documentation examined beyond MTP was purchase orders relative to other vendors.

Mrs. COLLINS. What did you find?

Mr. BRANAN. Very little that was usable from a criminal standpoint, because I was looking at the invoicing on tires, and all the tires were traced to Amtrak vehicles.

Mrs. COLLINS. Did you find things that were strange if not useful from a criminal standpoint, did you find transactions that caused to take another look at them?

Mr. BRANAN. No, not in the documentation I was reviewing.

Mrs. COLLINS. You got the general impression everything was hunky-dory?

Mr. BRANAN. I would not say that.

Mrs. COLLINS. Are you then as an auditor responsible for making a recommendation to somebody?

Mr. BRANAN. On this particular job or investigation, I was assisting the Office of Investigations and all my information was forwarded to them for handling with upper management.

Mrs. COLLINS. Did you make a recommendation then to them saying that your findings were so-and-so, and that you found that there was some cause for concern, and that there was some mismanagement that was involved; in the future, if they wanted to prevent that sort of thing, they might do this, this, or this?

Mr. BRANAN. No; because during this investigation, I was assisting primarily to provide them with paperwork evidence, for criminal prosecution.

Mrs. COLLINS. Miss Doonan, what research did you do during your investigation to ascertain the industry standard for markups, truck supplies, and parts?

Ms. DOONAN. Basically, that was handled by Mr. Branan, since he was pursuing that aspect of the investigation.

Mrs. COLLINS. Tell me what part you played in the investigation, please.

Ms. DOONAN. I was the lead investigator and conducted most of the interviews, obtained documentation, subpoenas and served those subpoenas to obtain additional information.

I had assistance from Chief Inspector Steil, Mr. Branan, and instructed them that they would help me in obtaining additional information.

Mrs. COLLINS. Mr. Branan, tell me the range of percentage markups on the MTP transactions containing fraudulent or disguised entries?

Mr. BRANAN. In the fraudulent entries the markups were 50 to 100 percent.

Mrs. COLLINS. Were there a lot of those?

Mr. BRANAN. I believe the fraudulent invoices would account for approximately 5 percent of the total expenditure with Mutual Truck Parts.

Mrs. COLLINS. Is that a large percentage, a percentage that would cause you concern?

Mr. BRANAN. A percentage of markup?

Mrs. COLLINS. No; a percentage of fraudulent, in the whole bundle, 5 percent of the total invoices that you were looking at, would that cause you some concerns?

Would you think that was a high percentage?

Mr. BRANAN. Any fraudulent invoicing would cause me concern.

Mrs. COLLINS. Did you think the markup was extraordinary?

Mr. BRANAN. Extraordinary in relation to normal purchasing, yes.

Mrs. COLLINS. I am sure my time has expired.

Mr. McCandless.

Mr. MCCANDLESS. Thank you.

In your statement, you mentioned Amtrak Executive Order No. 2, section 4, subsection (d). Do you have a copy of that with you?

Mr. INGALLS. No, sir; but we could forward it to you.

[See app. 2.]

Mr. MCCANDLESS. Would you make one available to the committee, and I would ask the chairwoman unanimous consent to have that entered in the record.

Mrs. COLLINS. Without objection.

Mr. MCCANDLESS. Does this document direct your office to report to responsible management personnel information regarding mismanagement or other noncriminal problems?

Mr. INGALLS. Yes, the executive order uses the term "violation of the rules."

Mr. MCCANDLESS. You indicated that you briefed Mr. Hackney and a Mr. Abate, pursuant to this Executive Order No. 2. What was the content of that discussion? What noncriminal problems did you discuss with them?

Mr. INGALLS. We had several conversations concerning this case, as it developed, as the information was coming in to us, and the content of the discussion dealt with the inventory problems, and dealt with that information which originally we had attempted to include in our investigation as criminal offenses all of the allegations cited in my complaint as criminal offenses.

We had hoped that we would be able to have all of them prosecuted. Obviously, it didn't work out that way, and as the noncriminal offenses fell out of the investigative process, I would say probably two-thirds through the investigation we had a good idea which ones they were, all items were discussed in terms of what would be noncriminal conduct and what we would be continuing to pursue in the investigation.

Mr. MCCANDLESS. For the record, would you clarify who Mr. Hackney and the other gentleman, Mr. Abate, are?

Mr. INGALLS. Yes, sir. Mr. Hackney is the executive vice president and chief operating officer.

Mr. Abate was a vice president, vice president, operations and maintenance was his correct title, I believe.

Mr. MCCANDLESS. I would like to go back to that aspect of the conversation that dealt with inventory, inventory control or lack of it. Can you expand upon your discussion of that? This was with Mr. Hackney, is that correct?

Mr. INGALLS. I believe this was a discussion with Mr. Hackney and Mr. Abate jointly.

Mr. MCCANDLESS. These gentlemen would have a level of management responsibility to accept this basic information for purposes of administrative review and determination, or whatever policy change may or may not take place, would that be a fair assessment of their position in this situation?

Mr. INGALLS. Yes, it would.

Mr. MCCANDLESS. Could you go into the inventory aspect of this as best as you can remember the discussion?

Mr. INGALLS. As best as I can recall, I stated that there did not seem to be a system in place, and that was compounded by a people problem. I was referring to John Durst, who was in charge of the tool room.

I have since learned that there was a system in place, but that it was not being followed by Mr. Durst, and is now in application at this time.

Mr. MCCANDLESS. From your perspective, having learned this subsequently to your discussion, from your observation point, who should have been auditing or overseeing that particular inventory system to insure the fact that it was in place as a management tool?

Who in your opinion should have been doing that?

Mr. INGALLS. The local management. The superior of the foreman who was running the tool program. This was a management problem.

Mr. MCCANDLESS. Who would that be in this particular case?

Mr. INGALLS. The difficulty is in this particular case, you had all three responsible persons, the foreman and the next two levels in the chain of command also involved in some of these schemes. There was a serious management problem at that location.

Under normal circumstances, you would expect that the individual's superior would assure that inventories were being maintained.

Mr. McCandless. Mr. Branan, in your position as auditor, auditor sometimes means different things in different organizations, but taking it in its broad context, was it your responsibility, your job classification, to review as an auditor some of these management-implemented programs, programs which management placed for purposes of checks and balances, getting back to the inventory control that was referred to earlier by Mr. Ingalls?

Mr. Branan. That appraisal——

Mr. McCandless. Will you pull the mike up?

Mr. Branan [continuing]. Your appraisal of my position is correct. The work that I am actually assigned to, of course, is determined by my superiors, and I had not done any work in this particular area that you are questioning.

Mr. McCandless. Taking the auditor-comptroller position in these situations that we find ourselves, were there ever assignments by management to review the policies or procedures relative to inventory control, purchases and related matters such as we find ourselves discussing today?

Mr. Branan. Yes.

Mr. McCandless. In the process of doing this, which I assume you did, am I correct?

Mr. Branan. I personally have not done any procurement or purchasing audits, but they have been done by the department, and you would have to direct any questions in that area to my superiors.

Mr. McCandless. Then how would I determine here, Mr. Branan, your position relative to the structure? Do certain people report to you? Do you assign certain positions, or are you one of the members of the team, or auditing department to which somebody else assigns a specific job?

Mr. Branan. I am just one of the members of the team. I have no people that specifically report to me.

Mr. McCandless. Were you ever assigned by your superiors to review any of the areas in question here today, inventory control purchases, et cetera?

Mr. Branan. At this location, no.

Mr. McCandless. That then begs the obvious question, at what location were you assigned to something like this?

Mr. Branan. The majority of the inventory work I have done has been at Beach Grove Maintenance Facility outside Indianapolis, IN.

Mr. McCandless. Your office is there in the greater Chicago area somewhere?

Mr. Branan. Yes.

Mr. McCandless. Mr. Ingalls, did you report to both of these men that we talked about earlier, the poor recordkeeping that was occurring at the 16th Street facility?

Mr. Ingalls. The recordkeeping problem was primarily in terms of the inventory.

Mr. McCandless. Well, it is my understanding from your statement that you were, or the other information that we have been given, that the investigation that you and the members of your staff conducted was somewhat hindered by a lack of recordkeeping consistent with the policies of management, the snowblower, battery charger.

Mr. Ingalls. That falls in the category of recordkeeping in terms of inventory expense items, and that was a question addressed earlier. Under a certain dollar value, items are not inventoried.

They are considered small tools or purchases. Perhaps Mr. Branan could better define the difference between an expense and a capital item. Inventories are maintained on capital items and an inventory is not maintained on expense items.

It has been explained to me that to inventory all expense items, it would cost more to carry an inventory on expense items than what the potential loss, normal loss would be. It is simply not cost-effective to do this.

Mr. McCandless. Is there a monetary level that any of you can share with the committee at which it is an expense item rather than a capitalized item?

Mr. Ingalls. Yes, there is. Mr. Crawford may have something to say about this.

Mr. Crawford. The difference between expense and capital items is a monetary figure, and I am not positive what that is. We could get that information.

Mr. McCandless. If I am familiar with the procedure that you are talking about, in my particular case, if it was over $200 you capitalized it, and under $200, you would expense that item?

Mr. Crawford. I don't know what the figure is. If I could mention, the inventory system we are speaking of has to do with small tools. Regarding Amtrak's material control inventory system, it is one of the most sophisticated in the country.

It was purchased from the Burlington Northern Railroad. In regard to the small tool inventory that we are discussing, if the facility manager was properly doing his job, we believe proper controls were there.

Mr. McCandless. Is it your assessment here that the facility manager was not doing a proper job?

Mr. Crawford. Yes, sir.

Mr. McCandless. Mr. Ingalls, during your investigation, did anyone report to your investigators some of these items, allegedly 50 missing traction motors, valued at $250,000, 20 to 25 missing locomotive governors, said to be valued between $2,500 and $5,500 each, that James Brown and Gary Baker were selling Amtrak scrap metals for their professional gain or one other one, that tools purchased from Cremioux were removed, hardware was unaccounted for?

Did anyone report to your investigators any of these items?

Mr. Ingalls. Not to my knowledge, sir.

Mr. McCandless. When, in the course of your internal investigation, or your responsibility as internal investigator, at what point do you consider some conversation or indication warranted for further discussion or review, irrespective of how it may come into your possession, someone may say something, someone of your people may overhear a discussion, what triggers an investigation or a review of a set of circumstances?

What criteria would you use separate from that of a direct requirement or request by management to do a specific thing? Do you have a set of criteria?

Mr. INGALLS. A criminal investigation?

Mr. MCCANDLESS. Any activity that would appear to be fiduciary in nature with respect to the employees and equipment from Amtrak.

Mr. INGALLS. We would accept information from any source. We do not need a direction from management to investigate a financial matter. It could come as an anonymous tip or from a confidential source.

It could come from a responsible employee who sees something wrong, and it could come from the department head, any number of directions.

Mr. MCCANDLESS. From a management point of view, what would happen to one of the employees in your section if you found out that they had failed to follow up on a rumor or something? Are there guidelines by which you can hold that person responsible?

Mr. INGALLS. If one of my investigators failed to follow up on a rumor, is that the question?

Mr. MCCANDLESS. Yes. Follow up on a report, even a rumor. I guess what I am trying to find out is, as the enforcement agency, internal investigation agency of Amtrak, it would appear to me that there would need to be some kind of a basic investigatory category of criteria, a rumor justifies a certain action, whatever you may wish to use as a criterion, and that is the interest that I have in asking these questions, because I am interested in the administration of Amtrak and how it functions on a day-to-day basis.

Mr. INGALLS. A specific criterion for accepting an investigation or any information reported to an investigator. Police officers are conditioned from the beginning to account for their time, account for their movements by documentation, and any information that would come into the office would not be summarily dismissed by an agent.

Other than that, I don't know what criteria we might have. We just accept everything that comes our way, and it would be documented.

Mr. MCCANDLESS. I would like to move into the area of specifics here. Did the company seek restitution from all of those your investigation had wrongfully benefited at the company's expense?

Mr. INGALLS. Yes, they did.

Mr. MCCANDLESS. In your February 22 report to Mrs. Collins, you indicated that the company obtained restitution from some people and not from others. It seemed that the people who benefited only a little had to make restitution while those who benefited comparatively more did not make restitution.

Can you share with us an explanation for this?

Mr. INGALLS. Yes, sir, that was at the urging, and I am not sure that that word is strong enough, of the prosecutor. He had not informed us that during the course of the investigation, that he did not wish us to collect restitution from the primary suspects, because that would have an adverse impact on his ability to prosecute these individuals, and a defense attorney could then come up and say, at the time of trial, they have already made their restitution, they have lost their jobs, and this is enough.

That was done at the direction of the prosecutor. As a matter of fact, we never received a formal letter from the prosecutor closing the case. The restitution was still outstanding, perhaps 2 months after the investigation had been closed, and we had only been advised—verbally, by the prosecutor that he was not going to prosecute the case.

We wanted a formal document, and it caused us to write a letter a couple of months later asking for it. We had not received communication formally closing the prosecution aspect from the prosecutor, but we did move ahead at some point after a reasonable time had gone by, and we sent a letter to each person involved, we did move ahead with requests for restitution from the people involved in this case.

Mr. McCandless. Mr. Crawford, your title here, according to the information I have, is assistant vice president and chief mechanical officer, which would place you in a management position of relatively high level, is that a reasonable statement?

Mr. Crawford. I am not assistant vice president, just chief mechanical officer.

Mr. McCandless. Maybe one of the others here may wish to expand on this, also. Most of the organizations in the private sector, their employees are bonded for the purposes that have come forward during this discussion, and that the bonding company is a means by which if loss is suffered by that company, in the event some activity or action takes place.

The restitution is forthcoming and the bonding company takes what action it deems advisable in its own best interests. There is no such system within Amtrak where the employees are bonded, management is bonded for fidelity purposes?

Mr. Crawford. I don't know.

Mr. McCandless. Ms. Moorhead, are you in a position to comment on that?

Ms. Moorhead. I am sorry, I don't have that information, but we can certainly provide it to your committee.

Mr. McCandless. There is no bonding for your employees, fidelity bond?

Ms. Moorhead. For most employees, my understanding is there is no such bonding requirements.

Mr. McCandless. What does that mean?

Ms. Moorhead. May we get back to you with that information?

Mr. McCandless. You keep looking over your shoulder. We will be happy to have that gentleman join you.

Mrs. Collins. The gentleman who was giving you information.

STATEMENT OF HAROLD R. HENDERSON, GENERAL COUNSEL, AMTRAK

Mr. Henderson. Harold Henderson, general counsel at Amtrak. Ms. Moorhead was directing the question at me. To my knowledge, we don't have any employees who are bonded. It may be certain circumstances, because of their financial responsibilities, an employee may be bonded for a particular purpose at a particular time, but as far as being bonded by virtue of holding a particular position, that is not the usual case.

Mr. McCANDLESS. From your point of view or from your knowledge, is this also a policy of independently-operated railroads in the private sector, or other railroads similar to that performing a service such as Amtrak does?

Mr. HENDERSON. I think that is correct, that our operation is very similar to the operating railroads.

Mr. McCANDLESS. So there is no bonding there, either, other than the specific positions that deal directly with money and that kind of thing?

Mr. HENDERSON. I believe that could be the case. As long as I am speaking——

Mrs. COLLINS. Why don't you bring up a chair?

Mr. Henderson, would you raise your right hand?

[Witness sworn.]

Mr. HENDERSON. I wanted to make one more small point, in addition to the smaller amounts of restitution that were reported in Mr. Ingalls' prior letter to the chairwoman that you referred to, we also have received full restitution as demanded from Mr. Rodgers in the amount of some $2,700.

That is reflected in the letter. That has been received, also.

Mr. McCANDLESS. One final question. February 22 report, you stated the mission of your office is to prevent, suppress and detect criminal activity, and you reiterated that idea in your statement today.

Mr. INGALLS. Yes, sir.

Mr. McCANDLESS. The focus of your Chicago investigation was criminal prosecution.

Mr. INGALLS. That is correct, sir.

Mr. McCANDLESS. But you make management aware of whatever information you develop regarding noncriminal abuses or shortcomings to the systems, such as recordkeeping.

Mr. INGALLS. That is correct, sir.

Mrs. COLLINS. Mr. Kleczka.

Mr. KLECZKA. Ms. Doonan, where are you stationed in your employment for Amtrak?

Ms. DOONAN. New York City.

Mr. KLECZKA. You were called in to provide the investigative capability for this Chicago case?

Ms. DOONAN. I was hired about approximately a week or 2 weeks before, and I was living in Virginia, stationed in DC as an orientator until I was to go to New York, so I was in DC at the time of this investigation.

Mr. KLECZKA. What is the job of a special agent?

Ms. DOONAN. What is the job of special agent? We investigate criminal allegations involving Amtrak employees and anyone who has any dealings with Amtrak, such as contractors.

We deal with white-collar crime, as well as——

Mr. KLECZKA. Blue collar?

Ms. DOONAN. OK.

Mr. KLECZKA. Have you participated in any other investigation outside of the Chicago case?

Ms. DOONAN. For Amtrak, yes, I have.

Mr. KLECZKA. When you were called into the Chicago situation, were you given a free hand to do your investigative work?

Ms. DOONAN. Yes, I was.

Mr. KLECZKA. What was Mr. Brown's reaction when you arrived in Chicago?

Ms. DOONAN. I don't know what his reaction was when I arrived in Chicago. When I arrived at the locomotive facility, he was extremely irate and upset, and I was there to obtain records from Mr. Durst and from Mr. Baker, the foreman of material control.

Mr. Brown was made aware of my presence by his superior, and he caused a great amount of upset by demanding that we all go to his office and he was carrying on about our presence in his facility.

Mr. KLECZKA. Were you refused any documentation that you needed in this investigation?

Ms. DOONAN. He tried to tell us that we could not have the procurement records, and I showed him Executive Order No. 1 which is an order which states that the auditors whom accompanied me are allowed access to any records that Amtrak has to perform their function, so once I showed him that, he consented to let me have the records.

Mr. KLECZKA. Did you have a free hand in interviewing subordinates right on the job, to Mr. Brown, that is?

Ms. DOONAN. I had interviewed some prior to meeting Mr. Brown. When he was made aware that I was interviewing his employees, he tried to tell me that I could not interview them unless he was present, and I then did not—I told him I was going to continue to interview his employees if he were to be present.

Mr. KLECZKA. What did you do then?

Ms. DOONAN. I ceased with that part of—for a couple of days, I didn't interview anyone, because when I tried to, he would accompany them. I later—at that time, I made contact with Mr. Smith, the prosecutor, and I had obtained a subpoena for Mr. Durst, whom I had wanted to interview, and for Mr. Brown.

After Mr. Brown received the subpoena, he consented to let me interview whomever I wanted.

Mr. KLECZKA. Since the Chicago investigation, you have performed others. Based on that professional background and knowledge, do you agree with the conclusions of this investigation, that the total criminal fraud involved in this situation in Chicago amounted to about $3,500?

Ms. DOONAN. Do I agree with that conclusion?

Mr. KLECZKA. Yes.

Ms. DOONAN. Yes, the amount that we came up with was in fact that amount, with also, as mentioned in Mr. Ingalls' statement, another approximately $3,000 that we could not specifically trace to specific vehicles.

Mr. MARTINEZ. Will the gentleman yield for a minute?

Mr. KLECZKA. I yield.

Mr. MARTINEZ. Following up on what you just said, what you did determine is what you were able to determine, right? I mean, there is still the case of the 40 to 45 traction motors that were alleged to have been taken and therefore, been able to be identified that they actually were there, and taken, because of inability to get into inventory documents?

Ms. DOONAN. No, let me clarify this. Certain allegations were never brought to our attention at all, such as the traction motors, I never heard allegations of traction motors or governors.

The snowblower was brought to my attention.

Mr. MARTINEZ. Were you able to determine there was a snowblower owned by Amtrak but missing?

Ms. DOONAN. No, we were never able to determine there was a snowblower. We had heard there was, but had no records to prove there was one.

Mr. MARTINEZ. The same thing for the battery charger?

Ms. DOONAN. That is correct.

Mr. MARTINEZ. If there were some way to prove there were things owned by Amtrak, and missing, that amount you just stated you agree with would probably go up?

Ms. DOONAN. Yes, that is true.

Mr. MARTINEZ. All right, thank you.

Mr. KLECZKA. Mr. Crawford, we are told by the chief and also by Special Agent Doonan that they were never made aware of missing traction motors or locomotive governors or scrap metal that was evidently sold by employees versus Amtrak itself.

Are you aware of those allegations?

Mr. CRAWFORD. I was aware of nothing regarding the missing traction motors until this past Monday, at which time we made a check on our traction motor inventory and we have, in fact, 261 traction motors in our inventory, and over the last 3 years, we have scrapped 60, and purchased no new traction motor since long before 1977.

Mr. KLECZKA. You found that allegation to be baseless?

Mr. CRAWFORD. Yes, sir.

Mr. KLECZKA. The missing governors?

Mr. CRAWFORD. I have had no knowledge of that until this past Monday. Our governor inventory, that is appropriate. It is 22. We use approximately 30 a year, and I have no knowledge of any missing governors from our inventory.

Mr. KLECZKA. When did you hear about the allegations of expensive brass, copper and other scrap metal being sold, at the same time?

Mr. CRAWFORD. Yes, sir; the same time, Monday. I know nothing about missing scrap.

Mr. KLECZKA. What was the value of the small tool inventory in Chicago? Do you know?

Mr. CRAWFORD. No, I don't. A ballpark would be under——

Mr. KLECZKA. I thought I heard $500,000.

Mr. CRAWFORD. That was for the whole country for all facilities; $290 million total mechanical department budget also applies to the whole country. Small tools at Chicago would be valued at somewhere under $50,000. Maybe even less than that, no more than that.

Mr. KLECZKA. Did you discover that there were heavy losses in that inventory?

Mr. CRAWFORD. We just took an inventory, so we had none to compare it to. We took one from our records.

Mr. KLECZKA. You never went back, looking at all invoices to see how many electric drills we actually had at one time and how many are now in inventory?

Mr. CRAWFORD. No, sir; we couldn't tell.

Mr. KLECZKA. How long have you been an employee of Amtrak?

Mr. CRAWFORD. Thirteen years.

Mr. KLECZKA. What was your previous employment?

Mr. CRAWFORD. Penn Central, and before that, the Pennsylvania Railroad.

Mr. KLECZKA. Wouldn't you think that type of inventory system is kind of shoddy?

Mr. CRAWFORD. Not on small tools.

Mr. KLECZKA. I have small tools in my basement, and I check them out every night to make sure my wife hasn't misplaced them.

Mr. CRAWFORD. I am under the impression, through my experience in 20 years of railroading that this is a very common practice throughout the railroad industry.

Mr. KLECZKA. You have an inventory system?

Mr. CRAWFORD. Yes, we have implemented an inventory system because of this incident.

Mr. KLECZKA. Are you putting serial numbers on the various tools?

Mr. CRAWFORD. No, sir. If we took the time to do that, it wouldn't be worth it.

Mr. KLECZKA. On a Milwaukee drill?

Mr. CRAWFORD. Larger items should be tagged and will be, if they are not already.

Mrs. COLLINS. Would you, for the record, tell us what you define as small tool, a dollar value or size value, so we can have it for the record? Is there a dollar value, a tool that costs less than $300, is that part of your small tool inventory, or by power or table tools or what have you?

Mr. CRAWFORD. The size has a lot to do with it, but the value would be anything less than $200.

Mr. KLECZKA. That is all I have. Thank you very much.

Mrs. COLLINS. Mr. DeLay.

Mr. DELAY. Thank you.

I apologize for my lateness. I ask unanimous consent to include my opening statement in the record.

Mrs. COLLINS. Without objection.

[The opening statement of Mr. DeLay follows:]

THANK YOU MADAM CHAIRMAN. IF THE FEDERAL GOVERNMENT IS GOING TO TAKE IT UPON ITSELF TO SUBSIDIZE AMTRAK, IT IS INCUMBANT UPON US TO PERFORM OUR OVERSIGHT FUNCTION--TO SEE THAT TAX DOLLARS ARE WELL SPENT. AFTER REVIEWING THE MATERIAL FOR THIS HEARING I CAN ONLY CONCLUDE THAT FEDERAL DOLLARS USED AT AMTRAK'S CHICAGO FACILITY WERE NOT WELL SPENT UNDER THEIR LAST SET OF MANAGERS.

THESE HEARINGS WILL SHOW THE HIGH PROBABILITY THAT PAST MANAGERS HAD A FREE HAND WITH THE MONEY THEY SPENT--AND USED THIS FREEDOM TO ENRICH THEMSELVES. WHILE I FEEL IT IS IMPORTANT THAT WE BRING OUT THESE ABUSES WITH THESE HEARINGS, I WANT TO EXPRESS MY CONCERN WITH WHAT I PERCEIVE WILL BE OUR FOCUS TODAY AND TOMORROW. IT SEEMS TO ME THAT WE WILL BE CONCENTRATING ON PAST PROBLEMS AND AT ONLY ONE FACILITY. I FEEL THAT IT IS IMPORTANT THAT WE TRY TO EXPLORE CURRENT PROBLEMS AND THEIR SOLUTIONS, EVEN IN THIS HEARING--TO THE EXTENT THAT IT IS POSSIBLE.

IT IS FOR THIS REASON THAT I RECOMMEND THAT THE REPORT ON THIS HEARING BE HELD SO IT CAN BE INCLUDED IN A FOLLOWUP HEARING THAT COULD EXPLORE THE WIDE RANGE OF PROCEDURAL PROBLEMS THAT MIGHT EXIST THROUGHOUT AMTRAK AND THAT WOULD BE WASTING TAXPAYER DOLLARS. THANK YOU MADAM CHAIRMAN.

Mr. DELAY. Investigators, did any of you receive pressure to abandon your methods and sweep everything under the rug?

Ms. DOONAN. That is untrue. No, we never did.

Mr. DELAY. Mr. Ingalls.

Mr. INGALLS. No, sir.

Mr. DELAY. Mr. Ingalls, you said in your opening statement that Mr. Smith made comments about your investigation. Could you expand on that, and tell me what those comments were?

Mr. INGALLS. Mr. Smith stated that we had conducted a thorough and competent investigation. He also stated that he had informed a member of the subcommittee staff of that.

He went on to say that he would be very pleased to have Ms. Doonan as a member of his own staff. He was very impressed with Ms. Doonan, very impressed with Mr. Rhodes.

Mr. DELAY. If you had gotten prosecutions and convictions in this case, thereby showing that you saved the company money, would this have been viewed by Amtrak as a job well done?

Mr. INGALLS. Most assuredly.

Mr. DELAY. Would someone new like Ms. Doonan have benefited if you had gotten prosecutions and convictions?

Mr. INGALLS. Absolutely. That is a successful conclusion to an investigation.

Not every crime is intricately solvable. You can't expect every investigation to come to a prosecution, but that is the ultimate goal of each investigation, and means a judge and a jury has put their stamp on your work; you did a good job.

Mr. DELAY. In that case and I would assume that you are pretty independent from management.

Mr. INGALLS. In terms of our law enforcement function, that is correct, sir.

Mr. DELAY. So there would be no reason whatsoever for you not to conduct a good investigation in this case?

Mr. INGALLS. Absolutely not. That is how we gain prestige. That is what we get from successfully concluding an investigation.

Mr. DELAY. Who do you answer directly to?

Mr. INGALLS. Mr. T.P. Hackney, chief operating officer of the company.

Mr. DELAY. Mr. Crawford, can you tell us the state of affairs at the Chicago facility at this time, and have things changed?

Mr. CRAWFORD. Yes, sir; they have.

Mr. DELAY. If they have, could you be specific as to how they have changed?

Mr. CRAWFORD. Yes, sir; I can. Specifically, in the small tools area, as I mentioned, we do take an annual inventory.

Also, we have a computer printout that the shop accountant reviews monthly on all small tool purchases. Regarding investigation, all the stereos were removed from company cars, since this investigation, and the number of company-assigned vehicles at 16th Street was reduced from three to one and a new vehicle policy was implemented last September, whereby a completely separate department monitors all vehicle maintenance through a computer system, on a monthly and annual basis.

Mr. DELAY. Could you give me a time?

Mr. CRAWFORD. That vehicle policy happened in September. The vehicle numbers reduced from three to one happened this past March.

The tool inventory system was implemented after the first of the year, January.

Mr. DELAY. You just testified, I thought, that an inventory system on small tools is not a normal practice in the railroad industry.

Mr. CRAWFORD. That is correct, it is not. This is something that was initiated since this investigation.

Mr. DELAY. Just for this facility or companywide?

Mr. CRAWFORD. Companywide.

If I might just explain that, the reason that we are capable of doing that is we have a safety program whereby some people who are injured are put on light duty and therefore can no longer perform heavier type work, and they are assigned to the tool room for inventory accounting.

Mr. DELAY. So you feel like the new inventory system is not really costing the company any more money?

Mr. CRAWFORD. That is correct.

Mr. DELAY. How about controls on blanket purchase agreements?

Mr. CRAWFORD. The material and purchasing department, whom I do not represent, have initiated several controls in that area.

In the mechanical department, we prohibited a delegation of the signing authority below the facility manager.

Also, the top mechanical person in Chicago is a mechanical superintendent. He must verbally approve a blanket order release, and a separate logbook must be kept at each facility, on each line item as it is released. And that mechanical superintendent, each month, at least once a month, must go over with that facility manager, sit down and go through that logbook and confirm what releases were issued, what the cost was, what the material was, and where that material went and what for.

That is besides the material and purchasing, and they do their own auditing of sorts.

Mr. DELAY. Do you feel this new paperwork is not inhibiting those employees' ability to do their work?

Mr. CRAWFORD. It is not inhibiting? No, it is not.

Mr. DELAY. Thank you.

Mr. Branan, can you give me an understanding about the paperwork problems that existed at that time at Amtrak?

Mr. BRANAN. In relation to this investigation?

Mr. DELAY. Yes.

Mr. BRANAN. Not in that great a detail because, here again, my assignment on this was to pursue the MTP invoicing and determine those areas where we could get criminal prosecution.

Mr. DELAY. Mr. Crawford, do you know of any paperwork problems at that time?

Mr. CRAWFORD. No, sir, I am not aware of any, at that time.

Mr. DELAY. You piqued my curiosity, Mr. Henderson. What did Amtrak do to get the restitution from Mr. Rodgers that you mentioned earlier?

Mr. HENDERSON. We had written demand letters basically. The general superintendent in Chicago was requested to seek collection, and I believe he wrote letters to all of the people with an outstanding debt.

Some made restitution. One now has a lawyer who is in touch with lawyers in my office, talking about his debt, and I believe there was an exchange of correspondence, and some request for explanation and detail on the accounting from Mr. Rodgers, and when he received that, he made a check in full.

Mr. DELAY. I see. These demand letters that you sent, were they sent recently, or have you been demanding restitution all along?

Mr. HENDERSON. Restitution was demanded from people who were not targets or suspect with prosecution, was thought to be imminent at the behest of the prosecutor earlier on, and for those remaining four or so people who Amtrak was requested not to seek restitution from after the investigation was closed, and as Mr. Ingalls testified, we didn't get an official notification from the prosecutor on that even yet, but simply a verbal statement that he did not intend to prosecute the case criminally.

We instructed the general superintendent to take steps to collect and demand restitution. And shortly after that, probably earlier this year, I believe, he did make those requests. There have been correspondences exchanged in the meantime.

Mr. DELAY. Was it your office? To what extent did you push for prosecution?

Were you adamant about prosecuting these people on criminal charges? Was it your decision or not your decision to prosecute?

Mr. HENDERSON. My office had nothing to do with the decision as to prosecute. In fact, we had no communications at all with the prosecutor. That would have been handled by Mr. Ingalls' investigation office.

Mr. INGALLS. Sir, we strongly desired prosecution in this particular case, and I believe that was evident to the prosecutor.

We had hoped that, even after he had given us his findings that the case was not prosecutable, he would still prosecute it.

We had additional contact with him based on a request by Mr. Branan through Ms. Doonan, and if you would ask either Ms. Doonan or Mr. Branan to explain that, I am a little hazy on the details.

Mr. DELAY. I would appreciate that.

Ms. Doonan.

Ms. DOONAN. Mr. Branan wanted to obtain the correct figures to determine exactly how much money was lost to Amtrak during the manipulation of the blanket purchase order.

Mr. Smith told me that he did not wish to prosecute the case. Mr. Branan asked me to make a request of Mr. Smith to put Mr. Hoffburg, the owner of Mutual Truck Parts, before the grand jury because Mr. Branan felt that some papers and documents from their records were not made available to Amtrak.

And Mr. Branan wanted to find out specifically what materials, and what parts and items were purchased so that he could trace the amount and come up with an accurate statement of loss to Amtrak.

Mr. Smith still declined that request.

Mr. DELAY. Did he give you reasons why he declined the request for the appearance before the grand jury and the request for prosecution?

Ms. DOONAN. He said that there was, the dollar amount wasn't large enough. That was his main reason.

And also, I don't think he felt that there was much substantiating evidence and also he was looking at the overall picture, which included the suspects. Mr. Durst's wife was suffering from terminal cancer. Mr. Brown had lost his job, and Mr. Rodgers was an elderly gentleman who retired. He didn't see great jury appeal in that.

Mr. DELAY. Thank you.

Mrs. COLLINS. Mr. Martinez.

Mr. MARTINEZ. The statement that you made right now about the $3,000 not being enough money, but that is only what you were able to determine by limited investigation, and if I take it what you said earlier, that your investigation was hindered somewhat—whoever feels they can answer this, please volunteer to answer it.

Almost everything that that facility had, it had to be sent there from someplace else, and there had to be requisitions made and there had to be purchase orders by some higher authority in order for those materials, tools, the 40 to 45 traction motors that we don't know whether or not they existed, the snowplow, battery charger, somewhere in the records there has got to be—and maybe the auditor could answer this question—there has to be a record somewhere that those things existed, if they did exist.

Were you able to do the kind of job you needed to determine whether or not those things were allegedly taken?

Mr. BRANAN. The items that were taken were transferred from a facility that was closed and had been purchased several years prior to the transfer, and therefore the bulk of the records were no longer available for research.

Mr. MARTINEZ. Wasn't there a bill of lading that transferred this material to this place, records saying, going through that?

What was transferred from here to there? You actually know what was transferred, to determine whether or not those articles ever were there?

Mr. BRANAN. I didn't make the actual review of the availability of records, so I would not have direct knowledge.

Mr. MARTINEZ. Is there a record someplace that you can check?

Mr. BRANAN. To my knowledge, the determination was in relation to these items. That there is no record.

Mr. MARTINEZ. Actually, you would not know so they may have been taken and may not have been?

It goes back to the question of you being able to obtain a search warrant. Without that search warrant, you actually find the materials and tracing back to the materials themselves, whether they did or did not exist, so we really don't know.

Mr. INGALLS. Documentary evidence, yes, sir.

Mr. MARTINEZ. We don't know that the limit is only $3,000 that we have made restitution for?

Mr. CRAWFORD. Regarding the traction motor situation, we have not purchased traction motors at Amtrak for many years.

We had a locomotive conversion program at Electro Motor Division where we converted 113 of our SDP-40 locomotives into F-40's, which made surplus two traction motors per unit.

Of that total number, less the 60 we have scrapped over the last 3 years, the balance are still in our inventory. So we do have records on the high money item you mentioned, traction motors.

Mr. MARTINEZ. The snowplow?

Mr. CRAWFORD. No records on that.

Mr. MARTINEZ. There is no way to check if Amtrak owned or transferred it to another facility, no record?

Mr. CRAWFORD. Not to my knowledge, no record.

Mr. INGALLS. It is not a snowplow. It was one of the snowblowers.

Mr. MARTINEZ. What is the value?

Mr. INGALLS. As low as $200, $300, and as high as $700 or $800.

Mr. MARTINEZ. Some valves valued or some bells, railroad bells?

Mr. INGALLS. We haven't heard of that.

Mr. MARTINEZ. Mr. Crawford, under the resignation conditions that Mr. Brown resigned, that he would be eligible for rehire?

Mr. CRAWFORD. No.

Mr. MARTINEZ. He would not be eligible for rehire?

Mr. CRAWFORD. No, he would not, not to my knowledge.

Mr. MARTINEZ. The personnel forms under which he resigned do not allow for him to be rehired?

Mr. CRAWFORD. That is correct. That is my understanding.

Mrs. COLLINS. Mr. McCandless.

Mr. MCCANDLESS. I need to have one area cleared up for my information, if I may.

Mr. Branan, how do you spell your name? We have two spellings on it.

Mr. BRANAN. B-r-a-n-a-n.

Mr. MCCANDLESS. How long have you been an auditor with Amtrak?

Mr. BRANAN. I have been with the company a little over 11 years.

Mr. MCCANDLESS. Were you with another organization in your employment prior to that?

Mr. BRANAN. Prior to that, with Penn Central Transportation Co.

Mr. MCCANDLESS. What sort of training do you have for your position? What background of training did you bring to your positions, both the two that you have alluded to?

Mr. BRANAN. Formal college training, none. I have come up through the ranks with Penn Central, was with the audit department there and was subsequently hired by Amtrak.

Mr. MCCANDLESS. Can you tell us, is there any way from your experience in the two employments that you had, any way that you can tell if an invoice is fraudulent simply by looking at it?

Mr. BRANAN. Tell conclusively, I would say no. But to look at a document and make an initial determination that in your opinion, there is something wrong with it, yes, I believe you acquire this with experience.

Mr. MCCANDLESS. Thank you.

The other members of the panel, I appreciated the opportunity of having this dialog this morning.

Mrs. COLLINS. Thank you very much.

The subcommittee has made a request that this panel and the second panel, the next one that is coming up, be subject to recall.

Right now we are getting ready to go into session, so we will adjourn until 1 o'clock.

[Whereupon, at 11:55 a.m., the subcommittee recessed, to reconvene at 1 p.m, the same day.]

AFTERNOON SESSION

Mrs. COLLINS. This hearing of the Government Operations Subcommittee on Government Activities and Transportation will reconvene at this time. Our next panel is—will consist of Mr. Charles Boyd, Mr. Arthur Almaguer, Mr. James Pitts and Mr. Kenneth Johnson, all of the machinists operations of Amtrak. Would you come forward, please? Will you raise your right hands, please?

[Witnesses sworn.]

Mrs. COLLINS. With unanimous consent your affidavits will be entered into the record. [See app. 3.] Do any of you have any remarks that you want to give at this time or written statements or statements you want to make at this time?

STATEMENT OF ARTHUR ALMAGUER, SENIOR MACHINIST, MAINTENANCE SHOP, AMTRAK

Mr. ALMAGUER. Yes. I would like to make a statement on something I heard earlier. It is about recordkeeping on the tools at Amtrak. Well, we have had recordkeeping at Amtrak since about 1982, the early part of 1982, and on Monday, just a few days ago, another inventory was ordered to be finished on the same day.

Mrs. COLLINS. You are saying the inventory we heard about earlier this morning was an inventory that has not been in existence, but admitted existence only since the day before yesterday?

Mr. ALMAGUER. No. What I am saying we had an existing record since 1982 and a new one was ordered just last Monday.

Mrs. COLLINS. My misunderstanding.

Mr. Pitts, you seem to have some remarks there. Did you want to summarize them or give them in their entirety?

STATEMENT OF JAMES PITTS, MACHINIST, MAINTENANCE SHOP, AMTRAK

Mr. PITTS. Madam Chairwoman, I would like to thank you and members of the subcommittee for inviting us here today. I heard a lot of remarks made here this morning.

Mr. MCCANDLESS. Could we get you to pull that mike in front of you?

Mr. PITTS. We have heard a lot of remarks this morning from corporate management in a lot of areas, and I hope we can get to the bottom of some discrepancies that seem to be made. The records that they were talking about that aren't mentioned was an inventory that we started approximately 2 years ago.

At that time, the tools in the inventory system—they are inventoried by size number, quantity. Inventories were kept by our department——

Mr. McCandless. May I interrupt, gentlemen, Madam Chairman? I think it would be important if we could put this point of reference into your comments. We had this movement to the 16th Street facility of equipment, tools and so forth from another facility, or maybe I have the description wrong. Is that the point at which the start of the inventory—was the inventory after this equipment was combined, before the equipment was combined and this equipment was added to it?

Can you share with us how that all came together?

Mr. Pitts. This all came together after the facility was closed. The inventorying of the tools was made after they came to the facility.

Mr. McCandless. Thank you. I didn't mean to disrupt your communication.

Mrs. Collins. You may proceed.

Mr. Pitts. That was about all I had to say at this time.

Mr. McCandless. Thank you.

Mrs. Collins. Mr. Johnson.

Mr. Johnson. I have nothing.

Mrs. Collins. Mr. Boyd.

STATEMENT OF CHARLES BOYD, LABORER, MAINTENANCE SHOP, AMTRAK

Mr. Boyd. Yes. Good evening—good afternoon. My name is Charles Boyd, and I am employed for Amtrak Railroad. Prior to that, I was with the Santa Fe Railroad for 28 years as a stationary engineer. In 1982—in 1976, when Amtrak had taken over the passenger end of our operation at the Santa Fe, I became an Amtrak employee with full seniority rights to transfer to the Amtrak facility.

I worked for the Santa Fe for 28 years, as I said, and I have 9 consecutive years now with the Amtrak facility in the 16th Street yard. Now I am working as a laborer. Prior to that, I operated a powerplant which was a million dollar operation a year, and hopefully I thought I did a successful job.

That's my statement and my credentials as being a railroad employee for 37 years.

Mrs. Collins. Why are you now opting as a laborer?

Mr. Boyd. Because in 1982 the Amtrak facility shut down the 21st Street powerplant where I worked for 33 years, and I was transferred over to the 16th Street facility where I was reduced to a laborer, and that is where I work now as a reduced laborer since 1982.

Mrs. Collins. We had—is that because they could not give you a lateral transfer, they did not have your position at the 16th Street facility?

Mr. Boyd. That's correct.

Mrs. Collins. Were there any pay cuts or anything?

Mr. Boyd. Yes, ma'am. That was one of the complaints that I had taken up with Mr. Claytor, his committee, concerning the pay cuts, and that I should have continued to maintain my pay scale, but they saw differently. And that was my contact with Mr. Claytor's committee at that time, and all my repercussions occurred at that time, from there until this date.

Mrs. COLLINS. What repercussions were you speaking of?

Mr. BOYD. Repercussions is that I have had a number of management problems to the point now where I am responsible for cleaning toilets, and I objected to that, and that is the gist of what a—there is a great deal of stories, but we are not here for that. You are here for other things. But just to put that in its proper perspective, that's one of the reasons why a lot of complications I had received because of this hearing and various other things.

Mrs. COLLINS. Did you say because of this hearing?

Mr. BOYD. Well, because of talking to the president's committee and also talking to various people who the company thought maybe perhaps initiated this investigation.

Mrs. COLLINS. Well, I think the record ought to show you did not initiate this investigation. The subcommittee initiated the investigation.

I want to just get this clear, that you feel that many of the repercussions against you were as a result of management problems that were brought on by the fact you were operative in this investigation? Is that it?

Mr. BOYD. Cooperated with this investigation and the investigation of President Claytor.

Mrs. COLLINS. So you feel this is a punitive action, the reason why you are—not so much a laborer, but why in order to keep your job you must clean toilets, as you say.

Mr. BOYD. That's correct.

Mrs. COLLINS. With all your experience in another position.

Mr. BOYD. Yes, that's correct. That's just one portion, but that is the portion of the job that I object to.

Mrs. COLLINS. What do you object to?

Mr. BOYD. Cleaning the toilets.

Mrs. COLLINS. Of course you do. I would, too. How does that tie into the subject of today's hearing, which is on whether or not there was fraud or theft of Amtrak material from Amtrak?

Mr. BOYD. Because of my statement that I made to Mr. Steil and Mrs. Doonan concerning the trip that I made with my supervisor, John Durse, to the 21st and Wabash to the Mutual Truck Parts.

Mrs. COLLINS. Go on.

Mr. BOYD. Well, he requested that I go with him there, and I did. And when we got to 21st and Wabash, to Mutual, we went in. I remained at the middle of the counter. Mr. Durse went to the far end where he approached another gentleman in a suit who I presumed to be the owner or manager of the store. And I stayed where one of the sales clerks remained and Mr. Durse was standing there face to face. And I was approximately 10 feet away. I couldn't make it out—he went in his pocket—they talked for a few moments, went into his pocket, took out a sum of money. Mr. Durse took this money, put it in his pocket and requested that I go with him.

So we left the store. I was thinking we were going back to the shop, which was 16th Street. We went to 14th and Wabash to Eckert Bros. Paint & Supply House. They specialize in paints and supplies of exclusive type of automobile paints. There he gave the man an order or slip of paper and the man handed him a box of paint where he paid for this paint with the money he received from Mutual Truck Parts. From that point he directed me to take the box of paint, put it in the trunk of the red Suburban vehicle, which was a company vehicle. And we returned to 16th Street facility on that account.

And from that point on, making that statement to Mr. Steil, I have had repercussions that, as I have told almost the entire world about, since that day, and it is—just in the last month has, I felt like I have been treated like a regular normal employee. And that was because of perhaps conversation that the other people may have had in my behalf so that they—I would not be totally misused.

Mrs. COLLINS. So you are not treated like a regular employee. Are you still washing toilets?

Mr. BOYD. Yes, ma'am, I am.

Mrs. COLLINS. Why do you feel you are being treated like a regular employee?

Mr. BOYD. I am not being harassed. In other words, management was not harassing me, but they were harassing my supervisors to the point where harassment to me had to come through threats.

Mrs. COLLINS. They put so much pressure on your supervisors, your supervisors were compelled to take action against you as far as you were concerned?

Mr. BOYD. That is absolutely correct.

Mrs. COLLINS. Mr. Almaguer, could you describe for us the time Agent Rhodes showed you the MTA invoice telling us why he showed it to you and how many of those invoices you say?

Mr. ALMAGUER. Agent Rhodes showed me one invoice. When he showed me the invoice, he pointed to one particular entry. I directed my attention to that. The entry was for repairs to a radiator in the amount of $240. I know for a fact those repairs were never done.

He immediately pulled the invoice away, but I happened to glance at it, too, and there was also a differential assembly on it. I didn't see no price on it, and a hydraulic pump on it, which I didn't see no price on it, and based on my experience if that work was done, I would have known about it and the work was never done.

Mrs. COLLINS. Can you tell me whether or not that interview was taped?

Mr. ALMAGUER. The interview was taped up to a point after he shut off the tape. That is when he showed me the invoice, after the tape was shut off.

Mrs. COLLINS. Did you think that was unusual?

Mr. ALMAGUER. I didn't give it any thought at that time.

Mrs. COLLINS. Since then did you think it was unusual he would shut off the tape just as he was showing you the invoice?

Mr. ALMAGUER. He didn't shut off the tape as he handed me the invoice.

Mrs. COLLINS. Your response was not on the tape. Is that it?

Mr. ALMAGUER. No.

Mrs. COLLINS. Did you think that was unusual?

Mr. ALMAGUER. Like I said, at that time I didn't give it any thought and no, I didn't.

Mrs. COLLINS. Thank you.

Mr. Pitts, can you please describe for us the time when Agent Rhodes showed you the MTA invoices? Why did he show them to you? How many were there, and what did you see?

Mr. PITTS. Well, I was instructed to report to Union Station for an interview with Mr. Rhodes. We had our interview and it was taped.

Mrs. COLLINS. In its entirety?

Mr. PITTS. No. During the interview Mr. Rhodes informed me he had to step out of the office to get a file folder, and he shut the machine off.

Mrs. COLLINS. He went out of the office.

Mr. PITTS. Yes. He was only gone a matter of a minute or so, came back in the room with a manila folder containing approximately 20 pieces of paper. He showed me—he opened the file folder, showed me the first, I assume it was an invoice, and asked me about a drive unit for a forklift. The invoice was partially covered. I informed him there was no drive unit ever installed in the facility to my knowledge as Mr. Almaguer and myself were the only two machinists there at that time and it would take more than one person to perform that job.

Mrs. COLLINS. Why do you suppose part of the invoice was covered?

Mr. PITTS. I have no idea.

Mrs. COLLINS. Which part was covered?

Mr. PITTS. The total on the bottom.

Mrs. COLLINS. Where the amount of money was.

Mr. PITTS. And whatever items underneath that were covered. He was directing my attention to the one specific item.

Mrs. COLLINS. Thank you. I would like to review some invoices with you, and I have some here to review for a few minutes.

[See app. 4.]

Mrs. COLLINS. Mr. Almaguer—I wonder if the clerk could provide those for you. See if we can coordinate these and see what we have here. Most of these come from the subcommittee's incomplete collection of Mutual Truck Parts invoices. A few come from the files of companies whose names begin with only one letter of the alphabet, and that is alphabet "C," I think.

I understand that you have been shown these invoices already, so I believe we can move very very quickly on these invoices. Please point out any irregularities you see on these transactions which are over a several year period, and all of which have been paid. Before I forget, please reexplain your job assignment and duties so the subcommittee will know, and what qualifies you to know whether or not these transactions are legitimate or not.

Mr. ALMAGUER. I was the senior machinist in the maintenance department. Our duties there was to repair and maintain all the company equipment, such as forklifts and trucks. We also maintained what they call a drop table, which is a jack to permit the removal of the traction motors and overhead cranes used for the removal of motors and heavy things on the top of a locomotive.

All the work that was performed in the shop was performed either by Mr. Pitts or myself. There were several other people throughout the time they were there: Domingo Hernandez. There was Murry Pipchock, Edward Pavon. And the reason I can see if these things are fraudulent because I was the one to mostly receive the parts and either Mr. Pitts or myself will install them.

Mrs. COLLINS. Let's look at the first invoice.

Mr. ALMAGUER. The first invoice I got here, there is a distributor for $42.50. The Hyster never had a distributor replaced. I also see a Hyster cylinder, two Hyster cylinders for $310.50 each. None was ever replaced on the Hyster forklift. I see on the second page a Continental 6-cylinder assembly for $1,173. We only had one vehicle that has a Continental engine. That engine has never been replaced.

Mrs. COLLINS. How long have you been with Amtrak? Eleven years?

Mr. ALMAGUER. I was 2 years with the Sante Fe. I have been with Amtrak since the takeover of the Santa Fe yards, June 1, 1976.

Mrs. COLLINS. You know it wasn't replaced since 1976.

Mr. ALMAGUER. Yes.

Mrs. COLLINS. The next invoice, No. 3, is September 22, 1983. So you certainly had been there, is that correct?

Mr. ALMAGUER. Yes. That vehicle came from the Santa Fe and we never changed that engine. I have been taking care of that vehicle for 11 years.

Page 3, Chev manifold for $187.50, never received. Then an air cleaner assembly at $110.30 for a Chevrolet, never received.

Mrs. COLLINS. No. 5.

Mr. ALMAGUER. Pettibone rear axle for $1,321.47. That work was never done. That's No. 4.

Mrs. COLLINS. No. 5.

Mr. ALMAGUER. The rear axle? It is a Pettibone rear axle, $1,321.47; never received.

Mrs. COLLINS. Invoice No. 5.

Mr. ALMAGUER. Pettibone brake drum, May 27, 1983, at $203.79 and the brake drum was replaced about maybe 3 months ago. This entry is fraudulent because we just bought it 3 months ago and this is from 1983.

Mrs. COLLINS. No. 7?

Mr. ALMAGUER. A Blackhawk jack, $39.05, that is a light-duty jack used for automobiles. We have no use for them there. I have seen that laying on the floor one time. It has since disappeared.

Mrs. COLLINS. No. 8.

Mr. ALMAGUER. The Hyster radiator repair for $240.50 was not done in February 1984. That work was done in 1985.

Mrs. COLLINS. This was ordered in February 1984. It wasn't done at all in 1984?

Mr. ALMAGUER. No.

Mrs. COLLINS. Was it sitting around in inventory?

Mr. ALMAGUER. No. I pulled it out and sent it out. And the Hyster hydraulic pump for $365.37, that pump has never been changed in the time I have been there.

Mrs. COLLINS. When they did the inventory, was it around the shop some place?

Mr. ALMAGUER. Yes, ma'am. There is no pump for a Hyster.

Mrs. COLLINS. No. 9.

Mr. ALMAGUER. Chevy T/O transmission assembly, $450. If it was bought we never received it.

Mrs. COLLINS. No. 10.

Mr. ALMAGUER. The Warren hubs. I will only mention this one. They were $245. They were bought. The only reason I mentioned it was because they were bought to replace perfectly good working hubs because Mr. Brown did not like the idea he had to get off the truck and physically lock them in. So they bought the self-locking ones.

Mrs. COLLINS. This was just as far as you are concerned a useless purpose?

Mr. ALMAGUER. Yes, ma'am.

Mrs. COLLINS. OK. I notice that most of these—a lot of these have the person that you ordered, I guess Mr. G.L. Baker—who is Mr. G.L. Baker?

Mr. ALMAGUER. Gary Baker, he was a general foreman, in charge of all the processing, the paperwork for purchasing.

Mrs. COLLINS. Where is he now?

Mr. ALMAGUER. To my knowledge, he has resigned from the employ of the company.

Mrs. COLLINS. When did he resign? Recently? A year ago?

Mr. ALMAGUER. Recently.

Mrs. COLLINS. Thank you very much.

No. 11.

Mr. ALMAGUER. GM carburetor, at $359.31. I have seen the carburetor come in, it was put in one of the lockers——

Mrs. COLLINS. You saw them put it in a locker?

Mr. ALMAGUER. Yes.

Mrs. COLLINS. Personal locker?

Mr. ALMAGUER. No, not personal locker. The storage lockers we have in the shop, and that disappeared from the shop.

Mrs. COLLINS. How much shrinkage have you noticed in inventory that has disappeared? You keep an inventory of small parts, so you couldn't measure the amount of shrinking, right?

Mr. ALMAGUER. Usually what disappeared the most was oil.

Mrs. COLLINS. Oil?

Mr. ALMAGUER. Yes, ma'am.

Mrs. COLLINS. OK.

Let me yield to the gentleman—one moment. If there was no inventory, it would have been impossible for you to determine whether or not 5 percent of the inventory was shrinkage in a given year, for example, right?

But you were able to notice, you put something in the storage locker, that it wasn't there when you went back to see it again, right?

Mr. ALMAGUER. When you go to the lockers every day, you learn there are certain things in certain places, and then all of a sudden, you open it up and it hits you, you say, wait a minute, there was something here.

Then you look back into it, and you realize something was missing.

Mrs. COLLINS. Thank you.

Mr. Kleczka.

Mr. KLECZKA. Going back to GM, on invoice 11. Do you have a vehicle in inventory that would accept that type of carburetor?

Mr. PITTS. Maybe I can answer it a little better. That particular carburetor was a four-barrel carburetor, and the vehicles that we had in the shop at that time, the only one that it would fit was a red Suburban, which already had a new carburetor on it.

Mr. KLECZKA. Do you know why this was ordered?

Mr. PITTS. Personally, I believe it was ordered for somebody who wanted to use it for something else.

Mr. KLECZKA. One last question, Madam Chair.

On the invoice where it states ship via, it says applicable refrigerator truck. Is that an error?

Mr. PITTS. I believe it is an error.

Mr. KLECZKA. Thank you, Madam Chair.

Mrs. COLLINS. Most all of these say applicable refrigerator truck. Do they keep these things cold or something?

Mr. ALMAGUER. No. I think they are thinking of the commissary vehicles which are refrigerated.

Mr. PITTS. If I could address one thing at this time, when these parts came in to the maintenance department, we were doing work on 16th Street vehicles and a lot of support vehicles.

Now, at that time, I took it upon myself to enter, receiving those items in logbooks we were keeping day by day. So, there were records being kept of the incoming material, and we would also write in those logbooks whenever we used parts out of those materials.

There were some records being kept on it.

Mrs. COLLINS. What happened to those records? The prosecutor said he couldn't find any records—the State's attorney.

Mr. PITTS. When the internal investigation unit of Amtrak started their investigation, I was terminated by the company.

Mr. Almaguer would be better capable of answering that.

Mrs. COLLINS. Can you answer that question?

Mr. ALMAGUER. Yes, ma'am. Those records were kept on the desk of the shop foreman.

Mrs. COLLINS. Who was the shop foreman?

Mr. ALMAGUER. Mr. John Durst was the shop foreman. Those were kept on top of the desk. They were there for us to write off every day. I know through conversation with one of my coworkers that he let Mr. Steil know of the existence of those records.

The one logbook, the recent one, disappeared overnight.

Mrs. COLLINS. The records disappeared overnight?

Mr. ALMAGUER. Yes, ma'am. I was harassed and given a hard time because they felt I had taken those records out.

Mrs. COLLINS. Why did they think you took the records?

Mr. ALMAGUER. I don't know, but they blamed me. When I started getting a hard time, I got in touch with Mr. Steil and told him that I was given a hard time because of those records. I asked him if he came in and took the records. He said "come on now," he said, "You know I couldn't give you that answer."

At a later time, he came and asked specific questions that he had, I knew were in those records. There were also two more books.

Mr. Durst, upon learning of the disappearances of the first logbook, he took the other two logbooks that were in the desk drawer and he removed them and took them upstairs, left the office in the direction of Mr. Brown's office.

That is the last I seen of those two other books.

Mrs. COLLINS. Do you feel you were being set up, because they accused you of taking the books?

Mr. ALMAGUER. No, not necessarily, not being set up. I never had any fear of that. I think they were just terribly annoyed, and they were trying to intimidate me into turning in the records if I, in fact, had them.

Mrs. COLLINS. Why does—you didn't—when you say you didn't have them, were they still giving you a hard time? Are you still with Amtrak?

Mr. ALMAGUER. Yes, ma'am, still with Amtrak. No, I wasn't really given a hard time, but I wasn't trusted as I was before. Let's put it that way.

Mrs. COLLINS. Let's go on. I want to get through these before we have to rush off here.

No. 14.

Mr. ALMAGUER. I see entry No. 3, the Chevy radiator, rebuilt for $165. We never had a radiator rebuilt from a Chevy. The other ones I can't read too well.

Mrs. COLLINS. What about No. 15?

Mr. ALMAGUER. I only see two check marks on 15. I can't understand that 15.

Mrs. COLLINS. On the fifth one down, it says 7.5-foot snowplow complete.

Mr. ALMAGUER. Yes, the 7.5-foot plow, that was bought for a truck we had rebuilt from scratch. It was a company truck. They purchased that plow and it was installed on that particular vehicle.

The vehicle was personally used by Mr. Brown for commuting to and from work, and basically—the basic use of that plow was for his own personal use. It was used on company property on two occasions by the manager. The manager used to go out there and plow the streets.

Mrs. COLLINS. Are you saying the plow was only used twice?

Mr. ALMAGUER. In the company? Yes, ma'am, only used twice for the company.

Mrs. COLLINS. And the rest of the time where was it used?

Mr. ALMAGUER. He took it home. Apparently, he used it for his own personal use.

Mrs. COLLINS. Was that a common practice of taking things that belong to Amtrak to people's homes for personal use?

Mr. ALMAGUER. Up to about last month, and assistant managers had vehicles to commute.

Mrs. COLLINS. Did they have permission to do that or they just did it?

Mr. ALMAGUER. I am unaware of whether—one way or the other.

Mrs. COLLINS. All right.

What about No. 19, the fourth one down?

Mr. ALMAGUER. I can't make this one out.

Mrs. COLLINS. Gas tank.

Mr. ALMAGUER. I think I am confused on this one.

Mrs. COLLINS. I am skipping over some.

Mr. ALMAGUER. OK. This gas tank and bracket for $414.21, that particular tank was bought for the same vehicle in question—same vehicle that the plow was installed. Mr. Brown wanted two tanks on that vehicle. They bought——

Mrs. COLLINS. Did he need two tanks on the vehicle?

Mr. ALMAGUER. If you go off the road and you want to go across the country, it is always nice to have 22 gallons of gas to spare.

Mrs. COLLINS. OK.

What about——

Mr. ALMAGUER. When they bought the tank, the tank was the wrong model. We were ordered to modify the tank and install it. The modification was impossible because the way the tank was built and the locations that we had to our operation where to put it in the truck.

So, after useless numbers of tries and trying to install it on it, they just threw it away.

Mrs. COLLINS. Threw it away?

Mr. ALMAGUER. Yes, ma'am.

Mrs. COLLINS. The whole gas tank?

Mr. ALMAGUER. After we had tried to modify it, they couldn't return it.

Mrs. COLLINS. Let's go to No. 22.

Mr. PITTS. Madam Chairwoman, while we are on that invoice No. 19. Madam Chairwoman, that was purchased from Warshawsky & Co., and was shipped in from California. It was a special tank. When we received it, it didn't fit the vehicle, so it had to be modified.

This particular tank on this invoice never came into the 16th Street facility.

Mr. ALMAGUER. I neglected to see the date on it. I realize that now.

Mrs. COLLINS. Where did it go? It did not come into the shop at this time?

Mr. PITTS. It did not come into the 16th Street shop.

Mrs. COLLINS. What about No. 22?

Mr. ALMAGUER. There is——

Mrs. COLLINS. Let me interrupt at this point. That is the second set of bells. We have to go. We are going to recess for 15 minutes.

[Recess.]

Mrs. COLLINS. Mr. Almaguer, the subcommittee will reconvene. I just have three more I want to go through. There are others here, but I want to do these three.

No. 22 is the one we were looking at when we left.

Mr. ALMAGUER. Let me look at that. I have been looking at this one, No. 22. I see all the entries there. The only entry I have questioned here is a central booster at $992.50. I have asked around to some of my coworkers if they know what a booster is. I don't know. They don't know.

All I can tell you, a central booster can be a hydraulic piston, a large one, or gas-driven generator used to jump batteries of vehicles.

If that is the case, neither one were received.

Mrs. COLLINS. Thank you.

No. 25, the second item.

Mr. ALMAGUER. Here, again, we have a Continental six-cylinder assembly for $1,173. This work has never been done on that piece of equipment that has a Continental engine.

Mrs. COLLINS. Would you repeat that, please?

Mr. ALMAGUER. We have what they call a Pettibone Mercury forklift. It is the only forklift that is equipped with a Continental engine. That engine has never been changed.

Mrs. COLLINS. I see.

And the final one I want to ask about is No. 35. The reason why I ask about it is because I notice it is from a different place altogether, it is from Chicago Pneumatic. Were there a lot of purchases as far as you know from Chicago Pneumatic?

Mr. ALMAGUER. We have quite a bit of air equipment. That is what they deal in.

Mrs. COLLINS. You can see it——

Mr. ALMAGUER. Yes, I can see it. It is what they call a No. 5 impact wrench worth $1,004. The date of this invoice is April 16, 1983. Prior to going into the maintenance shop, I used to work with that spine impact wrench.

We had one. If there was another one bought on April 1983, it is news to me because there is still only one there.

Mrs. COLLINS. Thank you.

I have other questions, but I have certainly used much more of my time than I should have. Let's move on to Mr. McCandless.

Mr. MCCANDLESS. Thank you, Madam Chairwoman. What I would like to do is to go through the process. The receipt of what appears to be the document that the receiver brings back to the facility with the part.

And those are, as I understand it, copies of what is then turned in at the facility to the person keeping track of purchases for purposes of reconciling at the end of the month the amount owed to the purchase agency.

When one of these items is purchased, whatever it may be, whether it is from Mutual Truck Parts or Chicago Pneumatic or whatever, the normal procedure is what? A particular person goes downtown, picks that up, comes back with it.

What is the procedure?

Mr. ALMAGUER. The procedure we learned to follow there was anything I needed or any other machine is needed, we usually went to Mr. Durst. Mr. Durst went to Mr. Baker to make a requisition. The purchase order was made or a request for a purchase order, and they put the order through, I believe it is 14th Street, Mr. Myers, I think it is, with a blanket purchase agreement they just went directly to Mutual.

Mr. MCCANDLESS. I understand that. Let's say now we have requested of management an item, whatever it might be.

Mr. ALMAGUER. As I say, as far as I knew, I went to Mr. Durst, Mr. Durst went to Baker——

Mr. MCCANDLESS. Let me finish, please. The authorization was given to go ahead and purchase the item on the blanket purchase order. The item was purchased and brought back to the shop.

Mr. ALMAGUER. Yes.

Mr. MCCANDLESS. The item had accompanying it one of these invoices, correct?

Mr. ALMAGUER. Sometimes it did, sometimes it didn't.

Mr. McCANDLESS. Give me a for instance when they didn't have something coming back.

Mr. ALMAGUER. All right. We received, I believe, three-quarter impact wrenches, they were in the box, there were no papers along with it.

Mr. McCANDLESS. Were you in a position in your job as a senior machinist to observe every action that took place in the way of a purchase coming back to the shop?

Mr. ALMAGUER. Unless I was occupied in one job or on vacation. Most of the time I did see it.

Mr. McCANDLESS. When there was an invoice accompanying the purchase, what happened to the invoice? Where did it go? Who took it, where?

Mr. ALMAGUER. I really don't know, those things were handled by Mr. Durst.

Mr. McCANDLESS. Mr. Durst received it, probably.

Mr. ALMAGUER. Yes.

Mr. McCANDLESS. What did he do with these, or are you aware of that?

Mr. ALMAGUER. Well, he usually just, after I checked them out to compare them, if everything that was on the invoices that came in, he took the paper and he handed it directly to the general offices on the third floor.

Mr. McCANDLESS. So, the invoice, if it came with the equipment purchased, ended up on the third floor after reconciliation of the purchase to what was actually received.

Mr. ALMAGUER. Yes, sir.

Mr. McCANDLESS. Explain to me what the third floor was.

Mr. ALMAGUER. The third floor is the general offices. That is where Mr. Brown has his offices, his secretary, Baker, all the management personnel——

Mr. McCANDLESS. Who on the third floor would receive the invoice?

Mr. ALMAGUER. Probably Gary Baker, because he was the—more or less like the purchasing agent, I believe. He had the records on his desk, stuff like that.

Mr. McCANDLESS. In paragraph 3 of your affidavit, you state that you are in a position to observe or make all repairs made at the facility. How many people are employed with you in the shop?

Mr. ALMAGUER. In the——

Mr. McCANDLESS. Your part of the shop.

Mr. ALMAGUER. In my part of the shop, there were several people employed. Domingo Hernandez, Gregory Baxtrum, Thomas Myers, Rudy Durkavic, and Murry Pipchuck. At present now is Dennis Daniels. He is the last one to come in.

Mr. McCANDLESS. If I understand your affidavit correctly, you are saying that you either observed or made all repairs that had been made during the 4 years that you have been at this location.

Mr. ALMAGUER. Yes, sir, I would say that. I went in and out of the shop, or I was actually doing the job or assisting on doing the job.

Mrs. COLLINS. In paragraph 42 of your affidavit you list the items which you mentioned to Cook County State's attorney, Tom Smith.

In that paragraph, you state that Attorney Smith expressed surprise regarding the listed items.

You also state that Attorney Smith was basically relying on Amtrak's investigation and did no separate investigation of his own. Would you please read the items on the list about which you talked to Mr. Smith?

Mr. ALMAGUER. Mr. Smith would talk about missing traction motors. We discussed 20 to 25 locomotive governors. There was salvageable scrap metal also discussed. And this large number of metals that were missing, things that we discussed with Mr. Smith.

Mr. MCCANDLESS. Of these items listed, which of these did you report to the Amtrak investigator?

Mr. ALMAGUER. Large number of tools and expensive brass, copper, things like that, metal—salvageable metal.

Mr. MCCANDLESS. All of the things you describe in your affidavit refer to events that occurred during the period that James Brown was the manager of the 16th Street facility. Is that correct?

Mr. ALMAGUER. I didn't quite understand, sir.

Mr. MCCANDLESS. I didn't say it very well. In your affidavit that you gave us, all of the events that you referred to during that period was when James Brown was manager of the 16th Street facility, is that correct?

Mr. ALMAGUER. That is correct.

Mr. MCCANDLESS. Is Mr. Brown still employed by Amtrak?

Mr. ALMAGUER. I don't know, sir.

Mr. MCCANDLESS. In your opinion, does this procurement abuse continue?

Mr. ALMAGUER. There is no evidence of it right now. Mr. Gil Bruno, the present manager, is keeping a very low profile.

Mr. MCCANDLESS. A point I keep coming back to, and I am not trying to play detective or public defender or anything like that, but the question keeps popping up, why didn't you tell Amtrak about the traction motors and the governors?

Mr. ALMAGUER. All right. When I was interviewed by Amtrak investigators, I really mostly answered questions, I didn't actually volunteer too much information, simply because being—working at their Gestapo type rulers, I didn't trust them. There was an investigation ordered by management to investigate management.

I did not trust them.

Mr. MCCANDLESS. I must confess to you, I have a little difficulty here because an investigation is only as good as the information that is available can develop from.

It is one thing to talk about, well, this investigation or that investigation, but if on the one hand, we said we didn't tell them this, we told them that, and then later on we say, well, the investigation would have been more complete and to the point if we had been able to tell them everything, the credibility of the whole process here as far as the procedures within Amtrak itself and how things are investigated becomes somewhat compromised.

That is why I am asking these questions of you. Do you have something, Mr. Pitts?

Mr. PITTS. Yes, I do. Maybe I can shed some light on this. At the time this was going on, Amtrak had just finished an investigation ordered by Mr. Claytor into employee abuses.

Mr. McCANDLESS. This is what we refer to as the Henderson committee.

Mr. PITTS. Yes, it would. I was urged along with a lot of members in my machinist union to testify at this particular investigation.

It was conducted, I believe, at a Holiday Inn on Halsted Street in Chicago. We went down there and testified and all this was supposed to be done in top secret. Nobody was supposed to know what we said to these investigators and people appointed by Mr. Claytor.

Not more than 24 hours after walking out of that meeting with Mr. Claytor's hand-picked investigators, the reports were sitting on Mr. Brown's desk.

My men were called into Mr. Brown's office and severely criticized for talking to these people. Not more than a couple weeks or a couple months after that, lo and behold, another investigative committee comes around, internal investigation, conducting another investigation, and I can tell you, sir, that my men were afraid to go in and talk to them.

Now, as far as the other information that you were talking about, this meeting with Mr. Smith in Chicago in the district attorney's office, all three of the people here attended that meeting, myself, Mr. Almaguer and Mr. Johnson, and we had this meeting because we were severely upset over the fact the State's attorney's office in Chicago was dropping the charges against Mr. Brown.

We called for an appointment and go down to talk to this man to try and find out why they could only uncover $3,000 in theft when between the three of us, internal investigation was made aware of all those documents on that piece of paper. They were made aware of the missing traction motors, they were made aware of the missing scrap, and the deals being cut in selling the scrap. They were made aware of the governors that were missing and made aware of a lot of other things.

To be quite blunt, it made no sense to us. That is why we requested the meeting and went down there to talk to the man. Now, he told us that he was trusting Amtrak's internal investigation because they were the moving party.

Amtrak came to his office and requested that the investigation be conducted, and we again told them, and we reiterated our position that all these things did happen, please check into, and he told us to our face that he would turn this same information over to Amtrak to find out what they would do about it.

And he said that in front of all three of us.

Mr. McCANDLESS. In our affidavit, Mr. Pitts, in paragraph 19, you imply that you attempted to get the FBI to investigate your allegations. Is that a fair statement? Is that correct?

Mr. PITTS. Yes, it is. I called—my wife called the FBI to try to get them involved in the investigation.

Mr. McCANDLESS. Because probably of what you have just shared with us.

Mr. PITTS. Yes, sir. And they informed us they would not get involved in the investigation and waste taxpayers' money in duplicating a State's attorney's investigation. And the State's attorney informed us he would not waste taxpayers' money by assigning his people to do the investigation when internal investigation of Amtrak was conducting an investigation.

Mr. McCandless. I am going to defer to Madam Chairwoman. I have to make a call here downtown. Maybe I can come back a little later.

Mrs. Collins. We reserve the gentleman's right to continue with his questioning. We move on now to Mr. Kleczka.

Mr. Kleczka. Thank you.

Let me ask Mr. Almaguer or Mr. Pitts more about this internal investigation. Was this before or after the State's attorney's investigation?

Mr. Almaguer. It was during the investigation when we went to see him.

Mr. Kleczka. Was this the investigation conducted by the first panel testifying before the committee, Chief of Police Ingalls?

Mr. Almaguer. Yes, it was.

Mr. Kleczka. You indicated that you turned over the documents that the Madam Chairwoman recited from before to this group, the various invoices?

Mr. Almaguer. No, not invoices. We were interviewed.

Mr. Kleczka. Did you share that information——

Mr. Almaguer. I looked at one invoice. My attention was directed to a particular entry on that one invoice.

Mr. Kleczka. Who produced the invoice?

Mr. Almaguer. Mr. Rhodes.

Mr. Kleczka. Mr. Rhodes did?

Mr. Almaguer. Yes, sir.

Mr. Kleczka. Did you share the balance of those invoices we have in our file with the investigators?

Mr. Almaguer. No. No, we did not.

Mr. Pitts. Mr. Kleczka, if I may, at no time did the internal investigation people inquire of us of anything other than one specific line item on one specific invoice. They never included us—throughout the whole, entire investigation.

Mrs. Collins. Throughout the entire investigation, you were only shown one invoice and one item on that invoice?

Mr. Pitts. That is correct.

Mrs. Collins. Thank you.

I yield.

Mr. Kleczka. However, when you were interviewed by the chief of police, did you not indicate that the other irregularities were transpiring and give some examples?

Mr. Almaguer. Yes. There was just a verbal conversation in-house. We were talking, they asked most of the questions.

Basically, we confirmed what they were asking.

Mr. Kleczka. Give the committee a flavor of some of the——

Mr. Almaguer. They asked me, did I know of any Amtrak purchased stereos going into the vehicles, which I answered yes.

Then they asked us—they asked me if John Durst took time off, stuff like that. I said yes. I was mostly confirming.

Mr. Kleczka. The conclusion of their report was that there was 3,000 or 3,500 dollars' worth of property that was stolen or missing.

Now, looking at these invoices, only two of the invoices total that amount. Did they talk about any other large items that weren't part of their final report?

Mr. **Almaguer.** In my interview with Mr. Rhodes—I had two interviews—in my interview with Mr. Rhodes, he kept on asking—asked questions about large repair work done to a particular Hyster vehicle, which I replied the only work done to that vehicle was routine maintenance.

On the one invoice he pointed out to me, that one entry, they had $240 repair for a radiator, which was never done.

Mr. **Kleczka.** Mr. Pitts, in your affidavit before the committee, you were asked at one point by Mr. Rhodes whether or not you knew of any drug trafficking.

Can you recall for the committee what that conversation was all about?

Mr. **Pitts.** At our initial meeting, Mr. Rhodes—at the end of our first taped session, rather—Mr. Rhodes requested that since I was local chairman of the machinist organization and that since I had just come back from termination, that I would be sort of made aware of certain irregularities in the Amtrak system.

In other words, if I witnessed or heard of any illegal activities being conducted that I should try to persuade these people to come before him, provide him with the information to investigate.

I informed him that I would be glad to do that and that—however, if the individual chose to remain anonymous, I would have to accept that and he would have to believe me in the fact that I couldn't reveal the identity of the people coming forward with the information.

After that meeting, I believe it was on August 23, we had another meeting. I called him and informed him I indeed had some information for him from some anonymous sources I wanted to relay. On that date, he came down to the facility, approached one of my men who happened to be in the parking lot at the time, and informed him he wanted to see me.

I went into the parking lot and he requested I go down and have another taped interview. I told him I would be glad to do that. However, I would have to inform my general foreman where I would be going.

I so informed my general foreman. However, when I was walking away to go back in the facility, Mr. Baker pulled up in his automobile.

When I come back out, Mr. Baker had just finished a discussion with Mr. Rhodes and I got into Mr. Rhodes' car and drove over to the 14th Street facility where the security offices are located.

We had our taped interview, I came back—at the taped interview, I provided him with a picture of a general foreman's truck being painted in the paint shop. I provided him with some information about a Mr. Kramer obtaining central heating and air-conditioning units for his home, and I provided him with some information about, I believe it was a Mr. Driscall receiving Mercedes-Benz parts for his automobile and Amtrak was paying the bill for them. I relayed all that information to him. It seemed to me he would check it out.

After I had finished that, he asked me if I knew if Mr. Baker was conducting any drug trafficking in the yard. I told him I was not aware of any drugs being sold in the yards, but I would certainly check it out for him.

He also indicated to me at that time that there was some kind of a connection on some kind of drug trafficking on the L.A. trains from L.A. to Chicago. I told him I had no information on that. I work the diesel house, I don't work the yards.

When I returned to the facility, my general foreman called me into the office and informed me he was docking me for the pay for being away from my job for this time. I protested that, but in light of the conditions that we were working on at the time, I didn't address it in a written form.

I got a call that afternoon from labor relations asking me what was happening. And when I asked how they got involved in it, they told me that the—evidently—there was a call made from 16th Street down to corporate offices downtown to the effect they wanted me removed from service because I left the facility to talk to Mr. Rhodes, and they were trying to take action to terminate me at the time for it.

Mr. KLECZKA. Did you ever appeal that rule to any of your supervisors?

Mr. PITTS. Again, at that particular time, there was a deluge of grievances I had to handle. Since the monetary portion of it amounted to $15, I chose not to bring it up.

Mr. KLECZKA. Going back to the actual drug questions on the part of Special Agent Rhodes, you indicated to him that you were unaware of drug trafficking but you would check it out.

Did you ever check it out further?

Mr. PITTS. Started to, but I basically lost faith in the internal investigation of Amtrak.

Soon thereafter, we learned the State's attorney's office was dropping charges against Brown, and I know for a fact all this information was turned over to him. We all became suspicious.

Mr. KLECZKA. You didn't——

Mr. PITTS. There wasn't any. Before I got involved in checking anything out, we got the report. It states: "Attorney was dropping the investigation and charges against Mr. Brown."

With that in hand, I couldn't get any information out of anybody for special agents.

Mrs. COLLINS. Will the gentleman yield?

Mr. KLECZKA. Surely.

Mrs. COLLINS. I want to ask about a previous point. You mentioned you were talking to Mr. Rhodes.

Were you ever asked to talk to any of the internal investigation unit people after that?

Mr. PITTS. No.

Mrs. COLLINS. Did you by chance mention to Mr. Rhodes that you had been docked because you had spoken with him?

Mr. PITTS. I see no use in it. Like I say, he lost all credibility with my men and myself.

Mrs. COLLINS. Thank you.

I yield.

Mr. KLECZKA. Thank you.

Mr. Pitts, you indicated that in your meeting with Mr. Rhodes you gave him evidence that a central air-conditioning unit was purchased by Amtrak for someone's personal home, that Amtrak ordered Mercedes' parts, and I assume Amtrak has no Mercedes laying around, and that you also had a photograph of a truck taped up for painting.

Were any of those three items in the final investigative reports as being items they found to be true?

Mr. PITTS. Mr. Kleczka, we have never seen any final investigative report from Amtrak.

Mr. KLECZKA. Maybe we can ask Mr. Rhodes what the followup was to those three items, should he come back.

Mrs. COLLINS. They will be available for subcommittee recall.

Mr. KLECZKA. Thank you, Madam Chair.

That is all I have at this point.

Mrs. COLLINS. The gentleman has reserved his right to continue his questioning.

Mr. McCandless.

Mr. MCCANDLESS. Thank you.

We talked about the incident where the invoice was—I would like a clarification.

In paragraph 23 of your statement, you state that Mr. Rhodes' hand was covering much of the invoice so I could not see many details.

What I need to know from you for the record is, by that statement, did you mean that his hand was in the way, blocking your view, or do you mean he was hiding things from you?

In your opinion, give me your synopsis.

Mr. ALMAGUER. In my opinion, he had his hand over the invoice pointing something out, not trying to block something.

Mr. MCCANDLESS. Thank you.

Mr. Pitts, in paragraph 13, you describe air-conditioning equipment from Jamieson Engineering, including, to the best of my knowledge, Mr. Rhodes never followed up on this information.

How would you respond if I were to say that Mr. Rhodes did follow through, contacting several relevant sources and concluding the allegation had no basis?

Mr. PITTS. Sir, all I have to say to you, I was never made aware of it. I was made aware of a possible misappropriation of funds and by his own request, I divulged that information to him.

Again, I told him the source for that was not very reputable at the time I told him and the people that made the allegation were requested to remain anonymous.

The reason I pointed it out is, at the same time I produced the picture of a truck being painted in an Amtrak shop, that was not an Amtrak vehicle. To this day, the owner of that truck is still a general foreman at the 16th Street facility.

Mr. MCCANDLESS. In paragraph 21 of your statement, you say that 4 months ago, your general foreman, Wayne Noakes, informed you 50 traction motors were missing.

Do you personally know that the traction motors were missing, or did you at the time? Did you see them taken yourself?

Mr. PITTS. Mr. McCandless, first I would like to explain to you what a traction motor is. I don't believe——

Mr. MCCANDLESS. It is not something you can put in your pocket, I know that.

Mr. PITTS. It weighs in the vicinity of 3,000 pounds. It is approximately 3 feet high and 5 feet wide. It is an electric motor, 600-volt electric motor.

It is not something you can pick up by yourself, and it is definitely not something you can put in your car.

The reason that I was made aware of the motors missing is in—at that time, I was occupying the position of machinist on a drop table. It was my responsibility to change these motors.

At numerous times in prior months to this, we ran out of traction motors. There were times we just didn't have any traction motors.

We maintain 72 locomotives out of the Chicago facility, maybe 50 percent of the Amtrak fleet. To run out of motors in a facility that does 50 percent of the work for the Amtrak fleet sounds a little strange to me, so I start inquiring as to where these motors are at. Why are we running out of motors?

And my general foreman told me that the parts department at 14th Street cannot account for 50 traction motors, that according to the records, we were supposed to have 50 motors in stock, and we have none.

Mr. MCCANDLESS. Then it was information passed on to you by your foreman.

Mr. PITTS. Yes, sir.

Mr. MCCANDLESS. Thank you, Madam Chairwoman. I think that is adequate for the time being.

Mrs. COLLINS. Mr. Pitts, what do you think happened to those motors that you can't pick up and put in your pocket and 50 are missing? Where do you think they went?

Mr. PITTS. In my own opinion, these motors, in order to be removed from the facility, would have to be moved on a flatbed trailer. The movement of them would be quite obvious.

You couldn't move them at night because they don't move the trucks out at night; they would have to be removed in the daytime.

I don't believe that those motors were ever removed from the facility because I don't believe they ever came to the facility.

In my personal opinion, I believe the trucks were rerouted or sent to another facility or somehow got sent to another area, but the bills sent to Amtrak and approved.

There was a time just prior to this where the manager of 16th Street, Mr. Brown, used to brag about being able to collect $5,000 in motor and scrap metal. He made common knowledge of the fact it was one of his sincere desires to open up a locomotive rebuild facility, that he was tooling up.

In other words, he would buy tools for the facility and order twice as much as we needed, and we would never see them. There were tools that he would brag about ordering that we knew we never received.

At this particular time, Mr. Brown is holding the position of facility manager for Chrome Crankshaft, which is in Silvis, IL, to rebuild switch engines, and who sells traction motors.

Mrs. COLLINS. In your opinion, that would not be considered a small tool and therefore an inventory would be always kept of those items.

Mr. PITTS. That is correct.

Mrs. COLLINS. I have another question of Mr. Pitts—we will come back to that.

Mr. Owens.

Mr. OWENS. What is the cost of a traction motor approximately?

Mr. PITTS. Mr. Owens, my information, a new traction motor costs in the vicinity of $25,000. It is scrap traction motor because it is mostly made up of copper and expensive metals.

A traction motor that is garbage is worth approximately $5,000.

Mr. OWENS. Do I understand correctly, you say there were 50 missing—these were new? They never came in?

Mr. PITTS. New or rebuilt. It is physically hard to scrap a traction motor. They are solid steel. There is brass inside and there are expensive metals inside.

You won't normally throw something away that has salvage value, so no matter what happens to the motors—I can't in my mind imagine what could happen to a traction motor that is that size that would cause them to be garbage and thrown away. Usually, they are rebuilt.

For that amount of money, you would take that motor and rebuild it. They rebuild diesel motors all the time. It is no big secret.

Mr. OWENS. Speaking of scrap, Mr. Johnson, I understand you received an award from President Claytor, you received the Presidential Achievement Award for saving the company through the switcher rebuilding program.

Can you tell us about that?

STATEMENT OF KENNETH JOHNSON, MACHINIST TECHNICIAN, PAINT SHOP, AMTRAK

Mr. JOHNSON. I did. We would gut these switches and remove all old wiring, copper, brass, and it would all be restored in a corner of our shop.

On several occasions, me and Gary Baker would load this scrap onto a company vehicle, and in turn—three occasions I went with them, we went to scrap dealers to turn it in.

On one occasion we turned in scrap metal, we received between $700 to $800. On another occasion we turned in six locomotive radiators, we received $100 a pair.

On another occasion, I was with them when we received a receipt to turn into a currency exchange to receive the money. I was with Mr. Baker when he turned in the receipt and we received between $500 and $600, and there were several occasions he left with the scrap copper himself.

Mr. OWENS. Can you slow down?

Are you talking about official transactions? When you say we received, you mean officially the company was paid——

Mr. JOHNSON. No, sir. He received the money, Mr. Baker. This was their pocket money.

Mr. OWENS. But you were accompanying him?

Mr. JOHNSON. I would accompany him to help unload it because I was the lead technician in the shop. All this stuff came out of the switchers we were rebuilding, so I was very familiar with what they wanted to do with it.

I was told to store all the scrap metal, and once the switcher was stripped of all the scrap, metal, to inform Mr. Baker and he would in turn come down, we would load it up.

Mr. OWENS. So the fact you received this award from the president means the people knew about this program and they knew about the scrap, the scrap metal?

Mr. JOHNSON. I don't believe Mr. Claytor and his staff knew about the scrap metal, but Mr. Brown and his staff knew of it.

Mr. OWENS. You saved $1 million per year—how was that figured? Is that the cost of the scrap metal reclaimed, also figured that or did you really save much more?

Mr. JOHNSON. I am sure we saved them a lot more money, and that was just through their leasing Conrail switcher engines at the time. They had, I imagine, a yearly lease on them.

We eliminated that, and the switchers that we did have had all obsolete parts, and when they did go down, it was hard to get a part. There was a lot of downtime on them, and with this rebuild we put in, all modern-day equipment.

Mr. OWENS. I understand this process in the same yard you generated a lot of scrap tungsten also?

Mr. JOHNSON. The tungsten was out of another shop. The one time I was at a scrap dealer with Mr. Baker, the owner of the scrap company was—I never seen the man before, but he came out of the office and he was familiar and he approached Mr. Baker and called him by his first name and said, "Gary, scrap tungsten is up to $3 a pound."

I was right there, and Mr. Baker was surprised and kind of embarrassed that the man had said that to him, and he changed his subject real fast to golf.

And scrap tungsten would be generated through the wheelhouse on the wheel true in the machine, which cuts the car wheels and locomotive wheels.

Mr. OWENS. A few pounds or a large quantity?

Mr. JOHNSON. It should be a large quantity. These cutters are indexed and changed at different times, various times.

In turn, these cutters were to be turned in to Mr. Baker to receive new cutters that were replaced on these, because each cutter has at least 100 cutters on it for the wheel.

Mr. OWENS. So Mr. Baker was in charge of receiving——

Mr. JOHNSON. Receiving the scrap tungsten and ordering the cutters and handing the cutters out.

Mr. OWENS. As far as you know, the company had no particular procedure or policy for dealing with disposal of that scrap metal.

Mr. JOHNSON. No, sir.

Mr. OWENS. Scrap parts engine, did they have a policy?

Mr. JOHNSON. They have a scrap company they just dump the chips into their dumpsters. As far as the rest of the scrap, I know of no procedure, just thrown out in the dumpster, or whoever collected the scrap at the time——

Mr. OWENS. Mr. Baker could have been doing the company a favor by getting rid of this stuff, is that right?

Mr. JOHNSON. If he would have turned the money in, yes.

Mr. OWENS. Mr. Almaguer, will you explain the issuance of new tool policy in 1980 and 1981 and Mr. Richard Kramer's role in this?

Mr. ALMAGUER. Yes, sir. At that time, most of the machinists and the electricians of the skilled craft workers had their own tool boxes and they kept their own tools. Most of the tools were inherited from the—in the railroads the individual came from. I myself came from the Santa Fe. I had tools Santa Fe left behind.

Those tools were top of the line, Williams tools, Snap-On tools. When the tool issuance was implemented, Mr. Kramer came down and then went directly to one of my fellow machinists, the top machinist and the one who had the most tools. They came directly to his box, they took everything out, inventoried everything, put everything in the tool rooms, and they did this with all the machinists, all the electricians.

Now, from my experience from buying tools before I came to the railroad, my friend had at least 10,000 dollars' worth of tools. I know they are very expensive, especially Snap-Ons and Williams.

All these tools were put—the tool case is built in two sections. They have a back section which is always locked. All the tools picked up from all the machinists and electricians were put in the back and inventoried.

The front part of the tool case was then stocked for us to go on a daily basis and sign out the tools. Right after the tools were collected, all the tools that were issued were inferior tools, nothing like the tools they have collected, and I have not yet seen all the tools, the Snap-On and the Williams tools, because they all disappeared out of there.

Mr. OWENS. So all of the good tools——

Mr. ALMAGUER. All of the good tools have disappeared out of there. They are right now equipped with Conwell tools, which are an inferior quality of the ones actually collected.

Mr. OWENS. This happened in 1981?

Mr. ALMAGUER. Yes.

Mr. OWENS. Until now you still have inferior tools?

Mr. ALMAGUER. Yes, sir. We have had occasions, one socket, two socket, that comes in as a snap on but not necessarily engine. It is something that just happens once in a while.

Mr. OWENS. Thank you.

I came in in the middle of your testimony. I didn't quite understand what you did that was so outrageous as to have you reduced to the role of cleaning toilets.

Can you repeat again what led to your being harassed to that degree?

Mr. BOYD. Yes. First, Gary Baker was my supervisor at that time, and, as I said before, I talked to President Claytor's committee, which you have referred to as the Henderson committee.

I talked to them concerning my pay scale, and if they could do anything about it because I was a stationary engineer And from this point, Mr. Brown and the third floor—when I say the third floor, I am talking about Mr. Brown and the assistant manager and Mr. Gary Baker.

They were aware that I had went down and talked to Mr. Henderson's committee, and they thought I had said something negative about him and his operation, which was not true. I was talking about my own personal problem that I had with Amtrak concerning a difference of opinion of pay scale from being a stationary engineer on one side of the river, being a laborer on the other side.

Mr. Brown misunderstood. Gary Baker threatened to fire me.

I talked to Mr. Henderson, and one of his corepresentatives from Mr. Claytor's committee. They came to the job, they talked to Mr. Brown, and from that point—that was 1 year ago—I have been having nothing but repercussions.

Now, at the same time I walked up on Mr. Gary Baker, he was loading brass and wanted to pick up new pickup trucks. At that time he saw me. He sent me on an errand by giving me his keys and he told me to give these keys to Mr. Brown in order to get rid of me while he was loading his brass.

When I gave Mr. Brown his keys, I said, "Gary Baker sent you his keys." I said I don't know anything about it. Why did he send them? I said I don't know. Later, when I went back and saw Mr. Baker, the brass was gone.

As I said, with that, me talking to the committee, seeing him load his brass, I have had continuous problems to the point where I thought perhaps my 37 years would be terminated any day.

Mr. OWENS. You were reduced from a stationary engineer. That was the title you had before?

Mr. BOYD. Yes, sir.

Mr. OWENS. What kind of reduction is that? What kind of drop?

Mr. BOYD. I was making $30,000 a year; now I am down to maybe $20,000 a year. So one-third.

Mr. OWENS. Did you appeal this decision?

Mr. BOYD. I appealed this to everyone I knew in Chicago labor relations and all the—everybody who I talked to; Mr. Henderson's committee, the union. I went from A to Z and I got the same conversation, that they would look into this, but I never got a response.

Mr. OWENS. You assume it is just a belief you talk too much?

Mr. BOYD. Yes, sir.

Mr. OWENS. No further questions.

Mr. KLECZKA. We were told this morning there is no inventory system in place. There is now an inventory system in place for small tools. Are any of you gentlemen aware of that?

Mr. ALMAGUER. There has been an inventory system for small tools since 1982, sir. Can I add something to that?

Mr. KLECZKA. Sure.

Mr. ALMAGUER. Monday, a few days ago, my shop, the maintenance department, including the performance, were requested to go to the general performance office and we were then ordered to do another full inventory, to be finished on that day.

Mr. KLECZKA. Thank you. Mr. Delay.

Mr. DELAY. Thank you, Mr. Chairman.

From the material I have read and heard so far, I think it is pretty clear there were managers at Chicago's facility, Amtrak's facility, who took advantage of their position for personal gain. I doubt that any member of this subcommittee questions that. My problem is only the conflicting statements that I seem to be hearing, and I would like to get them straightened out.

I think we can carry this out in an orderly fashion. Since you were the last to speak, Mr. Boyd. You seem to feel that you have been harassed or placed in a lower position because you spoke to the Henderson committee; is that correct?

Mr. BOYD. To a certain degree. As I said before, I hate to harp on this question, but in my 37 years, which would be in July, I have never had any discipline problems with management whatsoever. I have never had any investigation or I have never been disciplined.

I have had one investigation in 37 years, and I never have been disciplined in my entire life. So this last year, since Mr. Henderson's committee started, as I said before, I have reached a point where a month or two ago I figured I would never reach the 37 the anniversary date because of harassment that I was receiving. Until the last month where I believe the harassment has ceased or died out, and I do believe this all came about because of my originally talking to the Henderson committee, Mr. Brown's misunderstanding, thinking I was talking to the Henderson committee in a negative manner toward him, seeing Mr. Gary Baker load his brass——

Mr. DELAY. I understand all that. Without going into it any further, Mr. Almaguer, you spoke to the Henderson committee, too——

Mr. ALMAGUER. No, sir. I was at Beach Grove, IN, at the time going through schooling.

Mr. DELAY. Mr. Pitts, did you? And Mr. Johnson, did you, too?

Mr. JOHNSON. Yes. I spoke to Mr. Faucett.

Mr. DELAY. Mr. Who?

Mr. JOHNSON. Mr. Faucett.

Mr. DELAY. Have all of you been harassed because of that? Have you lost your jobs and gone to a lower pay scale?

Mr. JOHNSON. Yes, I have been harassed and threatened on several occasions since seeing their committee. One of the threats I received from Gary Baker during these investigations after seeing the Henderson committee was he had approached me a few weeks after he came down and told me, "if anything happened to John Durst within the next 60 or 90 days, I am personally coming after you because if he goes down I am going down."

Mr. DELAY. You are still working there, aren't you?

Mr. JOHNSON. Yes. And I received a threat from Wayne Noakes, my general foreman. He told me, because he was being groomed for the assistant manager's job at the time—he told me I had better go over to the RTA, the Regional Transit Authority. and get a job or if I stayed at Amtrak I had better carry a gun.

Mr. DELAY. How about you, Mr. Pitts?

Mr. JOHNSON. I would also like to add Mr. Noakes, his second threat was he said he was going to end the Switcher Program, demote from the lead technician's position, and cut my pay and all these are reality right now.

Mr. DELAY. You can answer things, too, Mr. Pitts, as a followup question. Since then has management been removed and have things changed?

Mr. JOHNSON. Not that much. The manager and assistant manager we have now are keeping a low profile and as far as me dealing with the foreman and general foreman, there has been weeks where I actually do nothing. They don't even talk to me or nothing. I punch in and I stand around or I walk around for 8 hours a day. They just don't talk to me.

Mr. DeLay. They didn't fire you either. Could they have?

Mr. Johnson. They tried to.

Mr. DeLay. Under the labor laws and labor agreement?

Mr. Johnson. On one of the occasions they tried to have an investigation against me.

Mr. DeLay. But they didn't?

Mr. Johnson. No.

Mr. DeLay. How about you, Mr. Pitts? You mentioned in your testimony that you were terminated.

Mr. Pitts. That's correct.

Mr. DeLay. Why were you terminated?

Mr. Pitts. Oh, boy.

Mr. DeLay. Were you terminated because of these two investigations?

Mr. Pitts. I was terminated because of Mr. Brown. I am now and was for the last 4½ years local chairman of the machinist union. It is my duty at the 16th Street facility—it is my assigned job actually as being local chairman to be Mr. Brown's counterpart.

In other words, if there is a dispute, if there is an investigation, a trial, or anything that happens to a machinist in that shop, I have a legal obligation to defend the man. In so doing Mr. Brown terminated me for being local chairman. I served 15 months on the street. The union fought the case all the way through arbitration. The arbitrator made a ruling although Amtrak discriminated against me that I did nothing wrong in his opinion. That was faced with the situation where Amtrak management was giving me conflicting orders. I couldn't do both orders that they were giving me.

I chose to carry on Mr. Brown's orders because he was the senior of the two people. They charged me with insubordination in violating a direct order. There was a whole page of charges at the investigation. The arbitrator put me back to work and said—again I was discriminated against, and I basically conducted myself in a proper fashion. However, he withheld my pay.

In our union agreement one of the rules states if I am found not guilty I am supposed to be made whole for all losses. In effect the arbitrator made an illegal decision. The union filed an executive session order. Over a period of 12 months they kept repeatedly filing orders, but the arbitrator——

Mr. DeLay. If I can stop you, Mr. Pitts, it is obvious there is a whole line of procedures you had to go through. And you feel you were terminated because you were local chairman.

Mr. Pitts. Right. What I am trying to say is this was before the Henderson committee.

At the time, Mr. Claytor basically started the Henderson committee they came to Chicago, and I went down to talk to Mr. Henderson personally. When I went down there, I brought a whole list of people who were improperly terminated because the Henderson committee was supposed to discuss employee abuses in Chicago.

We had approximately a 2-hour meeting. I voiced my opinions not in only my case, but numerous other people who were and still are in the same position as I am, and he made a lot of notes and wrote a lot of things down. However, I was unemployed at that time by Amtrak so there was no direct retaliation against me. However, I was told by numerous of my members who went down there to state their cases that were employed, again that those reports from the Henderson committee were on Mr. Brown's desk the next day. Mr. Brown showed them to them.

Mr. DELAY. Did any of you see those reports on Mr. Brown's desk or know for a fact that you saw those reports in the hands of Mr. Brown? Do you, Mr. Boyd?

Mr. BOYD. I didn't see them, but I was told they had discussed my case with Mr. Brown. But they did do that with my permission, because this concerned pay. Let me clear one thing, too, I don't want to mislead the committee for you. The pay scale cut came prior to—it had nothing to do with Mr. Henderson's committee. I want to make that clear.

This pay cut came in 1982 when I was in the 21st Street yard, and when I was transferred over to the 16th Street yard, that's when I got the pay cut and was reduced to a laborer with no other chance for advancement for another job.

Mr. DELAY. I appreciate you clearing that up.

Were all four of you here when we were asking questions of the first panel? I may be wrong, but I intended, if I did not do it, to ask the investigators on the panel if they were told about scrap metal and tools, the governors, the traction motors. And I didn't even know about the invoice problem, so I didn't ask about that. And they, all of them, said they were not informed of these problems.

Did you hear them say that?

Mr. BOYD. Yes, I did.

Mr. JOHNSON. Yes, sir.

Mr. PITTS. Yes, sir.

Mr. ALMAGUER. Yes, sir.

Mr. DELAY. I am trying to get things straightened out. Mr. Almaguer said that you told them about the scrap metal and the tools. Is that correct?

Mr. ALMAGUER. Yes, I did.

Mr. DELAY. Really—in response to their questions, because you said that you only answered their questions, that you didn't offer any information—which means to me that the investigator asked you specifically about the scrap metal and——

Mr. ALMAGUER. I basically confirmed what they were asking, and they were very thorough.

Mr. DELAY. Was that in the case of the scrap metal, too?

Mr. ALMAGUER. I am sure it was.

Mr. DELAY. Mr. Pitts, you said—and Mr. Almaguer said—that no one told them about the governors or the traction motors.

Mr. ALMAGUER. No, I didn't.

Mr. DELAY. Mr. Pitts, you said you told them about the traction motors and the governors.

Mr. PITTS. I informed Mr. Rhodes about the governors because Art and myself loaded those governors on that particular pallet that day.

Mr. DELAY. Mr. Johnson, did you tell them about the scrap metal, the incident you were talking about, the three occasions?

Mr. JOHNSON. No, on the first occasion I met Mr. Steil, and Ms. Doonan came out to my house on a Saturday. That is when I informed them of that. And then I don't recall if I mentioned it during the interview or not, the taped interview.

Mr. DeLay. Were you aware of these invoices before investigations by this committee, any one of you? When did you first see the invoices?

Mr. Johnson. Myself?

Mr. DeLay. The invoices the chairwoman laid out that Mr. Almaguer was——

Mr. Johnson. I never seen no invoices from——

Mr. DeLay. These invoices entered as exhibits.

Mr. Johnson. Last night.

Mr. DeLay. The same with you, Mr. Almaguer?

Mr. Almaguer. Yes, sir.

Mr. DeLay. And you saw them last night and—I am trying to find out how good your memory is, because you went item by item and knew exactly what was going on with each item. Some of these range back 2 years.

Mr. Almaguer. One of the things, there are certain vehicles that we service on a daily basis, and, believe me, if we have to change differential assembly on a forklift, we are going to remember it. That is not easy to do. It is quite difficult.

Mr. DeLay. I can understand that.

Mr. Almaguer. The Pettybone Mercury that they referred to, I have been servicing that machine for about 11 years now, short of 11 years, and I know that it has no engine been pulled out of there, because I would remember it. It's not an easy job to do.

Mr. DeLay. What I hear you saying, then, is you could not report to the investigators about these invoices because you didn't know this stuff was ordered.

Mr. Almaguer. That is correct.

Mr. DeLay. And seeing it just last night brings it to the forefront.

Mr. Pitts. Yes.

Mr. Almaguer. Yes.

Mr. DeLay. I will have to ask the investigators if they knew about these invoices, because evidently you didn't know about it until last night.

Mr. Johnson. I would like to add something. I felt the investigators never really got into any detail on that. Once you gave information, they never came back to ask any questions. There was like one interview, and that's the last time you heard from them. That's probably why they never had a chance to look at the invoices. We informed them of the stuff that was happening at Mutual Truck Parts, and they could have verified that by showing us the invoices.

Mr. DeLay. The reason I am so confused is that—frankly—your affidavits in some cases contradict each other, and I can understand how that can happen, but I am trying to lay things out for my own mind. I apologize to the committee because it is kind of confusing. I am getting what I see as two conflicting reports here. The investigators are saying they didn't know about a lot of these things. They knew about some, but like the traction motors, they have documentation they know where all the traction motors that were bought are, but they could only document and prove enough to make a case on some 3,500 or 3,700 dollars' worth of them.

Mr. Almaguer, what I am interested in, since most of that management is no longer there, is the procedures of Amtrak in correcting this horrible situation and what are they doing now? And keeping with that theme of what is going on now, you state, Mr. Almaguer, they are still using cars for commuting your filling with gas. Do you know if this is against Amtrak policy?

Mr. ALMAGUER. I don't know whether it is against Amtrak policy or not, but as of last Monday, the last time I was there, they are no longer—at least our managers are no longer using company cars. They were using them up to about the beginning of May, and they have ceased to do so. Now they are using their privately owned vehicles.

Mr. DELAY. I see.

Mr. PITTS. I would like to add, you were inquiring about the information that was given to the special investigators. Again, we had a meeting with Mr. Smith, and we were, the three of us were basically appalled by the decision of the State's attorney's office in Illinois, in Cook County——

Mr. DELAY. I remember your testimony.

Mr. PITTS [continuing]. The three of us specifically went to his office and itemized these topics, and he guaranteed us he would get back to Amtrak internal investigations and check these things out.

Now, even if they were never aware of this through any either taped interviews or any interviews with us, when the assistant States attorney tells me that he has got this dollar value of alleged misappropriations, I would tend to believe him when he says he is going to turn this back to internal investigations and see what they have to say, because he quite specifically told us that none of this was ever mentioned to him. He was quite sincere in the fact that Amtrak had given him $3,000 of documented theft, and that was all that was involved in the case and that is why, to him, he was going to terminate the proceedings, he did not want to prosecute.

We went in there, and we talked to him, and we discussed, and we told him about what we had seen disappear, and he told us, quite frankly, no one has ever mentioned that to him, but he would go back to internal investigations and tell them and try to find out what was going on.

Mr. DELAY. Thank you. I yield.

Mr. MCCANDLESS. Can you, Mr. Pitts, be a little more specific on the items that you specifically told the State's attorney about that he said he had not heard about prior to your conversation?

Mr. PITTS. I had no——

Mr. MCCANDLESS. Are we talking about traction motors, governors? What are we talking about that he said the investigating team hadn't disclosed to him or shared with him?

Mr. PITTS. There were three items that we discussed with the State's attorney. Mr. Johnson discussed the stolen precious metals, the brass, the copper and the titanium. I was not aware of that. I wasn't a witness to it being stolen, so Mr. Johnson is the one who discussed that with Mr. Smith in the State's attorney's office. I was aware of that conversation because I was present.

Mr. Almaguer was aware of the large amount of tools missing because he was conducting the inventories.

Mr. MCCANDLESS. What kind of tools?

Mr. PITTS. Hand tools, wrenches, sockets, ratchets, anything—power drills, whatever. I was aware of the governors because, as I said, I had loaded them on a pallet. OK? Those items were discussed with the State's attorney.

Mr. MCCANDLESS. Thank you.

Mr. Boyd, you had your hand up a little while ago. Did you have something you wanted to add to this?

Mr. BOYD. Yes. Maybe I can shed some light on the governors, because I was involved in that situation. On one occasion, my general foreman, named Mr. Wayne Noakes, requested that I throw these governors in the scrap. It was two boxes. I think it was six governors in each box, and he requested that I throw them away. I had taken those governors and thrown them in the scrap. They were brandnew governors, but not governors used for the F–40.

What is a governor? A governor is the brain that operates the locomotive. When I say the brains, it controls the engine, the speed of the engine. We threw those governors away. One of the machinists saw the governors in the scrap, his name is Richard Munster, he went in and got those governors out of the scrap and brought them back into the free issue department where I worked, and Mr. Wayne Noakes saw him and gave him a very difficult time, told him if he ever interfered in his business again, he would fire him, and he had those boxes this time welded up, and we put—and he requested that I put those governors back in the scrap.

So what we did then, we threw away 12 governors, and I have no idea how much they cost, but I was told they were in excess of $5,000 each for each governor.

Mr. MCCANDLESS. Who told you that?

Mr. BOYD. The machinst who went and got those governors out of the scrap and put them back in the shop. Now, those governors should have been tagged—under the normal procedure—tagged and shipped back to the storehouse for their disposal.

Richard Munster said you possibly could have gotten a $5,000 credit from the manufacturer.

Mr. MCCANDLESS. I would like to digress for a minute and go back to you personally and your career. For purposes of the personnel policies, if I understand your comments previously, you said that you started your career with Santa Fe.

Mr. BOYD. Yes, sir.

Mr. MCCANDLESS. And that at the time that you transferred to Amtrak your position was that of a stationary engineer in charge of some type of powerplant.

Mr. BOYD. That is correct.

Mr. MCCANDLESS. Now, how did you find yourself in that position as you sat on one side of the river going to the position that you had as a laborer on the other side of the river? Was that a mandated or an option that you selected? What happened there between your employment with Santa Fe and your employment with Amtrak? Was that something you decided to do or forced to do? What happened in that situation?

Mr. BOYD. No, sir. On one side of the river, which was the 21st Street, which was the Santa Fe yard, I was chief stationary engineer in the powerplant. When that yard shut down, closed, and all the operation of 21st Street yard was moved to the 16th Street yard, where I went as a laborer, there was no boiler room, there was no powerplant there that my seniority would dictate. So I had to go back to a laborer.

Mr. McCandless. Was there another job within the Santa Fe organization that you might have accepted in another location which you chose not to do?

Mr. Boyd. No, sir. I was not offered that—I was not offered that, I could say a luxury. I was not offered anything from Santa Fe. In fact, I was now an Amtrak employee with all rights with Amtrak as of 1976, when that yard shut down was 1982.

Mr. McCandless. So it was either accept this position with Amtrak or find other employment.

Mr. Boyd. That is absolutely correct.

Mr. McCandless. And the acceptance of this other position brought with it an automatic pay cut?

Mr. Boyd. Yes. The way that the Amtrak said it went, it did. I had a different idea, and that is what I talked to Mr. Henderson and his committee about. But under the C-2 agreement, I thought I was protected, that if my job was phased out without any fault of mine, that I would maintain my pay scale if I had taken a lesser paying job, but that did not pan out, and I had no other recourse but to take this cut in pay.

Mr. McCandless. Thank you, Mr. Chairman.

Mr. Kleczka. Thank you.

Are there any further questions for members of this panel? Hearing none, let me thank you for appearing today.

I believe that Chairwoman Cardiss Collins would like you to stay around until after the third panel is heard from, and also subject to call tomorrow. There is a vote going on on the floor right now. Let me thank you. We will recess the committee for 15 minutes.

[Recess.]

Mrs. Collins. This hearing of the Government Operations Subcommittee on Government Activities and Transportation will reconvene at this time.

I understand we have just finished with the last panel, which as we mentioned before they started talking is subject to recall after the third witness panel as well.

Mr. Orville Elza, who is a former material requirements manager for which is from 1970 to 1971 will please come forward, please.

Mr. Elza, raise your right hand please.

[Witness sworn.]

Mrs. Collins. Thank you. Mr. Elza, we have your full statement which we will put in the record. [See app. 5.] If you would like to summarize, we would appreciate it.

STATEMENT OF ORVILLE ELZA, FORMER MATERIAL REQUIREMENTS ADMINISTRATOR FOR WESTERN REGION, CHICAGO

Mr. Elza. Yes, I would. But I first would like to enter into the record two documents I have before me right now.

Mrs. Collins. Do you want to tell us what they are?

Mr. Elza. One is the drafting of a traction motor use over a 4-year period, and another one is an inner-office memo of an incident on August 5 between me and Mr. Brown that was submitted to Mr. Presky, who was Mr. Brown's boss at that time.

Mr. McCANDLESS. Madam Chairwoman, the first document he is asking to be submitted, traction motor use, I wonder if we could have a little more of an explanation on that before we accept it, and the reason for its being submitted.

Mrs. COLLINS. Without objection, please answer the questions.

Mr. ELZA. The document for traction motor use, what I was doing was trying to trace the failure rate of traction motors versus our usage, and trying to come down with initial causes and reasoning for the failures.

The document seemed very interesting to me at the time because when the Sante Fe Railroad and some of the other railroads helping Amtrak get on its feet were doing repairs during the first 2 years, we had a stabilized traction motor use, and as we started going into our own repair and replacement of these traction motor units the usage became very, very high, to the point where the graph just goes steadily up and with no reason for using—we were using the same motors from the same manufacturer at the time.

It was being—these figures were being given to me from the purchasing departments and I could not explain them and I turned the document into my suppliers.

Mr. McCANDLESS. Madam Chairwoman, the reason I asked, if I understand, it was a simple graph which had no particular explanation as to how you arrived at your conclusion on the graph.

And without some kind of an explanation accompanying your chart, it would be very difficult to accept it on its face value.

Mr. ELZA. Thank you very much.

Mr. McCANDLESS. I would have to object unless you are able to submit something on how you arrived at your conclusion.

Mrs. COLLINS. Would you be able to submit something to explain how you arrived at your conclusions for this graph?

Mr. ELZA. I could write it out. I don't have anything with me right now. Every item on there, the total number of traction motors, I have it per year as well as graphed it. If it was a 102 or 150 the following year, it increased some 70 motors.

Mrs. COLLINS. Would you have a problem with describing how you came about with these things? You could do it in a one-page memo to be attached to this.

Mr. ELZA. I could have it in a matter of minutes.

Mrs. COLLINS. We have to have it very timely. When could you get it to us?

Mr. ELZA. I could do it in about 5 minutes.

Mrs. COLLINS. OK.

Mr. McCandless.

Mr. McCANDLESS. Whatever you can do, I would appreciate. I would have to object to this on the face of the way you have presented it. It has EMD, I believe, DCC traction motor usage from 1978 to 1980 on at the top. Along the side it has some numbers. I guess they relate to the numbers of traction motors from zero to 160 or more.

Then along the top of the graph we have the dates 1978, 1979, 1980, then there is nothing beyond that. What someone would need who might be interested in analyzing this would be an explanation of the two graphs, the one across the top with the 178, 258, 356, what that means, the chart numbers along the vertical lefthand side of the page, the source of this information and what the information represents and how you arrived at your conclusions for placing things on the graph, and then the numbers at the various locks, what they mean as the lines move across the graph, so that someone can say, well, I understand the chart and the source of the information and, yes, I accept or whatever conclusion.

But given the information currently, there is no way to arrive at a conclusion because you have no basis on how to establish how the information was acquired on the chart. I don't mean this in a negative sense, but I think it is a reasonable request.

Mrs. COLLINS. The gentleman is absolutely right and I concur with his remarks totally, and I think it is going to take longer than 5 minutes.

What we are going to do is hold the record open for a week to give you time to prepare the necessary documentation backing up this draft here. If you will submit that within a week we will be most appreciative.

Mr. ELZA. I will do that.

[The information follows:]

EXPLANATION OF GRAPH DEPICTING TRACTION MOTOR USAGE

The graph was developed to show Locomotive Traction Motor usage over a several year period. The years under this period are indicated at the top of the graph. The numbers on the Left Side of this document relate to the number of Traction Motors used. This(these) number(s) do NOT indicate the total number of Traction Motors used as Warrantied Traction Motors are exchanged without charge and were not in the Material Control Computer from which this data was drawn.

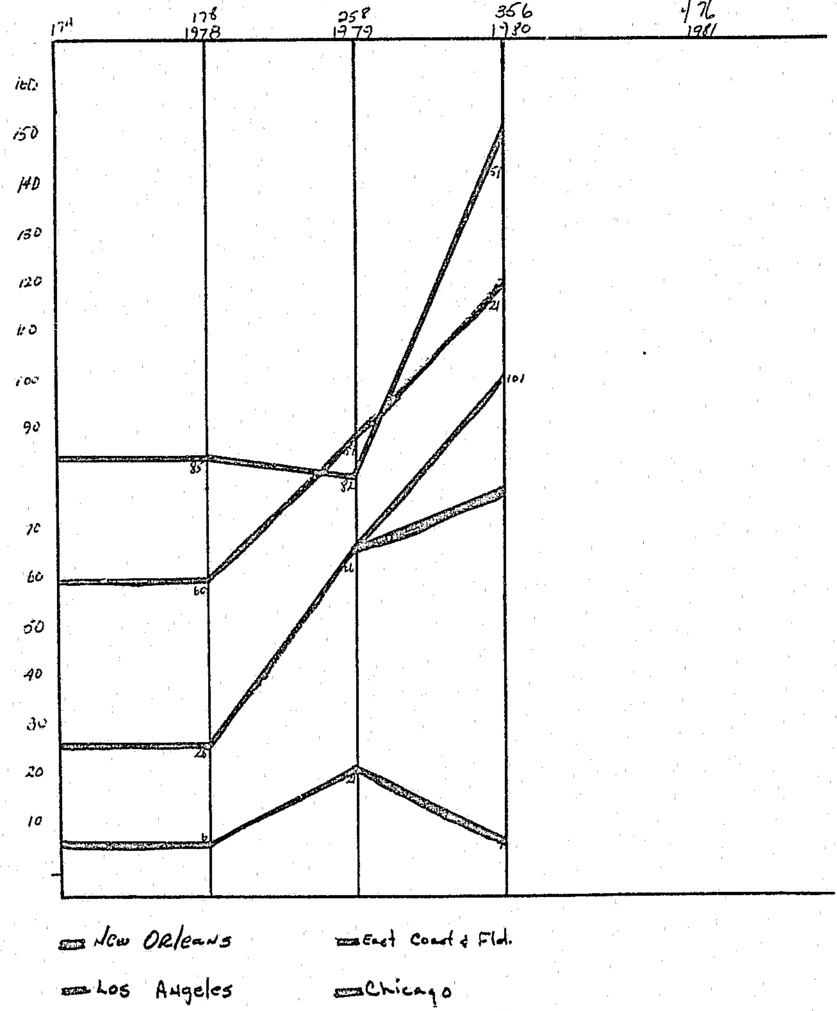
Each "Shop" was recorded by a different color in order to trace the usage from the different Shops. As indicated, traction motor usage was very high and the rates of increase in usage were extremely high.

I had contacted a Mr. Robert Ash, an employee of Amtrak in Chicago at that time, who had considerable knowledge of computer systems. He indicated to me that the computer could only reflect the information submitted to it, not alter the information.

I then contacted individuals in the Material Control Departments of the Milwaukee Road and the Burlington-Northern Railroad to compare our usage rates of Traction Motors with their usage rate to check if these railroads had also been experiencing an increase in their Traction Motor usage rate. The responses of individuals in these Material Control Departments stated that they had not experienced any increases in their usual Traction Motor usage rates, prior to or during the periods indicated on the graph.

From this graph, and other information, it was determined that the Warranty System was not being used properly at Amtrak, losing large sums of money related to repairs. Also, the results determined that The Preventive Maintenance Program was not being utilized appropriately; a cost-effective measure when properly used.

EMD D77 Traction Motor Usage from 1978 - 1980



Mrs. COLLINS. The gentleman reserves the right to object to that until receipt of the draft. You may proceed.

Mr. ELZA. Before I go into a summary of my affidavit here, I would like to bring up a couple of items that have come up today and to clarify them before I go into that.

I have heard testimony given they can account for 176 traction motors, 176. Now, I have a couple children in school and I am sitting here looking at 176. They said they scrapped 60 traction motors. It comes back to the exact number of 126.

I had a traction motor balance within the corporation prior to getting those traction motors that were kept at every facility. We had an inventory of pool stock of 7—sometimes as many as 20 motors at a facility.

Those motors are not accounted for in that number. Also, I heard the figure of the 60 traction motors going as scrap. I have never seen in my career time with the railroads a scrap traction motor.

At $25,000 you are telling me a house that is destroyed by a storm is scrap. You still rebuild it. The manufacturers of these traction motors have items in them that must be returned, they must be returned to get another traction motor or you pay a very exhorbitant amount of money for them, so these motors would not go as scrap, would be turned back to Electromotive Division or General Electric for rebuilding.

The other item that I would like to bring up is they talk about a new purchasing and material program to short circuit any of these problems with purchasing. What they are talking about now is the implementation of a program that has been in existence for years with Amtrak.

It means to me that—and this is what it sounds like to me, there was a failure in the last couple of years to use a program that they were using when I was there.

Not that it is a new program, it is just that they picked up the old program of purchasing and handling of material. And another item that comes up that I want to make clear on, that seems to bother me a great deal, because I am a stationary engineer now, the stationary engineer craft is the highest craft, short of being a turbine mechanic and working on something like a nuclear generator—Mr. Boyd was higher than a machinist, higher than a diesel machinist in Amtrak.

They bring him over from 21st Street, and I was there when they talked about shutting down that powerhouse, and they told him in the offices there when they shut it down they were bringing him over but he would lose no pay.

Today was the first time I have talked to the gentlemen since then and I found out that they have made him a laborer cleaning toilets. If this is allowed in the United States of America, for a man to be trained, licensed and do his job for that number of years and make him clean toilets, we have a serious, serious rotten problem here.

I don't think anybody here that would work at this level that you are as Congressmen would want to clean toilets, but this man got to the highest level as being a machinist and they have him cleaning toilets.

I am sorry, I get very emotional when I hear things like this happening to people.

I would like to read my statement briefly and then I will answer questions. My name is Orville Elza. I was administrator, western region until June 30, 1981. My duties included investigating material and inventory and expediting problem areas.

On February 1, 1980, Mr. Brown was promoted. He was promoted to Chicago and came into our facilities to learn the operations. He was replacing our current manager there. During one night he asked me to accompany him to get some milk. He had a severe ulcer problem, as he indicated to me.

During this drive I expressed to Mr. Brown my desire to change my position so I could earn more money. I wanted to go back as a general foreman because as materials administrator, which I was doing, I had been given two pay cuts because of a report from Washington on what level of management you were at.

I came from general foreman's ranks, I was promoted into the position I was in. Mr. Brown replied to me, well, Orville, I don't understand why you make the money you make but with me as manager and you as materials requirements administrator there is no reason for either one of us to be poor. Please do not request the general foreman's job now and give me a chance.

At that instant we arrived back at 26th Street, I went back to my job, Mr. Brown went home. I interpreted the remarks he would try to get my salary increased but not immediately.

It was very difficult at that time working in there, because being the material administrator, I couldn't have direct control over personnel. But sometimes he would make me stay there on weekends and work like a general foreman. That's why I was there that night.

Shortly after Mr. Brown assumed his duties full time in Chicago, he was trying to make the facility a showplace. It was a new building, relatively new, less than 1 year old, and he had contacted a cleaning service to come in and clean the building inside and out, to give a bid on it. He informed me that they were coming in to do these bids and about 2 or 3 days later he told me that he had gotten a bid from them for approximately $25,000 to $45,000.

The money then would have to go to Washington because it was such a large amount. I informed him it was above his signing authority. He told me to break the order down into increments that was within his signing authority and that he would sign them. At that time I did. He signed them and I sent them over to material control. This is why I am saying that the system really does work when it comes to material control.

The order went over, the five orders or six orders it was, for this cleaning. Material control immediately kicked them back and told him he did not have the authority to do this, this was stringing an order, which was forbidden in Amtrak. They had already started the work on his orders. He told me to call them and get them in to start the job. Now he had the vendor in there, he was working and cleaning and he wanted to be paid.

Mr. Brown called me at home. He told me that I would even have to take a second mortgage on my house to pay for the cleaning of his diesel shop or get it straightened out with material control.

I told him I couldn't get it straightened out with material control and I couldn't do anything about it, and he called me at home and harassed me about it. I was on vacation then for 1 week. My nerves were just about shot during this time and I didn't know what to do. I had two small children and a wife, and here a man is threatening to go to a second mortgage on my house. I come back to work and he said, "Well, Mr. Frank Abate has bailed you out again, Orville. He is going to take care of this little problem for me and get the vendor paid."

Well, the vendor got paid. Many, many times purchasing in Chicago, Mr. Paul Bat, Mr. Charley Frenault, people in purchasing and material controls, told the people in the diesel shop what their signing authorities were. They continued to write orders that were beyond it. Circumvent the system, go to Washington, go to Philadelphia, go around the problem. It seemed like that would be the way Amtrak was being run. I was not playing ball, so finally they moved me to 14th Street. They told me I was going to take care of the regional traction motor program and high-usage dollar items, not just in Chicago. Now, they had me out of the way and they put Mr. Baker in my old position over at 16th Street.

In 1978, Amtrak was buying parts from a vendor called power parts. We would buy them for inventory and they were controlled. But sometimes we would need a part that was not a high-usage item and was purchased one item. Mr. Brown wanted to do a truck program for the switch engines. At that time the Federal Railroad Administration had asked us to rebuild them. He called in the vendor at that time and he asked him to work out a package with all the necessary parts.

After the negotiations were over on that portion of it, the vendor went back to his company. Mr. Brown asked me to call the vendor and request tickets for a Barry Manilow concert that was sold out. He wanted me to squeeze the vendor for the tickets. This was done quite often. But the vendor this time did not come through for him.

Approximately 30 days after that, Mr. Brown was putting together an airhose package for the airhoses between the cars and locomotives for the control air. They again asked Power Parts out. They had lunch together, Mr. Brown, Mr. Rogers, Mr. Driscoll. They requested more tickets. This time they wanted tickets for the Chicago Bears. Very hard to get tickets. I found out about the front vendor itself, the salesman. He came to me complaining. I told him that I was no longer in a position over at 16th Street and I couldn't help him. They didn't get the business.

I had to resign from Amtrak, but after departing Amtrak one of my associates was a welding company, the Guinness Welding & Fabrication Co. I asked the owner, I said, "Are you still working with Amtrak? Are you still making snow plows for them and saving us some money?"

His reply was, quote, "I'm not doing much work for Mr. Brown because he is too expensive to work for." And I knew just what he meant.

I would like to go into my chapter 20 here about the spring of 1981 when Mr. John Jeffries retired. The corporation treated him like a dog until he left, a man off DIC with an impeccable record; proceeded by Mr. Winnell, and they got rid of him too. They put Mr. Van Buskirk in there, a young energetic executive, made the facility profitable, making it a model facility in the railroad industry today. It's closed now. Mr. Van Buskirk immediately asked me to start looking into the high dollar items, traction motor use, turbine charger failures, and I did.

One day I would come up to find out Mr. Brown is gone. I learned about this from one of the other employees, a Mr. Riley. He has been fired, I was told, by Mr. Van Buskirk. So I went to Mr. Van Buskirk and asked him why. He told me Mr. Brown had caused a locomotive failure by failing to do proper maintenance. These were the things I was seeking with material usage. I'm seeing material not being used. He said he was incapable of performing as a manager in terms of supervising his personnel. He said his conduct in investigations, he was prejudging the employees. I know for a fact they were doing that at that facility. And he said he doubted Mr. Brown's honesty and integrity. And he had fired him.

The bottom lines come into it, they demoted Mr. Van Buskirk and sent him back to Brighton Park. Three days later Mr. Brown is back in 16th Street again. Mr. Crawford came out and put him back to work.

Mrs. COLLINS. Can you tell me the name of Mr. Crawford, the first name of Mr. Crawford you have reference to?

Mr. ELZA. Mr. Joe Crawford.

Mrs. COLLINS. The same gentleman who was here this morning?

Mr. ELZA. Absolutely.

Now he is back to business as usual except Mr. Van Buskirk is no longer there. They put Mr. Driscoll in there. He doesn't want me to do anything or look into anything. He wants me to go to the west coast to keep me out of trouble. He doesn't want me to look at material usage, just be a good boy and to lunch.

I had no other choice at this point; I started going to another superior, Mr. Slacks, who is also in the same department as me. I'm finding invoicing for oil, oil usage that has doubled. I'm not running any more locomotives. If you as a car owner have one car now, you know your car uses 1 quart of oil and you do so many oil changes per year, you would ask a question if now your car uses 5 quarts of oil and you have to use double the oil usage in changes. You say, "I have a problem." So that's the question we asked. Where is the oil going?

The first thing they tell us is it is being drained, oil changes. So I check with the vendor on the reclamation of the oil, because we have a contract. He hasn't picked up oil in 1 year. They're saying they're sending 6,000 gallons of oil into Chicago every week. The tank holds 4,500 gallons. I reported it to my supervisor and he in turn reported it to Mr. Presky. Nothing was ever done. They said they were going to look into the problem, but nothing was ever done. Mr. Slacks said to me that he definitely had reported it to Mr. Presky.

Mrs. COLLINS. Would you repeat your last statement.

Mr. ELZA. Reported it to Mr. Presky at that time.

Well, they had to get me out of town. They sent me to California. To evaluate material. When I was there, I found a warehouse full of traction motors. These $25,000 units. This warehouse had approximately 45 traction motors in it and 30 steam generators, and the steam generators were being phased out. These were brandnew units.

I came back to Chicago to make my report on it and on my way back a reporter came up and asked me about Chicago and the theft that was going on in Chicago. I told him I would not comment on it and excused myself. He had told me that he had procured a ticket from an Amtrak employee to go out to his mother's funeral in California.

I found out later that the ticket was given to him and he wasn't authorized that ticket, and he came back and told them of all this information he had on the theft that was going on in Chicago, and he said he had talked to me on the train. So they assumed that I had told him these things. I was never allowed to face this man face to face, and at that point Mr. Presky told me that I would be going home for a month to think about my situation.

I did go home, and after 1 month's time they brought me back. Mr. Presky asked me what I thought I was going to do, and I told him that my situation was as stands, I was going to do my job. He said they were sending me to 16th Street diesel facility. I protested because, as you see on the first document I gave you, Mr. Brown had threatened my life. He was a highly irate man. He would—as testimony by the Amtrak people have said, he gave them a hard time about coming in his facility, and now here I am coming in his facility and he does not want any outsiders. So on my arrival at his facility, he tells me, "You were sent to me for one reason, you either resign or I fire you." He said, "You go out of here one of two ways."

Mrs. Collins. What did you do?

Mr. Elza. I was forced to write a letter of resignation at that time. I resigned from Amtrak. I worked until April, they told me to go home, and they paid me until June. They sent my checks to my house.

Now, this corporation of Amtrak is worried about $3,000 restitution on some automotive parts that Mr. Brown caused. What do you tell somebody like me? I lost a career. I was looked at in the railroad community, I was called on parts from every railroad in the country. After I left Amtrak they went and made sure that no railroad in the country would hire me without an investigation; without anything, I was unemployed.

This is the type of thing that went on. When I asked for an investigation on this, the Amtrak police came to see me. I had gotten a job with the State. I work in the prison. The first time they talked to me was in an automobile under some shady trees far away from everybody. I told them about the traction motors. I told them about the oil. I told them about the theft. They said they would get back with me.

Mrs. Collins. Let me interrupt you to ask a specific question. In your affidavit that you submitted, you indicate that procurement regulations were being disregarded as concerned competitive bidding requirements, and those were less than high bid. Can you talk to me about that for a bit?

Mr. ELZA. Under the system you had to have three bids to initiate a purchase order. The only time you would not have is if they were only a vendor, and under the criteria purchasing, which I would be qualified to talk about because I went through the material, purchasing and management class at Electromotive and General Electric, the criteria was price, quality, delivery. Amtrak was going by price as the primary reasoning for purchase. When someone in a facility wanted to buy something and it wasn't the lowest price, they would write a purchase request, putting the number down for a purchasing agent to procure and put down "only vendor," "only source of supply."

Now you circumvented the system. The purchasing agents, themselves, would pick up the document thinking it was the only source of supply, because they were purchasing so much material, and the people in the diesel shops were allowed to purchase without enough historical information on the material. That is how they were getting around the purchasing itself on going to the lowest bidder.

Mrs. COLLINS. I have no further questions at this time. Mr. McCandless.

Mr. MCCANDLESS. Yes. You have taken a lot of time to explain what you consider to be many of the shortcomings during your employment. Again I am primarily interested in policies and procedures, and where the system broke down and was accepted, when the maintenance contract for $25,000, or whatever the figure you said was, was broken down into sections and taken care of, if I understand your process.

Mr. ELZA. That is correct.

Mr. MCCANDLESS. Are you aware of the circumstances around which that was ultimately approved?

Mr. ELZA. The vendor had completed the work already, and he wanted to be paid. Of course, it was going to be——

Mr. MCCANDLESS. I understand that. Let me go back and explain a little more what I am interested in getting from you. If I understood your testimony correctly, you said that the instructions Mr. Brown gave would break it down into signable units.

Mr. ELZA. That is correct.

Mr. MCCANDLESS. And it was a violation of Amtrak procedures.

Mr. ELZA. That is stringing.

Mr. MCCANDLESS. You went through a set of circumstances during that week of vacation, and when you got back, Mr. Brown said that Mr., whatever his name was, had taken care of it and that he would get the credit, whatever that meant, and that is not important at this point to me. But did you actually experience or find out how it was taken care of?

Mr. ELZA. The purchase order was paid out of—capital out of Washington, DC. It was not paid for out of Chicago.

Mr. MCCANDLESS. So then it was paid for as a total rather than broken down as it had been submitted?

Mr. ELZA. That is correct. Their proper procedure, as I had said before, was to submit it as a whole and get it approved that way, but they did not want to do it that way.

Mr. McCandless. Ultimately it was taken care of in the proper manner.

Mr. Elza. The proper manner after the wrong——

Mr. McCandless. After the fact, yes.

Mr. Elza. Yes.

Mr. McCandless. The system was not circumvented in Chicago as it had originally been intended by Mr. Brown?

Mr. Elza. I don't follow you.

Mr. McCandless. You got a $25,000 purchase order that cannot be approved locally, it has to go to Philadelphia or Boston, as I understood your statement. It ultimately went to Philadelphia and Boston and paid as a total work order or total purchase order for the amount of $25,000. No?

Mr. Elza. It's true, but you're saying—it's like——

Mr. McCandless. I understand what you are saying. The work was done without an authorization. The authorization was after the fact.

Mr. Elza. Correct.

Mr. McCandless. What I am trying to get at is someone accepted that after the fact in the form of a purchase order for the total amount, right?

Mr. Elza. But would it have been approved?

Mr. McCandless. That is not the issue here as far as my questions is concerned.

Mr. Elza. Yes, it was paid for.

Mr. McCandless. And it was paid for in total.

Mr. Elza. It was paid in total.

Mr. McCandless. So Mr. Brown didn't circumvent the procedure by breaking it down into increments, the total of which would be the $25,000?

Mr. Elza. He did circumvent when he did the stringing, tried to turn it in that way.

Mr. McCandless. I understand that. I think I have had my question answered. It was paid ultimately where?

Mr. Elza. Out of headquarters in Washington. It was approved.

Mr. McCandless. You mentioned Philadelphia and Boston. Are those sections, as we go along the line——

Mr. Elza. Sometimes things to Philadelphia didn't go to Washington, DC, for payment.

Mr. McCandless. Give me an example how that would happen.

Mr. Elza. They were at that time just starting into centralizing purchasing, and sometimes it wouldn't go to Washington, it would go to Philadelphia, wherever there were purchasing agents available. By the time I left Amtrak, all the purchasing agents were getting ready to move all centralized to Philadelphia.

Mr. McCandless. Were you ever told how this was taken care of?

Mr. Elza. By Mr. Brown?

Mr. McCandless. Did he give you any details?

Mr. Elza. The only thing he gave me was the detail to sign, Mr. Abate. He was a chief mechanical officer, vice president, at that time.

Mr. McCandless. I am sorry?

Mr. Elza. Mechanical officer.

Mr. McCandless. He took care of it?

Mr. ELZA. Yes, he signed for the document for them to pay.

Mr. MCCANDLESS. In Washington?

Mr. ELZA. Yes.

Mr. MCCANDLESS. Thank you. I have no further questions.

Mrs. COLLINS. Mr. DeLay.

Mr. DELAY. Thank you.

Again, Mr. Elza, first off, you were terminated and most of this happened before you were terminated, correct, in your affidavit?

Mr. ELZA. Yes.

Mr. DELAY. You were terminated before the present management came onboard?

Mr. ELZA. No.

Mr. DELAY. Mr. Claytor didn't come on board after?

Mr. ELZA. Mr. Claytor came onboard afterwards, but most of the management was in tact there when I was there.

Mr. DELAY. Are you talking about the management of the Chicago facility or all through Amtrak?

Mr. ELZA. I am talking systemwide. It's just about as it is now except Mr. Brown now is gone.

Mr. DELAY. And Mr. Baker, Mr. Durst?

Mr. ELZA. I had heard Baker was gone. I didn't know about Mr. Durst being gone.

Mr. DELAY. But the point I am trying to make is most of what you claim has happened happened 4 years ago, 5 years ago.

Mr. ELZA. Yes. It has been going on for that long.

Mr. DELAY. I guess that is the point, the reason you are testifying, to show it has been going on this long.

Mr. ELZA. Yes.

Mr. DELAY. I have some problems with your affidavit. Your affidavit in paragraph 11, you state that Amtrak did about half a million dollars worth of business with Power Parts.

Mr. ELZA. Yes.

Mr. DELAY. I have been told that Amtrak does an average of about $37,000 a year over an 8-year period.

Mr. ELZA. Probably they would do that in expense items, but if you take their inventory total systemwide, it would be much heavier than that, things that you would put into inventory. It wouldn't be under the same category. Expense items are different than items put in material control that are put on the shelf.

Mr. DELAY. I see. Well, I will have to ask that of the Amtrak people, because I am informed—you are saying the $37,000 a year that they claim they buy from Power Parts is expense items, not total purchase from Power Parts.

Mr. ELZA. Correct. Expense items are items that, one-time use items or low-usage items, that you would no longer want to keep on inventory, like items for a switching in that we have one or two of in the entire Nation in the Amtrak system. Rather than buying inventory of material for it, you would buy it on an as needed basis.

Mr. DELAY. But you are claiming the half a million dollars is inventory, not purchase.

Mr. ELZA. If you take the inventory and you break them down by part numbers and find out who is delivering that item to Amtrak, you will find out a lot of it comes from Power Parts.

Mr. MCCANDLESS. Will the gentleman yield?

Mr. DELAY. Yes.

Mr. MCCANDLESS. With respect to this, you used the term systemwide. Are we comparing apples and apples here? Is the $37,000 just the Chicago facility, or is it a systemwide figure? I think that needs to be cleared up. I am talking systemwide.

Mr. DELAY. I understand that it is systemwide. But I think we are also comparing apples and oranges here in what you are saying—let me ask a different way.

Are you saying that Amtrak actually writes checks for half a million dollars every year to Power Parts?

Mr. ELZA. I would say the power ordering spectrum. If you take items bought for expense and for inventory, it would be that amount, yes.

Mr. DELAY. Amtrak disagrees with you, which makes me suspect, in paragraph 11, where you say——

Mr. ELZA. Can I interject something?

Mr. DELAY. Go ahead.

Mr. ELZA. The reason they were buying so heavily from Power Parts was they were a competitor to Electromotive. And items you buy from Power Parts are the same as Electromotive parts or superior to. If they're a nonessential part to a locomotive, like a handle, expendable item, liners, any item like that for the trucks, we bought them from Power Parts because the department was buying on price wherever it was available.

So when Electromotive would bid a part, or General Electric, Power Parts would also be allowed to bid in that, and they were always lower. They were always a penny or two lower per item. If you pull their price books—that's why they bought to much from them.

Mr. DELAY. What I am driving at, there are two conflicting statements, and you say it in No. 11, I would estimate Amtrak did a half a million dollars' worth of business annually with Power Parts. Amtrak says that they only do $37,000 a year with Power Parts, which makes me suspect your statement. I estimate this would have represented approximately $24,000 of additional bids for Power Parts.

Mr. ELZA. If we would have gotten all the truck kits we were talking about there. That was an entire truck kit for a locomotive. Two complete truck rebuildings.

Mr. DELAY. In paragraph 12, you allege Mr. Brown got Chicago Bear football tickets for Mr. Musel——

Mr. ELZA. He requested them.

Mr. DELAY. Of Power Parts. I would like to ask unanimous consent to enter into the record a document, case No. 8-1034(82) 2700. It is an investigation report done by Mr. Rhodes and Mr. Steil.

Mrs. COLLINS. Without objection.

[See app. 6.]

Mr. MCCANDLESS. The subject of the investigation is what?

Mr. DELAY. The subject of the investigation is the investigation is done, generated by Mr. Elza's accusations that have been pointed out in this affidavit time and time again referring to the baseball tickets and Mr. Musel's charges of kickbacks. This is the investigation report from Amtrak in response to his accusation.

Mr. McCANDLESS. May I ask the date?

Mr. DELAY. The date of the report is April 10th—wait a minute. July 1, 1982.

Mr. McCANDLESS. And the investigator or investigating authority was Amtrak?

Mr. DELAY. The special agent was Rhodes who works for Amtrak and the supervisor was Steil.

Mr. McCANDLESS. I have no objection then.

Mr. DELAY. Thank you, Madam Chairwoman. The report investigated your allegations in 1982, dealing with Cub tickets—I might back up here a minute. You also said——

Mrs. COLLINS. Bears.

Mr. DELAY. Bears, I'm sorry.

Well, it is the Cub tickets that he is referring to, I believe. Yes, he also talked about Cubs. Mr. Elza responded—I am reading from the report—profanely unable to recall exact response, and then inquired whether we had checked the six references; the Cub season tickets, baseball tickets. The rider advised in the July 23d interview he related season tickets for the Bears, on which Mr. Elza became loud and profane stating, "I will give it to Mr. O'Brien's office."

Mr. ELZA. I did not become loud. They asked me about the tickets, and at that time the officers from Amtrak, investigators, were acting like this was a big joke about these tickets. At that time I said if—at that I had gone to a director of the board of Amtrak just to get them to come and see me. And I said if you aren't serious about this investigation, I will go to my Congressman's office.

Mr. DELAY. I think they were pretty serious.

Mr. ELZA. I did not get loud.

Mr. DELAY. This goes over a long period of time and refers to all of your allegations. You refer to Mr. McGuinness, the McGuinness—excuse me—McGuinness Welding situation where you said it got too expensive to do business with Amtrak. Mr. Elza related, as we checked the McGuinness Welding situation, and the snowplows, rider, being the person Mr. Steil advised Mr. McGuinness had been interviewed and denied any knowledge of kickbacks and was in fact doing work on snowplows at that time for Amtrak.

Mr. ELZA. Mr. McGuinness made snowplows for Amtrak. When he started making them, we were buying them from Electromotive for $7,000 and some cents apiece. He was making them for $3,500.

Now, my last conversation, talking with him, he said he was not doing work for Amtrak. It had curtailed off because it was too expensive working for Mr. Brown.

Mr. DELAY. Well, you just stated that you didn't respond profanely, but all through this report there are quotes, your quotes, written in this report——

Mr. ELZA. I never saw that report.

Mr. DELAY [continuing]. With profanity in it. "At this point Mr. Elza interrupted and became loud and profane stating, quote, I don't have to prove any goddamn thing anymore. I am sick and tired of talking about it. You people don't give a . . ." excuse me, Madam Chairwoman, it is in here if you care to read it. "And I am tired of Amtrak's attitude." There are several references like that throughout this report.

Mr. ELZA. I think if I was writing a document like that, and I was trying to show I did an investigation that's the way I would have worded it, too.

Mr. DELAY. You stated you know Mr. Van Buskirk——

Mr. ELZA. Van Buskirk.

Mr. DELAY [continuing]. And you say in your affidavit that Amtrak demoted Mr. Van Buskirk. Would you say that this would cause him to feel bitter toward Amtrak?

Mr. ELZA. He was very complacent after they did it because he didn't portray that to me. He was more resolved to the situation he would have to find another job because they were going to phase out his diesel shop or turn on shop and he would be out of a job.

Mr. DELAY. Do you think if Mr. Van Buskirk were here now that he would support your allegations of kickbacks?

Mr. ELZA. I would think he would.

Mr. DELAY. I will also read from the report. "On July 2, 1982, at 1:50 p.m. the writer interviewed telephonically—" I don't know if that is a real word—"* * * telephonically Mr. Van Buskirk, former Amtrak employee, based in Chicago." Mr. Van Buskirk is the assistant superintendent in charge of motor power and equipment for the Detroit and Mackinac Railway Co. at Tawas City, MI. Mr. Van Buskirk stated that he was not aware of any attempts at shakedowns or kickbacks while employed by Amtrak at Chicago.

"Mr. Van Buskirk did not indicate any bitterness toward Amtrak."

Mr. ELZA. I would like to ask you a question.

Mr. DELAY. You can ask away. I don't know if I will answer it.

Mr. ELZA. If you were working for an industry as closed and encapsulated as the railroad industry, that is controlled lock, stock and barrel by the power group that is there right now, would you be willing, if employed by them, to come forward? And before you answer, think about this; that program that was started in Amtrak of employees being able to talk to the President of Amtrak freely, I know to be a sham.

When an employee reported anything, it got reported right back and retribution would happen. If you work with the railroad, no matter what railroad you work for, if anything happens on one railroad and they want to get back with you on another railroad, they can through the organization. If you were to say anything derogatory——

Mr. DELAY. Mr. Elza, in the real world that is with any industry. If that scenario was the case in any industry, we would all be in big trouble. So to answer your question, yes, if I found stealing going on, I would tell people about it. If I found kickback going on, yes, I would tell people about it.

Mr. ELZA. Then you and I are the same.

Mr. DELAY. But what I am trying to get to the bottom of is—what is being done now, what things have been done because of allegations? And in your case an affidavit that I really suspect, and I hope to have an opportunity to ask Mr. Rhodes about this report, because we are getting conflicting things from both sides in this whole thing, and I would like to get to the bottom of it. Thank you, Madam Chairwoman.

Mrs. COLLINS. As the gentleman knows, we have asked the previous two panels to stay around so that they would have been subject to recall for the express purpose of knowing there were further questions we were going to ask of them. You mentioned questions you wanted to ask. I have, and I know the ranking member has questions he wants to ask. Because of the lateness of the hour we are going to adjourn this hearing, but we would like to have those same witnesses available tomorrow morning.

They will be the first ones up, panel 1 and panel 2 tomorrow for the requestioning. Tomorrow when we have our hearing it will not be in this room. It is going to be in room 2203. We are not going to start at 10 o'clock; but rather at 9 o'clock tomorrow morning, room 2203.

This subcommittee is adjourned until that time.

[Whereupon, at 4:30 p.m., the subcommittee adjourned, to reconvene at 9 a.m., Thursday, June 6, 1986.]

IRREGULARITIES IN AMTRAK HANDLING OF MANAGEMENT CRIME

THURSDAY, JUNE 6, 1985

House of Representatives,
Government Activities and
Transportation Subcommittee
of the Committee on Government Operations,
Washington, DC.

The subcommittee met, pursuant to call, at 9:05 a.m., in room 2203, Rayburn House Office Building, Hon. Cardiss Collins (chairwoman of the subcommittee) presiding.

Present: Representatives Cardiss Collins, Major R. Owens, Alfred A. (Al) McCandless, Patrick L. Swindall, and Thomas D. (Tom) DeLay.

Also present: Myron Zeitz, counsel; Cecelia Morton, clerk; and Brian Lockwood, minority professional staff, Committee on Government Operations.

Mrs. Collins. Good morning.

This hearing of the Subcommittee on Government Activities and Transportation will reconvene at this time.

We will continue to receive testimony on the subject of corporate handling of financial irregularities of Amtrak.

Before we recall certain witnesses from yesterday for a brief round of questions to resolve lingering issues, I'd like to announce that, this morning, I've directed subcommittee staff to turn over relevant affidavits in the possession of the subcommittee to the Federal Bureau of Investigation for further investigation.

As you know, the theft of Amtrak property is, in significant part, the theft of Federal funds.

I am seeking this to put all on notice that this subcommittee will do all it can to guarantee that theft from federally funded Amtrak will be a Federal matter. Theft must be investigated and must be deterred.

Second, we have heard testimony describing lack of confidence in Amtrak's internal investigations. It was described as the management investigating itself.

I do not want to undermine that police investigative authority, but realizing that those fears stem from deeply rooted labor relations problems which this subcommittee explored last year, I see no choice but to urge all employees witnessing corporate crime to report those crimes to this subcommittee. This should be the last resort, but I do not want next year or the following to hear any more witnesses state that they witnessed theft but did not feel safe reporting it.

Elimination of the theft problem at Amtrak cannot await solution of their labor relations problems. In the interim, the ranking member of this subcommittee, Mr. McCandless, and I are requesting the General Accounting Office to make a limited but thorough investigation of several of Amtrak's asset procurement and control systems to determine the extent to which the problems documented through their Chicago internal investigation are recurrent.

GAO is the official audit arm in Congress and, we feel, is in the best position to identify systemic and procedural deficiencies which are responsible for the abuses we've learned about.

Unless other members wish to make an introductory remark, we will now proceed to recall the following panelists from yesterday. Mr. McCandless.

Mr. McCANDLESS. Thank you, Madam Chairwoman.

I have no introductory remarks. However, Mr. DeLay, I understand, has an opening statement. I would ask unanimous consent that that be included.

Mrs. COLLINS. Without objection.

Mr. McCANDLESS. Thank you.

[The prepared statement of Mr. DeLay follows:]

OPENING STATEMENT OF REPRESENTATIVE THOMAS D. (TOM) DELAY

Thank you, Madam Chairman. Yesterday I listened with great interest to the story of probable criminal activity and a subsequent investigation at Amtrak that had been occurring under the last set of managers at Amtrak's Chicago facility.

There are two things that concern me about yesterday's hearing. My first concern is that there is very little information, other than that supplied by Mr. Crawford, to help us find out what the current status of the situation is. My second concern is with the testimony. It would seem that on critical questions we have conflicting testimony between panels—and even between members of the same panel. I hope we will be able to get to the bottom of this today.

Also, I would again like to recommend that the report from this hearing be held so that it could include a followup hearing which could cover current Amtrak policies in depth. Thank you, Madam Chairman.

Mrs. COLLINS. The purpose of recalling these witnesses is to determine with more clarity, one, if Amtrak police had adequate reason to include within the scope of their investigation matters involving theft or disappearance of valuable scrap metal and locomotive parts; two, why Amtrak police and auditors apparently limited their review of invoices—there was enough evidence, it seems to me, to justify a full investigation of all purchases from Mutual Truck Parts and a thorough review of other vendors through whom their Chicago managers had access—and, three, why Amtrak police and auditors did not utilize a valuable resource in interviewing employees. They could have together reviewed invoices to identify stolen or fraudulent entries.

What concerns me there is that, yesterday, a statement was made that only one item on one invoice was looked at, and although I've heard of cursory examinations and used to perform them myself when I worked as an auditor for the State of Illinois Department of Revenue, that is the most cursory of examinations I've ever heard of.

This failure has cast a lingering doubt as to the exhaustiveness of the corporation's effort, which only exacerbated employee doubts about the integrity of the investigation.

The panel that we're going to call first are: Mr. Raymond Ingalls, Ms. Faith Doonan, Mr. Edward Rhodes, Mr. Joseph Crawford, Mr. William Branan, Mr. Steil, and Ms. Moorhead, and whoever else sat in the first panel, please come forward.

Mr. McCandless.

Mr. McCandless. Thank you, Madam Chairwoman.

I'd like to begin where we left off yesterday—you were all present most of the day and heard the dialog that the committee received from the various witnesses, their comments, their beliefs, their observations—and proceed into a not "he said, you said, I said" type of situation, but to try to find where the existing system might be improved or where the existing system is in a compromised position or lacks something that it should have in order to function to the maximum degree possible.

I appreciate the opportunity being presented this morning with the Executive order we discussed yesterday. Mr. Ingalls was kind enough to take on the task that we requested yesterday.

[See app. 2.]

Mr. McCandless. I would note for the record that the date on it is 1984. I'm informed that this executive order is an update of a previous update which was in effect at the time of the situation we're reviewing.

I think that's important, because if someone reviews that without knowing it, then they might find, without the knowledge, that they're barking up the wrong tree if they say the dates are not correct.

Mr. Ingalls, with respect to the National Railroad Police Department, your executive order talks about the use of all available police facilities. There's a direction to the members of your department.

I wonder if you would share with us how that part ties together with respect to an internal investigation versus an external or third party investigation, or whatever terminology you use.

In this case, it's my understanding that this was totally handled within house, except for the prosecution aspect of it, that if this had been an alleged theft or some other aspect of your obligation as an enforcement officer, outside of the employee realm, that the local police department over which this area has jurisdiction would have been involved.

Can you explain to the panel how this all works with respect to the external investigation?

STATEMENT OF RAYMOND INGALLS, CHIEF OF POLICE, AMTRAK, ACCOMPANIED BY FAITH DOONAN, SPECIAL AGENT; EDWARD RHODES, SPECIAL AGENT; JOSEPH CRAWFORD, ASSISTANT VICE PRESIDENT AND CHIEF MECHANICAL OFFICER; WILLIAM BRANAN, AUDITOR; AND HAROLD R. HENDERSON, GENERAL COUNSEL,

Mr. Ingalls. First of all, we do not treat internal investigations or external investigations any differently.

The Amtrak Police Department has concurrent jurisdiction with local municipal police departments, State police, or Federal agencies concerning whatever their scope of responsibility is in investigating certain criminal acts.

For the most part, we work independently in investigating both internal and external complaints. On a number of occasions, though, we work with other groups who also have concurrent jurisdiction.

A good example of this is what is call the *Penn Station sniper* case. We had an individual who had shot seven people in Penn Station and its environs.

We formed a homicide task force with the New York City Police Department, the Long Island Railroad Police Department, and our own investigators. That task force is still in operation and has been for 2 years.

In a number of other cases, we have worked with one or multiple agencies that also shared jurisdiction.

Mr. McCANDLESS. With respect to the circumstances that we have been talking about, there didn't appear to be anything in the way of another jurisdiction involved in this investigation. Is this a proper——

Mr. INGALLS. It's very normal.

Mr. McCANDLESS. Are they consulted at all in circumstances such as this?—they, meaning the jurisdiction.

Mr. INGALLS. No.

We have concurrent jurisdiction. Either one of us has the right to investigate.

An example of how this works as a practical matter: A member of this subcommittee, Congressman Owens, sent—either Congressman Owens did, or a member of his staff did—sent a letter concerning some information from a meeting he had held with Amtrak employees in New York which disclosed allegations of drug abuse and drug sales on Amtrak properties in New York.

This letter was sent over to the commander of the bureau of narcotics in New York City. He gave me a call personally and informed me that he had received the letter and said that this was within our jurisdiction, and he forwarded the letter to me for our followup.

Mr. McCANDLESS. I guess the concern I have here is a comparing of notes for possible information that might be commensurate with your investigation being available in another jurisdiction.

If there is no contact between your operation and the jurisdiction in question, then there is no chance or opportunity to compare what might be a working file or an information file.

Mr. INGALLS. I understand.

Mr. McCANDLESS. That is of concern to me, because most organizations have some kind of an intelligence section that accumulates information. Even though there is nothing available to prosecute at this time, it is a library upon which they draw for resources when and where necessary.

Mr. INGALLS. It is my understanding that record checks were made concerning this investigation involving the people who were alleged to be involved.

Mr. McCANDLESS. With respect to the investigation itself, the people discussing this yesterday talked about their process of being interviewed by Ms. Doonan, I believe, and the fact that they were quite surprised or they thought that there might be something in the way of a justifiable followup but that, after the first interview, there was no followup or any further contact. Is that about the way it went down?

Mr. INGALLS. If we are both talking about the same statement, Congressman, Ms. Doonan has informed me that she talked to that gentleman three times, not just once.

Mr. McCANDLESS. The point being here—and I don't want to play department head—that we exhaust to the maximum degree possible with the time available resources and assume it is minimal as possible in not building a factual base for that.

With respect to these alleged scrap sales, there doesn't appear to be an awful lot on that. Was that ever brought to your attention or Ms. Doonan's attention?

Mr. INGALLS. It was never brought to my attention, sir, and the investigators have stated they have no knowledge of it.

Mr. McCANDLESS. Ms. Doonan, was that ever brought to your attention?

Ms. DOONAN. No, sir, it wasn't.

Mr. McCANDLESS. Again, my reason for asking this is, we're getting involved in a community, getting involved in a situation where parties accepting this kind of material under the circumstances allegedly that they accepted it could very well be doing the same thing with other organizations, and the local jurisdiction could have some information on it but not enough to do anything.

Did we explore any of those areas with respect to the local jurisdiction—the Chicago Police Department?

Mr. INGALLS. Yes, that would be correct.

Mr. McCANDLESS. The comment made about the State's attorney yesterday and the lack of knowledge that he had on some of the information, would you care to comment on that at all? It had to do with the level of information that he had been supplied for purposes of seeking prosecution.

The statement, if I understand it correctly, went something like this, that after discussing this with the State's attorney, he was unaware of these certain things, et cetera. Do you remember that?

Ms. DOONAN. Sir, I didn't know that the individuals on the second panel had met with Mr. Smith until I read their depositions on Monday evening.

After reading them, I called Mr. Smith, and he stated that he did have a meeting with those individuals.

The information that was brought forth to him at that time was never brought to my attention during the course of the investigation.

He did state, as stated in their affidavit—I mean in their depositions—that he did have a meeting with them. He asked them for documentation and corroboration, which he informed me was not forthcoming.

He did say that he had confidence in the investigation that was conducted, and he never mentioned—he stated to me that he did not bring it to our attention as Mr. Pitts had stated. Mr. Pitts stated yesterday that Mr. Smith told him he would bring it to our attention. This is not in their depositions, and this is not what Mr. Smith told me.

Mr. McCandless. One other point, Madam Chairwoman.

The comments were made also yesterday that, shortly after discussions, the information of that discussion appeared on the desk—quote, unquote—of Mr. Brown.

Are we aware of the information that was being passed on—how that was being done?

Mr. Ingalls. That was not in relation to our investigation, I believe, sir. That was in relation to the Henderson committee's investigation.

Mr. McCandless. Yes, I was wondering if——

Mr. Ingalls. Do we know how that information was passed? I have no knowledge.

Ms. Doonan. No, sir.

Mr. McCandless. Was any of your investigatory information passed on to Mr. Brown?

Mr. Ingalls. Not at all.

Mr. McCandless. Having looked at this procedures manual page, with what you know today that maybe you didn't know yesterday, are you satisfied, one, that your procedures manual and the direction that it gives your employees and the informal administrative procedures that you have that are not written down are adequate or address the situation, whether it be this situation as an example or anything that might happen in the future?

Mr. Ingalls. I am confident, with one reservation, and we will do something about that. It is the way that we have briefed the management in terms of our activities.

In thinking about this entire problem, a number of these things have been done in discussions, meetings; that type of situation needs to be more formalized. We need to create a report form the investigator fills out in terms of these irregularities that are noted during the course of an investigation, and have that forwarded to the responsible person.

Mr. McCandless. One more question.

Mr. Branan, we have your named spelled right today, I see.

Mr. Branan. Good.

Mr. McCandless. It's my understanding that these exhibits yesterday of the various invoices were not available in the files of Amtrak but were subpoenaed through the vendor, Mutual Truck Parts. Is that a true statement?

Mr. Branan. No, that is not. The documents here that were utilized yesterday are from Amtrak's files.

Mr. McCandless. All of these came from Amtrak files?

Mr. Branan. I believe so; yes. They are all Amtrak documents.

Mr. McCandless. If they're Amtrak documents, then they came from Amtrak files?

Mr. Branan. Yes, however, these are not the documents that I actually worked with during the investigation.

Mr. McCandless. Could you explain that for me?

Mr. Branan. I worked with the actual invoice which were subpoenaed from MTP. This is a document that is prepared after the material is delivered, to input the information into the computer system to allow the vendor to be paid.

Mr. McCANDLESS. Was there any shortfall in the documentation necessary at Amtrak for Mr. Ingalls and Ms. Doonan and the others who were involved in this as a followup in their investigation?

Mr. BRANAN. There would be a shortfall from the standpoint of proving fraud on the false invoicing.

Mr. McCANDLESS. I have reference to the documentation needed on the various purchases and so forth. Was all of that information available to them?

Mr. BRANAN. Yes, we were well aware of what was supposedly reported as purchased. There was no problem in that area.

Mr. McCANDLESS. You had no problem with Amtrak's files relative to your investigation?

Mr. INGALLS. No, sir.

Mr. McCANDLESS. We were led to believe, through some source, that there were incomplete documents which had a tendency to compromise your investigation. That's an erroneous assumption?

Mr. INGALLS. That would relate to the lack of inventory records for expense items.

Mr. McCANDLESS. I understand. I have reference now to Mr. Branan's area of auditing and the auditing aspect of it, the recordkeeping, purchase orders, shipping notices, et cetera.

Mr. INGALLS. Not to my knowledge, with the exception of our mechanic's logbook that somehow disappeared, but that was an informal record, it was a record that was kept exclusively by the shop, it's not a matter of Amtrak policy or procedure to keep such a record.

Mr. McCANDLESS. Do you concur in that, Ms. Doonan? You were on the firing line and in the trenches.

Ms. DOONAN. Yes, that's correct.

Mr. McCANDLESS. Thank you very much, Madam Chairwoman.

Mrs. COLLINS. Mr. DeLay.

Mr. DELAY. Thank you, Madam Chairwoman.

In trying to organize my thoughts, I wanted to try to clear up some things that we heard yesterday a little beyond what Mr. McCandless just asked you, and I want to be a little more specific.

You heard yesterday that Mr. Pitts said he told you about, I believe—I can't get them all right—but the scrap metal, and what was the other thing? He told you about the scrap metal and something else—the tools—and then another witness said you were told about the traction motors and the governors.

I thought I remembered you saying that you were not told about any of these things. Could you again expand on that—each one of you—about whether you were or were not told?

Ms. DOONAN. Mr. Almaguer stated yesterday that he told me about the tools. He did tell me about the tools. I was not told by any of the other panel members about the things that are listed in their depositions which they brought to Mr. Smith's attention—the traction motors, the governors, and the scrap metal. That was never brought to my attention.

Mr. DELAY. Mr. Ingalls.

Mr. INGALLS. I had never heard of the——

Mr. DeLay. No anonymous notes?

Mr. Ingalls. No, sir.

Mr. DeLay. Nowhere.

On this Henderson committee report, it stated that they knew that it wound up on Mr. Brown's desk. I think you just said to Mr. McCandless that he did not get a copy of that report. Is that true?

Mr. Ingalls. He did not get a copy of our report. I believe that what the witness was discussing was some sort of Henderson committee report that had been put on Brown's desk. I assure you that Brown received no copies of our investigative reports, because they never left the police department.

Mr. DeLay. Do you know if Mr. Brown—and maybe we'd ask this of Mr. Claytor—if Brown was ever informed of the results of that report?

Mr. Ingalls. Of our final investigation of the Henderson report?

Mr. DeLay. Yes.

Mr. Ingalls. I'm sorry, sir, I don't understand which. There were two different reports.

Mr. DeLay. Yes. The Henderson committee report.

Mr. Ingalls. I don't know that, sir. I don't know if he was ever informed of the outcome of that.

Mr. DeLay. Wouldn't it be logical to you, if you do an investigation on a particular operation, and you find discrepancies and problems in that operation, you would normally go back and report to the head of that operation the problems that you found?

Mr. Ingalls. Most assuredly. That would not go back to Mr. Brown. He had resigned at that point. At the conclusion of the investigation—of our investigation—he had resigned, and if we're talking about the Henderson committee——

Mr. DeLay. That's what I'm talking about, the Henderson committee.

Mr. Ingalls. I am not aware of how that was handled.

Mr. DeLay. Can we bring Mr. Henderson up?

Mrs. Collins. Sure.

Mr. Henderson, just push your chair up, or sit at the corner there, and you can get yourself up to the table.

Mr. DeLay. Maybe, Mr. Henderson, you could answer for me, did Mr. Brown receive the report from your committee?

Mr. Henderson. Absolutely not.

Mr. DeLay. Did anyone inform him of the problems that that committee found?

Mr. Henderson. In some parts, yes. The three of us were sent out by Mr. Claytor to conduct an investigation into employee relations and management problems in Chicago.

One aspect of that investigation was to conduct personal interviews with employees who voluntarily came in to talk to us. We gave them my personal and Mr. Claytor's assurances that they would be afforded confidentiality, and took extraordinary steps to assure that.

Now, some of the information that people brought to us and some of the problems they brought to us they wanted to be addressed, and in each case it was made clear there was no way to address those things but to identify them.

An example is Mr. Boyd's case, who had a problem about his pay and his job classification. It would be very difficult for us to inquire into that and get an adjustment made without identifying the fact——

Mr. DeLay. Well, Mr. Boyd said that he allowed you to use the sting.

Mr. Henderson. Exactly, and he is a person who told us that he did not mind being identified, and that was the only purpose for which anybody who talked to us was identified.

Mr. DeLay. What kind of things did you do to protect their confidentiality? Meet in a car? Meet in a hotel room?

Mr. Henderson. Well, there were various levels, and obviously this was within the company, so some limitations on it.

We first—we selected people who had no direct affiliation with the department. Most of the employees in Chicago were people from labor relations, and law, and personnel, and headquarters. We selected support staff from Philadelphia and Washington and one from Chicago who was in personnel and trusted as a confidential employee, who basically handled administerial duties anyway and was not privy to any of the information, but primarily for scheduling rooms and things like that.

We met with people on the property at the various locations convenient to them, so that they could just leave work and come and talk to us to afford further confidentiality. Those were all private. Only one person or those of us on the committee could hear those conversations.

We met with people at a hotel several blocks away from the property so that people would not be seen coming and going. We set up hours ranging from 7 o'clock in the morning until 11 at night, so that people would be able to come before and after their shifts and not have to ask the supervisor for time off.

We very closely guarded the list of people—the appointment list—and secured that.

The interviews were conducted usually one-on-one, sometimes more employees, sometimes two or three of the interviewers participated.

We had a form we used for our note-taking. We each took our own notes on that form, and protected that form, and kept it. We did not Xerox it and make copies and spread it around or report it to anybody.

I can say with total confidence that none of the three of us on that committee, who were the only people who possessed any notes from the interviews, ever let Mr. Brown see any of those.

Mr. DeLay. How do you explain Mr. Brown's actions—what some of his employees claim being grilled by him or being harassed by him after your investigation?

Mr. Henderson. I can only speculate, but I did spend several hours with Mr. Brown on a number of different occasions, talking to him about issues in his shop and about other matters.

He is a person that would suggest that he knows more than he does, intimidate people, and in fact I'm told by some of the people here actually—by witnesses here—that statements were made that were no more than assumptions, sometimes inaccurate. Accusations were made, and people would hear those, and if he happened to be lucky and hit the truth, then people would think he knew a lot.

Mr. DeLay. Would you assume that, being what we obviously have found the type of person that Mr. Brown is, when he found that his shop was being investigated, is it your opinion that Mr. Brown would develop a certain amount of paranoia in suspecting everybody in his shop, because he probably knows the system of Amtrak and would know that almost everybody would be interviewed?

Mr. Henderson. Well, I think that may be partially true.

Our investigation initially into Chicago was not focused on criminal activity or this type of mismanagement or fraud that we're talking about here. We were looking at other kinds of management problems in the Chicago shop.

When this information was turned up initially to our committee, we immediately turned it over to the police. While obviously the people involved there had a much better idea of the potential danger for them than we did, we continued to pursue employee relations matters and discipline areas and dealt with them on those areas without any further concern for the police investigation. We knew it was going on. In fact, I think it was probably a week or two before the investigators were actually present there, and we had been working along in the meantime.

Mr. Brown's demeanor, as it has been described here, and some of his actions are not at all inconsistent with the kinds of things we were encountering in dealing with investigation of the management problem.

In fact, I'd have to say that, of the employees we interviewed who worked in his shop, there was approximately a 50–50 split between people who really liked the man and came to us to praise his performance and his relationship with his employees. The other 50 percent hated him and thought that he was the worst person in the world.

Mr. DeLay. To make the point, though, before you interviewed anyone, you expressed to them and tried to convince them that their confidentiality would be protected and that in no way would management receive their names or interviews or notes of any sort, before you interviewed them?

Mr. Henderson. Before—at the initiation of each interview, that representation was made, and people were expressly asked if they wanted to waive that confidentiality.

During the course of their conversations, if something came up that required an action, we'd have to contact somebody else in the company or outside, and we'd make it clear that, in order to do that, it may be necessary to reveal your identity and let it be known that you talked to us at least about this issue.

Mr. DeLay. How about you, Mr. Ingalls? Did you or Ms. Doonan do the same when you interviewed people?

Mr. Ingalls. I didn't participate in any of the interviews.

Mr. DeLay. Ms. Doonan.

Ms. Doonan. When I interviewed the different individuals, I told them that the information would be kept confidential, because they had expressed apprehensions about that to me, and none of the information was ever presented to Mr. Brown in any way.

Mr. DeLay. Did anyone approach you and say, "Look, I don't trust you, because Mr. Brown even has a copy of the Henderson committee's report"?

Ms. Doonan. No. No one ever told me that.

Mr. Henderson. Mr. DeLay.

Mr. DeLay. Yes?

Mr. Henderson. I'd like to add, too, that there have been communications between me, between Mr. Claytor, and other people in the company, and many of the employees that talked to the committee that went to Chicago, and there has never been before yesterday any allegation that information given to us was disclosed to anybody.

Mr. DeLay. Mr. Steil, could you answer that same question about confidentiality?

Mr. Steil. Ms. Doonan's answer was totally correct, with the addition that should we be able to progress the information to criminal prosecution, we would be relying on them as, if you will, State's witnesses.

Mr. DeLay. Did any of the panel yesterday or anyone else inform you of the traction motors and the governors and the tools and the——

Mr. Steil. With the exception of the tools, the first that I heard of that information was this past Monday.

Mr. DeLay. With the exception of the tools?

Mr. Steil. Yes, sir.

Mr. DeLay. Who is Mr. Rhodes?

Mr. Rhodes. I am, sir.

Mr. DeLay. Could you answer those questions also about confidentiality and what you told the people you interviewed, and did anyone inform you of these other allegations?

Mr. Rhodes. In any investigation, to include this one right here, I assure all people that I interview of confidentiality. It's a key element in any investigation.

In reference to the supposed statements that our people were notified with reference to traction motors, governors, scrap, et cetera, at no time did anyone mention this, offer this information to me, and I made a conscientious effort to the people I interviewed to get any information, whether it related to this or any other matter.

Mr. Ingalls. If I could make an interjection to this.

Mr. DeLay. Yes.

Mr. Ingalls. When we talk about tools, tools were a part of our investigation and were mentioned in the report. What we heard for the first time—and I believe Mr. Steil is referring to—is this two-for-one tool application.

There was an allegation presented to the investigators that tools were missing and that Durst was primarily responsible for stealing a large quantity of tools. The two-for-one is, I think, is what the question related to.

Mr. DeLay. I apologize, Madam Chairwoman. I want to go into one other area, and this is the testimony and affidavit by Mr. Elza.

Mr. Steil and Mr. Rhodes, I entered into the record your investigation report. Most of the allegations, I assume, in Mr. Elza's affidavit were answered in your report.

Could you give me an overview of what your impressions were with these allegations and what you found?

Mr. RHODES. In reference to Mr. Elza's allegations, all of the allegations that he provided us were investigated.

The investigation, while not substantiating his allegations, did in fact deny them. Based upon this information, I concluded that there is no truth, based on facts developed by the investigation of his allegations.

Mr. DELAY. Without getting into any personality clashes or anything, I noticed in your report time and time again reporting, and even quoting, profanity in response to your investigation. Could you give me an overview of Mr. Elza's problem? Is he just a disgruntled employee, or what is the problem there?

Mr. RHODES. Mr. Elza himself, in one of his interviews, stated basically that, No. 1, he did not like Jim Brown; No. 2, he feels he was treated unfairly by Amtrak; he feels that Amtrak owes him, at that point in time, 1982, 2 years' wages; and he stated also he was considering filing a lawsuit against Amtrak.

Based upon these type statements, I feel that there is definitely animosity.

Mr. DELAY. Can it be reasonably assumed, since you're connected to Amtrak, that he wouldn't trust you either?

Mr. RHODES. Reasonably, yes. That's a reasonable assumption.

Mr. DELAY. Thank you, Madam Chairwoman.

Mrs. COLLINS. Mr. Swindall.

Mr. SWINDALL. No questions.

Mrs. COLLINS. I just have a few brief questions here.

Ms. Doonan, several witnesses reported threats to them. Did you receive any such reports that witnesses had received any kind of threats or were afraid of reprisals of some kind?

Ms. DOONAN. Yes, I did. Kenneth Johnson had contacted me and expressed information regarding threats, and I contacted Mr. Steil. Mr. Steil contacted Mr. Johnson, and, I believe, Mr. Nate Fawcett who was on the Henderson committee contacted Mr. Johnson to advise him what to do in that matter.

Mrs. COLLINS. Mr. Steil, what did Mr. Johnson say?

Mr. STEIL. Mr. Johnson reported to me to the effect that he had been threatened by Gary Baker that if Brown or Durst lost their jobs, he, Johnson, would be next.

With that information, I went immediately to Mr. Fawcett, knowing that Mr. Fawcett had talked to Mr. Johnson under the Henderson committee.

Mr. Fawcett called Mr. Johnson immediately and advised him what to do.

Mrs. COLLINS. What did you recommend to Mr. Johnson?

Mr. STEIL. I recommended to Mr. Johnson that he stay by the phone, he write down what was said to him, and report it to his union delegate if he felt that's what he wanted to do.

Mrs. COLLINS. Do you know whether or not he did that?

Mr. STEIL. I don't. I know he stayed by the phone, because Mr. Fawcett did make contact with him.

Mrs. COLLINS. Mr. who?

Mr. STEIL. Mr. Fawcett did make contact with him, so I know he stayed by the phone. I don't know what else he did.

Mrs. COLLINS. Do you know how that was resolved?

Mr. STEIL. No, ma'am, I don't.

Mrs. COLLINS. OK.

Mr. Rhodes, Mr. Pitts stated that he informed you of traction motor theft. Did you receive this information, and did you follow up on any similar leads?

Mr. RHODES. I did not receive this information from Mr. Pitts.

Mrs. COLLINS. Did you have any knowledge at all of traction motor theft?

Mr. RHODES. I had no knowledge whatsoever until these hearings this week.

Mrs. COLLINS. Let me ask a question of Mr. Branan.

Mr. Branan, testimony was received yesterday about these invoices. You said you'd know about the document. You said that you looked at the invoices. At any time did you look at the invoices and check them with the documented information that we have here to see if there was accuracy by and large for the invoices that you examined?

Mr. BRANAN. Yes, I had looked at some of that, and there was accuracy between the two; plus, if these documents are not accurate, the vendor will not be paid.

Mrs. COLLINS. So when you looked at those—have you seen these documents?

Mr. BRANAN. Yes, they are all comparable.

Mrs. COLLINS. OK, they were all comparable.

When you saw those documents during the time of your examination, did some of the items on there leap out at you and say, these are something I need to look at?

Mr. BRANAN. The primary work I had done was with the invoices, which are really copies of these documents, and, yes, those items that you have pointed out, with the exception primarily of the 1982 items—we did not go into the 1982 records—were highlighted in our documentation that was reported to you either as fraudulent or suspected fraudulent entries.

Mrs. COLLINS. All right.

Now, a similar question. There was some discussion this morning about the scrap sales. What is the procedure for the sale of scrap by Amtrak? Can you tell me that?

Mr. BRANAN. I'm not fully familiar with it. The sale of scrap is handled out of Philadelphia.

Mrs. COLLINS. Mr. Crawford, can you answer that?

Mr. JOSEPH CRAWFORD. I can answer that the process to dispose of scrap materials is for the mechanical department to turn it over to material control. There is a policy within Amtrak policy procedures on material controls regarding disposal of that material, yes.

Mrs. COLLINS. Mr. Ingalls, I believe you responded, and I want you to correct me if I'm inaccurate, but I believe you responded to Mr. DeLay's question about the scrap that you did not look into it. Is that factual?

Mr. INGALLS. Yes, ma'am, that's correct. We were not aware that there was an allegation of scrap being missing. We did not look into that.

If I could go back to a question you had asked just before that of Mr. Branan, there are a couple of reasons why we, one, didn't look at the 1982 record, and, two, why the witnesses who were on the panel yesterday were only showed specific items on those invoices, and we would like an opportunity to address that, if we could.

Mrs. COLLINS. OK. Just one final question before we get back to those invoices, because I want to finish this up on the scrap right now.

In determining what you were going to look at as a part of your investigation, would not scrap have come up if you were going to do just a blanket examination of everything that was going on, inasmuch as the reason for your investigation is that there were allegations of thefts of parts, and so forth and so on? Wouldn't scrap have come into your examination?

Mr. BRANAN. In a normal audit, yes, this would probably have occurred.

Under this circumstance, I was in fact working with police and security and primarily doing and researching that information which they wanted done based on the allegations they had, to assist in confirming them, the allegations.

Mrs. COLLINS. But in order to have a sense of completeness in what you had done, wouldn't you, as the auditor, perhaps have suggested that you might want to look at the scrap, because if there are allegations of fraud and gross mismanagement, wouldn't that be an area that you would, as you have said, in a regular audit, look at, and since this was a special audit, wouldn't it be incumbent upon you, or would you feel it incumbent upon you—I won't say it would be incumbent—to look at every aspect of what's going on with inventory, and scrap, and all the rest of the things that are used?

Mr. BRANAN. To look at every aspect of inventory, you are working on time constraints here as far as manpower available. If we were to examine everything, we would probably still be there.

Mrs. COLLINS. Well, you would do it in a cursory manner, wouldn't you?

Mr. BRANAN. We do audit scrap through the audit department function.

Mrs. COLLINS. Do you know whether an audit had ever been done on scrap at the Chicago operation?

Mr. BRANAN. You would have to address that to my management.

Mrs. COLLINS. But do you personally know?

Mr. BRANAN. No, I do not.

Mrs. COLLINS. OK. Thank you.

Mr. Rhodes, can you tell me why you only reviewed one invoice with Mr. Pitts and one invoice with Mr. Almaguer?

Mr. RHODES. In reference to Mr. Almaguer, I reviewed several invoices with him, and in his interview with me, he provided me with information in reference to several of the invoices.

In reference to Mr. Pitts, the vast majority of the work that was done, the time period 1983, Mr. Pitts was terminated and not on the property.

I did ask him a few questions in reference to parts, forklifts, et cetera, but the bulk of my interview with him was in reference to the repair on privately owned vehicles at the support vehicle shop.

Mrs. Collins. You mentioned several interviews, and I don't want to be knotty about the problem. Was it within the realm of 100 or less? 200 or less? How many invoices did you talk to him about?

Mr. Rhodes. Less than 20.

Mrs. Collins. Less than 20.

Less than 10?

Mr. Rhodes. No. Less than 20.

Mrs. Collins. Less than 20; OK.

There were discussions about the tape recorder that was very interesting to me. Now, we were told by the panel that during the interviews, just before some responses were given, the tape recorder was turned off. Can you talk to me about that?

Mr. Rhodes. Yes, ma'am.

At no time was the tape recording turned off prior to a response. The only time I turned off the tape recording was if I was to leave the room. There was no need to leave it running, so I'd turn it off.

At the conclusion of both interviews, I turned off the tape recorder and talked to both men. My reasons for this were, No. 1, people have a tendency to be intimidated by tape recording.

Mrs. Collins. But doesn't that usually just last for the first few minutes until they get sort of used to answering the question, and then they'd sort of forget because you're concentrating on the response to the question? You sort of forget that the tape recorder is on.

Mr. Rhodes. No, ma'am. It has been my experience that that is not necessarily so. Some people can become intimidated and remain intimidated throughout the time that the recorder is on. In both instances I turned it off to try to put them at ease.

Also, they know I am law enforcement. From my experience, this also can be an intimidating factor with people.

I turned off the recording in another attempt to have just a general type conversation, to relax them, and maybe they could provide more information that they would not provide if they had the mental anxiety.

Mrs. Collins. Were all of your interviews done with tape recorders? Were there any that were not done with tape recorders?

Mr. Rhodes. To the best of my knowledge, reference Pitts and Almaguer, they were.

If I could correct one thing.

Mrs. Collins. Yes.

Mr. Rhodes. I talked to Mr. Pitts over the phone; I did not tape record that conversation.

Mrs. Collins. I wonder if I could call Mr. Pitts.

Mr. Pitts, I'm not interested in a "he said, she said" type of thing. I'm just interested in trying to get the record straight with this question. I want to ask you one question.

Did you inform Mr. Rhodes of traction motor theft, and, if so, when did you do that?

Mr. Pitts. I informed Mr. Rhodes of the traction motor thefts at our second meeting, which I believe was on August 28.

Mrs. Collins. How do you know it was August 28?

Mr. Pitts. As I stated in testimony yesterday, I was terminated by Amtrak, and part of my termination—my reinstatement stated that I was denied backpay.

Mrs. Collins. That you were what?

Mr. Pitts. I was denied my backpay.

Subsequent to that, I sought legal advice, and I was told by my lawyer that, upon my return, I should carry a notebook and write down anything out of the ordinary, anything that wasn't part of my normal duties.

The reason for this is to basically try to prove a pattern of harassment that I was going through as local chairman.

I complied with that.

I returned to duty, I believe, July 30, 3 weeks before my meeting with Mr. Rhodes, and I was maintaining this notebook, and in my notebook, in my notes, I wrote down that I talked to Mr. Rhodes about the traction motors.

The conversation about the traction motors was after the taped interview, and the reason for that was, there were three or four items that I had received tips on, and, at Mr. Rhodes' request at our first meeting, I called him and set up a second one.

At the second meeting, we discussed the three or four topics that I had received information on.

After the interview was over with, in our discussion, I talked about the motors and the governors because I was aware of that.

Again, when I came back to work at the 16th Street facility on the 30th, I bumped into the drop table crew, and it was my duty to change these motors, and during that period of time we kept running out of motors.

It just seemed strange to me, again, why a facility that was assigned over 50 percent of Amtrak's power to maintain would run out of one of the most vital parts on a locomotive, and I started inquiring about it, and my general foreman told me that 50 motors were unaccounted for.

Mrs. Collins. Just a final question on that. I'm going to ask you one more time—well, not one more time. I'm going to ask you at this time about the tape recorder business. Was the tape recorder turned off before you gave response to a question?

Mr. Pitts. It was—well, with all due respect to Mr. Rhodes, I contacted him to set up a second meeting, and I contacted Mr. Rhodes because I had complete faith in him. If I wouldn't have trusted the man, I wouldn't be turning over the information that I was getting.

Mr. Rhodes turned off the tape recorder one time during the interview, and that was at the first meeting when he had to physically go out and get a folder with invoices out of a different room. After that, he never turned it off during a questioning period.

Mrs. Collins. Did he turn it back on when he came back in?

Mr. Pitts. That I don't remember. I know he said he was turning it off when he left, but I don't remember if he turned it back on.

Mrs. Collins. So then he did not turn it off just before you gave a response to a question?

Mr. Pitts. Oh, never, no.

Mrs. Collins. OK. Thank you.

Mr. Ingalls, the subcommittee did not receive any MTP invoices from your file except by subpoena. Your internal MTP files, were they sealed by your office or something? Do you know? Anybody?

Mr. INGALLS. I had thought that we had sent a number of MTP invoices—copies of them—in the box of records that was given to Mr. Zeitz prior to the subpoena.

I did not personally inventory the box. I don't know what's in there. I'm just assuming that there were MTP invoices or copies of them in that box of information.

Mrs. COLLINS. According to Mr. Zeitz, they were not in the official folder that was given to him.

Mr. INGALLS. We did not, in terms of the actual case file, attach all MTP invoices to the case file, although, as far as I can recall, there may have been one or two.

Is that correct?

Ms. DOONAN. During an interview of Mr. Hochberg, there were MTP invoices attached to his interview. So there are some MTP invoices in the actual investigative case file.

Mrs. COLLINS. Well, if they were internal documents, is there a reason why they were not sent to us immediately and that they had to be subpoenaed—the invoices?

Mr. INGALLS. I'm sorry. We're talking about Amtrak's copy of the MTP invoices?

Mrs. COLLINS. Yes.

Mr. INGALLS. Could Ms. Doonan address this? She obviously knows more about it than I do?

Mrs. COLLINS. Sure.

Ms. Doonan.

Ms. DOONAN. I'm trying to understand if you're talking about the first time the material was turned over to you. The very first time, it did not contain the grand jury information, which would be the MTP invoices.

When your committee obtained a subpoena for the entire file, which included the grand jury material, that information was turned over to your staff.

Mrs. COLLINS. So there was a reason for it not being sent the first time, because it was under investigation?

Ms. DOONAN. Yes. Grand jury sealed information.

Mrs. COLLINS. I don't want to belabor this. If they were internal documents, shouldn't they have then been sent to us originally?

Ms. DOONAN. No, because under Illinois State law, grand jury information is not to be disclosed except to the people on the grand jury list, and so the information was deleted from, I believe, the first investigative report you received due to that, because it would have been a violation of Illinois State law to turn over that information.

Mrs. COLLINS. Mr. Branan, can you tell me your general feeling about the testimony of the panel that followed you today based on your audit experience?

Mr. BRANAN. The panel that followed me?

Mrs. COLLINS. Yesterday—Messrs. Pitts and Johnson, and Mr. Boyd, and Mr. Almaguer.

Mr. BRANAN. OK. What do you mean by general feeling?

Mrs. COLLINS. Their allegations about the fact that there were items missing—large items missing—of great cost, missing from the inventory, that some had been placed on shelves, they weren't there any more, there were large items that just disappeared in the wind someplace.

Did your audit reveal, or does your audit substantiate, any of those kinds of allegations that were just made yesterday?

Mr. BRANAN. Some of the allegations that they made yesterday concerning these invoices, yes, were substantiated by our investigation.

Mrs. COLLINS. Last question.

Ms. Doonan, on August 7, 1984, John Durst reported to you that he had delivered to James Brown the two missing logbooks. Is that correct?

Ms. DOONAN. That's correct.

Mrs. COLLINS. That were describing vehicle repairs and inventory changes. By this time you were able to utilize the subpoena power of the State's attorney.

Now, why were those logbooks never subpoenaed by you, or somebody?

Ms. DOONAN. I obtained information on the whereabouts of the missing logbooks on August 7, 1984, during an interview of Mr. Durst. Mr. Durst stated they were given to Mr. Brown at his request. I had intended to address this matter with Mr. Brown during a scheduled interview, however, the interview never took place. Mr. Brown's attorney advised him against participating in an interview. Therefore Mr. Brown was never questioned concerning the logbooks.

Mrs. COLLINS. Did you look at those logbooks and talk perhaps with Mr. Branan to see whether or not there were items of inventory missing?

Ms. DOONAN. The logbooks reflected the work that the car shop employees had done on various company and privately owned vehicles. It wouldn't reflect any inventory.

Mrs. COLLINS. Oh, yes, it would. If tools and parts had been placed on company or private vehicles, it would have to be shown on the work list, wouldn't it?

Ms. DOONAN. Right. OK.

Mrs. COLLINS. Like when you get your car fixed, they always have a little list of the parts that they put in there and so forth.

Ms. DOONAN. OK. I misunderstood.

Yes, it did reflect the parts and the different items that were used in the different automobiles. Mr. Branan did use that book in order to trace the different parts.

Do you want to address that?

Mr. BRANAN. That's one of the steps we had done.

I noted earlier you had indicated that we may have only looked at one item on an invoice.

Mrs. COLLINS. That was the testimony that was given yesterday. That's why I raised it, so that you could——

Mr. BRANAN. Well, one item may have been shown to an individual, but as far as the invoicing, we attempted to trace all items which would be practical back to the logbook to ensure that they had in fact gone on an Amtrak vehicle, as well as utilizing those entries for privately owned vehicles, to determine what parts were put on them and trace them to invoicing also.

Mrs. COLLINS. I have no further questions of this panel.

Mr. DeLay.

Mr. DELAY. I just have one, since we have Mr. Pitts here.

I think, Mr. Pitts, you and Mr. Almaguer yesterday stated that you only responded to specific questions put to you by the investigators.

Mr. PITTS. That's correct, during the taped portion of the interview.

Mr DELAY. During the taped portion of the interview.

This is new information to me—that after shutting off the tape you had informal discussions. Was turning off the tape motivating you to bring up the traction motors and the tools or whichever one you told them about?

Mr. PITTS. What motivated me to bring up the motors at that time—I think I already stated that when I requested a second interview with Mr. Rhodes, it was over, I think, four specific items.

He conducted the interview in his normal fashion of asking me questions in regard to the areas that he was interested in, which were the four areas that I had reported to him and told him about. I answered those questions.

The people who gave me information requested it be be anonymous, I withheld their names, and he had no problem with that.

As before when the tape was turned off at the end of the meeting, we would generally have what I guess people would call a bull session, and that's when the traction motors came out.

But, again, I knew about the motors, all right, from what I had learned myself. In other words, this was information that I was turning over, and it wasn't information that I gave Rhodes prior to the telephone call when I called him about the four items. So I didn't include it in the normal taped interview.

Mr. DELAY. Thank you.

Mr. Rhodes, do you still contend that you were not told about the motors?

Mr. RHODES. Absolutely, sir; yes.

Mr. DELAY. Thank you, Madam Chairwoman.

Mrs. COLLINS. Mr. Crawford has his finger up.

Mr. JOSEPH CRAWFORD. Thank you, Madam Chairwoman.

I think I can help a little bit with the misunderstanding on traction motors.

The fact that there was no traction motor in stock in Chicago to make a specific repair does not mean that the traction motor was stolen or missing. We have accountability for 311 traction motors. We have in stock as of this past Monday 251 traction motors. That is the total traction motors in Amtrak's ownership, and we are not missing any traction motors.

Mr. DELAY. Well, if I may, we're not looking for the traction motors. To me, we've got two testimonies—we have testimony disputing each other, not just on traction motors but many other things here, and I would hope that the subcommittee would get to the bottom of this.

Somebody is either not telling the truth or very forgetful, and I would hope the subcommittee would delve into that, because I think it's a serious question to the operation of Amtrak, even in its police investigations and its management policies, that someone is not communicating, and I think that's important.

Mrs. COLLINS. It's certainly important, and this subcommittee has always operated with a great deal of integrity—I must say so myself—and we do intend to find out what is factual and what is not before we write our report, as the gentleman well knows.

The subcommittee is going to recess now for 15 minutes, because we have to go for a vote on the floor. When we return, we will not bring the second panel but the third panel is the one we are going to bring up now.

Mr. INGALLS. I know you are in a hurry, but could I make two very quick points?

Mrs. COLLINS. Sure.

Mr. INGALLS. These four people were not the only people who were interviewed during the course of the investigation.

The invoices which were shown these people had already been reviewed by Durst and by Hochberg, who had, at that point, pointed out those items in which Amtrak had received through disguised invoicing. This was merely an attempt to increase the body of knowledge the investigators had about other items that they were suspicious of.

Second, in hindsight, the path of an investigation is always clear, but with hindsight and all the scrutiny that this investigation has received, I stand by my original statement that I believe we conducted the investigation in a thorough and competent fashion.

Thank you, ma'am.

Mr. MCCANDLESS. Madam Chairwoman, just a point of clarification. Yesterday, we had three panels. Is it your intent to call either panel two or panel three back?

Mrs. COLLINS. No, it is not. They are released as of right now.

Mr. MCCANDLESS. So we will begin then with panel one of today's hearing when we come back?

Mrs. COLLINS. Right.

Mr. MCCANDLESS. Thank you.

[Recess taken.]

Mrs. COLLINS. Our next panel is already here. They are Mr. Michael Mitchell, Mr. Eugene Eden, Mr. James Crawford, Mr. William Danby, and Ms. Kelly Zanders.

The purpose of this panel is to inquire into the facts surrounding the payment of two individuals in the material control facility in Chicago managed by Mr. Michael Mitchell.

At issue is the corporation's handling of an incident in which two material control clerks, Kevin Arnold and Tom Shive, were paid for Saturdays they did not work.

Mr. Mitchell reported to his vice president, Mr. Eden, and this subcommittee that this was done in order to compensate these employees for the fact that they had worked at a higher rated position called inventory control clerk.

He reported that because of this work, they deserved a 10-percent pay supplement. To achieve this 10-percent supplement, he reportedly paid them for one Saturday of no work for every 10 days of actual work. To do this requires that he and his supervisor sign approval of timecards containing false information. Normally, this would amount to payroll fraud.

I understand that none of the witnesses have prepared statements. So I will proceed with my first witness.

Mr. EDEN. Excuse me, Madam Chairwoman.

Mrs. COLLINS. Mr. Eden.

Mr. EDEN. We do have prepared statements, myself and Mr. Mitchell. If you have no objection, we'd like to read them.

Mrs. COLLINS. Well, I'll certainly not have any objection to that.

Do you want to proceed at this time, Mr. Mitchell?

Does the subcommittee have a copy of your prepared statement?

Mr. MITCHELL. No, ma'am.

Mrs. COLLINS. All right.

STATEMENT OF MICHAEL MITCHELL, CHICAGO MANAGER OF MATERIAL CONTROL, AMTRAK

Mr. MITCHELL. My name is Mike Mitchell. I'm the manager of material control in Chicago. I've been employed by Amtrak for almost 10 years, all of this in material control. I've held my position as manager since February 1983. In this position, I have approximately 45 employees working under my supervision.

It is my understanding that a number of questions have been raised concerning how four employees under my supervision were paid during the period October 1983, through January 1984.

In essence, what happened was that there were temporary vacancies which I couldn't get filled in time if I properly processed the required paperwork. I filled them unofficially with employees from lower paying positions and paid them the additional amounts to which they were entitled for the work they were doing by including extra hours on their timecards.

In other words, by adding the extra hours to their timecards, they were paid the amount that they would have earned if they had officially held the positions they were temporarily filling.

The first vacancy occurred on October 25, 1983, when a management employee, an analyst, went on a medical leave which was expected to last from 3 to 7 weeks.

At this time, our department was going through a tremendous increase in our workload as a result of taking over responsibility for supplying New York, in addition to our Chicago area. This doubled the amount of equipment for which we were responsible, and the number of shipments we made quadrupled during the period from October to January.

Mrs. COLLINS. Will the gentleman yield, please?

I intended to swear the witnesses in today. Would you please raise your right hands, all the witnesses?

[Witnesses sworn.]

Mrs. COLLINS. Thank you.

Proceed.

Mr. MITCHELL. The tremendous increase in workload that this made for our department made it essential that the analyst position be filled.

At that time, there were three inventory control clerks in the department who were capable of performing the analyst's duties.

I discussed the situation with all three of them and offered to have them work the position on a rotating basis so that they would all have an opportunity to gain experience in that position.

Two of the clerks accepted this offer and agreed to fill the analyst position on a temporary basis.

My understanding was that when union employees worked to fill temporary management vacancies, they would be paid either the base rate for the management job or a 10-percent increase over their current union wage.

The procedure that had been used in the past to authorize such payments was merely to make additions to their timecards.

When we checked with payroll to obtain the proper coding to make the additions on the timecards, I was told that this was no longer an acceptable procedure. Instead, a personnel action request form had to be processed to actually place the union employee on the management payroll for the period they worked.

I then talked to the administrator in Philadelphia about processing this paperwork and was informed that it would take 4 to 6 weeks for processing because corporate approval was required for filling such vacancies.

I expected that the management employee would have returned from sick leave before the paperwork could be properly processed and I would no longer have a need to fill that position.

In order to have someone to perform the analyst duties during the medical leave of absence, I explained the situation to the inventory control clerks.

I told them that, although officially they would remain inventory control clerks and be paid at that rate, if they performed the analyst duties, I would authorize 1 extra day's pay for every 2 weeks that they worked in the analyst position. In this way, they would receive 1 extra day's pay for every 10 days that they worked, giving them the 10-percent increase which they were entitled to for doing the management work.

They agreed to this arrangement, and I rotated one of the two inventory control clerks into the analyst position every 2 weeks until the management employee returned from medical leave.

Using the inventory control clerks to fill the analyst position, in turn, created a vacancy in the inventory control clerk positions which was not official and could not be filled through normal procedures.

Because of the increase in workload at this time, it was necessary that someone perform these inventory control clerk duties.

There were only two employees in my department who were even partially qualified to perform this work. Neither was capable of performing all of the functions of the position alone, but I believed that by working together they could handle the responsibilities of the inventory control clerk job as well as one material control clerk position.

Mrs. COLLINS. What were the names of those two employees?

Mr. MITCHELL. That was Kevin Arnold and Tom Shive.

I discussed the situation with them and explained to them that, although they would officially remain material control clerks, that they would also be performing the duties of the inventory control clerk position.

The inventory control clerk position paid approximately 10 percent more than the material control clerk position. To compensate them for performing the inventory control clerk duties, I authorized an extra day's pay for every 2 weeks they performed the inventory control clerk's duties.

The end result of these payroll adjustments was that each employee received the proper compensation for the work he was performing.

When the management employee returned from medical leave, everyone returned to performing their normal duties in the positions they had previously held, and no other adjustments were made to their timecards.

After the management employee returned, the union filed grievances claiming that two of these employees should have been paid overtime for the extra days that were listed on their timecards.

Since the employees had been compensated in the correct amount for the work which they had performed, I denied the union's grievances at my level and gave the union an explanation which was consistent with the hours as they were reflected on the employees' timecards.

Several months later, Kelly Zanders came to me requesting additional information on an EEO charge that had been filed by an employee claiming that, because she was a woman, she initially had difficulty obtaining a material control clerk position and that, after she obtained the position, she received less money than males performing the job.

At the time this employee became a material control clerk, all material control clerks were being paid at the proper rate, and it had been more than 4½ months since the employees had unofficially worked the higher rated position.

Therefore, when Ms. Zanders first asked me if there had been any payroll irregularities relating to these positions, I did not see any connection between the EEO charge which she was investigating and the adjustments that had been made 4½ months earlier. Therefore, I denied that there had been any irregularities.

However, when Ms. Zanders called me a couple of days later and began asking me more specific questions about the payroll practices in my department and referred back to the time of the medical leave, I realized that this was going to be an issue, and I told her exactly what had happened—that the employees, in fact, had been paid for days they had not worked in order to compensate them for unofficially filling higher paying positions.

I would like to emphasize three things. First, no employee was paid more than they were entitled to for the work which they performed; second, all payroll adjustments ceased when the management employee returned from medical leave; and, third, I have not and will not repeat this mistake.

I was reprimanded severely by my director, Charles Fernald, for my handling of this incident, and it was made clear to me that, should this happen again, it could cost me my job.

Mrs. COLLINS. Mr. Eden.

STATEMENT OF EUGENE EDEN, VICE PRESIDENT OF PASSENGER AND OPERATING SERVICES, AND FORMER ASSISTANT VICE PRESIDENT, MATERIAL MANAGEMENT, AMTRAK

Mr. EDEN. Thank you. Good morning.

My name is Eugene N. Eden. I am the vice president of passenger and operating services for Amtrak.

I would like to make some brief opening remarks for the subcommittee.

For the past several years, I have been particularly concerned with the improvement of Amtrak services in the area of direct passenger services—that is, it's onboard, station, and commissary operations. Approximately 500 management and 4,500 union employees are currently in my function areas of responsibilities.

It has been my management philosophy to require all those persons who report to me, both management and labor alike, to perform to the best of their abilities in providing the highest level of service possible for Amtrak passengers.

Toward that end, I believe that all employees have an obligation to adhere to established policies and procedures, and I have instructed my management team to be firm but fair in their day-to-day administration of their assigned duties.

The primary management tool with which to motivate management and labor is not discipline and punishment. There must be a careful balance between using both positive and negative forms of reinforcement.

I have been most pleased with the progress that has been made in the passenger service department over the past 2 years. Passenger commendations of Amtrak's passenger service employees have increased, and complaints about poor service and inadequate performance by our employees have decreased.

Also, I would like to add that, since the beginning of this committee's investigation, we have made further changes to encourage a more positive approach to management. We have implemented training programs for all our managers, and we are emphasizing the use of counseling instead of discipline for handling minor offenses by union employees.

We have also developed an incentive program for onboard service employees to encourage them to take pride in performing their jobs well. To date, I have personally signed over 720 letters of commendation for recipients of first level incentive award.

I understand that the subcommittee is concerned about what appears to be a disparity in the way that management disciplines union employees versus management employees.

Quite frankly, there should be no difference. All employees are held to the same performance standards. In fact, management employees quite frequently have been disciplined since I became vice president.

Most often, management employees have been disciplined for poor performance, but they have also been disciplined for violating corporate policies.

These management employees have been reprimanded, placed on probation, demoted, and terminated, as the situations may have warranted.

Today, the subcommittee is focusing on a disciplinary action involving Mr. Mike Mitchell for alleged payroll irregularities. I would like to relate my understanding of the events surrounding this matter and add my personal comments.

Last summer, when it came to my attention there were allegations that Mike Mitchell had authorized employees to be paid for hours which they had not worked, I had my staff investigate the matter.

My understanding of what happened is that Mr. Mitchell was unable to fill a temporary management vacancy through the proper procedure at a time when his department was experiencing a tremendous increase in their workload.

In order to accomplish the work, Mr. Mitchell used a method which had long been a common practice on railroads. He placed lower paid employees in the higher level position and compensated them in the proper amount by adding additional hours to their timecards.

Mr. Mitchell then compounded his error by misrepresenting the facts to the union when he denied a subsequent time claim.

After I learned the facts, my conclusion was that, although Mr. Mitchell had violated Amtrak's procedures and had used poor judgment, he in fact had only been attempting to accomplish the corporation's purpose in enabling his department to handle their increased workload.

It is my understanding that Mr. Mitchell was severely reprimanded for his handling of this situation and told that if anything similar happened in the future, he would lose his job.

In view of the facts that Mr. Mitchell had arranged to compensate these two employees for only the amount to which they were properly entitled for the work they performed, and he received no personal gain from this incident, I believe a reprimand was the appropriate discipline.

After I learned of this incident, I instructed all my staff that such deviations from proper procedures would not be tolerated in the future.

Moreover, Mr. Claytor subsequently issued a directive indicating that this method for compensating employees was not acceptable at Amtrak and any repetition of such incidents could result in dismissal.

Thank you.

Mrs. COLLINS. Did any of the others of you have opening statements?

[No response.]

Mrs. COLLINS. Ms. Zanders, I understand you had an opportunity to investigate this matter.

Mr. HENDERSON. Madam Chairwoman, can I raise an objection?

Mrs. COLLINS. Yes, you can, Mr. Henderson.

STATEMENT OF HAROLD R. HENDERSON, GENERAL COUNSEL, NATIONAL RAILROAD PASSENGER CORPORATION, AMTRAK

Mr. HENDERSON. For the record, I'd like to state that Amtrak has posed an objection to the subcommittee to the testimony of Ms. Zanders on certain subjects on the basis of attorney-client and attorney-work product privilege. I have addressed this objection in writing in a letter dated June 3 to the subcommittee.

Rather than restate the basis for that objection, I would ask that that letter be inserted in the record.

Mrs. COLLINS. Thank you.

That letter has been provided to the subcommittee, and I have a written response to that in the interests of saving time, and with your approval, and with unanimous consent, we'll enter both the letter and the response in the record at the appropriate time.

Mr. HENDERSON. Thank you.

Mrs. COLLINS. Is there objection?

Hearing none, so ordered.

[The letters follow:]

National Railroad Passenger Corporation, 400 North Capitol St., NW, Washington, DC 20001 • (202) 383-3000

Amtrak

June 3, 1985

Brian Lockwood, Esquire
Myron Zeitz, Esquire
Subcommittee on Government
 Activities and Transportation
Room B350 A&B
Rayburn House Office Building
Washington, D.C. 20515

Gentlemen:

This letter is to confirm a telephone conversation last Friday and to reassert our strenuous objection to disclosure at Subcommittee hearings of confidential attorney/client communications and information which is the work product of an attorney. Specifically, based on the scant information you gave us about the anticipated testimony of Kelly Zanders, we think it is highly inappropriate for Ms. Zanders to be required to disclose any information which came to her by virtue of her position as EEO Representative.

Ms. Zanders was Amtrak's EEO Representative in Chicago until December 1984. As such, one of her primary functions was to work with and under the supervision of Amtrak's attorneys, both staff counsel and outside counsel, and to prepare the Company's defense in employment discrimination cases before administrative agencies and courts. To the extent that Ms. Zanders has information obtained during her investigation or other participation in such cases, she was working directly for an attorney in the preparation of the Company's defense, and such information clearly is an attorney's work product.

I am aware that you do not believe that the attorney work product privilege, or for that matter any other non-Constitutional privilege, applies to Congressional investigations. You also know that I do not accept your position on that, primarily because of the widespread practice of Congressional committees to respect the privileges. Certainly, the policy considerations which gave rise to privileges in the judicial system apply equally to Congressional investigations. I submit that those privileges should not be lightly disregarded. I urge you refrain from requiring such information of Ms. Zanders and to avoid a confrontation at the hearing.

Very truly yours,

Harold R. Henderson
General Counsel

HRH/st

RULINGS ON POSSIBLE ASSERTION OF WORK PRODUCT PRIVILEGE AS TO TESTIMONY OF KELLY ZANDERS BEFORE SUBCOMMITTEE ON GOVERNMENT ACTIVITIES AND TRANSPORTATION

When a claim of privilege that is not of constitutional origins is asserted before a congressional investigating committee, it is within the discretion of the committee whether to uphold the claim.[1/] In exercising that discretion, the committee must weigh Congress' constitutional right to compel the disclosure of information needed for legislative and oversight purposes[2/] against the purpose served by the privilege.

In this instance, the subcommittee requires Miss Zanders' testimony in the course of its oversight investigation involving possible criminal conduct by Amtrak personnel. Specifically, the subcommittee intends to question Miss Zanders about allegations of payroll fraud which were uncovered in the course of an EEO investigation that she conducted for Amtrak. It is now contended by Amtrak that because Zanders worked in Amtrak's legal department with its attorneys, her testimony as to factual information she obtained in interviews with witnesses is barred by the work product rule.

1/ Cf. Hannah v. Larche, 363 U.S. 420 (1960); United States v. Fort, 443 F.2d 670 (D.C. Cir. 1970), cert. denied, 403 U.S. 932 (1971).

2/ McGrain v. Daugherty, 273 U.S. 135 (1927); Watkins v. United States, 354 U.S. 178 (1957); Eastland v. United States Servicemen's Fund, 421 U.S. U.S. 491 (1975).

The purpose of the privilege would not be served by upholding its assertion before the subcommittee. The privilege is intended to promote the administration of justice and the vitality of the adversary system.[3/] "...[T]he purpose of the work product rule 'is not to protect the evidence from disclosure to the outside world but rather to protect it only from the knowledge of opposing cousnel and his client thereby preventing its use against the lawyer gathering the materials.'"[4/] Obviously, this subcommittee is not in the position of opposing counsel seeking access to Amtrak's files in pre-trial discovery so that those files can be used against Amtrak in litigation. Furthermore, the requisite conditions for assertion of the privilege are not present here. The subcommittee is not seeking documentary evidence but the factual recollections of Miss Zanders. A leading authority on the privilege notes that "the courts have consistently held that the work product concept furnishes no shield against discovery...of the facts that the adverse party's lawyer has learned, or the persons from whom he has learned such facts, or the existence or nonexistence of documents, even though the documents themselves may not be subject to discovery."[5/] Additionally, under the Federal Rules of Civil Procedure, the work product rule is available only as to materials "prepared in anticipation of litigation or for trial."[6/] The subcommittee is not satisfied that the information that

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[3/] Hickman v. Taylor, 329 U.S. 495, 511 (1947); In re Sealed Case, 676 F.2d 793, 809 (D.C. Cir. 1982).

[4/] 8 C. Wright & A. Miller, Federal Practice and Procedure, Civil § 2024 (1970), quoted with approval in In re LTV Securities Litigation, 89 F.R.D. 595, 616 n.14 (N.D. Tex. 1981) and in GAF Corp. v. Eastman Kodak Co., 85 F.R.D. 46, 52 (S.D.N.Y. 1979).

[5/] C. Wright & A. Miller, supra, Civil § 2023, citing cases.

[6/] Fed R. Civ. P. 26(b)(3).

Miss Zanders will provide was collected by her "because of the prospect of litigation."[7/]

Because of this subcommittee's need for the information, because the conditions for assertion of the privilege are not present, and because the purpose of the privilege would not be served by upholding the claim here, the Chair rejects the claim of privilege. Miss Zanders is directed to proceed to testify.

[7/] C. Wright & A. Miller, supra, Civil § 2024, p. 198.

Mrs. COLLINS. Ms. Zanders, I understand, as I was going to say, that you had an opportunity to investigate this matter. Can you please describe your investigation as it progressed and shed additional light on whether Mr. Mitchell improperly authorized pay for two employees, Shive and Arnold—that's one thing—and are they trying to answer the question—what we are trying to do is answer the question of whether or not Amtrak assets were misappropriated in any way.

STATEMENT OF KELLY ZANDERS, FORMER AMTRAK EEO REPRESENTATIVE, CHICAGO

Ms. ZANDERS. I became involved in the incident in a question tangential to an EEO complaint investigation with the Equal Employment Opportunity Commission.

[See app. 7.]

Ms. ZANDERS. In approximately September 1984, I received a call from an EEOC representative with whom I had worked extensively. She said that she had received an allegation and corroborating statements from Amtrak employees that a manager in the material control department was, in fact, paying privileged employees for Saturdays on which they had not worked, on which they were not even on property.

I argued the point with the representative. I explained to her that that was not a practice at Amtrak and that, in fact, it had little to do with the EEO complaint we were involved in at the time.

She did not agree. She asked if I would look into the matter at Amtrak, which I did. I went to Mr. Mitchell and to the payroll department. I pulled the timecards for the period of time in question for Mr. Tom Shive and Mr. Kevin Arnold, both material control clerks; they are union employees.

After reviewing the timecards, I contacted Mr. Mitchell and asked if, in fact, he was aware of irregular payroll practices in his department, if he was aware of any employees who had worked on a Saturday who were not on property and therefore being fraudulently or illegally paid.

Mr. Mitchell was incensed. He said absolutely not, that sort of thing did not occur in his department; if, in fact, it had, he would know about it; his supervisors would know about it.

Based on Mr. Mitchell's statement, I went back to the EEOC rep, and I asked her if she had any more substantial information to give me. She again reiterated that she had various statements from Amtrak employees regarding this practice.

This was a Thursday or Friday when I had spoken with Mr. Mitchell. So a weekend passed. I was, in fact, writing up a response to the complaint in question.

On Monday morning, when I entered my office, within 5 or 10 minutes my telephone was ringing. It was Mr. Mitchell. He asked if I had acted on the information he gave me the previous week. I told him no, I had not.

He said that he had been approached that morning by a fellow employee, who gave him information which led him to believe I was doing more intensive investigation of his department than I had indicated.

I explained to him that I was not, in fact, investigating his department, per se, but I was investigating a couple of EEO complaints.

He said, "Well, I think I had better change the statement I gave you last week." He said, "I apologize; I made a mistake," and I asked him what was he talking about, what did he make the mistake in doing.

He said he had given me incorrect and nonfactual information in our previous conversation. I asked him to elaborate, and he proceeded to tell me that, in fact, he had paid Mr. Tom Shive and Mr. Kevin Arnold seven to nine Saturdays each on Saturdays which they did not work.

I asked why he had done that. He explained that he had had Mr. Shive and Mr. Arnold filling in at various points, performing inventory control duties. An inventory control clerk position is a higher rated position than the position these two men held.

He explained that, although he had paid them at the higher rate, which is mandated by their union contract, he felt they should be further compensated, and, in fact, that is why he paid them for these Saturdays on which they were not on property.

I explained to Mr. Mitchell that that was a questionable practice, that in fact I would have to talk to my supervisors about it, and explained to him the problems created when management gave me improper or false information and I then passed that information on to outside forums.

Mr. Mitchell's response was, "I don't understand what the fuss is"—something along that line—and I asked him again, "What are you talking about? Why would I not make a fuss about this? You gave me nonfactual information. I was in the process of putting it into a response to the EEOC."

He said, "Well, the committee knows all about this. They didn't make a big deal about it, and I don't understand why you're pursuing it this way."

I explained to Mr. Mitchell that I would contact Mr. Henderson, who was both the head of that committee and my indirect supervisor at the time, about the matter.

I spoke to Mr. Henderson, related to him what had occurred between Mr. Mitchell and I, what the allegation had been from the EEOC. He explained that in fact an employee had made these allegations to him and the committee earlier in the year and that action had been taken to reprimand Mr. Mitchell and to see that this did not occur in the future.

Mr. Henderson, in addition, had Mr. Eden speak to me. Mr. Eden verified that he had been made aware of the situation—the incident. He assured me that action had been taken with Mr. Mitchell as far as a serious reprimand and assured me further that he had had his previous assistant vice president, Mr. Crawford, look into the matter and that, in fact, one of the actions taken on this very serious issue related to Mr. Crawford's position.

He related that this issue was part of a reason for, I think, Mr. Crawford's demotion from the assistant vice president position.

I was satisfied with those two explanations. I went back to the EEOC rep. I explained to her that, in fact, we were aware that the incident had occurred, that management had taken some action, and, again, that the action was not directly related to the EEOC complaint in question.

In listening to Mr. Mitchell, I would have to state that I had not heard his current explanation, or at least not the full explanation.

I will say, though, that as regards Mr. Shive and Mr. Arnold replacing two contract employees, there is no need for any special paperwork or special procedure to do that.

A union contract for BRAC employees has a built-in procedure whereby a contract employee filling a higher level contract position is automatically paid at that higher daily or hourly rate.

In fact, Mr. Mitchell had paid Tom Shive and Mr. Arnold at the higher rate. Therefore, any pay on Saturdays for which they did not work was double time. They were being double paid for the time they had worked the inventory control position.

Mr. McCandless. Madam Chairwoman, will you yield to me?

Mrs. Collins. Sure.

Mr. McCandless. I understand, Ms. Zanders, what you have just said, but there is a disparity here.

It is my understanding from the testimony we have received so far from the other parties that this is a policy not acceptable to Amtrak and has nothing to do with the union contract.

Ms. Zanders. Mr. McCandless, there are two totally different issues being discussed here. There is an issue of two contract employees whom Mr. Mitchell utilized to fill the position of a management employee.

Mr. McCandless. I can understand what is said. I understand that part. The problem I have is that you said that there was no need for Mr. Mitchell to process anything because the union contract took care of that.

Ms. Zanders. I am explaining that. He is talking about four people. Two of those people filled a position for a management employee. The procedure for doing that is what Mr. Mitchell is saying was unacceptable to Amtrak. That is a totally different type of issue. You can't take a union employee out of his position and just put him in a management position and pay him.

Mr. McCandless. I'm confused, because I thought we were talking about Mr. Arnold and Mr. Shive, and now we have two other employees.

Ms. Zanders. Yes. By Mr. Mitchell's explanation, we're talking about two other employees. Mr. Arnold and Mr. Shive are contract employees. They simply filled the position of other contract employees, and there is a written procedure in their contract to cover that type of compensation.

Mr. McCandless. We have two separate circumstances?

Ms. Zanders. That's right.

Mr. McCandless. The gentleman then who testified only testified to one set of circumstances.

Ms. Zanders. The gentleman who testified testified to what he did with four different people.

Mr. McCandless. What I have reference to is the vacancies created where he needed to elevate these people, Mr. Shive and Mr.

Arnold, to a higher position. Were they the people replacing the parties that went up to the higher position——

Ms. ZANDERS. Yes.

Mr. MCCANDLESS [continuing]. Or were they the people who were elevated to the highest position?

Ms. ZANDERS. They were the people replacing the contract employees who were elevated to the higher management position.

Mr. MCCANDLESS. Thank you.

Mrs. COLLINS. You may continue, Ms. Zanders.

Ms. ZANDERS. That is pretty much what I have to say about it.

Mrs. COLLINS. Did you review the timecards to see whether they both indeed where paid at higher levels and, second, were paid for Saturdays that were not worked?

Ms. ZANDERS. Yes.

Mrs. COLLINS. What value would you place on the seven or nine Saturdays at straight time?

Ms. ZANDERS. At straight time, they were making $92 per day each.

Mrs. COLLINS. And for Saturdays, would they have been making double time or time and a half?

Ms. ZANDERS. No, I don't think so. I think it would have been $92 for those Saturdays.

Mrs. COLLINS. So it would have been a straight $92.

I believe you made the statement just before Mr. McCandless' question that Mr. Mitchell did not need to put them on Saturdays because of the fact that they would have been paid at the higher rate if they worked on a higher rate job classification, period. Was that a statement that you made?

Ms. ZANDERS. Yes.

Mrs. COLLINS. Were you aware of that, Mr. Mitchell?

Mr. MITCHELL. I was aware that I could add the extra dollars to their timecards on a day-to-day basis, but because the positions were unofficial—they didn't in fact exist—I had to pay them at the material control clerk rate. The additional Saturday was to make up the difference.

Mrs. COLLINS. So you were not aware that you did not have to do that, that they would have automatically been paid at a higher rate. Is that right?

Mr. MITCHELL. We indicate on the timecards what rate they are to be paid at.

Mrs. COLLINS. Is that the way it works, Ms. Zanders?

Ms. ZANDERS. All he has to do to pay a material control clerk a higher rate is change that person's day-to-day timecard.

Mrs. COLLINS. Did you know that you could change the day-to-day timecard and get the same effect—pay them for what——

Mr. MITCHELL. Yes, ma'am.

Mrs. COLLINS. You did know that?

Mr. MITCHELL. Yes, ma'am.

Mrs. COLLINS. So then why did you pay them for Saturdays?

Mr. MITCHELL. Because I did not have the vacancies officially to put them in and pay them at the higher rate.

Mrs. COLLINS. So there was not the slot?

Mr. MITCHELL. Yes, ma'am.

Mrs. Collins. Well, would that make a difference? If a person worked at a higher classification that required an increase in his hourly rate, or whatever the thing is—if he actually did that work, whether or not you had the slot, would you then have been able to—is counsel shaking her head, Mr. Mitchell?

Mr. Mitchell. I'm not sure I understand.

Mr. McCandless. I think, Madam Chairwoman, what we have is a table of organization that allows for these two people. Two people were removed from those positions and elevated, but those positions were not increased by two. So the people who were elevated still retained those positions. Therefore, there was no opening under the union contract.

Mrs. Collins. I certainly understand. That's not what I'm asking the gentleman. I'm asking the gentleman if he was aware of the fact that he would be able to pay these people according to Ms. Zanders without having to pay them for Saturdays on which they were not on the property.

Mr. Mitchell. Yes, ma'am.

Mrs. Collins. You were aware of that. That's the only thing I'm trying to find out.

With that knowledge then, why did you pay them for Saturdays?

Mr. Mitchell. Because if I had raised the rate on their timecards, it would have indicated they were filling inventory control clerk positions which, in effect, did not exist.

Mrs. Collins. What is your response to that, Ms. Zanders?

Ms. Zanders. That, in fact, the timecards indicate that Mr. Mitchell did raise those rates, he did pay them at the inventory control rates, and that, in addition to that, with regard to my investigation, I think Mr. Mitchell made a comment that the period late 1983 through January 1984, was the last time that was done. That is not quite correct.

In fact, Tom Shive was paid at the inventory control rate for the greater part of March, April, and a few days in May 1984.

So there is not a question of Mr. Mitchell's not understanding that he could pay him that way, because he continued to pay him that way when Mr. Shive supposedly did the inventory control clerk duties, which is not irregular at all. Contract employees are frequently enlisted to perform the duties of a higher paying position.

Mr. Owens. Would the chairlady yield?

Mrs. Collins. Of course.

Mr. Owens. Do we now have clearly established the fact that they were both paid at a higher rate and also on Saturdays?

Mrs. Collins. That's my understanding.

Mr. Mitchell. That's incorrect.

Mrs. Collins. That is incorrect. Tell me what's correct.

Mr. Mitchell. They were paid at the lower rate, on a straight time basis, for all days they worked during that period.

Mrs. Collins. Does payroll verification, Ms. Zanders, bear that out?

Ms. Zanders. There are original timecards which I reviewed which verify that, in fact, both Mr. Shive and Mr. Arnold on various days in November and December 1983, and Mr. Shive, in particular, in 1984 were paid at the inventory control rate on various days, and in addition they were paid those Saturdays.

Mrs. COLLINS. You say and in addition they were paid those Saturdays?

Ms. ZANDERS. In addition, they were paid those Saturdays, and, in fact, this is what Mr. Mitchell explained to me when we——

Mr. MITCHELL. We have payroll records that will verify that they were paid at the lower rate.

Mrs. COLLINS. Mr. Owens.

Mr. OWENS. No, thank you.

Mrs. COLLINS. We only care about whether the employees were paid at a higher rate and paid for Saturdays not worked. We are trying to establish whether or not this has happened.

My time has expired.

Mr. McCandless.

Mr. MCCANDLESS. Thank you.

Ms. Zanders, I didn't want to sound argumentative, but we're here to try to establish what is good for Amtrak and its employees and the future of the organization. With that in mind, that's my approach to this discussion.

First, Mr. Mitchell, in your decision to do what you did with your employees, did you consult with any of the higher authorities in your department or at some other point in Amtrak's table of organization to get permission to do what you did?

Mr. MITCHELL. No, sir, I did not.

Mr. MCCANDLESS. It was a unilateral action on your part to try to meet what you considered to be an immediate need?

Mr. MITCHELL. Yes, sir.

Mr. MCCANDLESS. Were you aware that there were policies in Amtrak's guide book, or whatever it's called, that did not permit this?

Mr. MITCHELL. Yes, sir.

Mr. MCCANDLESS. So you knew what you were doing when you did it?

Mr. MITCHELL. Yes, sir, I did.

Mr. MCCANDLESS. So we can explain it a little easier. You had need for two sergeants. You had two corporals and two PFC's. What you did was, you gave the corporals the sergeants' jobs and paid them Saturdays but paid them corporal pay.

Mr. MITCHELL. Yes, sir.

Mr. MCCANDLESS. OK.

Now we have the PFC's which you need to use for corporals. So you then gave them a temporary corporal rating, and you paid them the regular pay plus Saturdays for being corporals.

Mr. MITCHELL. I would have paid them the private's rate and then paid them for Saturday to make up the difference between the private and the corporal's rate.

Mr. MCCANDLESS. But the reason you couldn't pay them under the union contract is because the corporal positions were still being filled by the temporary sergeants.

Mr. MITCHELL. Yes, sir.

Mr. MCCANDLESS. Ms. Zanders, would you disagree with that analysis?

Ms. ZANDERS. No, I would not disagree with that analysis. I'm not quite sure that's what was done, but your analysis is correct.

Mr. McCANDLESS. Thank you.

Mr. Eden, once this was brought to your attention, you took immediate action to correct the situation administratively. Do I understand you correctly?

Mr. EDEN. Yes, sir.

Mr. McCANDLESS. In your correcting the action and discussing this with Mr. Mitchell, was there anyone else in Amtrak of higher authority than Mr. Mitchell, to your knowledge, that approved Mr. Mitchell's action?

Mr. EDEN. No one that I'm aware of.

Mr. McCANDLESS. So Mr. Mitchell acted unilaterally, which he thought to benefit Amtrak and the requirement of his position.

When this was discovered, the method with which he did it, as has been explained, action was taken by management of Amtrak, and Mr. Mitchell was brought before administration and penalized for his action. Is that correct?

Mr. EDEN. Yes, sir.

Mr. McCANDLESS. Then, Madam Chairwoman, I don't see where we have any kind of a problem, because Mr. Mitchell was not authorized to do what he did, he did it unilaterally, it was in violation of the rules and regulations of Amtrak, and, once management found out Mr. Mitchell's actions, they took appropriate measures.

I have no further questions.

Mrs. COLLINS. Mr. Owens.

Mr. OWENS. Just continuing the line of thinking that the gentleman started, what were the appropriate measures taken after Mr. Mitchell violated the company's procedures?

Mr. EDEN. Are you addressing me, sir?

Mr. OWENS. Just reiterate what the appropriate measures were that were taken, because appropriate measures in Amtrak sometimes mean forcing a stationary engineer to clean toilets. But in this case, what were the appropriate measures?

Mr. EDEN. The appropriate measures were—the policy and procedure was in place, and it was effective.

What I did was immediately contacted Mr. Crawford, who was then the AVP at that time, and he took the action with Mr. Mitchell, and then I called my staff together, and I reiterated that we would enforce that policy and what action would be taken if they didn't enforce that policy.

Mr. OWENS. Was anybody fired or disciplined in any way in the same pattern that the employees at a lower level are forced to endure?

Mr. EDEN. Mr. Mitchell was reprimanded.

Mr. OWENS. What is a reprimand?

Mr. EDEN. A reprimand is a verbal chewing out, and told that if it happens again, he'll lose his position.

Mr. OWENS. How much money was involved in this?

Mr. EDEN. I don't know.

There was no money actually involved in the sense that the employees were properly compensated for the work they did. Amtrak did not lose any funds whatsoever.

Mr. Owens. In the case of the other two, Mr. Shive and Mr. Arnold, Ms. Zanders is saying that Amtrak did overpay them, pay them for time that they didn't work.

Maybe Mr. Danby can help us here.

Mr. Danby, what was your involvement in the circumstances relating to Mr. Shive and Mr. Arnold?

STATEMENT OF WILLIAM DANBY, DISTRICT CHAIRMAN, BROTHERHOOD OF RAILWAY AND AIRLINE CLERKS, AND VICE GENERAL CHAIRMAN, AMTRAK DIVISION

Mr. Danby. I'd like to back up a little bit, Mr. Owens, and say that before I became a union officer full time a year ago, I was for 11 years an Amtrak employee, and I'm on a leave of absence now.

About half of my time was spent as a timekeeper in the payroll department for Amtrak, so I'm very familiar with the procedures that are being discussed here, and I'd like to reiterate the testimony given by Ms. Zanders that in fact the company should have no problem with compensating a contract employee simply by changing the codes on the card to reflect the higher rate for that day. There is no need to show any work on Saturday.

If I understand her testimony correctly, there's a doubling up here, but, of course, in my position as a union officer, I don't get access from the company to the timecards in question.

But to answer your question, my involvement with this situation began about a year earlier.

[See app. 7.]

Mr. Danby. Mr. Mitchell in his opening statement mentioned the grievances which were filed by my organization with the company, and they were in fact directed directly to Mr. Mitchell as the manager of material control, because we had been given information that there was work being paid for Saturday, and we filed a grievance about it.

We do this very often. It's a routine matter. We file grievances, and in a routine manner we get answers back from the company, and I'd like to read just a section of Mr. Mitchell's response to my organization following his investigation of the matter. This is his official answer on behalf of the company:

> Investigation of your claim reveals the following. The referenced individuals did in fact work on the dates in question. Their performance of duties was in compliance and subsequent to their written request to work temporary positions on those dates, copies of same attached.

And he provided, along with his answer to our grievance, written requests from the named employees, allegedly filed with him, to work those dates, and I'd like to have those entered into the record, because I think they'd be of interest to the committee today.

Mr. Owens. These are the people who were compensated for days that they did not work, and that statement says that they did work?

Mr. Danby. Well, their statements are the requests for the work, and Mr. Mitchell, in his response to us, told us the referenced individuals did in fact work on the dates in question, and to back this up, he says that he has attached their requests to work the dates, and the dates are mentioned.

Mr. OWENS. This is the third story we hear—the third explanation.

Mr. DANBY. This is a new explanation, yes. Well, it was the first. This is the first instance where, as far as I know, Mr. Mitchell gave an explanation of whether or not the individuals worked and on what days, and he replied that they had in fact worked and sent us evidence—signed statements with dates and addressed to various supervisors in his department—to substantiate their requests, and that's based on this. He told us that that's why these people were worked on those days; they had, in fact, worked.

Mr. OWENS. I don't know whether the sequence is important or not, but one explanation was given to you, Ms. Zanders. Was this before or after——

Ms. ZANDERS. This is the first explanation Mr.——

Mr. OWENS. This is the one you never saw?

Ms. ZANDERS. Exactly.

Mr. DANBY. Well, let me progress a little bit further.

Mr. OWENS. And you were given an explanation when you first talked to Mr. Mitchell, and he called you subsequently and gave you a second explanation?

Ms. ZANDERS. Exactly.

Mr. OWENS. So you got two explanations, and this was a third?

Mr. DANBY. Yes. I will be coming to the EEO situation, because I became involved in that almost a year later.

There was one extraordinary aspect to this——

Mrs. COLLINS. Before the gentleman proceeds, you were going to have that submitted into the record, and I'd like to offer a unanimous consent request that this be made a part of the record.

Mr. MCCANDLESS. Madam Chairwoman, I object.

This was a unilateral action on the part of Mr. Mitchell contrary to policies and procedures of the company that he worked for.

There is nothing to be gained by reviewing the disciplinary action with the events leading up to the action that Mr. Mitchell committed, because whatever the action taken by his company of a disciplinary manner—a disciplinary manner has been taken, and there was no complicity on the part of the company with the action he took. Therefore, I find that this is irrelevant.

Mr. OWENS. Will the gentleman yield?

Mr. MCCANDLESS. Yes.

Mr. OWENS. We are investigating a pattern of behavior which shows that management employees are treated very differently from other employees and a pattern of behavior which shows widespread corruption.

Why does the gentlemen think it's irrelevant to take evidence on one particular case which may, as far as we know, be the tip of the iceberg? We don't know how many other instances there are like this, and it could be the basis for further investigation.

What do we have to lose by accepting the evidence?

Mr. MCCANDLESS. If I may reclaim my time, Mr. Owens, the issue here involves 7 to 9—if I remember correctly—not 79 but 7 to 9 Saturdays. Is that correct?

Mr. MITCHELL. Actually, it was five Saturdays, I believe.

Mr. MCCANDLESS. Five Saturdays.

It is one instance. The man has been penalized in his record for the action which he took, which was completely contrary to the policies and procedures of the company that he worked for.

Now, what we're doing here is, we're rehashing the disciplinary action that has already been taken.

Mr. OWENS. Madam Chairlady, I don't think my time was used up.

Mrs. COLLINS. Your time has not been used, so the gentleman has the time.

Mr. OWENS. Pursuing this matter further on my time, I don't, again, see the irrelevancy of the particular evidence that's being offered, because we are not disciplining anyone in this hearing. We are seeking to discern what the pattern is of Amtrak management.

When large amounts of money are being wasted or being poured down the drain through corrupt practices—and this is a possible corrupt practice—one more—and I am among those who are defending Amtrak's funding here on the Hill—some people would like to see Amtrak wiped out completely while others would like to see drastic cuts made.

I think it is a serious matter—any small incident which indicates that there is a pattern. The lack of inventory control is a pattern of purchasing stealing, really, through the mechanism of false purchase orders, and in some cases through hijacking occur. The evidence is there.

We don't know if any of this is true. We haven't corroborated it. We've accepted pieces of paper and explanations, and it will be left to other people to go further and investigate.

I see no reason why one incident, which is a hard incident, on which already we've heard three explanations cannot be heard—for some reason, somebody is trying to cover up, desperately trying to cover up, or was trying to cover up.

Regardless of the actions later taken by management at a higher level, I think it is still relevant, because the one issue here is just how much effort does management at the highest levels put forth to control the corruption and to control the privileges which other management people at lower levels take on to themselves, and just how adequate are management controls? Just how much do they care, since their own internal investigations have been brought into question?

I think this is very much a matter of relevancy, and I wish the gentleman would reconsider and allow this piece of evidence to be entered into the record.

Mr. DELAY. Would the gentleman yield?

Mr. OWENS. Yes.

Mr. DELAY. I thank the gentleman from New York for yielding.

I am one of those that want to do away with our subsidizing Amtrak. So let's put that on the record, No. 1.

No. 2, I think your concerns about widespread management problems and trying to establish a procedure of management problems has been answered by this panel already, and we're rehashing old things.

The pattern is, Mr. Mitchell was not trying to get rich, was trying to take care of some employees and acting out of good faith in trying to pay somebody. He got caught. He tried to cover it up, according to Mr. Danby. He got caught, he was reprimanded, and that is what the management is doing. That answers your own problem. So all this is irrelevant.

Mr. OWENS. Well, it strikes me as strange that a management employee who is deliberately going contrary to company policy is given a reprimand—a verbal chewing out—when, at lower levels, we have heard of employees who had the wrong color socks, and they were fired.

We have heard of a stationary engineer just yesterday who, for no reason—he committed no particular act; he was just suspected to be talking too much—was reduced from a stationary engineer to a laborer and further harassed by being forced to clean toilets.

I think it's relevant that high level employees, or high level management people, are not disciplined in the same manner. It raises questions about just how permissive the corporate policies—corporate practices, not policies—corporate practices are, and just how free-wheeling are they with the money with which they are entrusted? I'm very much on the side of those who are trying to continue the Amtrak; I think it should continue.

I hope that one result of this hearing is that we have a management put in place or some actions taken so that the integrity of the management of Amtrak is not one of the issues that is constantly being raised.

The efficiency of the corporation is not an issue insofar as every effort being made by top management to implement policies and to hold all employees to a standard which will lead to the most efficient and effective operation of the corporation.

Mr. DELAY. If the gentleman will yield further, you have the labor end. The union has proceedings by which they are reprimanded or terminated, everything that the management does follow, just as it followed in the case of Mr. Mitchell.

If you pick out one incident where you don't agree with the management's operation in dealing with a labor employee and compare it to the way they deal with a management employee, I can probably pull out just as many where they have reprimanded labor people. So it's irrelevant.

If you have a system or a policy by Amtrak—and, believe me, I would love to have ammunition against Amtrak—but if you have something that's relevant to this investigation, more so than rehashing something that has already been taken care of by management, then let's get on with it. But this is a waste of our time and the committee's time, in my opinion.

Mr. OWENS. I would like to reclaim my time and register my disagreement with the gentleman. This is not a waste of time.

The entire hearing is based on a series of incidents, individual incidents collected, and I assume that this report will result in a recommendation that somebody go further and investigate this series of incidents. So no individual incident is irrelevant. We are looking for patterns.

The point has been made, Madam Chairlady. I have no further questions.

Mrs. COLLINS. Thank you.

Let me just say for the sake of the gentleman who was at another hearing this morning that we have already—Mr. McCandless and I, the ranking member of the committee—have made a statement this morning that we are going to turn the information that we have over to the FBI, and, second, that we're going to ask the GAO to do a limited but very thorough audit of the procedures and policies and practices of Amtrak, so that we can get a further handle on the problems that are here.

I thank the gentleman for yielding.

Mr. DeLay is next.

Mr. DELAY. I have no questions.

Mrs. COLLINS. Mr. Swindall.

Mr. SWINDALL. Ms. Zanders, you stated that you're not quite sure that what Mr. Mitchell stated happened really happened with respect to his statement that no employee was overcompensated.

Ms. ZANDERS. I believe I responded to Mr. McCandless' analysis that I wasn't quite sure it happened the way he stated.

Mr. SWINDALL. Would you tell me with specificity and documentation upon what you base that statement?

Ms. ZANDERS. Mr. Swindall, the documentation is the timecards themselves, and I reviewed the timecards before and during my conversation with Mr. Mitchell, and, over and above the timecards, I would have to take Mr. Mitchell's own statement, and the statement is quite contrary to the statement he read to you this morning.

As a matter of fact, I had never heard the issue of Tom Shive and Kevin Arnold being tied to that of the other two contract employees filling in for a management analyst. So even that part of the story was totally new to me.

Again, I can only deal with the timecards themselves, Mr. Mitchell's and Mr. Eden's and Mr. Henderson's statements to me at the time I was investigating.

Mr. SWINDALL. Do the timecards themselves reflect that in each of these instances, or any of these instances, that the employee was paid more than the amount that he would have otherwise been paid plus Saturdays?

Ms. ZANDERS. There are timecards during the period November through December that show on various days Mr. Arnold and Mr. Shive being paid at a higher rate. That is a normal procedure.

In addition, for the period October through January 1984, there are Saturday timecards signed off by a supervisor with time supposedly clocked in and out that says these men worked on those Saturdays. They were nowhere near the property, according to the statements I received.

Mr. SWINDALL. We understand why all that was done. My question is very specific.

Are you telling this committee that they literally defrauded Amtrak, given his most recent explanation?

Ms. ZANDERS. Yes, and I'm telling you that based on his own statement to me.

Mr. SWINDALL. I'm talking about with specifics of a timecard that says this week they worked on a Saturday, and if you add that Saturday plus what they were paid, that they were paid more than——

Ms. ZANDERS. They should have.

Mr. SWINDALL [continuing]. They would have been entitled to.

Ms. ZANDERS. Yes.

Mr. MITCHELL. I believe we've turned the timecards over to the committee.

Mr. SWINDALL. Could we see the timecards in question?

I would like to walk through one of these instances using the exact timecards in question.

Mrs. COLLINS. We don't have the original timecards. I'm sure they're in their files someplace. We don't have the originals. We might have——

Mr. SWINDALL. Do we have copies?

Mrs. COLLINS [continuing]. Photocopies of them.

Ms. ZANDERS. Mr. Swindall, I resigned from Amtrak in January, so you certainly could not have them from me.

Mr. MCCANDLESS. Would the gentleman yield a minute?

I would advise those people testifying that they were sworn in a while ago and that if this turns out to be one way or the other, with the positiveness with which these answers come to that question, then there is going to be possibly some additional action that we might have to take.

Mr. SWINDALL. I will reclaim my time and say that I find it shocking that individuals come in and make allegations that I think are equivalent to criminal allegations and then have no documentation here for this committee to examine.

Now, either this committee is here to find the truth, or we're here just to simply engage in rhetoric. If we are here to find the truth, I'd like to see the timecards. We've talked about them for 30 minutes.

Mrs. COLLINS. We have EEO submissions of copies of timecards.

Mr. SWINDALL. Could we bring the copies out and let's talk about them?

Mrs. COLLINS. Do you want to dismiss for 10 minutes while we go get them?

Mr. SWINDALL. I'll continue with other questions and come back to that, because I'd like to talk to Ms. Zanders about the specific timecards that substantiate those specific allegations.

While I'm waiting for that, Mr. Eden, based upon your investigation, did Mr. Mitchell in any way receive any personal gain from any of the incidents that we've talked about here today?

Mr. EDEN. None whatsoever.

Mr. SWINDALL. Are you aware of any other instances similar to the instances that we've discussed here today that have not surfaced in the course of this discussion?

Mr. EDEN. Well, sir, I know it was a common practice throughout the railroads. I'm not aware of any other circumstances.

Mr. SWINDALL. More than Amtrak? Outside of Amtrak?

Mr. EDEN. Yes. I've been told it was a common practice in the railroad up until we put our procedures in here at Amtrak.

Mrs. COLLINS. If the gentleman will yield, was it a common practice within other facilities in Amtrak, to your knowledge?

Mr. EDEN. Not to my knowledge.

Mrs. COLLINS. Thank you.

Mr. SWINDALL. Let me ask the heart of the question. Do you think that anyone involved in this investigation was paid more than that individual was entitled?

Mr. EDEN. No, sir, I do not.

Mr. SWINDALL. Mr. Danby, do you think anyone was paid more than the individual was entitled?

Mr. DANBY. My opinion is yes, and I'll tell you why. There was no reason to misrepresent to my organization. We would have accepted an explanation that two men had been raised——

Mr. SWINDALL. Mr. Danby, now we're talking about something entirely different. Now we're talking about whether somebody lied or whether somebody did something. I'm talking about the heart of the matter, and that is, did Amtrak pay more than Amtrak should have paid for the work received?

Mr. DANBY. I have no absolute evidence of that; no, I don't.

Mr. SWINDALL. OK. That, to me, is the heart of the issue, unless I'm missing something.

Mr. DELAY. Would the gentleman yield?

Mr. SWINDALL. Yes.

Mr. DELAY. On that point, Mr. Danby, have you worked all your time with Amtrak, or have you worked for other railroads?

Mr. DANBY. No. Amtrak was my first railroad employer. I started in 1973 with Amtrak.

Mr. DELAY. Do you have any connections with other railroads or other railroad unions?

Mr. DANBY. Only to the extent that some of my first duties were involved in bringing employees over from Burlington Northern and from the Milwaukee Roads to Amtrak, and I have to say that, yes, I have seen employees compensated for extra hours to increase their rate.

Mr. DELAY. By this method?

Mr. DANBY. By this method. But I'd like to add to that it was absolutely unnecessary in this case to do it.

Mr. DELAY. Did you file a grievance in those cases?

Mr. DANBY. No. If we knew that an employee was compensated for work he actually performed in a higher category by adding time, I don't think we filed any grievances.

Mr. DELAY. What made this one different?

Mr. DANBY. We filed grievances because we had understood the work was performed on a holiday—not on a holiday, excuse me—on a Saturday, and that it was paid at the straight time rate.

This particular grievance to which I'm referring said that if employees worked on a Saturday, they were entitled to overtime, and our information was that it was straight time.

The answer we got back from Mr. Mitchell was that they did in fact work the time but that it was under a different rule, per their written requests.

Mr. DELAY. That makes it different from the other incidents where you've seen this procedure used?

Mr. DANBY. Yes, sir. Well, I had no way of knowing. I don't have access to Amtrak's timecards.

At the time we made this, we had information that, in fact, the material control department was raising people up to a higher rate. We didn't know how that was done, and at that point we weren't very concerned.

We also understood that Tom Shive and Kevin Arnold were being worked on Saturday, as a separate issue. We filed several grievances all at the same time, and there was no need to answer us in this manner.

I'd like to add one other thing to this, because it might give you an idea about the vehemence with which these denials were made.

There was only one unusual aspect to this case, and that was that it was accompanied by a cover letter from Mitchell, and he was vehement, and, if I can, I'd like to quote from that cover letter which accompanied his reply to the three grievances, one of which concerned the time.

Mr. SWINDALL. If I could reclaim my time, I really don't want to hear about the coverup. I'm here to ask very specifically what happened in the root of this thing.

As I understand your testimony, you have absolutely no hard evidence to indicate that Amtrak paid any more money out than for services it received?

Mr. DANBY. You're absolutely correct. The only other information I had was, a year later I was in an EEOC factfinder, and at that factfinder that's when I became aware that there was a complete new explanation for this time, and at the time that I——

Mr. SWINDALL. Again, I don't want to get into all the "who shot whom and how."

The next question I have is, do you have any hard evidence that anyone in Amtrak higher than Mr. Mitchell had knowledge of the coverup?

Mr. DANBY. No. None whatsoever.

Mr. SWINDALL. OK.

Now, my question is, to Mr. Eden, did you have any knowledge of the coverup?

Mr. EDEN. No, sir, I didn't.

Mr. SWINDALL. OK. Did you have any knowledge of the letter, for example, that Mr. Mitchell sent to Mr. Danby?

Mr. EDEN. No, sir, I didn't.

Mr. SWINDALL. Upon learning of the problem, do you think that you took appropriate action?

Mr. EDEN. Yes, sir, I do.

Mr. SWINDALL. If I understand correctly—and I'll just ask a blanket question—with the exception of Ms. Zanders, is there anyone else that contends that money was paid by Amtrak for which appropriate services were not received?

[No response.]

Mr. SWINDALL. Mr. Mitchell, did you in any way profit personally from the action that you engaged in?

Mr. MITCHELL. No, sir, I did not.

Mr. SWINDALL. Was your motivation to simply make certain that the individuals that you temporarily promoted were paid justly and equitably for what they did?

Mr. MITCHELL. Yes, sir, it was.

Mr. SWINDALL. So to narrow my focus, it looks like it is only Ms. Zanders that is stating that there was some type of criminal activity involved. Is that correct, Ms. Zanders?

Ms. ZANDERS. Mr. Swindall, let me make a statement to you.

First of all, I haven't used the word "criminal," and, second of all——

Mr. SWINDALL. No. That was my word.

Ms. ZANDERS. All right.

Then, second of all, I did not make these allegations with regard to misappropriation of funds against Mr. Mitchell.

I was approached by your committee investigator regarding my knowledge of Mr. Mitchell's practices generally. My statements were made initially with regard to the total disparity in treatment of Mr. Mitchell as a result of what he did, and I wasn't comparing Mr. Mitchell's discipline with contract employees. I was comparing the way he was treated with the way I knew at least two management employees from the Chicago area to have been treated recently by the same people regarding disciplinary matters.

According to the records I reviewed, according to my statements from Mr. Eden, Mr. Henderson, and Mr. Mitchell himself, his activity was inappropriate, and at least one party labeled it illegal and stated Mr. Mitchell——

Mr. SWINDALL. Which party was that?

Ms. ZANDERS [continuing]. An adviser to me at the time—and stated Mr. Mitchell should have been fired.

Mr. SWINDALL. Who was that adviser?

Ms. ZANDERS. Ms. Sally Garr.

Mr. SWINDALL. OK.

Now, you did today, though, make the statement that, having reviewed the time records, you reached the conclusion that is different from every other person's conclusion on this panel, that Amtrak paid twice for services, once at the higher rate and once on Saturday, which was a double dipping. Is that true?

Ms. ZANDERS. Again, Mr. Swindall, I would have to state that I have never heard the explanation Mr. Mitchell gave you today.

Please, let me finish.

I have never heard of the specific dates which Mr. Mitchell stated today. I know, however, that there are timecards in November and December paying Mr. Shive and Mr. Arnold on various days at an inventory control rate, and I know that there were Saturdays during that general period of time on which they were paid for work they never performed.

Mr. SWINDALL. But do they match? Are they the same Saturdays for which they had already been paid at the higher rate? Is that what you're saying?

Ms. ZANDERS. I don't understand your question.

Mr. SWINDALL. Do we have the timesheets yet?

Mrs. COLLINS. Yes, we have timesheets. We're trying to find the ones that are under discussion at this point. We have copies of them.

Mr. SWINDALL. Ms. Garr, while we're waiting for those timesheets, would you just basically comment on that? Did you make that statement?

Ms. GARR. I did not.

Mr. SWINDALL. You did not make that statement?

Ms. GARR. Absolutely not.

Mrs. COLLINS. Ms. Garr, you did not raise your hand when we were swearing in the witnesses. Would you raise your hand?

[Ms. Garr sworn.]

Mr. SWINDALL. OK. Now I'll ask you the same question, now that you're under oath.

Did you make that statement to Ms. Zanders?

Ms. GARR. Absolutely not.

Mr. SWINDALL. And the specific statement to which I refer is the statement that there was illegal activity with respect to these timesheets.

Ms. GARR. I did not make that statement.

Mr. SWINDALL. Ms. Zanders, are you confident that you heard that statement?

Ms. ZANDERS. Mr. Swindall, as the EEO representative for the——

Mr. SWINDALL. If you would, please answer yes or no, and then you can explain it as long as you want.

Ms. ZANDERS. I think I'd like to explain it this way. I had a legal adviser for each and every case I handled. Ms. Garr handled the particular EEO complaint on which I was working at the time the Mitchell issue was raised.

When I spoke to Ms. Garr regarding the submission I was preparing for that case and explained to her these additional allegations made by the EEOC rep. I explained to her my conversation with Mr. Mitchell, Mr. Eden, and Mr. Henderson.

Her comment was—and I quote—"If that happened, that's illegal. Why is that man still on staff? He should have been fired."

Mr. SWINDALL. If what happened?

Ms. ZANDERS. If, in fact, he was paying employees on Saturdays and falsifying timecards when they were not on property.

We weren't even dealing with an issue of whether they were double paid; we were dealing with the falsification of timecards for days the men did not work.

Mr. SWINDALL. Who all was present when that statement was made?

Ms. ZANDERS. We were talking on the telephone.

Mr. SWINDALL. No one else heard it?

Ms. ZANDERS. No.

Mr. SWINDALL. OK.

Mrs. COLLINS. If the gentleman will yield——

Mr. SWINDALL. If I could, before I lose my train of thought—Ms. Garr, do you recall that conversation?

Ms. GARR. I certainly do.

Mr. SWINDALL. Did you make that exact quote?

Ms. GARR. No, I did not.

Mr. SWINDALL. OK.

Yes, I'll yield.

Mrs. COLLINS. We have copies of timesheets here, and the Chair is going to rule that, because you need to look at them and you need to find the ones that you have, and that we need to provide Ms. Zanders with the opportunity to look at them also, since she doesn't have them right here in front of her, that she be—well, this entire panel, if need be, be subject to recall so that, one, you can look at them while we're talking to the rest of the witnesses—the next panel—and she can have time to look at them.

Mr. SWINDALL. OK. And so that we're very specific about what I'm going to be talking about, I'm going to be asking to see the exact timesheets that document the statements that she made with respect to Amtrak having paid more than the services for which it received.

Mrs. COLLINS. If, by chance—and I don't know if they are or not—those particular ones are not here, then we will recall the witnesses at a later date, so that we can get that information.

Mr. SWINDALL. If I could followup, has anyone else looked at those timesheets and reached a similar conclusion to Ms. Zanders?

Mr. EDEN. I haven't.

Mr. SWINDALL. Mr. Danby, have you looked at those timesheets?

Mr. DANBY. I did see some photocopies last—I did get a chance to see some of those last night, but so many of the dates were missing, and there was no opportunity to take the time to match up particular days.

Mr. SWINDALL. Just by way of explanation for both the panel's benefit and this committee's benefit, I think that we are engaging in something very, very serious here when an individual, under oath, makes that type of statement, and I beg the panel's and the committee's indulgence as we look at it, because I think that if there is any substance, certainly this committee ought to move forward.

Mrs. COLLINS. Well, that's what this subcommittee will certainly do. I mean, there is no question in my mind but that we will pursue it to the final extent that we need to, to get at the bottom of whatever has happened here, because we certainly agree about the importance of this issue.

Mr. OWENS. Madam Chairlady.

Mrs. COLLINS. Well, the gentleman has the time. He would have to yield.

Mr. SWINDALL. My final statement would be, if, on the other hand, we find that there is no substance to some of these statements, I think that this committee needs to make it very clear that we are here to find facts and not rhetorical statements that are not—

Mrs. COLLINS. If the gentleman will review the record of this subcommittee, he will find that this subcommittee has been evenhanded in all of its operations and that we do intend to be very fair—lean over backwards, if necessary, to do so.

Mr. SWINDALL. Thank you.

I yield.

Mrs. COLLINS. Mr. Owens.

Mr. OWENS. Before the panel recesses, I would like to just address one question to Mr. Mitchell.

Mr. Mitchell, would you say that the two cases that are being discussed here, the case of Mr. Shive and Mr. Arnold, are isolated incidents and to your knowledge there have been no other similar problems of this kind—situations where you have violated company policy with other individuals?

Mr. MITCHELL. These are the only instances that I'm aware of, sir.

Mr. OWENS. These are the only instances that you are aware of?

Mr. MITCHELL. Yes, sir.

Mr. OWENS. There is not a pattern?

Mr. MITCHELL. No, sir, there is no pattern.

Mr. OWENS. Thank you.

Mrs. Collins. Mr. McCandless.

Mr. McCandless. Madam Chairwoman, I detect from some of the dialog here with the staff that the timecards in question are not a part of what we have here, but these are for other situations that are yet to come. Is that correct?

Mr. Zeitz. These timecards were represented to us—your staff and Mrs. Collins——

Mr. McCandless. Let's put it another way. Are the timecards in question in our possession?

Mrs. Collins. At this moment.

Mr. Zeitz. Amtrak has informed us that they met a timecard request that we made, and the timecard request was for all relevant timecards concerning the incident.

Mr. McCandless. There is no point going through this exercise if, in these timecards, we don't have the ones that are in question.

Mr. Zeitz. A cursory review indicates that they have supplied us with the many dates that we're interested in.

Mr. McCandless. Thank you, Madam Chairwoman.

Mrs. Collins. Thank you.

We thank the panel for appearing before us. You are leaving with the knowledge that you will be subject to recall, so that we can find out about these timecards.

Mr. Swindall. Madam Chairwoman, after that exchange, I'm not sure if I understand where I stand. Have we got these records anywhere?

Mr. Zeitz. We requested of Amtrak the timecards for a period of time which was slightly larger than the period of time which Amtrak said was in this large EEO submission.

To economize their effort, they requested that the time period be shortened slightly, so that they could submit to us the entire EEO submission instead of all of the timecards we requested.

So I believe we do have the relevant timecards, if they have correctly represented what they're sending us.

Mr. Swindall. So we will make an attempt to find those and, before this panel leaves, go back into this?

Mrs. Collins. Well, the panel is subject to recall.

If we are not able to find those timecards here, what I have said before is that we will have another hearing, at which those timecards will be presented, and at which these panelists will be called back again, so that we can compare the kind of information that you want to have.

Mr. Swindall. I would simply suggest that we do it as hurriedly as possible, because I'm sure Mr. Mitchell probably is very concerned about his reputation with respect to those.

Mrs. Collins. I think we all are concerned about his reputation or any other reputations that are here and that the subcommittee wants to get on with the work, too, so we can get through with this case.

Our next panel will be Mr. W. Graham Claytor, who is the president and chairman of the board of directors; Mr. Thomas Hackey, who is the executive vice president and chief operating officer; and those who are accompanying him.

Will the witnesses please raise your right hand?

[Witnesses sworn.]

Mrs. Collins. Thank you.

Mr. Claytor, will you tell us, for the record, who is accompanying you, please?

STATEMENT OF W. GRAHAM CLAYTOR, JR., PRESIDENT AND CHAIRMAN OF THE BOARD OF DIRECTORS, AMTRAK, ACCOMPANIED BY THOMAS HACKNEY, EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER; EUGENE EDEN, VICE PRESIDENT OF PASSENGER AND OPERATING SERVICES; JOSEPH CRAWFORD, PRESIDENT AND CHIEF MECHANICAL OFFICER; AND HAROLD R. HENDERSON, GENERAL COUNSEL

Mr. Claytor. I am Graham Claytor, president of Amtrak.

On my right is Harold Henderson, our general counsel. On my left is Thomas Hackney, our chief operating officer; Joseph Crawford, our chief mechanical officer; and Gene Eden, our vice president for onboard services.

Mrs. Collins. Mr. Claytor, do you have a written statement?

Mr. Claytor. No, I do not.

Mrs. Collins. All right. Would you want to just give an opening statement then in your own words?

Mr. Claytor. I would indeed, Madam Chairwoman.

Mrs. Collins. All right.

Mr. Claytor. Thank you very much for the opportunity to appear before your committee.

In view of your opening statements in which you state that there are structural and leadership problems demanding solution if Amtrak is to survive, and that if the leadership isn't there, the accountability also is missing, and further in light of what Mr. Owens just indicated, that Amtrak's management is probably incompetent, I think it's important that in my opening statement I review some general problems and general principles with respect to our management and a little bit of the background.

First of all, I want to say very briefly that I've been at Amtrak just under 3 years. In the past, I practiced law here in Washington for some 30 years as a partner of a local firm, with some 5 years out for service in World War II at sea with the Navy.

I moved over to Southern Railway in 1963 as vice president, law, and in 1967 was made president and chief executive officer of that company. I served in that capacity until 1977, when, on approaching compulsory retirement age, I was asked by President Carter to serve as the Secretary of the Navy.

I served in that position for 2 years and in 1979 was asked to move over to be Deputy Secretary of Defense, which I did.

In the interim, I happened also to serve for some 4 weeks as acting Secretary of Transportation.

I subsequently practiced law as counsel to my old firm here in Washington for a short time. I was then elected president and chairman of the board of directors of Amtrak on July 1, 1982, by the board of directors of that company on recommendation of Drew Lewis, who was then President Reagan's Secretary of Transportation.

I want to emphasize that Amtrak is not part of any Government bureau, but it is an operating railroad company incorporated under the laws of the District of Columbia.

Section 301 of our basic statute, the Rail Passenger Services Act, states that Amtrak "shall be operated and managed as a for-profit corporation" and "shall not be an agency or establishment of the U.S. Government."

We are an operating railroad and in fact have about the same number of employees as my old company, Southern Railway, did.

Now, Amtrak was created in 1971—some 14 years ago. It had a very rough start. It took over from a zero base and created a new organization to run a national passenger system, taking over largely broken down equipment from the existing railroads.

Service was spotty and difficult. The tracks in the northeast corridor were under construction, and the equipment was largely worn out.

Beginning in the spring of 1982, Amtrak finally was able to complete the acquisition and rebuilding of a complete set of equipment, so that from that day on Amtrak has had new or refurbished equipment and has been able to provide very good and reliable service.

When I joined the company, the primary problem that we faced—and it was a big one—was that there was a general impression that Amtrak gave terrible service and that it had no future unless the service could improve.

We were just, as I say, over the threshhold of having new equipment, so that we had an opportunity to really do something.

I devoted the next 18 months, after coming to the company, to two objectives: Improve the quality of the service in every way, both on-time service and on-board service, and decrease our costs and so our need for subsidy.

In the last 4 to 5 years, at the most, we have made great progress in both of these areas. As Mr. Eden has said, our on-board services have substantially improved. I think we provide a first-class service now, and our customer comments that we receive have shown that.

Our bottomline is our revenue-to-cost ratio—that is, that proportion of our total costs that are covered with our own revenue. That was as low as 43 percent a few years ago. It will be 58 percent this year, and we're going to meet or exceed 60 percent in 1986.

That was what I devoted, as I say, the first 18 months of my time here almost exclusively to.

About a year ago, I found a series of serious management problems in Chicago that I felt should get top priority. That came about through some testimony by Congressman Yates at one of our appropriation hearings.

I got right into it. I sent an investigatory team, chaired by Harold Henderson here, and including a top representative of our personnel and labor relations departments, to Chicago to look into this. I'll say more about that in a minute.

But what I got out of that right away was that the root cause of our problem was that Amtrak had no uniform management philosophy, policy, or mission statement.

We had started, as I said, from a zero base; we had been beset with all kinds of operational problems for our entire existence; and no one had really devoted any attention to the problem of management and how management should be operated.

I thought the first thing we had to do was to develop a management policy. Based on my experience at Southern, where we had had a very serious problem many years before, we developed a management philosophy and mission statement that had been submitted to this committee following last September's hearings and widely circulated through the company throughout the country.

That's only a first step. A piece of paper can be readily ignored if it's just passed around and put in the file.

Accordingly, Mr. Hackney and I last autumn, starting in October, visited every department and every division in the company from Boston to Los Angeles over a 2-month period, meeting with our local management and going over our policy and what we were planning to do about it.

Even that is just a start. The next thing we have to do—and we did—was to develop a management and leadership training program for our entire management, from frontline supervisors, including union supervisors, right through the vice presidents and management committee at the top, about how you implement—how you manage a company of this size and what the management philosophy should be.

We utilized outside consultants with experience in this field. With their help, we trained our own trainers to do this. We started in December with classes that last a week, have about 20 people in each class drawn from all over the country, different branches of the company, and those classes are going forward.

We will cover all of our first-line supervisors by the end of this year. We are starting now on the next tier, the next line supervisors, and within a total of 2 years we will cover the whole company to the top.

To me, this is an essential basis for fixing any problems in management we have.

Yes, sir?

Mr. McCANDLESS. If I may interrupt, with the permission of the chairwoman, we have been called to a vote. The second buzzer will give us 10 minutes. Would it be possible in the next 4 minutes to summarize what it is you have left, and then we could come back at that point? Providing that the Chair is agreeable to that.

Mr. CLAYTOR. Yes, sir.

That's the background that I wanted to give.

This brings me to the mismanagement and improper conduct at the Chicago shop.

Our police department, under the very able direction of Ray Ingalls, in my opinion, handled this investigation as well as they could have. We are faced with a limitation in any investigation in that no private company has subpoena power or the ability to compel answers.

So we went to the local district attorney and got him sufficiently interested to issue subpoenas through a grand jury.

Actually, as soon as we had convincing evidence, not merely that there was mismanagement but there was actually misconduct in the Chicago shop, we moved right away to do something about that.

We first removed the head of the locomotive shop, pending further investigation. He was then required to resign. His second-in-command was required to resign. The third, Mr. Durst, did not resign, and so he was terminated. Other actions are taken against the remaining involved employees.

We sought criminal prosecution, but the local district attorney in Chicago—where crime is a serious problem, and he is a very busy man—decided that we didn't have enough—the money involved was not sufficiently great for him to proceed with any criminal prosecution.

The question is not whether a company this size is going to have misconduct like that. Every company of this size will have some misconduct. The question is what do you do about it?

We had it at Southern; we had it in the Navy and in the Defense Department when I was there; I am sure that every other organization of this size will have it. Do you do something about it? The answer is yes. We use every means at our disposal to find out about it.

Our auditors do both spot checks and regular checks. We have an employee comment program, in which the employees are requested to write directly to me; no one opens those letters but me. I investigate them, and I turn them over to the police or do whatever other action is called for. If criminal activity is found, we report it to the local authorities.

I am satisfied that we are moving forward with both our management and our efforts to turn up any misconduct, whether by management people or otherwise, and I intend to keep going.

I intend to run a tight ship here. I've had experience doing this, and I think we're well on the way.

We cannot straighten out our management problems by pressing a button. We've continued work on this problem from the beginning. I think, at the end of a couple of years with our management philosophy and training, we will get there.

I have complete confidence in my police department and top managers, and I want to say that we have extremely good people in Amtrak. They are not limited to management. We have wonderful people in our union group as well as in our management group.

In a company this size, we also will have some bad apples, and there's no question about that.

Our objective is to get rid of the bad apples, whether management or union, and to encourage the good people we've got to keep going, and I think that's what we're doing.

Mr. Hackney will have an opening statement, and then I'll be glad to answer any questions.

Mrs. COLLINS. Why don't we break at this time then and recess for 15 minutes and come back and receive your statement, Mr. Hackney.

Mr. HACKNEY. Thank you.

[Recess taken.]

Mrs. COLLINS. The hearing will resume at this time.

Mr. Hackney, when we recessed, we were getting ready to have testimony from you. Do you want to begin your testimony right now?

Mr. HACKNEY. Thank you, Madam Chairwoman.

My name is Thomas P. Hackney, and I am executive vice president and chief operating officer for Amtrak.

Reporting directly to me are six major functional areas, which in turn come under Mr. D.F. Sullivan, our vice president, operation and maintenance; Mr. Eden, vice president, passenger and operating services; Mr. Daniels, vice president of labor relations; Mr. Edeleston, assistant vice president, operations support; Mr. Larson, assistant vice president, contract administration; and Mr. Ingalls, our general manager and chief of police.

I would like to briefly summarize for the subcommittee my knowledge of, and involvement in, the Chicago locomotive investigation, and I would like to also make some additional comments concerning Amtrak's general operating policies.

Mrs. COLLINS. Proceed.

Mr. HACKNEY. During the latter part of May 1984, as a result of information supplied to Amtrak's Special Investigation Task Force—Mr. Henderson's task force—I was made aware of allegations by some employees that local management had been involved in possible improper and illegal activities concerning Amtrak's owned and privately-owned automobile vehicles in the Chicago area as well as in other matters.

Mr. Claytor directed Mr. Ingalls, our chief of police, to make a thorough investigation of the matter. In turn, I directed my staff to render Mr. Ingalls their full support, and I instructed Mr. Ingalls to keep me totally informed on a regular basis of the status of his investigation. Mr. Ingalls did this, briefing me approximately once a week in the beginning and, as the investigation developed, more frequently, sometimes as much as three times a week.

By the early part of July 1984, it became apparent that Mr. Jim Brown, the locomotive facility manager, may have been directly involved in the matter and had committed company assets improperly.

Although Mr. Ingalls' investigation was not complete, I made the decision that Mr. Brown should be relieved of his current responsibilities and authority and be temporarily reassigned to a position where he would have no management authority or responsibility.

It was made clear to Mr. Brown at that time that this was a temporary change and a final decision in his behalf would be made in the near future.

I informed Mr. Brown's superiors that, while a final decision concerning him had not been made, I had concluded that, barring some new evidence that would clear him, he could not return to Chicago in a management position.

On approximately October 30, Mr. Ingalls made his final report to me. On the same day, I arranged to immediately brief Mr. Abate, our vice president of operations and maintenance at that time, and Mr. Crawford, our chief mechanical officer, and instructed them to consider the matter immediately and give me their recommendation for action.

Within the hour, Mr. Crawford recommended that Mr. Brown not be continued as an Amtrak employee. I approved of this recommendation and instructed him to handle the matter without delay.

The next day, Mr. Abate and Mr. Crawford met with Mr. Brown in Chicago, at which time he gave them his resignation. Other employees involved in this matter were also disciplined.

I believe that this matter was thoroughly and professionally investigated and that Mr. Ingalls made a concentrated effort to obtain criminal prosecutions for the parties involved, and he did do a thorough job of keeping me informed.

I cannot overemphasize the fact that Amtrak's management takes all allegations of fraud and misuse of company funds very seriously. We encourage employees to report such instances, and we do take appropriate action.

We have in place policies and procedures by which we try to protect the company's assets. It is management's obligation to place in effect adequate safeguards and prevent abuse while, at the same time, allowing management the flexibility it needs to take care of the day's work.

However, the best system in the world cannot always prevent dishonest employees from doing the wrong thing or people assuming certain responsibilities they have no right to assume.

I would like to also briefly mention at this time some recent management actions that we have implemented in Chicago as well as other places throughout our system that are indicative of the responsiveness of our management in our ongoing effort to continuously improve.

First, immediately on getting Mr. Ingalls' report, we discontinued doing business with Mutual Truck Parts. We have done no business with that company since this report.

We have established tighter controls and review processes over all local purchases in the field. In addition, we have restricted the use of blanket purchase orders, we have prohibited delegation, as Mr. Crawford explained yesterday—the release of orders below the facility manager level.

In other words, at that time, there was delegation below the level that there should have been, and this was part of the problem.

We have established a logbook that controls and monitors these blanket orders. In turn, our top regional officers are required to review that log on a regular basis to see if there are any discrepancies taking place.

As Mr. Crawford mentioned yesterday, we have established procedures for the accounting of small tools throughout the system, with monthly and annual inventory checks.

We have instituted procedures for checking out tools through the tool room, and while these are small items when compared to our total budget and material usage, they are important, and we felt the need for additional controls.

We have reviewed our policy for company vehicles and procedures. In the case of the stereos in the automobiles in Chicago, we ordered that they all be removed immediately and put in inventory, where they could be used throughout the system, as needed.

We have issued very strict guidelines in the use of company vehicles. We do not permit anybody using a company vehicle for personal use whatsoever. We have a limited amount of permits out for people to drive automobiles home if they are subject to having to go out during the middle of the night to take care of a situation, such as a signal maintainer or somebody like that.

We are tightening that control right at this time, and an amendment to our procedures will be coming out, because we're not satisfied that we've got that list pared down to the extent it should be, and so the new procedures will require not only the department head's approval but that I will review it, and then I'll review it with Mr. Claytor to satisfy him that we've done it.

We have set up tight controls on the sale of scrap and surplus material, as has been already described.

Another thing we've done is to broaden the responsibilities of our local general superintendents.

Our system is divided into six areas, each under a general superintendent. We have put that person in charge of all the day-to-day operating departments whereby he can pull them together. No individual department will be going off on their own, establishing their own special procedures, and, at the same time, he can assure that there is a better flow of communication and better teamwork.

All of these actions, really, we have initiated at Amtrak on our own, as we continue to look for improvements, and we will continue to do so.

We appreciate the subcommittee's concern in this area, and we're sure that we all share a common cause in trying to improve Amtrak, and I'm sure we'll get some benefit out of these hearings.

Thank you.

Mrs. COLLINS. Thank you.

Mr. McCandless.

Mr. McCANDLESS. Thank you, Madam Chairwoman.

We're talking now, I guess, to the top honcho, aren't we?

Mr. CLAYTOR. Yes, sir.

Mr. McCANDLESS. This the captain that either floats the ship or puts it on the rocks.

Mr. CLAYTOR. That's absolutely right. I'm responsible for everything that takes place, and I recognize that.

Mr. McCANDLESS. Since the captain said he runs a tight ship, I'm here to try to assist.

Mr. CLAYTOR. Thank you, sir.

May I comment that I not only welcome your assistance and the assistance of this committee, but I am very pleased that we are now going to get help from both the FBI and the General Accounting Office, and I welcome that.

I will join the committee in asking both of them to give us all the assistance they can and to make the maximum investigation. I am very much in favor of that.

Mr. McCANDLESS. I was going to mention the GAO. In consultation with the chairperson, we worked with GAO over a period of time to develop a work plan.

They came back to us with the work plan that we felt would be objective in nature and would be of assistance to the management of Amtrak as a third party looking at things without the general knowledge of what happened the day before and what might happen the day after.

Mr. CLAYTOR. Yes, sir.

Mr. McCandless. So I'm pleased that you have taken that in the light that it was intended.

Mr. Claytor. Yes, sir. We welcome that and will cooperate in every possible way.

One of our problems is that, when we ask for that, sometimes they're too busy and it doesn't happen. The FBI is very busy, and when we ask for FBI assistance, they work with our police department, but the priority is not the same as if a congressional committee asks for it. So we are very pleased to have this happen.

Mr. McCandless. Thank you. I'm glad you're accepting it in that manner.

Mr. Claytor. Yes, sir.

Mr. McCandless. The subject of labor relations, the subject of disciplinary action, the subject of reassignment, and the subject of accepting parties, in the case of Mr. Boyd, from a previous organization during the transition, seemed to have been the nucleus of some of those areas that we've listened to in previous testimony.

I'd like to start out with consistency in the application of discipline. One of my colleagues on the panel, if I understood him correctly, felt that in the case of Mr. Mitchell, that was a rather softpeddling of what he actually did.

How do you, as management, arrive at—do you have some kind of criteria where you can be consistent in this? Each position, each activity, requires special attention. How do you handle these things so that one can be assured not only at the labor level—contract level, I believe it's called—but also at the administrative level that disciplinary actions that we're talking about here are consistent?

Mr. Claytor. Actions involving moral turpitude are going to have extremely serious consequences for anyone, management or otherwise; that is clear.

This action was an action in which we had created a problem, in my opinion, for him. It was a bad management setup. It was so difficult for him to meet the necessary bureaucratic, if you will, paperwork to perform his job.

Mr. McCandless. Do I understand correctly that Mr. Mitchell had to have your personal approval to do something like this?

Mr. Claytor. Well, the problem there was, when I came in, I felt that we had to reduce our staff to the extent possible. I put out a rule right away that no one could fill a management vacancy without my personal approval. That was burdensome, but I felt that was one way to be sure that we didn't just continue to fill vacancies that we could learn to do without. So that was part of the problem.

Mr. McCandless. This would have taken how long during that period in question?

Mr. Claytor. Well, I think it could have been done, but probably he would have had to go through channels that might have taken a week or so.

In an emergency—Mr. Hackney will explain—we have now set it up so it could be handled by telephone, and we can do it quickly, and we should have had it then, but we didn't.

Mr. McCandless. The comment of 6, possibly 7, weeks——

Mr. Claytor. Yes, well——

Mr. McCandless [continuing]. To go through the process that he——

Mr. Claytor [continuing]. It depends on the location. It could have.

Mr. McCandless. That's a pretty long channel, isn't it?

Mr. Claytor. That's right. That's a bad setup, a bad situation, and we created it, in part, for Mr. Mitchell.

Mr. McCandless. That ship could have foundered in that channel somewhere along the way.

Mr. Claytor. That's right.

So he was trying to find a shortcut to accomplish something that needed to be done, and we took that into consideration.

In the process, I have made it very clear that, hereafter, that type of conduct will result in serious action—dismissal or otherwise. I think we have fixed it so it isn't necessary. So we have eliminated the problem, I hope, and we have made it very clear.

The reason we have to have a policy like that is that such action as Mr. Mitchell—in that case, it was not an abuse in the usual sense, but it could be an abuse. A man could put a friend on on Saturday and pay him extra.

Mr. McCandless. You don't have to explain it to me.

Mr. Claytor. So that's why I have issued firm instructions regarding this practice and we have now, I think, got that fixed. But that's why I think the action taken with respect to Mr. Mitchell, under the circumstances, was reasonable.

Mr. McCandless. Let's talk about the contract employees. Is that the way the union employees are referred to?

Mr. Claytor. That's right.

Mr. McCandless. In your labor agreement, you have specific sections that deal with the disciplinary aspects of it. Is that correct?

Mr. Claytor. Detailed procedures are set out in the agreements that are generally similar, and those, in turn, are in accord with the provisions of the Railway Labor Act, which provide that there must be an investigation or hearing on discipline matters; that if the discipline applied as a result of that is not satisfactory, there are two levels of appeal within the company. If that is still not satisfactory to the union employee or his union representative, there may be an appeal to a neutral arbitrator, who then makes a final and binding decision that's binding on everyone.

That's the procedure that's fundamentally set up.

Mr. McCandless. We're all human, but from time to time in large organizations we get little Caesars, little Napoleons, that think they're above the system.

Mr. Claytor. Exactly.

Mr. McCandless. And in order to express themselves, they take it out on their employees.

How does management guard against this kind of a situation when it comes to lower disciplinary action?

Mr. Claytor. This is one of the problems that I addressed in establishing a management philosophy. I'm not sure if you've had a chance to look at my management philosophy memorandum, but a major part of it is that a supervisor who has not ever had to supervise people before is inclined, especially in the railroad business, to follow President Theodore Roosevelt's theory of, "Speak softly, and carry a big stick," except he doesn't always speak softly, he just carries a big stick. He thinks the only way you can get things done is through discipline.

That is an attitude we are attempting to eradicate. I had the problem at Southern; we're doing it here. That management philosophy is the thing that we have to make clear as mandatory, and we are getting there. You don't do that by pressing a button, but we're getting there, and this is a major problem.

Part of it is, we must work with the local union representative. In many cases, in Amtrak and elsewhere—this is not at all unique to us—the local union man is the enemy of the local supervisor, and they don't speak to each other unless they have to, and when they do speak to each other, they have a row.

We are trying to put a stop to that, and it takes two people to do that, but I'm trying to see that our side takes the lead in working with the local chairman, not against him.

Mr. McCandless. In the perfect world, this is the ideal situation.

Mr. Claytor. That's right.

Mr. McCandless. But in the practice of everyday life in business and industry, are you satisfied that you're taking the steps, and the steps are being accomplished, to get as close to that as you can?

Mr. Claytor. Yes, sir, I absolutely am, and it's a high priority with me.

Mr. McCandless. What indications do you have that you're making progress?

Mr. Claytor. You have some figures on that.

Mr. Hackney. Since the Chicago investigations, we have taken two major steps that have improved the situation, we feel, and there have been much less actual types of discipline action.

Mr. McCandless. This is on a companywide basis?

Mr. Hackney. Yes—well, in the regions, and we are now in our final review. We think we'll make it systemwide and apply it to the Northeast corridor.

What we did, we set up a more professional type of hearing officer arrangement, and the person that hears the case is not from the department that's involved, so there's no prejudice there.

Then the general superintendent I mentioned reviews all of these cases and approves the action that was taken so we have somebody looking at it from a uniform basis, so our department doesn't do it this way and that, or this particular manager is too zealous, the superintendent looks at it from a uniform basis, and this has improved it tremendously in the past year.

Mr. Claytor. And we have some statistics, Mr. McCandless, which we'll be glad to submit to you.

The number of disciplinary actions has gone down enormously since we have said that discipline is not the only way to fix a problem; it's the last way to fix a problem, not the first. Although that word has gotten out, we haven't finished educating all our people yet; this cannot be done overnight; it's going to be done over a year or two.

But the number of disciplinary proceedings has gone down enormously all over the system, and particularly in Chicago and the West, which we've concentrated on.

Mr. McCANDLESS. I'd like to zero in on one specific area and one incident to get your feeling, using it as an example—I discussed it very briefly yesterday with one of the panels—and that's the situation where Mr. Boyd was an employee of Santa Fe, who accepted a position with Amtrak after his position was abolished at Santa Fe at a lesser pay and as a laborer rather than as a stationary engineer.

It was my understanding, in discussing this with Mr. Boyd, that that was a voluntary decision on his part. However, it may have turned out it was voluntary.

Then he was encouraged, or he was told, that if he had certain things he wished to discuss with management, that there was this open door policy.

So he took advantage of that by means of discussing with Mr. Henderson and the task force his concern about some of his own personal problems and that, as a result of that, if I understand the series of events correctly, that dialog within the framework of the Henderson group was made available to his superiors and that allegedly his superiors, for whatever reason, decided to take punitive action, because he accepted the invitation of management to share with them his concerns about certain aspects of Amtrak and its growing pains or whatever it was he wished to discuss beyond that of his own personal desires.

I'd like you, if you have some information—any of you—I'd like you to share with me, what's to prevent this from happening again?

If you encourage the open door policy and a man takes advantage of that for what he considers to be the good of the company, and punitive action—alleged punitive action takes place, it would appear to me to be defeating the very purpose that you're trying to accomplish.

Mr. CLAYTOR. Mr. McCandless, if that happened, and it can be proved that happened, whoever did it would be fired on the spot by me.

Mr. McCANDLESS. I think the gentleman has since been terminated, but I'm talking about in the future. We can't change what happened in the past.

Mr. CLAYTOR. No, I know.

Mr. McCANDLESS. All we can do is address the future and hope that it doesn't happen again.

Mr. HENDERSON. Could I have a moment, Mr. McCandless, please?

Mr. McCANDLESS. Sure.

Mr. CLAYTOR. Mr. Henderson was the one who spoke with him.

Mr. HENDERSON. We don't have witnesses on the panel here who have firsthand facts knowledge of what happened in Chicago with respect to Mr. Boyd and his shop there, but in response to a letter from Mrs. Collins of March 27, Mr. Claytor caused an investigation to occur and reported back to her in a letter dated April 30.

Mr. McCANDLESS. Is this the letter you handed me a while ago?

Mr. HENDERSON. That's the letter that's been handed to the——

Mr. McCANDLESS. Do members of the board all have this?

Mr. HENDERSON. Of the subcommittee—yes, and I would ask that this be entered into the record as an explanation of the company's position on the allegations of harassment and retaliation against Mr. Boyd.

Mrs. COLLINS. Without objection.

[The letters follows:]

[illegible]
MAJOR R. OWENS, NEW YORK
TOM LANTOS, CALIFORNIA
GERALD D. KLECZKA, WISCONSIN

ALFRED A. (AL) McCANDLESS, CALIFORNIA
PATRICK L. SWINDALL, GEORGIA
THOMAS D. (TOM) DELAY, TEXAS

(202) 225-7920

NINETY-NINTH CONGRESS
Congress of the United States
House of Representatives
GOVERNMENT ACTIVITIES AND TRANSPORTATION
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-350-A-B
WASHINGTON, DC 20515

3/29/85
Mr. Claytor,
Per our conversation
today.
Collins

March 27, 1985

Mr. W. Graham Claytor, Jr.
President and Chairman of
the Board
National Railroad Passenger
Corporation
400 N. Capitol Street N.W.
Washington, D.C. 20001

Dear Mr. Claytor:

It has come to my attention that your current management team in Chicago is flouting your explicit directive that no reprisals occur against Amtrak employees who cooperate with your internal investigators or with my subcommittee investigation.

I am writing to describe to you recent occurrences in Chicago that were described to my subcommittee and my Administrative Assistant by an employee who has fully cooperated with your internal investigation committee and Chief Ingalls' investigation. In addition, this employee was to have been a witness at the March 5, 1985 hearing on the Locomotive Shop procurement fraud scheme. It was this hearing for which you requested and obtained a postponement.

Because the actions taken against this witness are indistinguishable from "reprisals", "retaliation" and "managerial harassment", I thought it necessary that they be brought to your attention. I urge you to personally investigate these matters because there is increasing evidence that some of your highest staff advisors have been aware of this matter for some time and have closed their eyes to this abuse to human rights, notwithstanding its gravity.

Charles Boyd, who apparently fully cooperated with Harold Henderson and Special Agents Steil and Doonan, has been a railroad employee for 37 years serving 28 years as laborer for the Santa Fe and nine years with Amtrak. He is the member of the Firemen and Oilers Union with the highest seniority in Chicago. I understand that his 37-year record was so exemplary that even in the face of the shocking managerial disciplinary abuses uncovered in Chicago he has never been disciplined. This would suggest his ability to serve Amtrak effectively, even in the now-documented repressive environment.

As I understand it, Mr. Boyd, acting in reliance upon your assurances of protection from reprisal, became a witness to Mr. Henderson and Chief Ingalls' investigators. He apparently assisted them in breaking up a "procurement fraud operation which resulted in the resignations of a number of Amtrak management officials (James Brown, Gary Baker, and William Rogers) and the firing of a union employee (John Durst).

At the time, Mr. Boyd's responsibilities as a laborer included refueling vehicles, cleaning the maintenance shop, and assisting machinists in the removal of parts and equipment.

Since his efforts to cooperate with your special agents and the subsequent departure of Messrs. Brown and Rogers, Mr. Boyd's circumstances have changed. In addition to the above duties, Mr. Boyd has now been assigned regular diesel shop floor responsibilities including toilet cleaning and heavy labor. While this railroad veteran with 37 years of seniority cleans the Amtrak toilets, the laborers with merely one or two years of seniority are permitted to watch Mr. Boyd. To make matters worse, Mr. Boyd has become the only laborer to receive his instructions in writing, a transparent effort to intimidate him and facilitate charges of a rule violation. These written instructions were issued by a general foreman who might have taken the Assistant Manager position, if the Manager himself had not resigned.

Moreover, the work environment is apparently hostile. One of Mr. Boyd's young supervisors, not even born when Mr. Boyd was already employed by the Santa Fe, is permitted to be rude and discourteous in telling Mr. Boyd to "shut up". Mr. Boyd as you know is liable to immediate dismissal for insubordination if he answers the insult in kind. Other employees are being encouraged to ridicule or humilitate Mr. Boyd.

Mr. Boyd has attempted to ameliorate the situation. He requested authority to utilize his seniority rights to change jobs and supervisors and was apparently promised that this would occur. After the agreement was made he informed his manager of the position he would seek using his seniority rights. Apparently the manager later broke the agreement.

These allegations are reminders of managerial methods prior to your intervention, Mr. Claytor. Clearly your mid-level managers in Chicago are violating your orders that no reprisals be taken against employees who may cooperate with your investigation, or that of this subcommittee. As Chairwoman of this subcommittee, I cannot overlook deliberate efforts, however subtle, to intimidate and punish Amtrak employees who have the integrity and courage to report labor abuse, crime, or other violations to your internal investigators or to my congressional investigation.

Please fully investigate Mr. Boyd's situation. Previous investigations by Messrs. Ingalls, Henderson, and Autro seem to result in the channelling of investigative findings to those responsible for the abuses and it is important that this not occur. For this reason, I would request that you oversee this investigation personally and report your findings to me in writing by April 10, 1985. Please identify all Amtrak officials who assist you in your investigation. In addition, I would request that you fully investigate the treatment of all of the corporation's and the subcommittee's identified witnesses to determine whether any similar reprisals are occurring.

Moreover, I must request that your staff work closely with my counsel, Myron Zeitz, to develop a letter from you to all Amtrak employees encouraging them to contact my subcommittee with evidence of irregularities they have witnessed and promising them your complete protection from reprisals. Given the pervasiveness of the management problems at Amtrak and the apparent ambiguity regarding protection of witnesses, it is essential that the situation be clarified immediately. This letter should also be completed by April 10, 1985.

This subcommittee will, this year, conduct further oversight at Amtrak and will inquire into Amtrak handling of unionized employees and officials who disclose irregularities and violations. I will be carefully reviewing the career progress and personnel actions taken with respect to our witnesses as well as employees implicated in corporate abuse. I earnestly hope the corporation is not engaged in a campaign to punish employee witnesses committed to the improvement of Amtrak management and to reward those responsible for the abuses. Early indications suggest this may be occurring.

Sincerely,

Cardiss Collins

CARDISS COLLINS
Chairwoman

CC:MZ:eg

cc: Charles Boyd
Members of Congress
Interested Union Officials

National Railroad Passenger Corporation, 400 North Capitol Street, NW, Washington, DC 20001

Amtrak

April 30, 1985

Honorable Cardiss Collins
U. S. House of Representatives
2264 Rayburn House Office Building
Washington, DC 20515

Dear Representative Collins:

I am responding to your March 27 letter regarding your concerns that Amtrak management employees in Chicago are not adhering to my directive that there be no reprisals against employees who have cooperated either with my special investigation team or your Subcommittee investigators.

You will recall that concurrent with the establishment of Amtrak's internal special investigating committee, I issued a letter to all Amtrak employees in the Chicago area encouraging them to communicate with committee members "in complete candor without fear of adverse consequences." Similarly, at the conclusion of your Subcommittee's September 13, 1984 hearing, I gave my assurances to the Subcommittee that there would be no retaliatory action taken against Subcommittee witnesses. We are in full agreement that we must afford employees the opportunity to surface complaints or shortcomings without fear of reprisal. However, employees should not believe that they enjoy special immunity or privileges as a result of their actions; they should continue to be treated fairly, neither preferentially nor prejudicially.

You have mentioned several specific incidents which have involved Mr. Charles Boyd, an employee at Amtrak's Chicago 16th Street Maintenance Facility. In June 1984 Mr. Boyd spoke with the special investigation team regarding his knowledge of procurement irregularities at the facility, and he was named as a Subcommittee witness at the scheduled March 5, 1985 Subcommittee hearing, which was postponed. I can find no factual basis on which to conclude that any actions by Amtrak's management which adversely affected Mr. Boyd were motivated by his cooperation with the several investigators, or by his identification as a witness at your hearing. I would like to provide you with some background information concerning Mr. Boyd's employment and specific information on the incidents described in your letter.

Mr. Charles Boyd began employment with Amtrak on June 1, 1976, when Amtrak assumed control and operation of a power plant from the Atchinson, Topeka and Santa Fe Railroad, where he had been employed for many years. When Amtrak closed the facility in May 1981, Mr. Boyd accepted a job as a laborer at the maintenance facility. He worked there until August 1982, when he went out on a medical leave of absence until March 1983. He experienced difficulty performing the duties of a laborer after his illness, and the facility manager of the locomotive shop created a job for him as Motor Equipment Operator-Laborer on May 6, 1983. He still holds that position.

A Motor Equipment Operator-Laborer must be qualified to operate a forklift. An employee in that job category is also required to clean the shop, water locomotives, and "perform all other duties assigned which are generally known as laborer's work." Thus, it is a laborer's job, with the added duty of operating a forklift as needed.

In late June 1984, Mr. Boyd notified my special investigating committee that he had been threatened with termination because he talked with them. There was an immediate investigation of those allegations held at the 16th Street facility on that same day. The investigative team concluded that the allegations were unfounded, and that in fact an unfortunate happenstance of several concurrent unrelated events created that impression in Mr. Boyd's mind. Shortly after Mr. Boyd met with my committee, General Foreman Gary Baker told him that if he were found sleeping on the job he would be disciplined. Messrs. Henderson, Fossett and Thomas determined that Mr. Baker did not know Mr. Boyd had talked with the committee, or even that an investigation had focused on the automotive shop, when the statement was made. Rather, another foreman seeking reassignment of laborers from Mr. Baker's area to his own had argued that Mr. Baker obviously did not need as many people because he could afford to have Mr. Boyd sleeping all the time. Mr. Baker's warning was precipitated by that comment, and was totally unrelated to Mr. Boyd's discussion with the investigators.

The facility manager, James Brown, personally explained to Mr. Boyd what had happened and assured him that he was not targeted for reprisals. Messrs. Brown and Baker clearly understood that any allegations of reprisals would receive careful scrutiny and that such conduct would not be tolerated. They reported to Mr. Henderson in a follow-up call that he accepted the explanation and had no problem with the handling of the matter.

In July 1984, Mr. Gil Bruno was appointed the new Facility Manager at 16th Street, replacing Mr. James Brown. Shortly after his arrival, Mr. Bruno was made aware of the fact that Mr. Boyd had been sleeping while on duty. Mr. Boyd told Mr. Bruno that his drowsiness was caused by medication which had been prescribed for him for high blood pressure. They agreed that Mr. Boyd would not operate the forklift while he was on medication and that other laborer duties would be assigned to him. No disciplinary action was taken against Mr. Boyd following this conversation.

Mr. Boyd subsequently complained that he had not been permitted to attend a safety award dinner, which he believed was in retaliation for disclosing improper activities in the shop. By way of background, in May 1982 a safety incentive program was established at 16th Street by Mr. Brown. Along with all those who worked in the vehicle/shop maintenance group, Mr. Boyd was placed in the "A" team for safety competition purposes. When an award dinner for the "B" team was scheduled, Mr. Boyd was of course not invited. Mr. Boyd was upset at not being invited, because Mr. Brown had told him that he would be on the "B" team. However, Mr. Brown apparently never communicated his verbal agreement to the other supervisors, and Mr. Boyd's status on the team roster was not changed. In an October 2, 1984 meeting between Mr. Boyd, Mr. R. L. Townsend, Mechanical Superintendent, and Mr. Bruno, it was acknowledged that an oversight had been made, and Mr. Boyd was invited to the next award dinner regardless of which team won. During that meeting, Messrs. Townsend and Bruno also discussed with Mr. Boyd the circumstances under which Mr. Boyd had been removed from forklift duty. Mr. Boyd indicated that he had discontinued his medication and had resumed operating the forklift. The October meeting seemed to fully address Mr. Boyd's complaints, and he appeared satisfied with the discussion.

During November 1984, Mr. Bruno began getting complaints about the condition of the toilets in his shop. The complaints persisted throughout December, and early in January 1985 Mr. Bruno directed a General Foreman, Mr. Wayne Noakes, to rectify the situation. To ensure that the toilets were properly cleaned and stocked, Mr. Noakes delegated the responsibility to a union foreman, Steve McIntyre, giving him a list of additional daily duties which were expected to be handled. As unpleasant as cleaning toilets may sound, it is an essential task which must be done, and such duties traditionally fall to laborers in the shops. These duties were assigned to Mr. Boyd, the only laborer reporting to Mr. McIntyre. Mr. McIntyre provided a copy of the duties list to Mr. Boyd, who now construes it to be "written instructions," which other laborers had not received. With the benefit of hindsight, I cannot say that handing Mr. Boyd the list was well-advised. However, I have no reason to believe that Mr. McIntyre acted with malice or vengeance. Moreover, it appears that the managers involved probably were attempting informally to accommodate Mr. Boyd's inability to perform some of the more physically demanding duties of a laborer. I should point out that Mr. Boyd is excessively overweight, has difficulty climbing ladders or stairs, and his general mobility and dexterity are limited.

Within a week of being given his list of duties, Mr. Boyd complained to Mr. Bruno about being given the assignment of cleaning the toilets. He asked Mr. Bruno to abolish his position and allow him to exercise his seniority to obtain another laborer's job. Mr. Bruno confirms that he told Mr. Boyd he would consider this request, but he is emphatic that he did not say he would grant the request. Several weeks later, in early February, Mr. Boyd again approached Mr. Bruno and wanted to know why his job had not been abolished. Mr. Bruno told him that he was reviewing a plan to change a number of laborer assignments but was not ready to do so at that time. As of this time no changes have been made, but the organization of any shop is under constant review, and any change in the position Mr. Boyd holds would be considered in the context of larger organizational needs.

Mr. Autro personally met with Mr. Boyd on March 1, 1985, when he was arranging for Mr. Boyd and other Chicago-based witnesses to attend the March 5 hearing. Mr. Boyd informed Mr. Autro that he was upset and that the "number one man in seniority" should not have to clean toilets. This statement caused Mr. Autro to initiate an immediate investigation on his own. It became apparent that since his return to work in May 1983 Mr. Boyd had become less and less productive. The position created for him was cited by several employees who met with my special committee as an example of preferential treatment afforded to certain "favorites" of Mr. James Brown. Mr. Boyd's health may have been a factor in his reassignment, but the controlling labor contract does not provide for such special arrangements. This is exactly the type of management practice which led to Mr. Brown's removal from his position as facility manager. Apparently Mr. Boyd developed the perception that he was getting what the "number one man" should have and, when he was given the additional duties associated with his job as a laborer, he concluded he was being treated unfairly. That conclusion is unwarranted.

I am also informed that Mr. Boyd was not restricted from forklift duty, but rather that there was not enough forklift work to keep all forklift operators occupied on a full-time basis. Additional duties were assigned to him, which included cleaning and stocking the two washrooms on the ground floor (other laborers maintain second floor washrooms and lockers), cleaning the Free Issue Area and maintenance shops, removing acetylene and oxygen bottles from the backshops and ensuring fresh supplies are on-hand, and cleaning and fueling vehicles. Mr. Bruno felt that other assignments normally given to laborers would go beyond Mr. Boyd's physical capabilities. These duties would include cleaning out locomotive cabs, toilets, and enginerooms; washing windows; handling drums, steel plates and beams; and assisting machinists. The assignments he was given were not out-of-line for any laborer; they clearly do not evidence an attempt by management to harass Mr. Boyd. Local management attempted to rectify a situation where an employee was not being used productively by adding assignments to effect labor efficiencies. I simply cannot agree on the basis of these facts that management's actions were vindictive or retaliatory.

I have assured our employees that they should speak out about management or employee problems in complete candor without any fear of adverse consequences. I believe there is little or no doubt anywhere in this company about my position on the questions of reprisals or harassment--such conduct will be dealt with swiftly and severely. However, you should understand the need to hear all sides of a story before forming conclusions and taking action. We have cooperated totally with every aspect of your Subcommittee's investigation, and I intend to continue to do so. However, I do not agree with your statement that "the pervasiveness of the management problems at Amtrak and the apparent ambiguity regarding protection of witnesses" require another communication from me to all Amtrak employees at this time.

I initiated an "Employee Comment Program" at Amtrak shortly after my arrival here, and that mechanism affords an opportunity for any employee to communicate directly with me confidentially or anonymously if he wishes. It is my experience that this system of communication is working well, and I would not want to do anything to detract from its effectiveness in bringing problems to my attention directly. Moreover, I am confident that my past communications to our employees make clear that reprisals will not be tolerated, and that cooperation with your investigation is encouraged.

Lastly, I am advised that Mr. Zeitz has informally notified us that you have postponed the hearing scheduled for May 21 and 22 until June 5 and 6. I sincerely appreciate your willingness to rearrange your schedule to avoid a conflict with the monthly meeting of Amtrak's Board of Directors. Please let me know as soon as you can the names of employees who will be required to attend so that necessary arrangements can be made.

Sincerely,

W Graham Claytor Jr

W. Graham Claytor, Jr.
President

WGC/JHE/HRH/FEW/jeh

bcc: T. P. Hackney, Jr.
P. F. Mickey
H. R. Henderson
C. Autro

Mr. HENDERSON. I would like to further add here, as counsel for Mr. Claytor and not as a witness, even though I've been sworn and required to testify, I do have some fact knowledge that may be relevant, and I'd like to explain that aspect of it.

I was in Chicago in June of last year—about my third or fourth trip out there connected with the investigation—when I was advised by one of the police investigators—I believe it was Pete Steil—that Mr. Boyd had called him and said he'd been threatened with his job because he had talked to the subcommittee.

That very day, within the hour, the three people that had been sent on our investigating committee went to the 16th Street shop, went directly to Mr. Boyd without going through his managers, took him from his work place, interviewed him, got the details of what had happened in that incident, and he in fact told us that he had been threatened with firing.

We left him and immediately confronted both his foreman, who was alleged to have made the threat, and Jim Brown, and required an explanation of them.

We got an explanation that was plausible; it's explained in the letter. We got Mr. Boyd in, had that explanation put to him, and he acknowledged that it was plausible and that it could have been a misunderstanding. What was indicated to him was in a different context.

In that meeting, outside the presence of Mr. Boyd, I can tell you that it was made absolutely clear at the outset and at the conclusion to Mr. Brown and Mr. Baker, the two management people involved, that if those allegations were true, they would be terminated.

I had Mr. Claytor's authority and representation when I went out there that that was the case, and I felt comfortable telling them that, and did.

When I went back and reported to Mr. Claytor in a few days in Washington, he confirmed that if we did in fact substantiate those kinds of allegations, that would happen.

There was no question in the minds of either of those managers or Mr. Boyd that those kinds of actions were taken very seriously and they were investigated promptly, thoroughly, and, as far as we were concerned, they were resolved at that time as we were later advised by Mr. Boyd. I personally called him back a couple of days later to see how things were going, and he said that it appeared to have been a misunderstanding, and he was satisfied at that time.

Mr. MCCANDLESS. Thank you.

I have a couple more short questions.

Mr. Hackney, you said that you had vice presidents in six functional areas reporting to you in the table organization now under operation.

Mr. HACKNEY. Yes, sir.

Mr. MCCANDLESS. What is the length of time that these people have been in these areas of responsibility? There are six of them. Has it been within the last 3 years that these people have been promoted? The last 2 years? Is it a situation where they were one step below this and they were promoted?

I guess what I'm looking for is the length of time that these people had been in these functional areas that you referred to.

Mr. HACKNEY. Some of the six have not been in this particular position. Mr. Ingalls has been in that activity for many years and was with, I think, the Southern Railroad before Amtrak.

Mr. McCANDLESS. Why don't we move on then.

Mr. HACKNEY. And Mr. Larson has been in his position, he's the one that handles all the details with all the railroads—our contracts and working relationship with the railroads. He has been in that area ever since he's been at Amtrak pretty much, and he had many years of railroad experience before that.

Mr. McCANDLESS. He came from where?

Mr. HACKNEY. Chicago Northwestern, I think it was.

Mr. Edeleston has been at Amtrak for approximately, I would say, 12 years, and he's worked in government affairs and is now in operating and support. He's a special staff person for me mainly.

Mr. Daniels, the head of our labor relations, has been in that activity ever since he's been at Amtrak, which is probably 10 or 12 years, and he was in that activity for many years with Penn Central or Conrail—Pennsylvania before that.

Mr. Eden has been in passenger services and operating support ever since I've been at Amtrak. He's worked close with me, and he's been at Amtrak, I guess—what?—12 years maybe.

Mr. EDEN. Going on 12 years.

Mr. HACKNEY. And Mr. Sullivan was recently appointed vice president of operation and maintenance just very recently, but before that he was our chief engineer for some time, so he also has many years of railroad operating experience.

Mr. McCANDLESS. I'm puzzled. The reason I ask this question, I'm puzzled why we appear to have had to reinvent the wheel, and we have all of this experience that Amtrak brought from all of these other railroads, and we had all of these problems that created a negative influence on Amtrak.

If we had had somebody from IBM, and we'd had somebody from the Grace Shipping Co., and somebody else from some other, I could understand this. But if I understood your response correctly, five of the six individuals had spent their lifetime, or at least their work time, in railroad-oriented businesses or responsibilities.

Mr. HACKNEY. That is true.

Mr. McCANDLESS. Now that we can put all these people on a map and say that there are six people reporting to you and that this is going to happen and that's going to happen, what assurance does the taxpayer have who is assisting you in keeping your operation going that anything is going to be any different than it was? Because these people haven't gone off to Harvard Business School or anything, they're still railroaders basically.

Mr. CLAYTOR. Mr. McCandless, I became president of Southern Railway in 1967. I discovered that almost nobody at Southern Railway performed a management function by using anything but discipline. That's a railroad tradition; it goes back 75 years. Railroads have generally operated as military organizations.

You didn't have a team, a management team. What you had was a boss and his subordinates, and you gave them hell, and that's the only conversation you ever had with the subordinate. This is a tradition in the railroad business.

You cannot run a good business that way today, in my opinion.

The first thing that I did at Southern was to see if I couldn't break that up, and now we have that. At Amtrak, we've gotten people from lots of different railroads with different backgrounds, and they have come from that type of organization.

Mr. McCandless. Let me stipulate that what you're saying is correct and I'll buy it.

Mr. Claytor. Right.

Mr. McCandless. Now, are we saying that Santa Fe, and Southern Pacific, and all of these other railroads have all of these problems that you had when you first started up, and that's a part of the management system today?

Mr. Claytor. They vary from railroad to railroad and time to time, because I'd say that, 25 years ago, absolutely. One by one, they have modernized their management system, but in order to do this, you have to have a top management that is going to make an effort at this. If you just let nature take its course, the problem is—take a foreman. The man is a good machinist. You make him a foreman. No one tells him how you become a foreman. How do you get other people to do the job?

He looks around, and he sees that the way you get things done is to show everybody else who is the boss; you be tough.

Mr. McCandless. I understand that. You've gone over that.

Mr. Claytor. And that's the problem that the railroad industry, I think, has had from tradition, more than other industries.

Company by company, they have modernized, and I think today most of them have got an enlightened management that's doing a good job, and it varies from company to company. I'm sure I can find some in the railroad industry that behave just like they did 30 years ago.

The problem we had at Amtrak was, we were a new company; we got people from five, or six, or seven different organizations, some railroad, some not; there was no unified policy, tradition, or effort; and everybody did his own thing and was allowed to; and the ones who did their own thing, I think, were using this discipline as the only method of operation, and I'm trying to stop it.

Mr. McCandless. Thank you.

One more question. This is a $64 one.

Mr. Claytor. Yes, sir.

Mr. McCandless. Just a short answer.

Mr. Claytor. Right.

Mr. McCandless. When will Amtrak break even and not need a subsidy, if it continues to get a subsidy?

Mr. Claytor. I don't think that will ever happen, and it has never happened anywhere in the world. The reason that it won't happen is that there is a significant subsidy to every other form of transportation that the Federal Government is providing. The buses have free highways, in effect. The airplanes have got over $2 billion of general tax money to run their dispatching system, billions of dollars of tax-free revenue bonds to build the airports.

If we eliminated all the subsidies to all the other forms of transportation, I believe we could break even, but I don't think that's ever going to happen. It hasn't happened anywhere else in the world. Something over $1 billion a year is subsidized in England

and $2 to $3 billion in Germany and Japan, and I think we're always going to do it.

My objective is to reduce that. We're never going to make it zero, if you're going to have a passenger system.

Mr. McCandless. What is your objective?

Mr. Claytor. My objective is to reduce it every year as much as we can.

Mr. McCandless. What is your bottom line objective?

Mr. Claytor. The bottom line objective is, I think we can manage to get—I intend to have two-thirds—67 percent—of our total costs covered by our own revenues by the end of this decade, which is only another 4 years now.

Mr. McCandless. All right.

Thank you very much.

Mrs. Collins. Mr. Owens.

Mr. Owens. Yes.

First, Mr. Claytor, let me start by agreeing with you 100 percent on your position on subsidies for the railroads matching the subsidies that the other forms of transportation have enjoyed, hidden in many cases.

I also was impressed with your credentials, the credentials you have cited, and impressed with the philosophy and the mission statement that you also cited.

However, I'm quite upset by the fact that, within this same organization with the same mission statement, there seems to be such a disparity between the way employees on the line are treated versus managerial employees.

This is not only in your Chicago shop. I know a little bit about your metropolitan New York area operations only because large numbers of employees have bombarded my office with complaints, leading us to have what we call an open mike hearing and systematically accept complaints from those that have come to us.

So it appears that there may be some justice in the way you handle employees, but certainly we saw no mercy, and we suspect there's a great deal of abuse and the oppressive approach seemed to be the pattern.

Yet, when we look at the situation with management—and I'm sure if you were not here yesterday you have been briefed on the testimony concerning material control, inventory controls, and the kinds of things that have occurred there; and even your own investigative body, it seemed, certainly had a philosophy of looking only selectively and going out of its way to give management the benefit of the doubt.

Tens of thousands of dollars of irregularities were noted in the testimony yesterday with respect to inventory control.

There was testimony to the effect that there's a whole warehouse of unaccounted for traction motors or something, and there is no disciplinary pattern with respect to management which seems to parallel that pattern which you have with the lower level employees.

I'd like for you to start by just elaborating on the case of Mr. Van Buskirk. It appears that one of the people who testified yesterday, Mr. Elza, who had formerly been one of your employees—

there was a Mr. Van Buskirk who was considered a first rate manager, came in, and some of the same abuses were cited.

He began to investigate and take action against the people who were guilty of perpetrating those abuses, and he fired one of the individuals whom you later decided to either fire or he resigned under pressure, and yet Mr. Van Buskirk, instead of being rewarded, was terminated—not terminated but transferred, and certainly removed from that hot spot there in Chicago that was a source of so many of these inventory irregularities.

I think your name was mentioned—Mr. Crawford's name was mentioned as the person directly responsible for the removal of Mr. Van Buskirk.

I'd appreciate your comments on the case of Mr. Van Buskirk to enlighten us on how you approached this.

Mr. CLAYTOR. First of all, Mr. Owens, let's say that none of the incidents that have been talked about—with which I am not personally acquainted of course—occurred after I had taken the action that I had taken with respect to management philosophy and with the training program which we were just getting started.

My experience on Southern was, it will take 2 to 3 years to do this effectively and have it completely effective, and I'm doing it as fast as I can.

Second, I know nothing about the incident you asked about, and I refer to Mr. Crawford, who is the manager in charge of that.

Mr. OWENS. Mr. Crawford, would you care to elaborate?

Mr. JOSEPH CRAWFORD. Yes, sir, if I may, Mr. Owens.

The incident occurred in approximately the spring of 1980 with Mr. Van Buskirk and Mr. Brown, to my knowledge. Now, that's quite a while ago. So to bring my memory to light, I gave Mr. Van Buskirk a call this Monday afternoon. After receiving Mr. Elza's statements, and, in confirmation by Mr. Van Buskirk, the facts of that particular situation were that he was working for Ray Preski, on Ray Preski's staff, not in a line management position but as staff adviser on a locomotive site, and he and Mr. Brown had an argument on a specific repair.

During that argument discussion, Mr. Van Buskirk said to Jim Brown, "You're fired." It was a personality conflict difference.

Mr. Preski is the one that Mr. Brown worked for directly and the only one with the authority to fire Mr. Brown. Therefore, Mr. Brown at that particular time was never fired nor reinstated.

Mr. Van Buskirk, approximately 6 weeks later, requested to go back to a line job at Brighton Park, which he did.

Mr. OWENS. What is your assessment of Mr. Van Buskirk? Is he a top-flight manager or not?

Mr. JOSEPH CRAWFORD. Yes.

As a matter of fact, approximately 6 months later Mr. Van Buskirk went on and is working presently with another railroad up in Michigan.

Mr. OWENS. He left your——

Mr. JOSEPH CRAWFORD. Yes, for a better——

Mr. OWENS. Even though he had been cited as being a top-flight manager?

Mr. JOSEPH CRAWFORD. Yes, and he moved on for a better opportunity, and everything I just mentioned to you he confirmed with me in our discussions this past Monday.

Mr. OWENS. And this Mr. Brown which you had reinstated, where is he now?

Mr. JOSEPH CRAWFORD. He wasn't reinstated, Mr. Owens, because——

Mr. OWENS. He was never fired properly.

Mr. JOSEPH CRAWFORD. Yes, sir, that's correct.

Mr. OWENS. Where is he now?

Mr. JOSEPH CRAWFORD. He is terminated.

Mr. OWENS. He was terminated?

Mr. JOSEPH CRAWFORD. Yes—Mr. Brown.

Mr. OWENS. Mr. Brown was terminated.

Mr. JOSEPH CRAWFORD. Recently.

Mr. OWENS. Thank you.

You wanted to elaborate, Mr. Hackney?

Mr. HACKNEY. Yes. I was going to say Mr. Brown was the one that I referred to in my opening comments that was terminated after we had the final results of Mr. Ingalls' hearing.

I think I heard reference made to Mr. Van Buskirk being terminated. He actually chose, when we closed Brighton Park—this is about the time I——

Mr. OWENS. I corrected that, and I said he was transferred.

Mr. HACKNEY. OK. He was transferred over and did not lose any monetary value or anything.

Mr. OWENS. Oh, I'm sorry.

Mr. HACKNEY. He simply chose to take a promotion with another railroad heading up one of their main departments.

Mr. OWENS. I'm sorry. He was transferred with a demotion.

Mr. JOSEPH CRAWFORD. No.

Mr. OWENS. Was he demoted or not?

Mr. HACKNEY. At Brighton Park, it was a special shop facility within the Chicago area. It was built to maintain only our turbine locomotives. We no longer operated those out that way, and we were able to consolidate the work, that miscellaneous work that was left there, into the Chicago major shop as an economy move, and Mr. Van Buskirk was brought over to the main facility at Chicago on an equal level job at the same level of pay.

To my knowledge, he was quite satisfied with us, with the action, or the treatment, he had received until he got a good opportunity and left.

Mr. OWENS. There seems to be some confusion about Mr. Brown. Was Mr. Brown terminated, or did he resign?

Mr. JOSEPH CRAWFORD. Mr. Brown was required to resign or be terminated.

Mr. OWENS. So he was required to resign, and he resigned?

Mr. JOSEPH CRAWFORD. Yes, sir.

Mr. OWENS. And you said this incident went back to 1980.

Mr. JOSEPH CRAWFORD. The incident with Mr. Van Buskirk that was referred to.

Mr. OWENS. When did Mr. Brown resign under pressure?

Mr. JOSEPH CRAWFORD. Last August.

Mr. OWENS. He was there until last August?

Mr. JOSEPH CRAWFORD. Yes, sir.

Mr. OWENS. In the testimony of Mr. Elza, he stated that Mr. Van Buskirk said that he fired Mr. Brown, one, because Mr. Brown had caused a locomotive failure by failing to do proper maintenance and then lied about it to him, Mr. Van Buskirk; two, Mr. Brown was not capable of performing as a manager in terms of supervising employees; three, Mr. Brown had already been relieved of his authority to conduct employee discipline investigations because he was prejudging the employees and denying them fair hearings; and, four, he doubted Mr. Brown's honesty and suspected him of stealing Amtrak property.

Top-flight manager Mr. Van Buskirk made these statements. He's involved in the firing of Mr. Brown. As it turns out, that was not done properly. Mr. Brown is brought back on, and Mr. Brown stays on for another 4 years before a pattern of irregularities that are really under investigation from outside lead to his resignation.

Does that say that we have management that's on its toes and can spot a real piece of deadwod that's beyond being a piece of deadwood, corrupt also, perhaps?

Mr. JOSEPH CRAWFORD. Mr. Owens, that is Mr. Elza's opinion. Mr. Van Buskirk does not support that statement.

Mr. OWENS. Mr. Van Buskirk did take action to fire him.

Mr. JOSEPH CRAWFORD. No. He had a verbal argument with him.

Mr. OWENS. He took actions, and Mr. Brown was removed from the scene for 2 or 3 days. Is that correct?

Mr. JOSEPH CRAWFORD. No, sir, that's not true.

Mr. OWENS. So he did not fire him improperly?

Mr. JOSEPH CRAWFORD. No, sir.

Mr. OWENS. He did not do anything to him? No discipline action was taken by Mr. Van Buskirk?

Mr. JOSEPH CRAWFORD. That's correct.

Mr. OWENS. A few minutes ago you said differently.

Mr. JOSEPH CRAWFORD. No. In August 1984, Mr. Brown was required to resign.

Mr. OWENS. No. The encounter between Mr. Van Buskirk, a top-flight manager, by your own admission, and Mr. Brown led to Mr. Brown's being terminated improperly so by Mr. Van Buskirk because you said he didn't have authority to do it.

Mr. JOSEPH CRAWFORD. I'm sorry. If I said that, that is wrong. He was not terminated—Mr. Brown—in 1980; that's correct. They had a verbal argument.

Mr. OWENS. All right.

Would any one of you gentlemen like to address yourselves to the pattern of irregularities with respect to the inventory control in the Chicago shop and the incidents which are cited repeatedly about missing parts and parts that never appeared that were paid for, traction motors that were ordered and never appeared, allegations that there was a warehouse full of motors in California? Would you like to address yourself to those charges?

Mr. JOSEPH CRAWFORD. Yes, Mr. Owens, I'd like to speak on the traction motor incident.

There has been some discussion that traction motors were purchased and not received. We have not purchased traction motors at Amtrak since before 1977.

Since that time, we've converted some SDP-40 locomotives at EMD into F-40 locomotives—113 of them—which surplused to Amtrak 2 traction motors per unit, which were put in our traction motor pool. All these traction motors and the traction motors that had been in our original inventory pool have been and are accounted for. We are missing no traction motors.

Mr. OWENS. Are the other allegations of purchases that were made that never appeared in the shop—you're saying those purchases were never made either?

Mr. JOSEPH CRAWFORD. I'm not aware of those instances.

Mr. OWENS. You're not aware of the testimony of yesterday?

Mr. JOSEPH CRAWFORD. I read that testimony yesterday, and that's the first time I've been made aware of anything like that.

Mr. HACKNEY. I would add, we're aware of the improper situations that were brought out in Mr. Ingalls' investigation and his reports to us. The others we have not heard anything of except until this week—the affidavits of the witnesses yesterday.

Mr. OWENS. Mr. Ingalls' investigation is the one that revealed only about $3,000 worth of property missing or the value of the corruption was no more than about $3,000?

Mr. HACKNEY. That's correct.

Mr. OWENS. Or the corruption was no more than about $3,000?

Mr. HACKNEY. That's true.

Mr. OWENS. So you would say that the allegations that were made in testimony yesterday are new to you or untrue?

Mr. HACKNEY. That's true. The other items mentioned, the traction motors, which would be the large price items that were mentioned, certain things about scrap, governors, we only heard about it this week.

We will do whatever investigating needs to be done to follow any of those claims up, but that's the first time it was called to our attention.

We do know that there's a misunderstanding about the traction motors, and I know that possibly the subcommittee has heard as much about traction motors that they care to hear, but we got new locomotives.

The old locomotives we traded in had three traction motors on each truck; the new ones only had two. So we got for each truck, or two per locomotive unit, we got two surplus traction motors. They didn't need those. They weren't needed on new trucks, because certain parts are used over, the way we do it. It's a trade-in type of thing, and rebuild, and there's a lot of financial advantage.

We were not about to let General Motors get those two traction motors and put them in their surplus, and that's the reason, for several years, we have not had to buy any new traction motors, because we had a large inventory.

Now, that inventory can float from various places, and no one location would really know the story unless they were assigned to those details, because the traction motors are basically overhauled either at an outside vendor, if necessary, or at Beech Grove shop in Indiana, and there may be 10 of them at Beech Grove today and 25 of them next week. It depends on the various other workload things.

So what Mr. Crawford is trying to tell you is, with all this surplus of traction motors that we got through our various locomotive trade-ins, we came up with a number, and he can still account for every one of them.

The inventory is about 60 less now than it was, because there have been 60 of them disposed of, and when the reference is made to scrap, that doesn't necessarily mean we physically scrapped it; it was turned in as scrap. We might have sold one as a secondhand unit to somebody because, with all this inventory we have, we would not put several thousand dollars into the repair if we had a bank of others here that could be repaired much cheaper.

The statement was also made yesterday—the individual said he had never heard or seen a destroyed traction motor. My only answer to that is, that gentleman has never seen a bad derailment when the underside of locomotives are wiped out. I have seen several.

I have seen pieces of rail punched clear through a traction motor. It doesn't happen often, but the statement that it can't happen is not right.

Mr. OWENS. I think it was stated before that only one individual, as a result of your investigation, was terminated. That was Mr. Durst, was it? He would not resign, so he was terminated?

Mr. HACKNEY. Oh, no. Our investigation in Chicago—one individual?

Mr. OWENS. Yes. Only one was terminated; the other two resigned.

Mr. HACKNEY. That's right. Mr. Durst had the privilege of resigning, and I think we ought to make sure that everybody understands that every employee we have has that privilege.

If a union employee is charged with some violation, if they choose to resign before the official investigation, they have that right to do so, and it happens sometimes, and the same thing applies to a manager.

Now, the reason Mr. Durst was terminated—he was officially charged, through the proper union agreement, for official hearing. He did not choose to show up. So the hearing officer terminated him after an official review of the facts.

Mr. OWENS. The two gentlemen who resigned—what kind of rights or privileges do they take with them as a result of resigning in terms of pension, or leave, or——

Mr. HACKNEY. There's no difference between the rights they take if they are terminated or if they resign. The only thing that gets into that picture is, if somebody has reached a certain age and certain years of service and has the right to retire.

Mr. OWENS. Then they can retire with all rights and privileges?

Mr. HACKNEY. That's true.

Mr. OWENS. We have heard numerous stories of employees that have been dismissed and not been given rights and privileges. You have a different standard for your management employees?

Mr. HACKNEY. No. I didn't say that people who were dismissed had all this. I said the person that has got the years of service and has reached the age of retirement, which is 55 or older, he has earned that right. There is no way we could not give it to him if we chose to do so, which we wouldn't.

But if they're terminated, or if they're fired, or they come in and give you a letter of resignation, there's no difference.

Mr. OWENS. One final question. Mr. Claytor, on this timetable, your open door policy, or writing directly to you was started when—the invitation of employees to write directly to you?

Mr. CLAYTOR. I think we've had something like that for some years. I specifically put this into effect, I think, sometime about a year ago.

Mr. HACKNEY. I'd say maybe a little longer than that. But prior to Mr. Claytor coming aboard Amtrak, we had what we called an employee hotline, where they could write a letter or make a telephone call, and it'd be recorded—the same thing. He merely improved it, put it into a form——

Mr. OWENS. I heard him say that there'll be no reprisals also.

Mr. CLAYTOR. That's right.

Mr. HACKNEY. I'd like to—so he won't have to, I would like to advise you how that works.

Any employee that wishes to make any comment, a complaint, a better suggestion for service, or whatever, if they have something that they want to tell management, they can put it on this employee comment form and explain it.

Those letters go to Mr. Claytor. Mr. Claytor personally reads those letters, and, if he's out of town, a copy is held so he can see it when he comes back. They, in turn, go to the department heads, such as Mr. Eden, or Mr. Crawford, or I see a lot of them within my group.

Mr. CLAYTOR. With my comments in many cases.

Mr. HACKNEY. Yes, with a note to get into this, or, "This doesn't look right," or, "I'd like to know more about this;" there are many different comments that he can make.

Then that department head is responsible for thoroughly investigating and preparing a response. That response is personally signed by Mr. Claytor. If he happens to be on vacation or out of town for a while, where we don't want to hold up the mail, either I or some other officer that has the signing authority for that period will sign it to keep it moving, but there is a copy made that he reads when he comes back.

Mr. OWENS. So that's in effect now, and it's all over your system?

Mr. HACKNEY. Yes. It has been for a long time.

Mr. CLAYTOR. Yes, sir.

Mr. OWENS. I heard you say something about it was started——

Mr. CLAYTOR. All over the system.

I'd like to add one thought to that.

Mr. OWENS [continuing]. Two years.

Mr. CLAYTOR. In some cases, charges are made that may involve very senior people or be very broad. In those cases, I don't send it to anybody except the police or the auditor, depending on the kind of case, and I have them make the investigation and report back to me, and only to me.

I do the same thing on occasion with anonymous letters, because some of these things that come in are not signed. People say, "I can't sign it because I'm afraid of reprisal." In every company that happens.

I investigate all the anonymous ones, too, and if it's the sort of thing that ought to be looked into for criminal action by the police or for financial action by auditors, I will send it direct to the auditor and get a report back to me, and nobody else sees it until I get that report; and we're still doing that, and I intend to continue that.

Mr. OWENS. No further questions, Madam Chairlady.

Mrs. COLLINS. Mr. Swindall.

Mr. SWINDALL. Mr. Claytor, I've got one question. When do you find time to run the railroad, as much as you're before subcommittees and committees of Congress?

Mr. CLAYTOR. Mr. Swindall, I'll tell you, the problem of the budget and answering all the questions of this committee have taken an inordinate amount of my time this year, and I haven't had the kind of time to do a lot of the things that I had planned to do this year.

For example, we had hoped that we were going to be able to make agreements to take over the train and engine employees on some of the railroads that run our trains for us. It would be a considerable saving, and we were going to do it. We were planning for that this year. We had to postpone our negotiating because of the budget problem, as well as all the other things.

I consider that my relations with the congressional committees on every side—your committee, the Budget Committees, the authorization committees—are of critical importance. So that is a major part of my job.

However, having been in Washington for almost 50 years now, it's not new to me, and I think I can handle this sort of thing without devoting all of my time to it. I wish I could spend more time trying to make the railroad more efficient and doing other things, that would be more productive.

But I will say this. I have not let it interfere with our going forward with this management development program which I've been talking about, which is my No. 1 priority, and it's something that's going to be going on for the next 2 years.

Mr. SWINDALL. While you were at Southern Railway, did you experience any of the kinds of problems that turned up at the Chicago automobile plant?

Mr. CLAYTOR. Yes, sir. I think any company of our size is going to have those. We had agents stealing money; we had various people in the purchasing department—not lots, but occasionally. As I say, I was there 10 years, so we had a significant number over that period of time taking kickbacks, people cheating on expense accounts.

Probably the most expensive thing of all was, every now and then you'd turn up just plain total incompetence, and that cost you as much money as the other things did.

One of the things that I happen to remember was—our police caught them at this—we had a supervisor who was in cahoots with outside people who were stealing copper wire off an abandoned telephone line along the railroad and then selling it. Copper at that time was very expensive, and this was a big deal. They were sharing the proceeds with the supervisor, who was sort of protecting them. He's in the pen, or he was in the pen.

As a matter of fact, when I was Secretary of the Navy, I was still getting letters from somebody who was in the penitentiary saying, "Won't you help me get a pardon? After all, I didn't do anything but what everybody else was doing," which is one of the usual things that is claimed. So it's a problem.

The problem is, what do you do about it? I think the system that we've got, and we'll have even more, will help.

Let me say that on Southern, after we got our management development program going, that helped a great deal in finding these things, because we had a team approach at all levels, including our union people who would tell us things and not be afraid to do it, and we'd turn them up. We had a thoroughly effective and competent police department.

I'm sure some people stole money and got away with it, and that will always happen, but I think we did as good a job as you could do, and I'm determined to do that here.

Mr. SWINDALL. How did the wrongdoing at the Chicago automobile plant first come to your attention?

Mr. CLAYTOR. It started when Congressman Yates, at an appropriation hearing, read me some excerpts from a disciplinary hearing that he thought was being badly handled, and I got into it instantly and had our labor relations department check this, and that particular hearing was being badly handled.

I then got into the thing more deeply, and it became clear that we had management problems in Chicago, and I appointed Harold Henderson as the chairman of a special group from headquarters, reporting directly to me; Nate Fawcett, who is now assistant vice president, personnel; and a senior man from the labor relations department in Washington, Charlie Thomas.

I said, "The three of you go out and interview everybody, all the union people particularly, in passenger services, where the first problem arose, and in the shops, and find out all the information you can, and come back and talk to me." That is how the whole thing started.

Mr. SWINDALL. Was this before this committee's investigation?

Mr. CLAYTOR. Yes, yes, that was.

You turned over a great deal of information to the committee. The committee went out and did it's own investigation, covering a lot of the same ground.

Mr. SWINDALL. Do you penalize management employees differently when they are caught for any type of wrongdoing than you do union employees?

Mr. CLAYTOR. No; no. Only the procedure is different.

We must understand that a union employee cannot be penalized without complying with the procedural requirements of the Railway Labor Act and the union agreements which means he's entitled to a hearing, he's entitled to several appeals, and he's finally entitled, if he wants to, to take it all the way to a decision by a neutral.

Management people don't have that. I can fire them out of hand. The only thing they have is that if I do so arbitrarily or on improper grounds, they can sue you for wrongful discharge in the courts.

I, therefore, try to take action on management people only when I'm sure that I've got a solid case and that they're right. I don't want to be arbitrary about this.

But I do, and I think in some ways management people have got to be held to a higher standard than others, particularly in matters of real misconduct, because someone in the management who is doing something like occurred here—encouraging people to have their automobiles repaired in the company shop improperly—that is going to get a lot of other people doing the same thing, and their justification will be, "Well, the manager was doing it, and I was just doing the same thing my boss was doing." Therefore, the boss is particularly responsible.

As you go down the line, when a situation like that occurs, the more junior people who were just doing what everybody else was doing are not excused. You ought to have enough gumption to do something about it and not just go along with the crowd. But it's a different level of guilt than the boss and the top men who were doing it. I insist on that, and we're going to continue to insist on it.

Mr. SWINDALL. One final question. How would you evaluate Amtrak's police department in comparison to other similar police departments?

Mr. CLAYTOR. The other similar one that I happen to know about was the one at Southern Railway, which I think was one of the very best in the industry. We had a superb working arrangement with the FBI, all the local police, and we had good people.

I don't know how Amtrak's police department was before I came; I can't evaluate that.

But after I came to Amtrak, Tom Hackney and I appointed Ray Ingalls to take charge of it, and Ray Ingalls I had come to know well—he came from Southern, although I didn't know him when he was there—as a very able, experienced man, and he has made his group, in my opinion, into one of the most effective railroad police departments in the country. He's respected by other police agencies very well and has an extraordinarily good working relationship with them. That's why I'm particularly pleased to have the FBI get into this, because I think they will work with Ray superbly well.

Not that we can't improve it—God knows, you can improve anything—but I think it's a very good police department, in the upper echelon of railroad police departments as I know them.

Mr. SWINDALL. Thank you.

I will yield back the balance of my time.

Mrs. COLLINS. Thank you.

I just have a couple of quick questions, Mr. Claytor.

You mentioned in response to a question by Mr. Swindall that there were problems at Southern Railroad, and all that with white-collar crime, shrinkage of inventory, theft, and running off with copper wire from a facility that was not being used, and all that.

Knowing of these problems when you came to Amtrak, did you review, and, if your review showed, did you institute new policies of inventory control or internal control, first of all, to see to it that these things were not occurring within the Amtrak system?

Mr. CLAYTOR. No, indeed.

As I mentioned, when you come to a new company as the head of that company, as an outsider, what you've got to do is set some priorities for what you're going to try to do. If you try to do everything at once, nothing gets done.

My priorities were the big problem Amtrak faced, which was the problem of not providing the kind of service that it ought to provide and spending too much money.

I devoted, I'd say, just about all of my first 18 months to those problems, and I got into the others when I realized we had these other problems.

We had a police department. We had an organization that should pick up things like this, as we did at Southern, and I didn't devote my attention to that until I realized that our management problem was a problem that needed attention.

I had found it at Southern, but the first things come first, and I spent the first 18 months of my time, as I say, trying to get my first priorities accomplished with the help of my excellent management team. I didn't do this myself; the team itself did what I wanted to do.

We are moving now toward an improved efficiency, financial efficiency, every year, and better service every year. Now we are trying to do some other things.

Mrs. COLLINS. Mr. Hackney, I believe you talked about your hotline, and I think in further response to a question, Mr. Claytor, you said that you investigate the anonymous tips that come in.

How do you go about investigating the anonymous tips? Do you go to the supervisor? Or how do you handle that if you don't know——

Mr. CLAYTOR. It depends on what it is, obviously.

Mrs. COLLINS [continuing]. Who initiated it?

Mr. CLAYTOR. Where an anonymous letter comes in that says that in a certain place somebody is taking a kickback, or stealing money, or something like that, I take it right to the police. That's all the information I have. You don't go back to the writer, obviously; you can't.

Mrs. COLLINS. Well, you don't know who the writer is.

Mr. CLAYTOR. So you take this and turn it over to the police, and they take the information there and follow up on it.

Sometimes—all kinds of results turn out. Significantly—and my experience at Southern was the same—about 80 percent of them are not valid, but if I can get 20 percent that are, that's certainly worthwhile. So we do them all.

Mrs. COLLINS. Mr. Hackney, you wanted to respond?

Mr. HACKNEY. I was just going to add that the reason we encourage signatures rather than anonymous letters is so we can properly respond to the person. We can't respond to anonymous, of course, but it does not in any way water down the investigation that's made.

Mr. Claytor requires the same investigation and report back to him on something that was reported that way as if they were signed. We just can't follow through to the employee; that's all.

Mrs. COLLINS. On the hotline that you have, is the employee required to give his name, and where he works, and all that?

Mr. HACKNEY. No. The hotline was the forerunner of this.

Mrs. COLLINS. Is it a telephone line?

Mr. HACKNEY. Yes. Mr. Boyd established that when he was president, prior to Mr. Claytor, and Mr. Claytor refined it into what we have now. But at that time, they could make a call and——

Mrs. COLLINS. But now there is no telephone number that they can call; they must write a letter; is that it?

Mr. HACKNEY. That's right.

Mrs. COLLINS. A letter must be written.

Mr. CLAYTOR. That's right.

Mrs. COLLINS. OK. Do you find that you get more of these letters than you did when you had the hotline or fewer?

Mr. HACKNEY. I don't have the exact numbers. I might ask the gentleman that processes a lot of them. I think we get a less number than we did, but I think we get a more definitive type of comment, and it's more thorough. and it's something we can really follow on. The quality is much better.

Mrs. COLLINS. In both of the hearings that we have had, there has been a recurrent theme of fear among the employees, that they have fear of reprisals, they're afraid to talk, they feel that they'll be intimidated, that they'll be dismissed. Somebody used the terminology yesterday that there was management by Gestapo tactics and so forth.

What are you doing, if nothing more than a PR job, to eliminate that kind of great concern among the employees at Amtrak?

Mr. CLAYTOR. Let me say first, Madam Chairwoman, that I think that's not true in the company as a whole among the great majority of our employees. You have selected people who have volunteered to come in and say that.

Mrs. COLLINS. We have not had every person that we have talked to, Mr. Claytor, come in; and I may tell you this: We have received boxes of letters from people that I don't even know, that I've never even heard of in my entire life, from all over this country, and they have said that they fear, that they were glad that we were having these hearings, et cetera, and that somebody was willing to speak up, because they were not willing to do so because there would be severe reprisals if they were to do so.

Mr. CLAYTOR. And I got lots and lots of those at Southern, and I even got them when I was Secretary of the Navy, and I would expect to get it.

If you advertise around that anybody who has got a complaint write in, and you're dealing with a company that has 20,000 employees, you're going to get a significant number that write in.

But I have talked to employees. I travel a great deal, and I talk to employees all around the country. I feel they are loyal, they are hardworking, they are first-rate, they are members of the team, and I'm proud of the union and other employees that work for us, and I'm sorry that some feel that way, but it's not a majority, it's not even a significant number.

Three of the five employee witnesses yesterday were fired before the subcommittee got involved, for example.

Mrs. COLLINS. There are others who are not fired, who will not come forward, who have not done so because you have a massive amount of fear within the ranks of Amtrak, you know, and I think that's a factor that needs to be at least looked into, if not fully recognized, because we see it recurring time and time and time again.

Even when I was out there, even when I was in Chicago, there were a number of employees who refused to talk. They just said, well, they didn't have anything to discuss, and so forth and so on, and yet, when we asked them to come and talk to us away from the 16th Street facility, employees in huge numbers came to the Federal Building, in room 2525, and we had an open mike as well, Mr. Owens, and they stood up and told us stories that were absolutely atrocious and said that they didn't want to be named. We had to be sure they had no cameras available, and so forth.

So something is certainly wrong in Dodge.

Mr. CLAYTOR. I think we could have found that with my other company, and we can find that with any company.

Mrs. COLLINS. But we're more concerned, not about Southern, because that's a private facility——

Mr. CLAYTOR. I know, but I think it's true of any company in the country.

Mrs. COLLINS. But we're certainly concerned about it when we have a government-run facility—a quasi-government facility.

Mr. CLAYTOR. I will say that you can find problems like that with relatively few employees. When one looks at the percentage of the total number we have, it's relatively few, and we're trying to fix it, in addition.

One of the things I'm trying to do with my entire management development program is to develop everybody into a team, and that includes the union people as well as the other, and we are working closely with the union people.

I might add that if you check with the heads of the major railroad unions—John Sytsma of the Engineers, or Fred Hardin of the UTU, for example—they will tell you that what we did at Southern was an enormous advance, and——

Mrs. COLLINS. Well, I'm more concerned with what you do with Amtrak now.

Mr. CLAYTOR. Wait a minute. I'm trying to do the same thing here, and that's what I'm pointing at. I'm using that only because that is the experience that I had in turning a similar situation around, and I'm going to do it here.

The union people that I have worked with will tell you that they think we did a great job with this type of approach and we're going to do it here, but one thing is clear, you cannot press a button and turn it out overnight, and it's going to take us another 2 years.

But I don't think it's as bad as you say. I disagree with you. I don't believe it, and I know that there will always be a reasonable number of disgruntled people.

Mrs. COLLINS. I think it's safe to say that you didn't believe when we talked to you before some of the things—at least your administration did not—when we mentioned some things that we had found in the city of Chicago until you yourself were faced with the evidence that we provided for you.

So I think that we're trying to work with you, but what we're trying to do—this subcommittee is trying to do is to try to help you in every way that we possibly can, and I think we've gone on record as having said and done that.

Mr. CLAYTOR. I want to work with you, but I want to disagree with that statement. Not one single fact came up until some of the things in these affidavits that we had not heard about—not one single fact was brought out by this committee that we hadn't already uncovered ourselves.

Mrs. COLLINS. Well, I certainly agree with that, and I'm not going to keep going on and on and on with this same thing. However, I am going to move to another topic, Mr. Claytor, and that is the matter of the timecards.

Mr. Swindall requested the timecards. Now, what has happened is that, when we went through our batch of timecards, we found that we have some that Ms. Zanders had seen and some that she had not seen.

So, in an effort to completely respond to his questions, I'm going to ask that Ms. Zanders be called back as a witness, and also perhaps even the whole panel if necessary, before this subcommittee next Thursday, which I think is June 13, at 2 o'clock, so that that will give Mr. Swindall an opportunity and the subcommittee an opportunity to look at the timecards as well as Ms. Zanders.

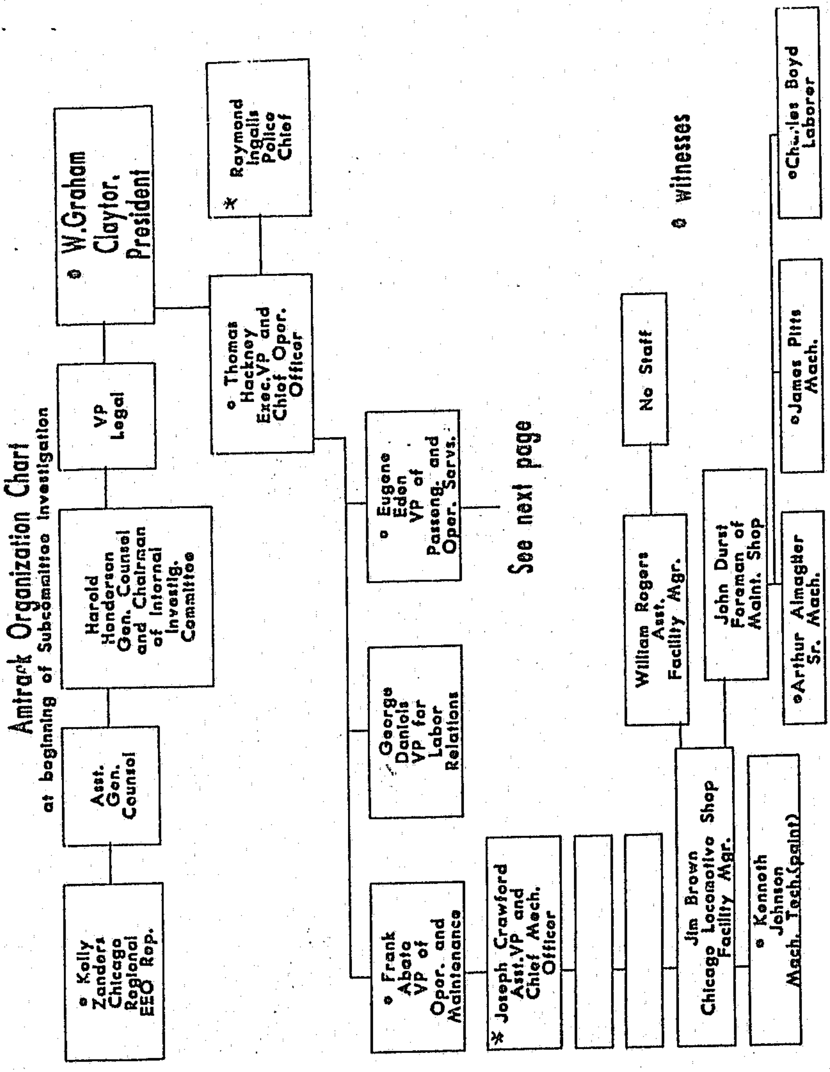
Mr. CLAYTOR. Fine.

Mrs. COLLINS. With that, the subcommittee is adjourned.

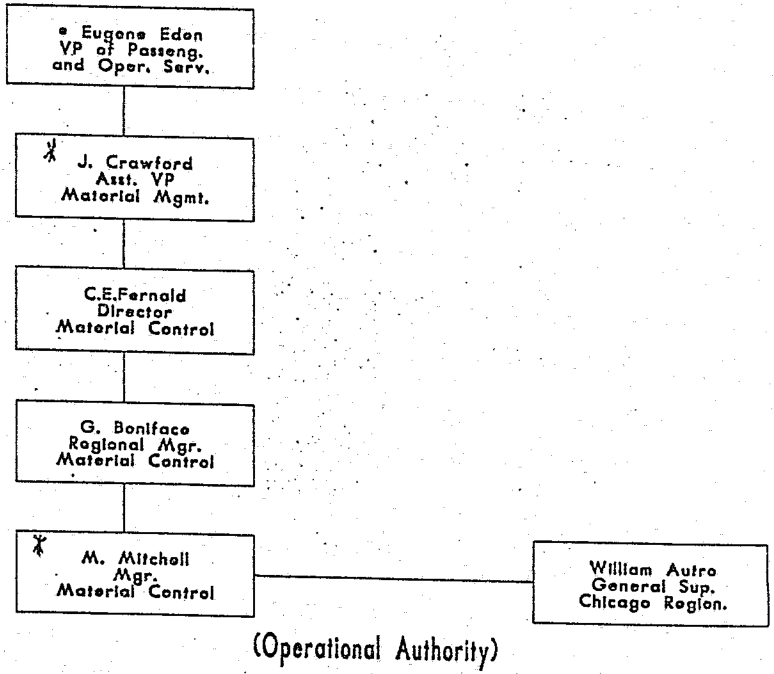
[Whereupon, at 1:25 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIXES

APPENDIX 1


Amtrak Organization Chart
at beginning of Subcommittee Investigation
o W.Graham Claytor. President
VP Legal
Harold Henderson Gen. Counsel and Chairman of Internal Investig. Committee
Asst. Gen. Counsel
o Kelly Zanders Chicago Regional EEO Rep.
* Raymond Ingalls Police Chief
o Thomas Hackney Exec.VP and Chief Oper. Officer
o Eugene Eden VP of Passeng. and Oper. Servs.
See next page
George Daniels VP for Labor Relations
o Frank Abate VP of Oper. and Maintenance
* Joseph Crawford Asst.VP and Chief Mech. Officer
Jim Brown Chicago Locomotive Shop Facility Mgr.
o Kenneth Johnson Mach. Tech.(paint)
William Rogers Asst. Facility Mgr.
No Staff
John Durst Foreman of Maint. Shop
o Arthur Almagtier Sr. Mach.
o James Pitts Mach.
o Charles Boyd Laborer
o witnesses

Amtrak Organizational Chart (cont.)



° Eugene Edon
VP of Passeng. and Oper. Serv.
J. Crawford
Asst. VP
Material Mgmt.
C.E.Fernald
Director
Material Control
G. Boniface
Regional Mgr.
Material Control
M. Mitchell
Mgr.
Material Control
William Autro
General Sup.
Chicago Region.
(Operational Authority)

° witnesses

APPENDIX 2

NATIONAL RAILROAD PASSENGER CORPORATION

PROCEDURES MANUAL

SECTION: EXEC 2
PAGE: 1 of 2
ISSUE DATE: 9/1/84
ISSUED BY: R.C. Ingalls
APPROVED BY: T.P. Hackney

SUBJECT: POLICE DEPARTMENT

I. PURPOSE: To apprise Amtrak employees of the responsibilities and procedures relating to the Police Department.

II. COVERAGE: All Amtrak employees.

III. POLICY:

A. Mission: The Police Department is established to protect the life and safety of passengers, employees, and protect Amtrak property. It shall preserve the peace, ensure the security of Amtrak fiscal and material assets, and the monies and property of the United States Government in the custody of Amtrak.

B. Authority: Amtrak Police Officers are duly appointed law enforcement officers under state and federal statutes. As such officers, they have the power and the sworn duty to preserve the peace, detain or arrest offenders, and enforce laws pertaining to crimes committed against Amtrak employees, passengers and property.

C. Responsibilities: The Executive Vice President & Chief Operating Officer is responsible to oversee the Police Department.

The General Manager-Chief of Police will administer and direct a system-wide law enforcement program consistent with state and federal requirements.

IV. PROCEDURES:

A. Amtrak Police Officers, while engaged in the performance of official duties, will have access to all company property, activities and personnel, as well as access to any company records necessary to conduct specific investigations.

B. All employees will report to appropriate Police Department personnel any suspected criminal activities which come to their attention.

C. All employees will comply with official requests and assist and cooperate with investigations lawfully conducted by Amtrak Police Officers and Agents.

D. Company rule violations, or other irregularities observed by Amtrak Police Officers during the regular course of duty, but not constituting criminal activities or conflicts of interest, will be reported to and dealt with by management.

NATIONAL RAILROAD PASSENGER CORPORATION

PROCEDURES MANUAL

SECTION: EXEC 2
PAGE: 2 of 2
ISSUE DATE: 9/1/84
ISSUED BY: R.C. Ingalls
APPROVED BY: T.P. Hackney,J

SUBJECT: POLICE DEPARTMENT

E. Where probable cause exists, Amtrak Police Officers will comply with existing law regarding arrest, search and seizure, and prosecution.

F. Executive Staff requirements for administrative investigations will be accomplished by personnel of the Police Department to the extent its resources are available.

APPENDIX 3

TO: Chairwoman Cardiss Collins, Government Operations Committee,
Subcommittee on Government Activities
United States House of Representatives
Washington, D.C. 20515

IN RE: Committee Investigation of Amtrak

FROM: Arthur Almaguer

I, ARTHUR ALMAGUER, UNDER OATH DO HEREBY DEPOSE AND SAY AS FOLLOWS:

1. I am currently employed at Amtrak as a machinist. I have been an employee of Amtrak since June 1, 1976, the date which Amtrak took over the Santa Fe Yards in Chicago.

2. I have worked in the Chicago 16th Street Locomotive Facility for approximately four years. While there, until the summer of 1984, James Brown was the manager of the 16th Street facility. My foreman (Foreman II) was named John Durst. Mr. Durst reported directly to James Brown.

3. I am the senior machinist in the facility maintenance department in the Diesel Shop. This department is responsible for maintenance of the cranes, wheel shop company vehicles (such as forklifts, pickup trucks and company-owned cars), and the drop table (a heavy-duty jack designed to permit removal of six ton traction motors and 15-ton trucks from locomotives). Because of these responsibilities, I was in a position to observe or make all repairs made in Chicago on Amtrak locomotive, crane, and vehicular property.

4. During the time I was employed in the Facility Maintenance Department, the following persons were also assigned to work with me at one time or another: Domingo Hernandez, James Pitts, Gregory Backstrom, Edward Pavon, Thomas Myers, Rudy Durkovic and Murray Pipchok.

5. Mr. Durst, responding to Mr. Brown's criticism of low productivity in the maintenance shop, once instructed Jim Pitts and me to record in great detail all work we performed in a log book which was to be updated daily. Mr. Pitts and I immediately started such a log book in a new green ledger book which Mr. Durst supplied to us from the Amtrak supply room. To the best of my knowledge over four years at least two log books were in use. All of these books were kept on or in Mr. Durst's desk. I had occasion to see Mr. Brown reviewing these book, so he knew of their existence.

I used these ledger books to record work performed and materials used. My coworkers and I used this ledger to record all work done on Amtrak-owned vehicles and similarly all work done on privately-owned vehicles. All vehicles were identified in this ledger by year, make and model. When the owner was unknown we would identify the vehicle by license tag number or parking permit registration number.

6. In approximately August of 1983, Mr. Brown ordered my department to totally rebuild a 1973 Chevy Suburban which had over 100,000 miles and which was in worthless condition. We began this work immediately. Work was performed continuously on this reconstruction for at least 8 hours per day by at least one if not three men until the middle of December. The reconstruction included:

a) complete restoration of the floor with reinforcing rods and a layer of fiberglass;
b) replacement of all rocker panels;
c) replacement of all fender and rear quarter panels;
d) replacement of all six doors;
e) replacement of windshield;
f) installation of completely rebuilt engine, transmission and transfer case (for four-wheel drive feature)
g) installation of new air-conditioner;
h) installation of new hydrolic snow plow
i) installation of brand new am-fm cassette stereo with four speakers
j) a new Mars light (emergency beacon)

Much time was spent looking for rattles and making recurring multiple changes in the starter and alternator to achieve a perfectly functioning machine. Mr. Brown always wanted everything just right in the vehicles he drove. In my opinion, Amtrak paid more to rebuild this vehicle than it would have cost to purchase a brand new one with a full warranty, considering parts and labor costs.

7. Mr. Brown had all of this work done because this was one of three company cars over which Mr. Brown had exclusive control. Mr. Brown was crazy about cars. His other two company cars were a 1984 Dodge Van and a 1984 Chevy Pickup. An Am-FM Cassette Stereo with a power antenna was installed in each, after purchase, at Amtrak expense. Mr. Brown had an air-conditioner installed in the van for his summer comfort.

Generally Mr. Brown used the Dodge Van for his personal travel, but if he requested another vehicle, one of us would park the van in the garage and provide him with either the pickup or the Chevy Suburban. Generally Mr. Brown used the air-conditioned van in the summer, the four-wheel drive Suburban in the winter, and the pickup when he wanted a change.

8. Following completion of the reconstruction of the Chevy Suburban, Mr. Brown complimented the men in my department for a job well-done. I mention this incident partly to describe the enormously costly work done to restore an 11 year old piece of junk, but mostly to explain the apparent abuses which began to take place following this project.

9. In the following month, Mr. Brown and at least one other employee began to perform work on their own vehicles during company time and with company equipment. Some company-purchased parts were involved.

10. Shortly thereafter, the company nurse Clare Zukley began to bring her car into the shop for minor adjustments and repairs. Then Linda Watson of the Personnel Department had company employees perform over 4 hours of electrical and mechanical (door-lock) repair work on her Dodge Charger.

11. Mr. William Rogers, Assistant Facility Manager, began to bring his 1974 Ford Fairlane into the shop on a daily basis. The work included installation of new carburator, fuel pump, complete muffler system and countless adjustments and minor repairs over a six month period. I am also aware of an Amtrak purchased rebuilt engine that was installed off-the-property on Mr. Rogers' car.

One management secretary, Kathy Stachura, brought her Alfa-Romeo in for installation of a slave cylinder for her clutch. This work was performed on company time. I do not know how the parts were acquired. I also performed work on the vehicles of Mary Rose Barbera, Norrell Pride, and the wife of Richard Cramer.

All of this work was approved and ordered by Mr. Brown. No work could be done without Mr. Brown's approval.

12. Mr. Brown never permitted me or any of my co-workers to repair his car because he enjoyed working on his own personal cars, a Corvette Sting Ray and a Lincoln Continental. He performed repairs on these cars, both during company time and on his own time on company property with company equipment.

13. I am aware of company cars now being used by Amtrak officials for personal commuting--beside Mr. Brown's former use of three vehicles for this purpose: Mr. Richard Townsend and Mr. Ray Preski--(Mr. Brown's bosses); Mr. Gil Bruno and Mr. Lou Butler (Mr. Brown's and Mr. Rogers' replacements); Mr. Gerry Mescall (14th Street Facility Manager) and the Amtrak police captain. When Mr. Brown went on vacation, one of the company vehicles would frequently remain away from our Amtrak facility during his vacation. I do not know if he used it for his vacation.

From the time Mr. Brown was removed from Chicago until he actually resigned from Amtrak, I did not see the company van he normally used. I believe it was in his possession. While Mr. Brown worked in Chicago, either I or my co-workers would have to fill the gas tank on the company car he used for commuting each day. He warned that failure to fill his gas tank daily was a dismissable offense. I estimate that over the years, each day I placed an average of 6 gallons of gasoline into one or another of the company cars he used every day for commuting, more following weekends. I continue to place gasoline into cars used by managers for commuting.

14. There are many instances of waste in my department, because Mr. Brown allowed Mr. Durst to purchase whatever he wanted. I do not believe any of Mr. Durst's purchases were reviewed before approval. I will give several examples:

a) Sometime during 1983 one of the company's vehicles (1972 Chevy Van--a vehicle Mr. Brown managed to get rid of in order to get a newer vehicle) was to be transferred to New Orleans. I was instructed to install a cruise control device for the trip. I know of no use for cruise control other than to allow the driver to remove his foot from the accelerator while driving. Mr. Durst purchased one cruise control device at Mutual Truck Parts in Chicago which was designed for a manual transmission.

The part could not be used because the van had an automatic transmission. I informed Mr. Durst of his error. He insisted that we make it work. This was impossible and eventually we persuaded Mr. Durst. He purchased a second device, again mistakenly for a manual transmission. Eventually a third device was purchased. Mr. Durst refused to return the first two and parts of each are still in the shop. The third device was installed. I assume the trip to New Orleans was completed in comfort.

b) Mr. Durst observed what he believed was an abnormality in our lubricating oil system. I checked it out and informed him that there was no problem that required corrective action. He disagreed and insisted upon replacing the vibrator-eliminator, which is a very expensive item. Instead of purchasing one such unnecessary item, Mr. Durst purchased 12 of the vibrator-eliminators, each of which offer at least 6 years of reliable service. This means that we have over 72 years worth of this part for equipment which might not last even half that time.

c) We have a 15-year supply of oil filters for our one heavy-duty forklift.

d) Amtrak purchased Mr. Brown a concrete saw which during a period of four years has only been used one time. Approximately two years after I first noticed the brand-new power tool, Mr. Durst loaded it into Mr. Brown's car. Mr. Brown used it for his personal work for approximately one week and then brought it back to Amtrak. It has never been used since.

e) There is a great deal of other very expensive inventory that has been in storage for years waiting for use.

15. This waste problem is not new. When I worked at Amtrak's 21st Street facility, in the late 1970's my facility manager, William Wonnell, purchased approximately 4 or 5 dollies for transporting and storing large the diesel engine, radiators and approximately 10 racks for installing diesel engine alternator and radiator into locomotives. These items were purchased from McGuiness Welding. As soon as they were delivered and used, they were found to be inappropriate for the purpose for which they were purchased. they were never used again for the next 1-1/2 years that I remained there. From information that I received from the shop foreman, I believe Amtrak paid a total of $60-65,000 for this abandoned equipment.

This problem affects used equipment also. When Amtrak took over the Santa Fe yards, a large quantity of used equipment in good working condition was scrapped. For example, I personally scrapped six caterpillar engines with generators, all in good working condition. At least six other identical engines were scrapped by others in my presence. If Amtrak had no use for these engines, they could have been sold to other railroads. Conservatively speaking the engines and generators were then worth at least $10,000 to $12,000 apiece.

16. When Amtrak Police Investigators Faith Doonan and Peter Steil arrived at Mr. Brown's locomotive facility to begin their investigation, I observed Mr. Brown physically obstructing their entry and notifying them that this was his facility and he didn't want them there. Ms. Doonan and Mr. Steil retreated temporarily until Mr. Brown's superiors instructed him to allow them to enter.

17. During the summer (possibly June or July) of 1984 I was telephoned by Mr. Steil, who requested an interview with me concerning allegations of fraud in the Diesel Facility. The same day, following my 7:00 a.m. to 3:00 p.m. shift, I met with Mr. Steil and Ms. Faith Doonan, both official investigators from Amtrak. During this interview they asked me what I knew about Amtrak-financed repairs of private vehicles and about improper installation of expensive steroes in Amtrak-owned vehicles. They told me certain things and I confirmed what I knew. They also told me things which I had reason to believe were true but could not myself confirm.

18. For example, they asked me whether I could confirm the purchase of several sets of tires by Amtrak for vehicles owned by Mr. Brown. I responded that while I did not know with certainty that the tires were actually placed on Mr. Brown's cars, I knew they were purchased from Amtrak suppliers.

a) I knew that one set of four tires was intended for Mr. Brown's Lincoln (to replace a new set of originals which Mr. Brown was teased about because they were of mediocre quality). Mr. Brown had ordered Mr. Durst, in my presence, to purchase a new set of tires. Within a few days, Mr. Durst told me he was going to pick up Mr. Brown's tires. Later that day he returned with no tires in the company Suburban (no trunk). He was gone for a sufficient period of time to have picked up the tires at Central Tire, where most of our tires are purchased, deliver them to Mr. Brown's home, and to install the four new tires on the car. Mr. Brown rarely drove any of his personal vehicles to work and I never again saw his Lincoln until after he was transferred to Beech Grove, Indiana, so I did not see the new tires on the Lincoln.

b) In another example, when I started in the maintenance shop, about three years ago, I noted four brand new Mudders Tires mounted on brand new "mag" rims with fancy spokes. Within a couple of months John Durst requested that I load these wheels and tires in the company van being used by Mr. Brown to travel between home and work. I never again saw these wheels and tires. I know of no Amtrak vehicle on which they were used or for which they would have been suitable. Mr. Brown owned a Jeep (AMC) with four wheel drive. The Mudders wheels tires I saw would have fit onto and would have been especially suitable for a four wheel drive jeep such as the one Mr. Brown owned. From my knowledge of Mr. Brown, he would have preferred wheels with "mag" rims.

19. I cannot recall any other subjects discussed at this interview with Mr. Steil and Ms. Doonan.

20. Several weeks later Edward Rhoades telephoned me and requested an interview. Mr. Rhoades is an Amtrak police investigator. I again went to Union Station in Chicago and this time I met with Mr. Rhoades. Mr. Rhoades requested and obtained from me permission to tape that interview. Mr. Rhoades was reviewing a report prepared by Ms. Doonan or Mr. Steil covering their interview. Mr. Rhoades asked me many questions which covered the same discussions I had had with Mr. Steil and Ms. Doonan.

21. Mr. Rhoades then began to ask me a number of questions concerning repairs on a Hyster (light-duty) forklift in our shop. I explained to him the repair work that had been done on that equipment. It consisted solely of tuneups and oil changes. He asked me if we had done any heavy repairs and I replied "no."

We also discussed a heavy-duty forklift. I reported to him that some heavier repairs were performed including a hydrolic valve, replacement of six or seven tires, tuneups, oil and filter changes, replacement of two tilt pistons for the mast.

22. At this time, he concluded the interview, shut off the tape recorder and then presented me with one photocopied invoice from Mutual Truck Parts. I believe the invoice was from February 1984, but I am not certain. He then directed my attention to one item listed on that one invoice. He showed me that the invoice entry billing for repairs on one radiator for the Hyster Forklift for $240. As the senior machinist in the Maintenance Department, I would know if the Hyster forklift radiator had been repaired. The radiator repair did not take place. In addition, the repair price makes no sense. Because of the radiator is small, it is unlikely that a new replacement radiator would have cost $240.

23. Mr. Rhoades' hand was covering much of the invoice so I could not see many details such as most other item descriptions, prices for the full page of items, or quantities. Mr. Rhoades did not allow me the opportunity to review any more of this invoice. However, before he took the invoice away from me I did glance at it and notice two other items out of a full page of entries. The entire invoice covered purchases for that same forklift.

24. One of these items was a billing for the purchase of a complete differential assembly for the same forklift. I did not have the opportunity to observe the price or the number ordered, but I estimate the cost of one such replacement assembly at $2500. I also noticed the billing for a hydrolic pump. Again, I was not given the opportunity to see the price, but I estimate the cost of a forklift hydrolic pump at $1500.

25. From my knowlege of the entire repair history of the only forklift these parts could have been used for, every one of these items, billed to Amtrak, was fraudulent because we never received any of them. Moreover, I cannot imagine a full page of items billed for our Hyster forklift because only routine tuneups and oil changes were performed.

26. Although I had told Mr. Rhoades this, Mr. Rhoades asked only about the radiator. He did not ask any questions about the differential assembly or hydrolic pumps. Moreover, he never asked me about any other items on the invoice and he did not show me any other invoices.

27. During the Amtrak police investigation, one of my coworkers notified Mr. Steil of the ledger books we were keeping. One night the most recent ledger book disappeared while the shop was closed. I later learned that Amtrak police had obtained possession of it. A couple of days later, Mr. Durst took the remaining book(s) out of his desk in my presence and went upstairs in the direction of Mr. Brown's office. I never again saw the book(s).

The following day, Mr. Durst instructed us to continue the record-keeping on slips of paper and shortly thereafter Mr. Brown came by and read our records for that day. He then asked whether these were the same kind of records we kept in the ledger books and I responded "yes". He then stated "they will never prove anything against me with this." He tore up all of the papers, he threw them in the trash can, and ordered us to stop keeping these records. To the best of my knowledge no work on private vehicles occurred after this date.

28. Following the beginning of the Amtrak police investigation of Mr. Brown's actions as manager, Mr. Brown came up to me while I was working and informed me that Agent Faith Doonan had told him that I was in possession of records which Mr. Brown evidently believed were very important. At that time the ledger books were already gone and I subsequently learned Mr. Brown was referring to the tool inventory records. I told Mr. Brown I did not have any records. After arguing with me for several minutes, he left very upset.

The records Mr. Brown sought were on Mr. Durst's desk at that time. I have since learned that those records have disappeared.

29. When I discussed these records with Agent Faith Doonan, I advised her that the records Mr. Durst had were useless. Earlier Jim Pitts and I performed a complete inventory of tools. When we completed the inventory, Mr. Brown assigned the tool room responsibility to General Foreman William Rossetti. Mr. Rossetti had that responsibility for 4-5 months when Mr. Brown reassigned it to the maintenance shop. When we reassumed responsibility I checked the records against the actual inventory and found discrepancies running 90%. Although I performed this inventory alone, I did notify Mr. Durst of the problem. I concluded that Mr. Rossitti had not kept track of newly acquired tools or tools issued to employees.

30. Disappearing tools have been a problem at Amtrak. In 1976, when Amtrak took over the Santa Fe facilities in Chicago, Amtrak inherited a large inventory of top-of-the-line Snapon and Williams tools which we continued to use as Amtrak employee until sometime in 1980-81. At that time Amtrak collected all of our individually assigned tools in order to supply a large tool room from which we would check out and return the tools we needed for our work. Richard Cramer collected all of the tools from us and was to have inventoried them and stored them in the tool room for our use under the new tool issuance system. I never again saw any of the tools that he collected. The tool room was completely supplied with brand new, but inferior tools.

I cannot estimate the value of all of the tools that Mr. Cramer collected because I did not see the complete collection, but I would say that from one man's locker alone Mr. Cramer collected at least $10,000 worth of tools. I am able to make this estimate on the basis of my own experience as a mechanic before working at Amtrak when I purchased tools regularly. At that time, we had over 100 machinists and even more electricians, all of whom had to turn in the tools. All of the high quality tools disappeared.

31. On one occasion Mr. Durst brought to the shop some tools he claimed he owned. These tools were identical to the tools which Amtrak purchases and supplies to me in the Maintenance Department. On another occasion, Mr. Durst reported to me that he had more tools at home than Amtrak had. I do not know that Mr. Durst's personal tools were purchased by Amtrak through the Mutual Truck Parts nor that Mr. Durst stole any tools from Amtrak. However, I do know that Mr. Durst was the only person besides Mr. Brown and Mr. Baker who could make purchases at Mutual Truck Parts on the Amtrak blanket purchase orders. I also know that Mr. Durst was the only person besides Mr. Brown who had a key to the tool shed.

32. On one occasion Mr. Durst asked me to help him load a heavy cell charger onto a company pickup truck. He explained that he was "giving it" to the neighboring 14th Street facility at Amtrak two blocks north of our shop. A little while later Mr. Durst entered the truck and drove off in a southerly direction, the same direction he would drive if going home. About 2 1/2 hours later he returned without the cell charger and I never again saw the cell charger. From my conversations with Amtrak employees at 14th Street who would use such a cell charger if it existed where Mr. Durst said he would deliver it, I believe the cell charger was taken home by Mr. Durst.

33. Approximately 20-25 locomotive governors for locomotives which Amtrak no longer uses were stored in the Maintenance Department until mid-1982. At that time, Mr. Brown ordered me and Jim Pitts to package the governors and place them on a pallet. Normally these obsolete items would be taken on the pallet by a forklift to the storehouse at 14th Street for disposal consistent with Amtrak property management procedures. The next morning when I returned to where I had stacked the governors, I found them gone, although the pallet was still there. I do not believe the governors were delivered to the storeroom because they would have been delivered while the shop was open during my shift. The shop closes at the end of my shift and reopens at the beginning of my next shift. Moreover, by shop practice the locomotive governors would have to have been delivered to property disposal on the pallet. I would conservatively estimate the value of these governors at $75,000 total. These parts would have easily been resold to other railroads at a discounted price. There is a market for stolen parts in the industry.

34. On one occasion in 1983 Mr. Durst asked me and Jim Pitts, the only other employee around, to leave the shop. He said to us "Go have a cup of coffee, I don't want you to see what I'm taking."

35. Mr. Durst, on one occasion reported to me that Mutual Truck Parts was billing Amtrak approximately $10,000 per month. During no month did I ever see $10,000 worth of supplies or parts delivered to my shop. I generally know the types of products which this truck parts company sells and their line of merchandise is unlikely to be used in any other part of the Diesel Facility but the Maintenance Department where I work. Mr. Durst went to Mutual every day, sometimes several times.

36. On one occasion when I was discussing waste/ unused inventory, Mr. Durst said "if you think that's waste, you should see the third floor (general offices)." This was approximately one month after he had revealed to me that Amtrak was paying Mutual $10,000 per month.

37. On many occasions Mr. Durst informed me that Mr. Gary Baker approved facility purchase orders. I believe all transactions through Mutual Truck Parts had to be approved by Mr. Baker or Mr. Brown.

38. I have been told by a co-worker that on numerous occasions, perhaps daily, Mutual Truck Parts would supply Mr. Durst with cash or checks. I am informed that this was to purchase supplies, parts or equipment which Mutual does not itself carry. As I understand the scheme, Mr. Durst would return to Mutual with a receipt for the purchased item and then Mutual would bill Amtrak for an item which they did carry but did not in fact deliver to Amtrak. They billed for a equivalent price plus a substantial markup.

39. In the only markup case in which I have some direct knowledge, Mutual's markup on a $541.00 stereo was approximatley $300. I saw the Mutual check to D&J Delco Distributors in Suburban Chicago for $541.00 and I was told by Mr. R. D. Johnson that he knew Mutual billed Amtrak a $300 markup. This particular stereo was installed in Mr. Townsend's company car by Mr. R. D. Johnson. Mr. Townsend is the Facility Manager's boss in Chicago.

40. Every month Mr. Durst went to Mutual to "take care of the bill." When he went he always carried a purchase order. Frequently, I saw him taking a parts book with him to Mutual. There is no reason to bring one parts book to Mutual to "take care of the bill." If he needed the parts book to verify items on the monthly invoice, he would have brought numerous parts books for all of the monthly purchases. I observed no connection between subsequent delivered purchases and the parts book he would select for his monthly trip to Mutual to "take care of the bill." I believe the parts book was used to "prepare" false entries on the invoice which was paid with the purchase order he was authorized to use.

41. Mr. Durst was authorized by Mr. Brown to leave work whenever he wanted. Mr. Durst was the only foreman not required by Mr. Brown to punch in and out for his shifts. He was the only foreman whose timecard was approved by Mr. Brown, or Mr. Rogers, or the Locomotive Superintendent Mr. Richard Cramer.

42. In early fall of 1984 Ken Johnson, Jim Pitts and I met with Thomas Smith, Assistant Cook County States Attorney in the Financial Crimes Division. He reported to us that Amtrak came to the State's Attorney to complain of theft and that because Amtrak had an internal investigation underway he would not duplicate the Amtrak investigation, but rather would rely upon it.

He reported that Amtrak had revealed to him approximately $3000 worth of theft and fraud and that "I have no reason not to believe them since they requested the investigation."

When we discussed the details of our own personal knowledge of theft far in excess of $3000 by a number of Amtrak officials, but especially Jim Brown, Mr. Smith expressed surprise regarding:

-- $250,000 worth of missing traction motors

-- About 20-25 locomotive governors which I would value at $3000 each

-- Very expensive brass, copper, titanum, and other expensive scrap metal sold directly by Mr. Brown and Mr. Baker

-- Large number of hand and machine tools unaccounted for from Cremioux Hardware suppliers

Mr. Smith closed the meeting by restating his confidence in Amtrak's internal investigation. It was here that he stated he could not independently duplicate an investigation being conducted by the complaining party's own investigators. Mr. Smith demanded documented evidence before he would reconsider opening the case and duplicating the Amtrak investigation.

43. Approximately five years ago I attempted to obtain employment at Amtrak in behalf of my brother Phillip. Eventually his application (resume) was denied. Hank Kuraszek advised me that the reason was because Amtrak will not hire relatives of current employees. At that time and today there are many examples of siblings, children, and spouses working for Amtrak. I now know that Mr. Kuraszek who continues to work for Amtrak has a son who is also an Amtrak employee.

I CERTIFY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE & BELIEF

Arthur Almaguer
Arthur Almaguer

SUBSCRIBED AND SWORN TO BEFORE ME THE 23rd DAY OF February, 1985.

x Anita López
Notary Public

May 21, 1985
My commission expires

TO: Chairwoman Cardiss Collins, Government Operations Committee,
Subcommittee on Government Activities
United States House of Representatives
Washington, D.C. 20515

FROM: Charles Boyd

IN RE: Committee Investigation of Amtrak

I, CHARLES BOYD, UNDER OATH DO HEREBY DEPOSE AND SAY AS FOLLOWS:

1. I have been an employee of Amtrak since 1976 when I was brought over from the Santa Fe Railroad where I was employed for 28 years. I will have 37 consecutive years of service with the railroad this July. I have never been disciplined by either the Santa Fe or Amtrak for any rule infractions.

2. My current title and position at Amtrak is laborer in the 16th Street Maintenance Shop where I have worked since March 1, 1983.

3. During the middle of 1983, John Durst, my foreman, requested that I accompany him on what he called a "run".

4. Mr. Durst drove me in Amtrak's red Suburban vehicle to Mutual Truck Parts which is on the corner of 21st and Wabash Streets in Chicago. We both entered the parts store.

5. While I remained at the middle of the sales counter, Mr. Durst walked off to the end of the sales counter where he found a man who was white, approximately 65 years of age and wearing a suit. I believe he was the store's owner or manager. The other gentleman was Black, approximately 50 years of age and one of the salesmen. I would recognize both of these gentlemen again.

6. While Mr. Durst was speaking with the owner or manager the man counted out a sum of cash (all in bills) which Mr. Durst took and placed in his pocket. I estimate the two men were about 10 feet away from me when this occurred. Both men were facing each other over the counter, the cash was sitting on the counter as it was counted.

7. Mr. Durst then left the store and I accompanied him. We got into the red Suburban and drove in the direction away from Amtrak. We drove to 41st and Wabash, to Erkert Brothers which specializes in automobile paint and supplies.

8. Mr. Durst and I went into the store. Mr. Durst handed a sales clerk a piece of paper who selected a case of mixed paint (12 quarts) and handed it to Mr. Durst. Mr. Durst paid for the paint with cash he picked up from Mutual Truck Parts, and obtained some change and a receipt. Mr. Durst then requested that I carry the paint to the Suburban.

9. Mr. Durst and I then drove back to Mutual. Mr. Durst instructed me to remain in the car while he ran into the store to drop off the receipt. Within two minutes Mr. Durst returned to the car and we returned to Amtrak with the paint. I do not know if Mr. Durst left any change at Mutual.

10. I have seen Mr. Durst's privately owned vehicle on many occasions. It was a white Buick Regal. A few days after picking up the blue paint, I saw that Mr. Durst's car had been partially painted the same color blue as the paint he and I had picked up together with cash from Mutual. I was later told by Kenny Johnson, Amtrak machinist, that he painted the Durst vehicle off Amtrak premises.

11. Regularly I observed the private vehicles of many of Amtrak's female office employees being serviced and repaired. The work included starters, brakes, battery work, door locks. Mr. Rogers' private car was always being worked on for repairs. In addition, regardless of mechanical problems, every Friday we inspected the car, added oil, transmission fluid, windshield cleaner and regreased the car. Frequently his car remained over night. I assisted in the installation of the following Amtrak-purchased parts in Mr. Rogers' car: starter, fuel pump, carburator, repaired radiator, electrical/firing parts.

12. Everyday my co-workers and I entered into a log book all of the work we did at Amtrak whether official or for private vehicles. This log book will document the repairs done on private cars. On occasion Mr. Durst would not tell us who owned the car that we were to repair that day. In those instances we logged the Amtrak parking sticker registration number in our log book. Arthur Almaguer was responsible for entering those numbers. After repair work was completed on private vehicles which we could not identify, Mr. Durst would pull the vehicle out of the shop and close the door explaining that he didn't want us to see which direction he was driving to deliver the car to its owner.

13. I observed repair work being done on Richard Cramer son's car. The men were welding a bumper bracket onto the bumper.

14. After the Amtrak investigation began, Jim Brown ordered us to stop keeping records on work being done for privately owned vehicles.

15. Mr. Durst was the only foreman who did not punch in. Mr. Durst's timecards were frequently approved by Richard Cramer. Mr. Durst very freqently went home by 8:30 or 9:00 a.m. (7:00 a.m. - 3:00 p.m. shift) and very often took off entire days before and after weekends, especially holiday weekends. I know Mr. Durst went home or went on early vacation on these occasions because he told me so himself. I also know that Mr. Durst was paid, not only his full and regular 40 hour per week paycheck, but also overtime for these occasions, because he told me, following such weekends, that he was going to check to make sure that "Dick" (Richard Cramer) had paid him as though he were there. On occasions he boasted that he was regularly "getting overtime."

16. When Mr. Brown drove his Lincoln Continental to work he stood around the car so that people would come up and praise it. On one occasion Mr. Van Holt teased Mr. Brown that he had a cheap set of original tires on such a nice car. I heard Mr. Brown order Mr. Durst to buy him a new set of good tires. A few days later Mr. Durst loaded a hydrolic jack and stand, electric torch gun, lug wrench into the Suburban and he announced he'd be gone most of the day. These tools would be required to remove and replace four tires from a standing vehicle. Mr. Durst was gone long enough to have traveled over 200 miles to pick up Mr. Brown's original tires and rims, bring them back to Central Tire where all Amtrak tires are purchased, have Central mount and balance the new tires, and go back to Mr. Brown's home to install the new tires and rims onto Mr. Brown's vehicle. To the best of my knowledge, he brought back all of the tools.

17. From 1982 until Mr. Brown resigned, at least once a week I saw large quantitites of tools being delivered by Mr. Durst to the third floor management offices. No work requiring tools was ever done on the third floor. Prior to 1982, tools were issued to workers and they were responsible for Amtrak-issued tools. After 1982 this system ended and tools were available as requested by the employee. Mr. Brown, Mr. Baker, and Mr. Durst could remove whatever tools they wanted without checking out the tools. They were the only employees who had keys to the tool room.

18. On a number of occasions Mr. Brown would leave Amtrak with Gary Baker and they would return several hours later with vehicle filled with purchases from Cremioux Hardware. At times, Mr. Brown would instruct me to deliver some of these purchases to the Third floor offices at 1600 S. Lumber or directly to female employee vehicles. These items were in boxes and included an electric insect zapper, trash baskets, carpet runners, non-disposable plastic cups. On most occasions I could not identify the contents of the boxes I delivered. As soon as Mr. Brown and Mr. Baker would return, Mr. Durst would cover the purchases with sheets of canvas or paper. This was very unusual because on no other occasions would Mr. Brown's personal property be covered in his vehicles. For example, when Mr. Brown was traveling, his luggage was not covered while it was in the parked Suburban. Mr. Tom Meyers also observed these purchases in the back of the Suburban.

19. In early April of 1984 I observed Gary Baker loading the new leased orange pick-up truck with scrap copper wire and piping and scrap brass. When Mr. Baker saw me observing him, he sent me out on an "errand" to get rid of me. He asked me to deliver his car keys to Mr. Brown. When I delivered these keys to Mr. Brown, Mr. Brown had no idea why Mr. Baker was giving his keys to him. Later when I saw Mr. Baker again the scrap metal was gone. Around the same time I observed a technician, loading the red Suburban with scrap copper wire. On another occasion I saw Louis Van Holt

loading brass bearings into the red Suburban. On several occasions I overheard Mr. Van Holt and Mr. Durst discussing "stolen" scrap metal. They joked about the need to call Amtrak security police with big smiles on their faces. I saw Amtrak conduct several "investigations" of stolen property. The investigations lasted about 10 minutes. While Mr. Brown was in Chicago, I never observed valuable scrap metal being tagged and disposed of properly. Worthless salvage items however were always tagged and returned through proper Amtrak disposal channels, to the best of my knowledge.

20. On many occasions I was instructed by general foremen to throw brand new items into the dumpster. Generally, I do not recall what items were involved. In one instance I was ordered by Wayne Noakes to throw brand new locomotive governors into the trash. I performed this assignment. Machinist Richard Musser saw this and angrily brought the governors back and welded the metal containers shut. He claimed that although they were obsolete for our locomotives they could be returned to the Amtrak supplier for a credit. He estimated each of them was worth approximately $5,000. There were at least $30,000 worth. A couple of days later Mr. Noakes again ordered me to scrap the items. I again followed my orders and the items were carted off as scrap. Doug Bell was a witness to this event.

21. Mr. Brown had the red Suburban rebuilt from the ground up. We spent huge sums of money and countless hours rebuilding the car. The only original part of the car kept was the chassis. Every other part was purchased piece by piece. This car then had a snow plow attached and it became Mr. Brown's personal company car for all personal driving during the winter (and to plow his driveway at home.) During the summer he used his Amtrak provided white Ram van which was air conditioned. When he needed a change he would use an Amtrak provided recent model Chevrolet pickup truck. All three vehicles were exclusively his. No other employees could use them for official purposes even though he used them mostly for commuting to and from home. Every day we had to refill the gas tank with Amtrak gasoline. On vacations he took one of the vehicles with him. He once told me that if he ever found one of his three Amtrak cars without a completely full tank, I would lose my job.

22. I was interviewed by Amtrak police agents only one time concerning my knowledge of financial theft and fraud in the locomotive facility. Faith Doonan and Peter Steil interviewed me, after I finished my shift, in a 4th floor room at Chicago's Union Station. I described in great detail my trip with Mr. Durst to Mutual Truck Parts where he picked up cash and later purchased paint for his car. In all I discussed with them everything I have described above in paragraphs 3-10, and significant portions of 11, 15 and 18. My interview with them was not recorded and I was never

invited back to make a recorded statement. They never asked any questions concerning paragraphs other than the ones indicated above. While interviewing with them I asked Ms. Doonan how large the investigation was. She replied that she believed that the information I and my coworkers were providing was "just the tip of the iceberg." She would not disclose to me how big her investigation was getting, just that the schemes we were describing were "the tip of the iceberg."

I CERTIFY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, UNDER PENALTY OF PERJURY.

Charles Boyd
CHARLES BOYD

SUBSCRIBED AND SWORN TO BEFORE ME THE 11th DAY OF February, 1985.

Janet J. Hill
My Commission Expires 4-11-87

TO: Chairwoman Cardiss Collins, Government Operations Committee,
Subcommittee on Government Activities
United States House of Representatives
Washington, D.C. 20515

FROM: James Pitts

IN RE: Committee Investigation of Amtrak

I, JAMES T. PITTS, UNDER OATH DO HEREBY DEPOSE AND SAY AS FOLLOWS:

1. I am currently employed at Amtrak as a machinist. I have been an employee of Amtrak since February, 1977.

2. I have worked in the Chicago 16th Street locomotive Facility since that date. James Brown became the Manager of this facility a few years after I started.

3. Approximately three years ago, I took the position of maintenance machinist and from that time until late summer of 1984 I worked in the maintenance shop under foreman John Durst, except for 15 months when I was in terminated status.

4. Mr. Durst was eager to increase the size of his crew. Thus, he wished to document the machinist work being done, in order to persuade Mr. Brown later, that he should expand the crew size.

5. He instructed me and Arthur Almaguer to start to record all work we performed in a log book which was to be updated daily. Mr. Almaguer and I immediately started such a log book in a new green ledger book which Mr. Durst supplied to us from the Amtrak supply room. To the best of my knowledge, Mr. Durst was never requred to justify the continuation of the second machinist position, and thus did not have to show Mr. Brown the record books being kept. To the best of my knowledge, Mr. Brown did not know about these ledger books until after Amtrak investigators informed Mr. Brown. To the best of my knowledge, over the 2 3/4 year period, at least 3 ledger books were in use as each book ran out of space. All of these books were kept in Mr. Durst's desk.

6. I used this ledger book to record supplies and materials received, material used, and where the material was used. My co-workers and I used this ledger to record all work done on Amtrak-owned vehicles and similarly all work done on privately owned vehicles. All vehilces were identified in this

ledger by year, make and model and owner. When the owner was unknown we would identify the vehicle by license tag number or parking permit registration number. For at least a half-dozen automobiles, we did not recognize the vehicle's owner. They may have been 14th Street managers' cars or they may have been vehicles owned by persons unaffiliated with Amtrak from whom payment was obtained by Mr. Brown for the repairs.

7. Without seeing the ledger books in which I recorded my work on these privately owned vehicles, I estimate that I performed and was paid for approximately 80-100 hours of work on these vehicles over 12 months. I estimate that I installed, with no assistance from any other employees, approximately $1000 worth of parts in private vehicles including those owned by William Rogers, Clare Zukley, Gary Baker, Mary Rose Barbara, and John Durst.

   Mr. Richard Cramer asked me whether I could do front end work on a car driven by one of his children. I informed him that Amtrak did not have the required equipment. Other cars on which I believe I have performed work, but cannot prove ownership without the ledger book include the automobiles of Norrell Pride and Linda Watson.

8. When I returned to work in July 1984, although to a different part of the facility, I was told by Arthur Almaguer that James Brown had forbidden them to keep these work records any longer.

9. I met with Amtrak investigator Edward Rhoades alone shortly after my July 1984 return to work. Investigator Rhoades taped the interview. Mr. Rhoades gave me specific information to confirm or deny. I informed him of when I had no direct allegations.

   I discussed all of the above mentioned work done on private vehicles with Mr. Rhoades. Mr. Rhoades showed me the most recent green ledger log. The book contained only one short period of my recorded work.

10. Mr. Rhoades asked me about major repair work done on shop forklifts while I was in the shop. He was asking about work that would have been performed during periods covered by early ledger logs. I told him that at that time we were using a GSA surplus property forklift named MOBILIFT. This was the only forklift which done any major work performed on it. I had rebuilt the engine. He asked me about the transmission. I replied that no transmission work was performed. I would have known about such work because it would have required two machinists one full day. The transmission replacement never occurred.

Mr. Rhoades then showed me one invoice from a file folder which contained over 20 sheets of photocopied paper. Mr. Rhoades, holding that invoice and using another sheet of paper which blocked out the rest of the invoice pointed my attention to one line on which was entered a transmission (possibly described as "front axle" or "drive unit"). Mr. Rhoades asked if I knew of this repair. I responded that this work was never performed. I do not know whether this part of the interview was recorded, because before Mr. Rhoades showed me the invoice he shut off the tape recorder and left the room to get the folder which contained the invoice.

Mr. Rhoades asked me no further questions about this transmission. I do not remember the exact price charged Amtrak or this invoice for this fraudulently billed item, but I recall seeing a figure of $5000. I was not given an opportunity to see whether a core deposit was charged on the invoice.

11. Mr. Rhoades, aware of the fact that I am the machinists union representative in Chicago and that I was trusted by all of the men, requested at that meeting that I pass any additional information or illegal activities to him. He requested that I encourage employees to testify before him.

I advised him that I would indeed pass all tips and evidence on to him but that I could not identify employees who insisted upon remaining anonymous.

12. Shortly after my first meeting with Mr. Rhoades, I requested a second meeting to provide him with a tip on possibly illegal conduct by locomotive supervisor Richard Cramer.

13. At that meeting, I advised Mr. Rhoades that Mr. Richard Cramer might have improperly received home heating or air conditioning equipment from an Amtrak supplier, Jamieson Engineering and its sale representative Vince Blakely. I was not permitted to reveal the identify of the source of this tip. To the best of my knowledge, Mr. Rhoades never followed up on this information.

14. It was at this meeting that I provided Mr. Rhoades with a photograph of the General Foreman Van Holt's truck in preparation for or premises painting. This photo was also provided by an anonymous tipster. Mr. Van Holt remains a general foreman at Amtrak - a management position.

15. At that same meeting, Mr. Rhoades asked me if I knew of any drug trafficking in the yard. I replied "no" but that I would check around. Mr. Rhoades had specifically asked also about whether Gary Baker - General Foreman for Procurement was involved in drug trafficking. Mr. Rhoades also indicated he knew Amtrak trains were being used to transport drugs from Los Angeles to Chicago and New York. He indicated he knew the names of many Amtrak employees and officials implicated in the drug trafficking.

16. Following this second meeting, I learned that my paycheck was reduced by the two hours I spent away from my job in order to provide Mr. Rhoades with this additional information. Mr. Baker was chatting with Mr. Rhoades when I came outside at Mr. Rhoades request. I believe he informed Mr. Townsend that I was meeting with Mr. Rhoades. I was informed that Mr. Townsend sought to have me fired for meeting with Mr. Rhoades while on duty.

17. I never again met with Mr. Rhoades. I began to believe he was covering up the fraud, theft, and kickbacks when I learned that the Cook County States Attorney was dropping its criminal investigation of James Brown and his assistants.

18. In early fall of 1984 Ken Johnson, Arthur Almaguer and I met with Thomas Smith, Assistant Cook County States Attorney in the Financial Crimes Division. He reported to us that Amtrak came to the State's Attorney to complain of theft and that because Amtrak had an internal investigation underway he would not duplicate the Amtrak investigation, but rather would rely upon it.

He reported that Amtrak had revealed to him approximately $3000 worth of theft and fraud and that "I have no reason not to believe them since they requested the investigation."

When we discussed the details of our own personal knowledge of theft far in excess of $3000 by a number of Amtrak officials, but especially Jim Brown, Mr. Smith expressed surprise regarding:

-- $250,000 worth of missing traction motors

-- about 20-25 locomotive governors which I would value at $2,500 - $5,500 ea.

-- Very expensive brass, copper, titanum, and other expensive scrap metal sold directly by Mr. Brown and Mr. Baker

-- Large number of hand and machine tools unaccounted for from Cremioux Hardware suppliers

Each of the three of us indicated which portions of this information we had provided to Amtrak investigators. Mr. Smith stated that Amtrak investigators had not supplied him with any of this information.

Mr. Smith closed the meeting by restating his confidence in Amtrak's internal investigation. It was here that he stated he could not independently duplicate an investigation being conducted by the complaining party's own investigators. Mr. Smith demanded documented evidence before he would reconsider opening the case and duplicating the Amtrak investigation.

19. Our efforts to obtain an FBI investigation were frustrated by the FBI's policy of not duplicating a States Attorney investigation. Mr. Jeff Snow stated this policy to my wife, June.

20. Thus far only Representative Cardiss Collins has been interested in getting an independent investigation of these financial crimes against Amtrak and Amtrak's efforts to coverup these crimes.

21. Approximately four months ago the locomotive shop ran out of traction motors, which are needed replacement parts for locomotive operation. My General Foreman, Wayne Noakes, informed me and my coworkers that 50 motors, normally kept at the 14th Street storehouse, were missing. These motors are rebuilt at Electro-Motive Division. Each motor weighs approximately 3000 pounds with 6-8 per truckload. Mr. Ken Johnson has told me that Mr. Brown boasted to him that he could sell these motors for $5000 each. The company that I believe now employs Mr. Brown, Chrome Crankshaft Locomotive Incorporated, uses these types of motors for their contract repair work and sells these types of motors individually. I believe Amtrak may be purchasing from this company because I have seen their catalogue around the shop.

22. Approximately 20-25 locomotive governors for locomotives which Amtrak no longer uses were stored in the Maintenance Department until mid-1982. At that time, Mr. Brown ordered me and Arthur Almaguer to package the governors and place them on a pallet. Normally these obsolete items would be taken on the pallet by a forklift to the storehouse at 14th Street for disposal consistent with Amtrak property management procedures.

The next morning when I returned to where I had stacked the governors, I found them gone, although the pallet was still there. I do not believe the governors were delivered to the storeroom because they would have to have been delivered while the shop was open during my shift. The shop closes at the end of my shift and reopens at the beginning of my next shift. Moreover, by shop practice the locomotive governors would have to have been delivered to property disposal on the pallet. I would conservatively estimate the value of these governors at $75,000 total. These parts would easily be resold to other railroads at a discounted price. There is a market for stolen parts in the industry.

23. At one time Amtrak's machinists performed nearly all welding required for locomotive maintenance and repair, the primary exception being fuel tank repairs. Gradually, Mr. Brown began using McGuinness Welding Company for all repairs and maintenance, however small.

On one occasion, I was informed by a McGuinness welder that McGuinness was using Amtrak supplied sheet-steel and yet billing Amtrak for the material in addition to labor charges. This occurred in 1980.

I CERTIFY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, UNDER PENALTY OF PERJURY.

JAMES PITTS

SUBSCRIBED AND SWORN TO BEFORE ME THE 12th DAY OF February, 1985.

My commission expires Nov. 20, 1988

TO: Chairwoman Cardiss Collins, Government Operations Committee,
Subcommittee on Government Activities
United States House of Representatives
Washington, D.C. 20515

IN RE: Committee Investigation of Amtrak

FROM: Kenneth Johnson

I, KENNETH JOHNSON, UNDER OATH DO HEREBY DEPOSE AND SAY AS FOLLOWS:

1. I am currently employed at Amtrak as a machinist technician. I have been an employee of Amtrak since April 28, 1977.

2. I have worked in the Chicago 16th Street Locomotive Facility since October, 1977. From approximately 1978 or 1979 until summer of 1984, James Brown was the manager of the 16th Street facility. Because I was lead technician in the paint shop I reported directly to Mr. Brown. The paint shop name is a little misleading; as we performed wreck repair and switcher rebuilding work as well as painting.

3. Mr. Brown is a major collector of a huge miniature model train collection. I know this because I witnessed or was involved in many situations in which he instructed Amtrak employees to work on or obtain parts and supplies for this collection. For example, he asked me to load six dozen cans of spray paint for each of Amtrak's five primary colors into his personal jeep. For some colors I could not fill his order from Amtrak's available stock, but I estimate I loaded 35-40 cases into every available inch of space in his personal jeep. I believe Mr. Brown wanted this paint to repaint his collection in Amtrak colors.

Employees in the cab signal shop were frequently assigned the responsibility of making customized circuit boards for wiring these miniature trains with normal and strobe lights.

Laborer Billy DeMar performed carpentry work to mount the miniature train cars onto track attached to pieces of decorative wood. I believe Mr. DeMar purchased these trains from the hobby shop and painted them the colors selected by Mr. Brown. I do not know whether Amtrak paid for Mr. Brown's toy trains, but I do know that Mr. ~~John Durst~~ DEMAR made some of these purchases.

K.A.J.

4. General Foreman Louis Van Holt once teased Mr. Brown that there were cheap tires on his expensive Lincoln Continental. Mr. Brown immediately turned to Mr. Durst and instructed him to replace those tires with the best set of tires he could get. Whenever Mr. Brown instructed Mr. Durst to make a purchase, this meant that Mr. Durst was to go to an Amtrak supplier, usually Mutual Truck Parts to arrange and disguise the transaction as an Amtrak purchase. I never saw Mr. Brown give anyone money of his own to make purchases for him.

5. On another occasion the company ordered four new tires supposedly for its Dodge truck (government-surplus property). I had just completed restoring and repainting that truck. New tires were needed. When the tires arrived, I found four top-of-the line all-terrain radial tires mounted on white spoke rims. This truck was only for use on pavement so all-terrain tires were completely unnecessary. In addition, it would be ridiculous to have white-spoke rims on an old truck. Furthermore, the tires were the wrong size for this truck. They sat in the shop for a few weeks and then disappeared. I later saw them on Mr. Brown's private jeep. Mr. Brown was an automobile buff who had to have the best equipment. I estimate the tires and wheels were worth $200 each set:

6. I have no personal knowledge of financing for modifications made by Mr. Brown to another of his private cars, a Corvette, but I estimate that when he purchased the car he paid about $9000. He made major changes in the car adding chrome and stainless steel parts everywhere, braided wiring, beautiful rims, best tires, a super stereo, pin-striping, etc. He added $10,000 worth of improvements to the vehicle over a short period.

7. I have been told that Amtrak-purchased materials were used by Mr. Brown when he had the roof on his private home redone. I believe Bill Rossetti performed the work, while on the Amtrak payroll and that he received extra vacation time in compensation for the work. Mr. Rossetti became a General Foreman around this same time.

8. On many occasions Jim Brown would talk to me and my coworkers about his plans to open a private shop to rebuild switchers. No such company provides this service in Chicago. Other companies simply repair and paint old switchers without gutting them and rewiring and repiping them. He frequently told us we would be able to work for him after our Amtrak work hours if we wanted. On many occasions Mr. Brown told me that my co-workers and I could purchase any tools we wanted. I never had a tool request denied. In fact, at the end of each fiscal year Mr. Brown instructed us to look through tool supplier catalogues and pick out any power and hand tools we wanted. He told us we were helping him to use up the extra money in his budget for that year. We ordered as many power tools and hand tools as we wanted. The only restriction, which was in effect at all times that we ordered tools was that we had to order two of each tool, whether a power or hand tool. Mr. Brown was always given one and we received the other. Many tools were ordered from Cremioux Hardware in Chicago. On one occasion, Mr. Brown asked me to load a power grinder and a power buffer that Amtrak had purchased into his personal jeep which he drove home that night. To the best of my knowledge, the tools ordered for Mr. Brown were never incorporated into our shop tool supply, even after Mr. Brown left Amtrak. All tool purchases and deliveries went through Gary Baker. On many occasions I saw John Durst loading boxed and unboxed tools into Mr. Brown's car and his own car. Mr. Durst frequently bragged that he had the best tools available. The maintenance shop employees often needed tools for their work. Mr. Durst would often "lend" them tools from his collection. Mr. Durst as a foreman, was authorized to purchase tools directly from the Amtrak suppliers Cremioux Hardware and Mutual Truck Parts.

An example of a major tool purchase in which major waste has occurred was the purchase of a $30,000 power shear. The machine was intended for use as a front-end and inside-wall fabricator under Mr. Claytor's "switcher" program--the program from which I received Mr. Claytor's presidential achievement award. In addition, it had important other uses that could have saved Amtrak great sums of money.

One of these uses was the modification of design defects in the F-40 locomotive. Under a settlement agreement of which I am aware, Amtrak received over $4 million from Electromotive Division in LaGrange, Illinois.

It was my job to make some of the modifications. The power shear should have been used in this modification program. It wasn't. Instead the machine sat unused for nearly one year. It was recently wired and connected and had been used a few times to perform minor metal work which other tools that we have could perform. To use the machine for those small tasks is itself wasteful because an enormous amount of energy is required to start the machine. Recently Amtrak eliminated the only program which would have utilized the machine for the purposes for which it was designed and purchased.

9. Vito DeBari was with me when I observed John Durst load an Amtrak owned giant snowblower (Sears model) from the closed Brighton Park facility into the company van. Mr. Durst drove off southbound in the direction of his home and Mr. Brown's home. He returned a couple of hours later without the snowblower. It was never seen again at Amtrak.

10. Before Mr. Brown arrived there were many vendors from which our facility purchased. After his arrival, we got rid of many of our vendors and most of our purchases came from fewer suppliers.

10a. On one occasion in the summer of 1983, just after Mr. Brown announced he had taken up the sport of golf, he reported to me that a brand-new set of very good golf clubs had suddenly appeared near his third floor office. He told me that since nobody claimed them they were now his. At the same time Mr. Baker told me that J. T. Nelson Company, a Louisville, Kentucky firm, had sent him a couple of cases of golf balls.

11. As part of our effort to correct design defects on the F-40 lomotive, we installed two aluminum window frames on each locomotive. I believe these frames came through a non-competitive contract which Amtrak gave to J.T. Nelson, Co. I believe the initial contract was for nearly $100,000. Mr. Baker has often boasted that if he ever got fired by Amtrak, J. T. Nelson Co. would hire him. I was recently informed that Mr. Baker took a job with J. T. Nelson Co. in Louisville beginning January 7, 1985. Earlier, Mr. Baker told me that J. T. Nelson Co. had offered him a new Mercedes if they got the window replacement contract. I believe this offer was made because the Nelson Company, believing that I was in a position to recommend them for the job, offered me a new Porsche. At that time, I took it as a joke. J. T. Nelson also supplies Amtrak with the new bullet-proof side windows that are now required by FRA.

12. Amtrak has conducted a popular program to rebuild its switcher engines rather than purchasing new engines. We would strip out all original copper wiring and copper tubing and collect it in a pile. After the gutting job was completed Mr. Gary Baker would bring an Amtrak truck to the pile and my coworkers and I would load the truck with up to several thousand pounds of copper. Mr. Baker would deliver the scrap copper and brass to scrap yards and receive cash payment. On a few occasions I accompanied Mr. Baker. One time he sold six locomotive radiators for around $100 per pair. He received cash directly from the scrap dealer. On one occasion he received $700-800 cash for a load of copper from the dealer. On one occasion he took a slip of paper from the trash dealer to a currency exchange off Halsted Street and received $500-600. I was at his side when he exchanged the slip of paper for cash. I am aware of at least two or three other such trips he made with loads of copper to junk dealers where I did not actually accompany him. On each of these occasions including those in which I did not accompany him, Mr. Baker would use a small portion of the proceeds from these sales for the purchase of lunch for employees of the paint shop.

13. On one occasion when I was with Mr. Baker at a scrap metal dealer selling copper and brass in my presence the dealer advised Mr. Baker that the current price he was paying for tungsten was $3 per pound. Mr. Baker looking embarrassed, nodded and immediately changed the subject to "golf." Amtrak maintains a "wheel house" at the locomotive facility which shaves wheels on locomotives and coaches in order to "true" the wheels. The machine which performs this work is called a "wheel truing machine" and I estimate that each side of it has over 100 tungsten cutters which are conical in shape and are made from high grade tungsten. These cutters are regularly rotated and eventually disposed of as solid tungsten chunks. Mr. Baker, as general foreman for purchasing would have been able to take possession of the scrap tungsten and sell it for cash as he did with the copper, brass and radiators.

14. Mr. Baker and Mr. Brown were big money flashers. On at least half-a-dozen occasions Mr. Brown pulled very large sums of cash from his pocket. On one occasion Mr. Brown offered to bet someone $1000 on something. He then, pulled out a wad of cash and counted out $1000 in hundreds. On another occasion when an employee joked with him asking for a loan of a few hundred dollars Mr. Brown would pull out a large wad of cash in hundreds and count out a few hundred dollars. He never actually loaned the money, though.

On one occasion, Mr. Baker asked me if he could borrow one dollar. I asked him "why" since he made so much more money than I. He said it was because he had no small bills and he told me to look into his brief case. Inside his brief case I found four new plain white envelopes all about equally thick. I looked inside one and found a stack of fresh one hundred dollar bills. Each envelope looked identical from the outside. I saw no names on the envelopes. I would estimate there were ten to fifteen $100 bills in each.

15. I am aware of log books maintained in the maintenance shop. The log books were started when the maintenance shop was created by Jim Brown and when John Durst was appointed foreman. The books were used to record work done on private vehicles I was aware of at least two books. There may have been a third. I believe Tom Myers, a maintenace shop employee' turned one book over to Amtrak investigators Steil and Doonan, Peter Steil told me that Amtrak security had gone into the shop at night and taken the other books. Mr. Steil told me that Mr. Myers had told him where the other books could be located. It was not until I went to visit the Cook County States Attorney Mr. Smith that I learned that Amtrak Security had lost one of these books. I never made any entries in the log books because I worked in the paint shop, not the maintenance shop.

16. At one point after the log books were discovered, Mr. Brown tried to get me to keep quiet. He reminded me that if he lost his job he would have to sell his house and three cars and tell his 15 year old child that he was unemployable. He admitted to me that he had cheated me out of 45 days pay in 1980 when he was my hearing officer at a disclipilinary trial. He admitted to me that he did it to me because I was an effective union representative. He stated he felt that if he could have gotten rid of me, he could have intimidated the rest of the machinists. Mr. Brown raised the fact that he was being investigated in regard to the disappearance of 45 traction motors. He denied stealing them, but he did boast that someone from another railroad had offered him $5000 each.

17. I performed approximately 8 hours of work on Mr. William Roger's personally owned Ford. The work consisted of radiator repair and sheetmetal work on outside mirror. I am aware of a great deal of other work performed on that car by other Amtrak employees with Amtrak-purchased parts. I witnessed but did not participate in this other repair work. The work I recall being done included installation of a new exhaust system, fuel pump and carburator. In addition I witnessed oil changes and other routine maintenance. In addition, I know that his car received a rebuilt engine.

During the early months of 1984, Mr. Rogers and Mr. Durst asked me to prepare a list of materials required to completely repaint Mr. Rogers car. I prepared such a list for Mr. Durst who told me he was ordering the paint through Mutual Truck Parts. He picked up the materials the next day and delivered it to me. The paint was never used on Mr. Roger's car because the locomotive paint shop always had a locomotive inside and the car could not be done at the same time. Mr. Rogers repeatedly asked when I was going to paint his car. The paint disappeared during the Amtrak police inestivation. I have not seen it since.

18. During the middle of 1983, John Durst asked me to paint his private car. I informed him that I would have to perform this work away from Amtrak, because if I were to use the very expensive custom paint he wanted, it would make no sense to do the work at Amtrak's paint facility which was too dusty. He asked for an estimate, but before I could examine his car to give him one, he offered to pay me by providing me with enougn customized materials to paint my own car. I accepted his offer. I painted his car at my uncle's garage and Mr. Durst "paid" me with the paint he promised, although I never removed that paint from the Amtrak paint locker.

About one week later, before I could use the paint on my own car, Gary Baker informed me that Mr. Jim Brown had told him that the paint Mr. Durst had used to pay me for my labor was Amtrak-purchased paint. When I heard this, I immediately told Mr. Baker that I would not accept the paint. That paint is still stored at the maintenance shop in Chicago. I was never paid for my labor in painting Mr. Durst's car. Mr. Baker and later Mr. Brown repeatedly told me I should take the Amtrak-purchased paint anyway, because I had performed the work. I refused their offers and told them that I did not want to have trouble later.

I would estimate the value of the materials used to paint Mr. Durst's car at $143.05. In addition, Mr. Durst purchased $528.95 of paint and materials with Amtrak funds to cover his labor costs. Hence, I would calculate the total Amtrak cost of painting his car at $672.00.

19. I once was instructed by Mr. Noakes to cut Amtrak-owned plexiglass to specified sizes for the front windows in his house. He claimed that the plexiglass was needed because "Amtrak's niggers" were breaking his windows. Mr. Noakes had never before complained about broken windows.

20. When we rebuilt the switcher engines we always removed the large very valuable solid brass bells. We were required to deliver them to Mr. Brown immediately. Removal of the brass bell was the first priority when the switcher arrived in Chicago. At first we resurfaced and polished the brass bells and mounted them on an oak board for display. Later Jamieson Engineering performed this work.

I estimate we removed about 6 or 7 brass bells all of which have been cleaned, shined and mounted. These bells were distributed by Mr. Brown to his bosses in Washington. Mr. Brown kept one of these in his office until he resigned. He removed these and other Amtrak-purchased collectors items when he resigned.

21. Mr. Brown ordered a Hermes plastic router machine which has an electric saw and vacuum attached. The machine including assessories would be priced at $15,000-$20,000. The machine would rarely be used for official Amtrak purposes. It is located very close to the facility manager's private office, in the "game room", rather than a room in the shop where it would normally be placed. Our Beech Grove, Indiana facility also has one of these machines and official Amtrak work could have been done on that machine. Mr. Brown purchased this machine as a toy. Most of the expensive accessories he purchased are

needed only for the private projects he used them for. These projects would include making vanity plates for private vehicles. For example, he had his initials on the "vanity plates" on his private cars. Mr. Rogers had two vanity plates, one mentioning Oklahoma and one with his nickname. Mr. Brown provided many of the secretaries with vanity plates bearing their initials. I believe Mr. Brown wanted this machine in part because the Beech Grove facility had one. The purchase was approved by Amtrak to the best of my knowledge.

22. I recall seeing approximately 12-16 new locomotive governors that were scrapped . This part was obsolete for Amtrak locomotives but could have been sold to other railroads. I believe Richard Musser (machinist) got in trouble with Mr. Noakes because he attempted to stop others from tossing them into the dumpster (trash) under Mr. Noakes orders. I do not know where the governors ended up. I believe each governor cost around $6,000.

23. Mr. Brown instructed us that all work was to be done in the following order of priorities:

1st priority:	repairs and work requested by any Amtrak employee for their homes, cars, home furnishings, personal plaques, etc. We call this "government work" because those are the most important. Managers got a higher priority than union employees who brought in "government work".
2nd priority:	locomotive work was done at all other times

Mr. Brown advised us that we should do "government" work in the open. He did not want to trigger suspicions that would be created if we were caught hiding our work.

24. Following Mr. Claytor's creation of a presidential committee chaired by Harold Henderson to investigate labor relations and other problems in Chicago, I made an appointment to speak with an investigator. I did so in reliance upon promises by Mr. Claytor that he would not permit any reprisals or retaliation against union employees who provided information.

I met with investigative committee member Nate Fossett for over 30 minutes. Vito DeBari and Domingo Hernandez accompanied me in this meeting. We discussed the terribly unfair abuses in the disciplinary process which Jim Brown and his cronies had rigged. At the end of that meeting, Mr. DeBari and Mr. Hernandez left and I remained in order to inform Mr. Fossett that significant theft from the facility was occurring. I mentioned to him a scheme involving fraudulent billing by Mutual Truck Parts, the theft of tools, expensive stereos being installed in Amtrak vehicles, and Amtrak-financed repairs of private vehicles. I am not certain whether I mentioned the sale of Amtrak-owned scrap metal at this interview. Mr. Fossett advised me that he could not investigate the theft allegations and that Amtrak police investigators would contact me.

25. A few days after my meeting with Mr. Fossett, I was called by Mr. Steil who requested a meeting at my home the next morning, a Saturday. I agreed. That morning, Mr. Steil and Ms. Doonan interviewed me. I told them about all the theft I had described here. They asked me to help them arrange appointments with other eye witnesses. I agreed. Every witness I approached eventually met with them. They included: Art Almaguer, Charlie Boyd, Tommy Myers, Vito DeBari, Murray Pipchok. Jim Pitts also met with the two special agents.

At one point, which I describe below, Mr. Steil requested that I not contact my Congressman or Senator. He assured me he was going to "get" the guys involved. He stated it would not be in my best interest to let Congress know. He gave me his card with his Chicago and Washington phone numbers. This meeting had not been taped.

26. I never again met with Steil. He only called me when he was trying to arrange a meeting. During one of those phone conversations I asked Mr. Steil if they were making progress in the investigation. He replied "the abuse of funds was so big that it is unbelievable." He added "Everything is going to take time."

27. On one occasion Mr. Baker told me that in that month alone Amtrak had purchased over $5,000 worth of replacement parts for tools used in the paint shop. He was referring to purchases from Cremioux Hardware and Mutual Truck Parts. I told him that was impossible because as the technician in charge of the paint shop I would have done the ordering and I would have checked in the deliveries. I told him that I had never seen more than $50 of such items in any one month. He remained silent and then changed the subject. I was never given an opportunity by Amtrak police investigators to review any invoices in order to verify delivery of items supposedly delivered to my paint shop.

28. At a later date, I was instructed to meet with Mr. Rhoades and Ms. Doonan. This interview was taped. I discussed the same topics as I had at my first interview. I also discussed threats that had been made against me since my first interview. I was never provided a transcript of that interview.

29. A couple of weeks after my interview with Mr. Steil and Ms. Doonan, Gary Baker approached me and informed me that "if anything happened to John Durst in the next 60 (or 90) days, I will personally come after your ass, because if he goes down then I'm going to go down too." When I told Mr. Steil what Mr. Baker had said to me, Mr. Steil said "don't worry about it, I'll take care of it - just write it down if anything more happens."

30. After Amtrak security took possession of the log books which documented the work done on private cars, Mr. Brown and Mr. Rogers approached me and asked for help. They both knew they were in trouble. They asked me to hang out in the maintenance shop to find out who was doing the talking. They tried to motivate me to help them by reminding me that if Rogers or Brown got fired, they might be replaced by, using their words, "putting a nigger in charge." They stated this because Mitch Campbell, the only black general foreman, would have been a possible candidate. Mitch Campbell did not in the end, get the job. Mr. Bruno, Mr. Brown's replacement, named a Californian as Assistant Manager.

31. Approximately one week after receiving this threat from Mr. Baker, I was approached by Wayne Noakes who was a superintendent. He was then being groomed for Mr. Rogers' job, assistant facility manager. Mr. Noakes is white. Mr. Noakes informed me that I should take a job with RTA (Chicago's Regional Transit Authority) because they were hiring. He said "If you stay at Amtrak, you'd better carry a gun!"

Mr. Noakes expressed his concern that if Mitch Campbell was made assistant manager, he (Noakes) "would have to leave Amtrak because I could never work for a nigger." I believe Mr. Noakes may be either a NAZI or NAZI sympathizer because on one occasion, he instructed me to prepare an oak plaque and mount and varnish a paper cutout of a NAZI oath - which included a swastika. The plaque was made from wood that was Amtrak property. I followed his orders and completed the entire job.

32. After Mr. Brown put Mr. Noakes in charge, of the paint shop, Mr. Noakes told me that I would no longer be given overtime, and that they were going to end the switcher program.

33. When I told Ms. Doonan of the threat from Mr. Noakes, Ms. Doonan stated, "Don't worry, I'll take care of it." She promised to inform Mr. Steil. Mr. Steil called me. He told me not to worry. I also called Mr. Fossett. He told me not to worry about it, just to take out a pad of paper and show the person threatening me that I was writing it down.

It was during this conversation that I told Mr. Steil that it didn't look like anything was happening to the people threatening me, except wrist-slapping, at most. I stated that I might call my Congressman. Mr. Steil replied: "it wouldn't be in my best interest."

34. Shortly thereafter Mr. Brown, who evidently knew I was talking to Amtrak security about the financial crimes, demoted me from the lead technician position, and reduced my take-home pay. I notified Mr. Fossett that Mr. Brown had demoted me and reduced my take-home pay. Mr. Fossett said "he'd check into it." Later he reported to me that Mr. Brown had done these things to me "on his own." He admitted it wasn't proper but stated that he couldn't do anything about it. Mr. William Autro, general superintendent in charge of all of Chicago operations told me the same thing.

35. In my opinion, Amtrak's investigators used us to determine how much evidence we had on their managers in order to figure out how to best protect them.

36. Most recently, Amtrak decided to close our paint, wreck repair and switcher rebuilding operations. The employees most hurt by this decision are the paint shop employees who did this work. We are the ones who assisted Amtrak in solving the crimes by Mr. Brown and his cronies. We are now being punished for cooperating with Mr. Claytor's so-called "investigations." There are many days when we do absolutely nothing, because since this investigation began, they transferred all of our work to Beech Grove, Indiana. At Beech Grove there are long delays in locomotive repairs. The official reason for closing our shop is that our work area requires modifications in order to meet safety code standards. For years Amtrak knew our work area did not meet safety code standards, and they did nothing. Yet for some odd reason Amtrak is now closing our shop and trying to terminate our jobs. I believe this is because of our testimony.

37. In March of 1984 President Claytor awarded me and four other employees in the paint shop a Presidential Achievement award. Only six other Amtrak employees in the entire country won this award. In explaining the award to us, Mr. Claytor stated:

> With team spirit and cooperation these five men from the electrician, sheetmetal worker and machinist unions pooled their resourcefulness and expertise to ingeniously implement Amtrak's first SW-1 switcher rebuild program. It saved Amtrak an estimated $1 million in 1983 alone. The attitudes and skill that allowed these five men to function as composite craftsmen made this accomplishment possible. Their professionalism and desire to conquer a problem is an excellent example for others to follow.

At the actual awards assembly Mr. Claytor stated, in part:

I've said before that the people who are selected to receive the President's Achievement Awards are the outstanding people in a company that is made up of achievers. Amtrak is filled with employees who have shown time and again that they are willing to work the extra hour and go the extra mile.

Because of this, we can look today on a national rail passenger system that enjoys a solid base of support and stability....

There are many definitions of excellence. Excellence is what we honor in the President's Achievement Awards Program. The winners are honored because they took it on their own to reach for excellence.

Excellence is what you get when you are determined to do the best you can. We've all known people who approach a job with the intention of merely meeting the job requirements. That usually means doing the least they can get by with. Other people will do a little more than they really have to because somehow they feel it is expected of them.

And then there are those who take on a job...and go at it full throttle, absolutely determined to turn in their best. The result of their efforts is what we call excellence.

Excellence in a company has never resulted from a management directive to be excellent. Excellence is created by ordinary people who do ordinary jobs extraordinarily well.

That is the beauty of this--we are not talking about some magical or mystical quality...we are not waiting for the arrival of super-heroes. Excellence is right in front of us...

As we honor the winners in the President's Achievement Awards Program, let us use their achievements as an example for us in our own jobs. Let us all--as individuals and as members of this Amtrak team--reach for excellence...

38. I know that Mr. Claytor informed Senators Percy and Dixon of our awards because I received congratulatory letters from both of them. I do not know whether Mr. Claytor notified the two Senators that he was terminating the program which we created and which was saving Amtra $1 million per year only 10 months ago. This $1 million figure only covers savings from the switcher program. It does not include the enormous savings from our wreck damage and locomotive modification program. The letters from Senator Percy, Senator Dixon and Mr. Claytor are attached to this statement.

39. Following my conversation with General Superintendent William Autro and his assistant Mr. Lee Bullock, where I described the threats and intimidations I was facing as a result of my cooperation with Mr. Claytor's investigators, I received a call from Mr. Bullock to meet with him.

When I met with him, he discussed the possibility that I would be brought up on charges of insubordination for signing out sick in the middle of a shift. That day Richard Cramer, Gary Baker and Wayne Noakes tried to force me to paint a drop table with floor mops. They would not allow me to use paint brushes or rollers. Fearing a confrontation and feeling sick from their efforts to torment me, I had told Mr. Noakes that I was signing off sick and was going home.

I later learned that Mr. Noakes had arranged with Mr. Shipper, another general foreman, that Mr. Shipper would falsely swear that I swore at Mr. Noakes and that I refused a direct order. Mr. Shipper was not even present. Mr. DeBari, Mr. Stepanian, Mr. Brown and pipefitter apprentice John Pilewski were present. They would have been my witnesses at a hearing. This all occurred after Mr Claytor promised in September that the disciplinary abuses were over. This is exactly how things worked for the entire time Jim Brown ran our facility.

Mr. Bullock informed me that if I wanted to avoid a disciplinary investigation for insubordination, I had to accept counselling on refusing orders and I had to get "outside help" from someone who would not be connected with Amtrak but would decide whether the threats and intimidation I was facing "were all in my mind." He told me somebody at 16th Street was pushing for an investigation. I believe the purpose of this conversation was to intimidate me through the threat of a false insubordination investigation into seeing a company-selected psychologist who would then have discredited me so that nothing I would say later would be considered credible. Amtrak had reason to know that I might someday become a witness concerning Mr. Brown's abuses. I told Mr. Bullock that I would be willing to take a polygraph test if he believed the threats were all in my head, but only if Mr. Noakes, Mr. Baker and Mr. Cramer took those tests. Mr. Bullock stated those tests cannot be relied upon and refused my offer. He reminded me that Amtrak had 30 days to file charges. I never again heard from Mr. Bullock. I believe the entire incident was a big bluff, using the disciplinary process as their main weapon. All of this occurred after the September 13, 1984 congressional hearing in Washington at which Mr. Claytor took responsibility for the abuses in Chicago. If Mr. Claytor ordered changes in the disciplinary terror, I do not believe the order was heard in Chicago.

I CERTIFY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE

BEST OF MY KNOWLEDGE AND BELIEF, UNDER PENALTY OF PERJURY.

Kenneth Johnson
KENNETH JOHNSON
J 525-5015-5360

FEB 18 1985

SUBSCRIBED AND SWORN TO BEFORE ME THE _____ DAY OF _________, 1985

Mary Ellen Petrigni
My commission expires
3/18/86

National Railroad Passenger Corporation, 400 North Capitol Street, N.W., Washington, D.C. 20001 Telephone (202) 383-3000

Amtrak

March 1, 1984

Mr. Kenneth Johnson
562 Deere Park Drive, #312
Bartlett, IL 60103

Dear Mr. Johnson:

It is indeed a pleasure for me to personally congratulate you and your four co-workers as winners in the 1983 President's Achievement Awards Program.

The President's Achievement Awards Program recognizes employees who have made an outstanding contribution towards improving Amtrak's service, efficiency and the economy of its operations. Nominees for this award must meet very high standards, and the very fact that you were nominated is an honor.

Your group was selected along with seven other outstanding employees from a pool of almost 100 nominations. Being selected a winner is an accomplishment of which you should be extremely proud.

I hope that you and a family member will be able to attend the award festivities March 7 and 8 in Washington, D.C. You will soon be contacted by a committee member concerning travel arrangements and ceremony details. Your award will be widely publicized so that all your colleagues will know of your achievement.

Once again, congratulations and best wishes.

Sincerely,

W. Graham Claytor

W. Graham Claytor, Jr.
President

cc: Frank D. Abate
James M. Brown

AN EQUAL OPPORTUNITY EMPLOYER

ALAN J. DIXON
ILLINOIS

COMMITTEES:
AGRICULTURE, NUTRITION, AND FORESTRY
BANKING, HOUSING AND URBAN AFFAIRS
SMALL BUSINESS

United States Senate
WASHINGTON, D.C. 20510

April 20, 1984

Mr. Kenneth A. Johnson
562 Deere Park Drive, #312
Bartlett, Illinois 60103

Dear Mr. Johnson:

Congratulations on receiving the President's Achievement Award for 1984 from Amtrak.

You must be an outstanding employee to receive such an honor. You and your family should be proud!

Please feel free to call on me whenever you believe I can be of service.

Kindest personal regards.

Sincerely,

Alan J. Dixon

Alan J. Dixon

BELLEVILLE OFFICE:
618-235-0998
10 EAST WASHINGTON

CHICAGO OFFICE:
312-353-8420
230 S. DEARBORN STREET

SPRINGFIELD OFFICE:
217-492-4126
POST OFFICE AND COURT HOUSE

MOUNT VERNON OFFICE:
618-244-6703
FEDERAL BUILDING
ROOM [illegible]

United States Senate
WASHINGTON, D.C. 20510

June 7, 1984

Mr. Kenneth A. Johnson
562 Deere Park Drive, 312
Bartlett, Illinois 60103

Dear Mr. Johnson:

I would like to take this opportunity to congratulate you on being one of six Illinois recipients of the President's Achievement Award for 1984 by the National Railroad Passenger Corporation (Amtrak).

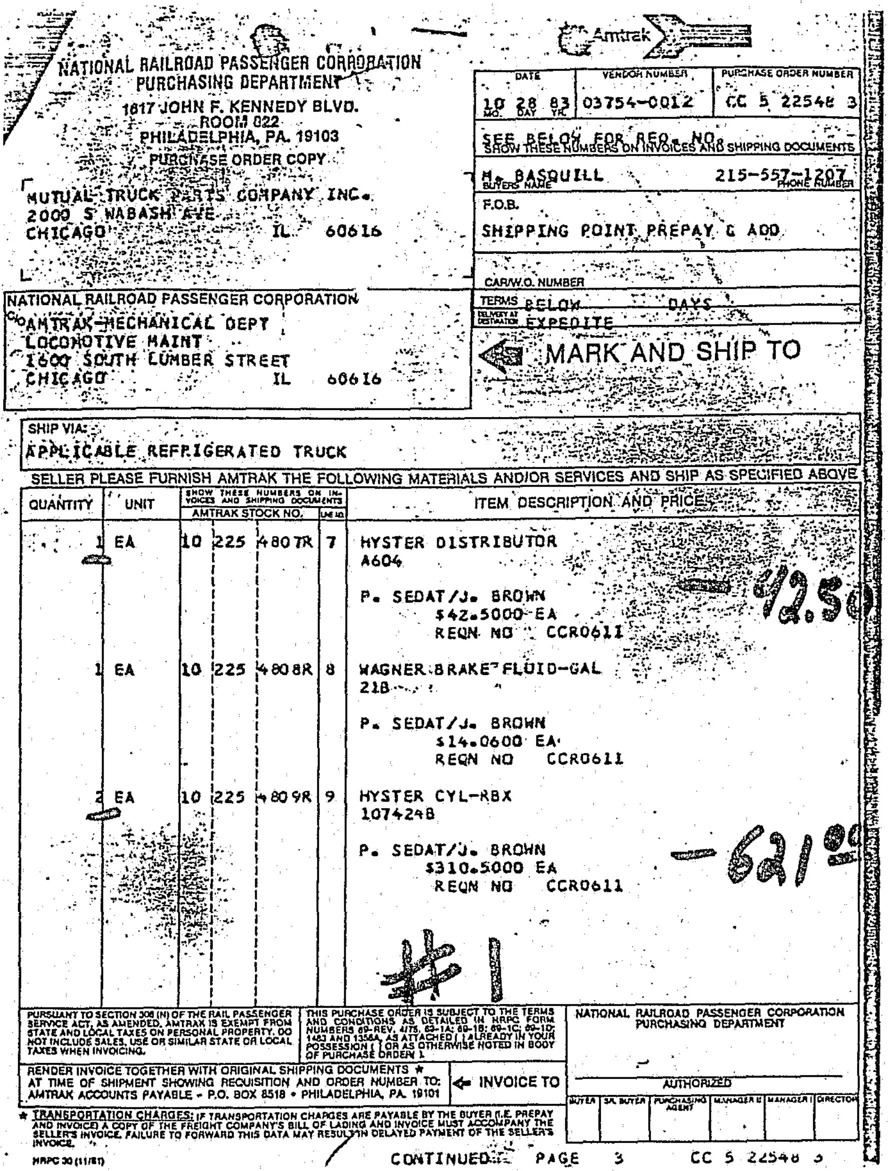
You are certainly to be commended for the extraordinary dedication and contribution you have shown in your service to the Corporation I wish you continue success in your work with Amtrak.

Sincerely,

Charles H. Percy
United States Senator

CHP/at

APPENDIX 4



NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT
1617 JOHN F. KENNEDY BLVD.
ROOM 822
PHILADELPHIA, PA. 19103
PURCHASE ORDER COPY

Amtrak

DATE	VENDOR NUMBER	PURCHASE ORDER NUMBER
10 28 83 MO. DAY YR.	03754-0012	CC 5 22548 3

SEE BELOW FOR REQ. NO.
SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS

BUYERS NAME: M. BASQUILL
PHONE NUMBER: 215-557-1207

F.O.B.: SHIPPING POINT PREPAY & ADD

CAR/W.O. NUMBER:

TERMS: BELOW DAYS

DELIVERY AT DESTINATION: EXPEDITE

MUTUAL TRUCK PARTS COMPANY INC.
2000 S WABASH AVE
CHICAGO IL 60616

MARK AND SHIP TO

NATIONAL RAILROAD PASSENGER CORPORATION
C/O AMTRAK-MECHANICAL DEPT
LOCOMOTIVE MAINT
1600 SOUTH LUMBER STREET
CHICAGO IL 60616

SHIP VIA: APPLICABLE REFRIGERATED TRUCK

SELLER PLEASE FURNISH AMTRAK THE FOLLOWING MATERIALS AND/OR SERVICES AND SHIP AS SPECIFIED ABOVE

QUANTITY	UNIT	SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS AMTRAK STOCK NO.	LINE NO.	ITEM DESCRIPTION AND PRICE	
1	EA	10 225 4807R	7	HYSTER DISTRIBUTOR A604 P. SEDAT/J. BROWN $42.5000 EA REQN NO CCR0611	—42.50
1	EA	10 225 4808R	8	WAGNER BRAKE FLUID-GAL 218 P. SEDAT/J. BROWN $14.0600 EA REQN NO CCR0611	
2	EA	10 225 4809R	9	HYSTER CYL-RBX 1074248 P. SEDAT/J. BROWN $310.5000 EA REQN NO CCR0611	—621.00

#1

PURSUANT TO SECTION 306 (N) OF THE RAIL PASSENGER SERVICE ACT, AS AMENDED, AMTRAK IS EXEMPT FROM STATE AND LOCAL TAXES ON PERSONAL PROPERTY. DO NOT INCLUDE SALES, USE OR SIMILAR STATE OR LOCAL TAXES WHEN INVOICING.

THIS PURCHASE ORDER IS SUBJECT TO THE TERMS AND CONDITIONS AS DETAILED IN HRPC FORM NUMBERS 69-REV. 4/75, 69-1A; 69-1B; 69-1C; 69-1D-1483 AND 1356A, AS ATTACHED ( ) ALREADY IN YOUR POSSESSION ( ) OR AS OTHERWISE NOTED IN BODY OF PURCHASE ORDER).

NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT

AUTHORIZED

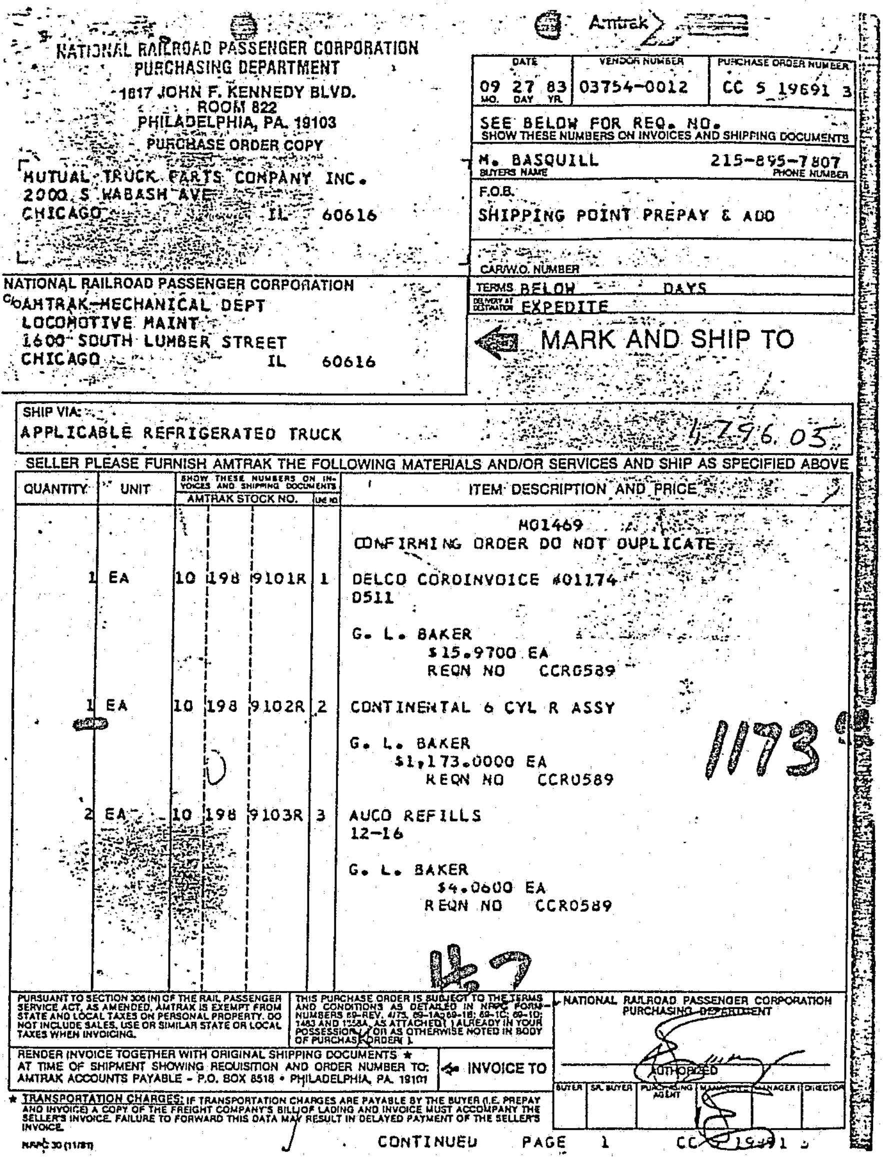
BUYER	SR. BUYER	PURCHASING AGENT	MANAGER II	MANAGER I	DIRECTOR

RENDER INVOICE TOGETHER WITH ORIGINAL SHIPPING DOCUMENTS ★ AT TIME OF SHIPMENT SHOWING REQUISITION AND ORDER NUMBER TO: AMTRAK ACCOUNTS PAYABLE - P.O. BOX 8518 • PHILADELPHIA, PA. 19101 ⇦ INVOICE TO

★ TRANSPORTATION CHARGES: IF TRANSPORTATION CHARGES ARE PAYABLE BY THE BUYER (I.E. PREPAY AND INVOICE) A COPY OF THE FREIGHT COMPANY'S BILL OF LADING AND INVOICE MUST ACCOMPANY THE SELLER'S INVOICE. FAILURE TO FORWARD THIS DATA MAY RESULT IN DELAYED PAYMENT OF THE SELLER'S INVOICE.

HRPC 30 (11/81)

CONTINUED PAGE 3 CC 5 22548 3



NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT
1817 JOHN F. KENNEDY BLVD.
ROOM 822
PHILADELPHIA, PA. 19103
PURCHASE ORDER COPY

Amtrak

DATE	VENDOR NUMBER	PURCHASE ORDER NUMBER
09 27 83 MO. DAY YR.	03754-0012	CC 5 19691 3

SEE BELOW FOR REQ. NO.
SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS

M. BASQUILL — BUYERS NAME
215-895-7807 — PHONE NUMBER

F.O.B.
SHIPPING POINT PREPAY & ADD

CAR/W.O. NUMBER

TERMS BELOW DAYS

DELIVERY AT DESTINATION EXPEDITE

MUTUAL TRUCK PARTS COMPANY INC.
2000 S WABASH AVE
CHICAGO IL 60616

NATIONAL RAILROAD PASSENGER CORPORATION
C/O AMTRAK-MECHANICAL DEPT
LOCOMOTIVE MAINT
1600 SOUTH LUMBER STREET
CHICAGO IL 60616

MARK AND SHIP TO

SHIP VIA:
APPLICABLE REFRIGERATED TRUCK

1,796.05

SELLER PLEASE FURNISH AMTRAK THE FOLLOWING MATERIALS AND/OR SERVICES AND SHIP AS SPECIFIED ABOVE

QUANTITY	UNIT	AMTRAK STOCK NO. (SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS)	LINE NO	ITEM DESCRIPTION AND PRICE
				H01469 CONFIRMING ORDER DO NOT DUPLICATE
1	EA	10 198 9101R	1	DELCO CORDINVOICE #011174 0511 G. L. BAKER $15.9700 EA REQN NO CCR0589
1	EA	10 198 9102R	2	CONTINENTAL 6 CYL R ASSY G. L. BAKER $1,173.0000 EA REQN NO CCR0589 1173
2	EA	10 198 9103R	3	AUCO REFILLS 12-16 G. L. BAKER $4.0600 EA REQN NO CCR0589

147

PURSUANT TO SECTION 306 (N) OF THE RAIL PASSENGER SERVICE ACT, AS AMENDED, AMTRAK IS EXEMPT FROM STATE AND LOCAL TAXES ON PERSONAL PROPERTY. DO NOT INCLUDE SALES, USE OR SIMILAR STATE OR LOCAL TAXES WHEN INVOICING.

THIS PURCHASE ORDER IS SUBJECT TO THE TERMS AND CONDITIONS AS DETAILED IN NRPC FORM NUMBERS 69-REV. 4/75, 69-1A, 69-1B, 69-1C, 69-1D; 1483 AND 1358A, AS ATTACHED ( ) ALREADY IN YOUR POSSESSION ( ) OR AS OTHERWISE NOTED IN BODY OF PURCHASE ORDER ( ).

NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT

AUTHORIZED

BUYER	SR. BUYER	PURCHASING AGENT	MANAGER	MANAGER	DIRECTOR

RENDER INVOICE TOGETHER WITH ORIGINAL SHIPPING DOCUMENTS * AT TIME OF SHIPMENT SHOWING REQUISITION AND ORDER NUMBER TO: AMTRAK ACCOUNTS PAYABLE - P.O. BOX 8518 • PHILADELPHIA, PA. 19101

INVOICE TO

* TRANSPORTATION CHARGES: IF TRANSPORTATION CHARGES ARE PAYABLE BY THE BUYER (I.E. PREPAY AND INVOICE) A COPY OF THE FREIGHT COMPANY'S BILL OF LADING AND INVOICE MUST ACCOMPANY THE SELLER'S INVOICE. FAILURE TO FORWARD THIS DATA MAY RESULT IN DELAYED PAYMENT OF THE SELLER'S INVOICE.

NRPC 30 (11/81)

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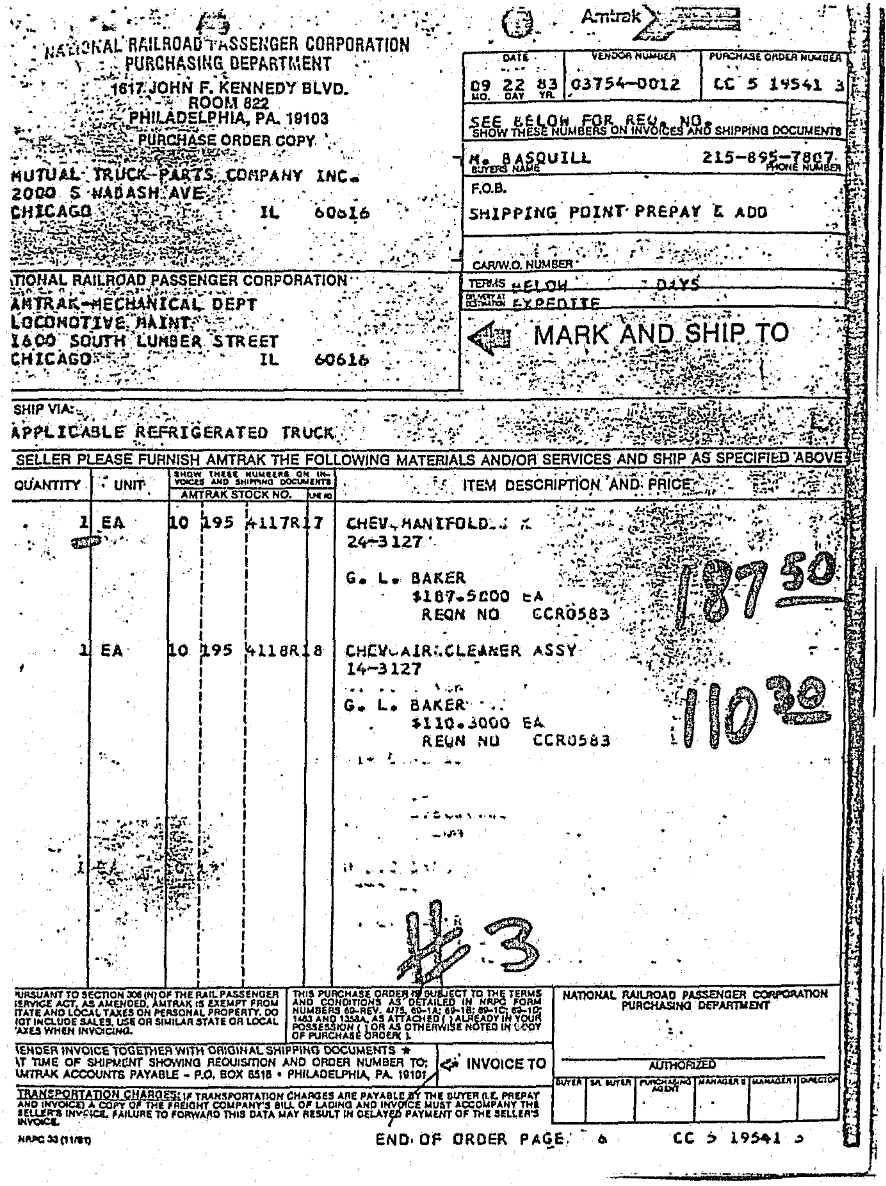


Amtrak

NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT
1617 JOHN F. KENNEDY BLVD.
ROOM 822
PHILADELPHIA, PA. 19103
PURCHASE ORDER COPY

MUTUAL TRUCK PARTS COMPANY INC.
2000 S WABASH AVE
CHICAGO IL 60616

DATE	VENDOR NUMBER	PURCHASE ORDER NUMBER
09 22 83 MO. DAY YR.	03754-0012	CC 5 19541 3

SEE BELOW FOR REQ. NO.
SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS

M. BASQUILL — BUYERS NAME
215-895-7807 — PHONE NUMBER

F.O.B.
SHIPPING POINT PREPAY & ADD

CAR/W.O. NUMBER

TERMS BELOW DAYS

DELIVERY AT DESTINATION EXPEDITE

NATIONAL RAILROAD PASSENGER CORPORATION
AMTRAK-MECHANICAL DEPT
LOCOMOTIVE MAINT
1600 SOUTH LUMBER STREET
CHICAGO IL 60616

MARK AND SHIP TO

SHIP VIA:
APPLICABLE REFRIGERATED TRUCK

SELLER PLEASE FURNISH AMTRAK THE FOLLOWING MATERIALS AND/OR SERVICES AND SHIP AS SPECIFIED ABOVE

QUANTITY	UNIT	SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS AMTRAK STOCK NO.	CHK NO	ITEM DESCRIPTION AND PRICE	
1	EA	10 195 4117R1	7	CHEV. MANIFOLD 24-3127 G. L. BAKER $187.5000 EA REQN NO CCR0583	187 50
1	EA	10 195 4118R1	8	CHEV. AIR CLEANER ASSY 14-3127 G. L. BAKER $110.3000 EA REQN NO CCR0583	110 30

#3

PURSUANT TO SECTION 306 (N) OF THE RAIL PASSENGER SERVICE ACT, AS AMENDED, AMTRAK IS EXEMPT FROM STATE AND LOCAL TAXES ON PERSONAL PROPERTY. DO NOT INCLUDE SALES, USE OR SIMILAR STATE OR LOCAL TAXES WHEN INVOICING.

THIS PURCHASE ORDER IS SUBJECT TO THE TERMS AND CONDITIONS AS DETAILED IN NRPC FORM NUMBERS 69-REV. 4/75, 69-1A; 69-1B; 69-1C; 69-1D; 1463 AND 1358A, AS ATTACHED ( ) ALREADY IN YOUR POSSESSION ( ) OR AS OTHERWISE NOTED IN BODY OF PURCHASE ORDER ( ).

NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT

AUTHORIZED

BUYER	SR. BUYER	PURCHASING AGENT	MANAGER II	MANAGER I	DIRECTOR

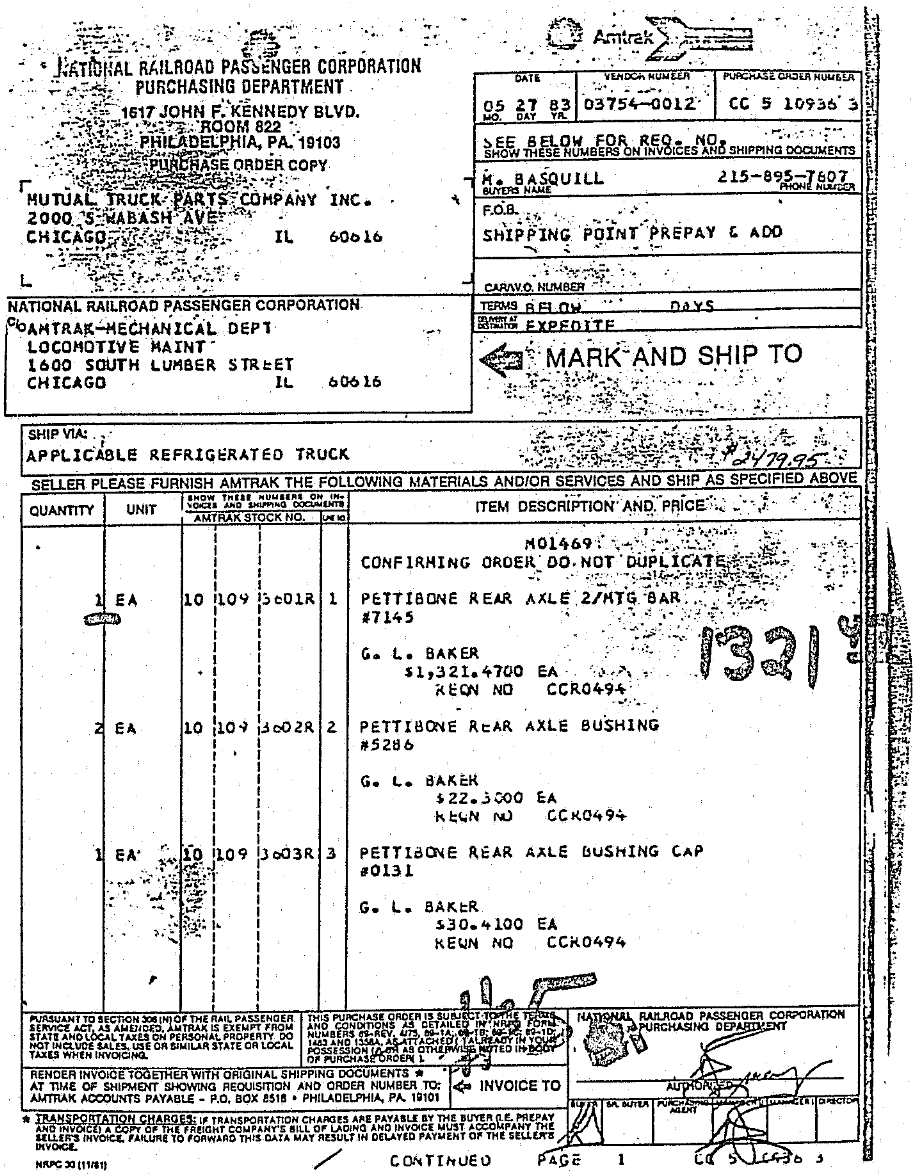
RENDER INVOICE TOGETHER WITH ORIGINAL SHIPPING DOCUMENTS ★ AT TIME OF SHIPMENT SHOWING REQUISITION AND ORDER NUMBER TO: AMTRAK ACCOUNTS PAYABLE - P.O. BOX 8518 • PHILADELPHIA, PA. 19101

INVOICE TO

TRANSPORTATION CHARGES: IF TRANSPORTATION CHARGES ARE PAYABLE BY THE BUYER (I.E. PREPAY AND INVOICE) A COPY OF THE FREIGHT COMPANY'S BILL OF LADING AND INVOICE MUST ACCOMPANY THE SELLER'S INVOICE. FAILURE TO FORWARD THIS DATA MAY RESULT IN DELAYED PAYMENT OF THE SELLER'S INVOICE.

NRPC 33 (11/81)

END OF ORDER PAGE 6 CC 5 19541 3



NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT
1617 JOHN F. KENNEDY BLVD.
ROOM 822
PHILADELPHIA, PA. 19103
PURCHASE ORDER COPY

Amtrak

DATE	VENDOR NUMBER	PURCHASE ORDER NUMBER
05 27 83 MO. DAY YR.	03754-0012	CC 5 10936 3

SEE BELOW FOR REQ. NO.
SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS

M. BASQUILL 215-895-7607
BUYERS NAME PHONE NUMBER

F.O.B.
SHIPPING POINT PREPAY & ADD

CAR/V.O. NUMBER

TERMS BELOW DAYS

DELIVERY AT DESTINATION EXPEDITE

MUTUAL TRUCK PARTS COMPANY INC.
2000 S WABASH AVE
CHICAGO IL 60616

NATIONAL RAILROAD PASSENGER CORPORATION
C/O AMTRAK-MECHANICAL DEPT
LOCOMOTIVE MAINT
1600 SOUTH LUMBER STREET
CHICAGO IL 60616

MARK AND SHIP TO

SHIP VIA:
APPLICABLE REFRIGERATED TRUCK

$2479.95

SELLER PLEASE FURNISH AMTRAK THE FOLLOWING MATERIALS AND/OR SERVICES AND SHIP AS SPECIFIED ABOVE

QUANTITY	UNIT	AMTRAK STOCK NO. (SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS)	LINE NO.	ITEM DESCRIPTION AND PRICE
				M01469 CONFIRMING ORDER DO NOT DUPLICATE
1	EA	10 109 3601R	1	PETTIBONE REAR AXLE 2/MTG BAR #7145 G. L. BAKER $1,321.4700 EA REQN NO CCR0494
2	EA	10 109 3602R	2	PETTIBONE REAR AXLE BUSHING #5286 G. L. BAKER $22.3000 EA REQN NO CCR0494
1	EA	10 109 3603R	3	PETTIBONE REAR AXLE BUSHING CAP #0131 G. L. BAKER $30.4100 EA REQN NO CCR0494

1321

PURSUANT TO SECTION 306(N) OF THE RAIL PASSENGER SERVICE ACT, AS AMENDED, AMTRAK IS EXEMPT FROM STATE AND LOCAL TAXES ON PERSONAL PROPERTY. DO NOT INCLUDE SALES, USE OR SIMILAR STATE OR LOCAL TAXES WHEN INVOICING.

THIS PURCHASE ORDER IS SUBJECT TO THE TERMS AND CONDITIONS AS DETAILED IN NRPC FORM NUMBERS 69-REV. 4/75, 69-1A, 69-1B, 69-1C, 69-1D, 1483 AND 1338A, AS ATTACHED ( ) ALREADY IN YOUR POSSESSION (✓) OR AS OTHERWISE NOTED IN BODY OF PURCHASE ORDER ( ).

NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT

AUTHORIZED

RENDER INVOICE TOGETHER WITH ORIGINAL SHIPPING DOCUMENTS * AT TIME OF SHIPMENT SHOWING REQUISITION AND ORDER NUMBER TO: AMTRAK ACCOUNTS PAYABLE - P.O. BOX 8518 • PHILADELPHIA, PA. 19101

INVOICE TO

BUYER	SR. BUYER	PURCHASING AGENT	MANAGER	MANAGER	DIRECTOR

* TRANSPORTATION CHARGES: IF TRANSPORTATION CHARGES ARE PAYABLE BY THE BUYER (I.E. PREPAY AND INVOICE) A COPY OF THE FREIGHT COMPANY'S BILL OF LADING AND INVOICE MUST ACCOMPANY THE SELLER'S INVOICE. FAILURE TO FORWARD THIS DATA MAY RESULT IN DELAYED PAYMENT OF THE SELLER'S INVOICE.

NRPC 30 (11/81)

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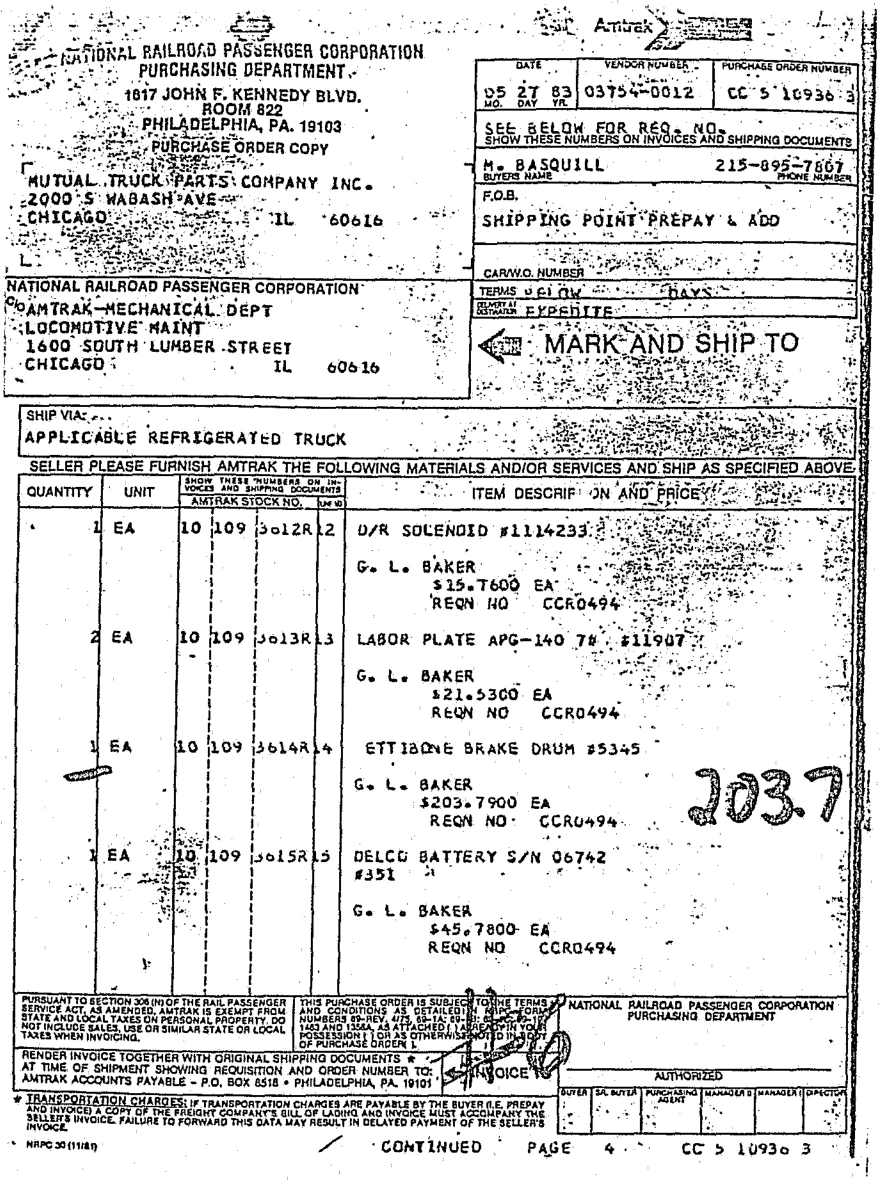

Amtrak

NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT
1817 JOHN F. KENNEDY BLVD.
ROOM 822
PHILADELPHIA, PA. 19103
PURCHASE ORDER COPY

DATE	VENDOR NUMBER	PURCHASE ORDER NUMBER
05 27 83 MO. DAY YR.	03754-0012	CC 5 10936 3

SEE BELOW FOR REQ. NO.
SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS

BUYERS NAME: M. BASQUILL
PHONE NUMBER: 215-895-7807

F.O.B.: SHIPPING POINT PREPAY & ADD

CAR/W.O. NUMBER

TERMS: BELOW DAYS

DELIVERY AT DESTINATION: EXPEDITE

MUTUAL TRUCK PARTS COMPANY INC.
2000 S WABASH AVE
CHICAGO IL 60616

MARK AND SHIP TO

NATIONAL RAILROAD PASSENGER CORPORATION
C/O AMTRAK-MECHANICAL DEPT
LOCOMOTIVE MAINT
1600 SOUTH LUMBER STREET
CHICAGO IL 60616

SHIP VIA: APPLICABLE REFRIGERATED TRUCK

SELLER PLEASE FURNISH AMTRAK THE FOLLOWING MATERIALS AND/OR SERVICES AND SHIP AS SPECIFIED ABOVE.

QUANTITY	UNIT	SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS AMTRAK STOCK NO.			UM ID	ITEM DESCRIPTION AND PRICE
1	EA	10	109	3612R	2	D/R SOLENOID #1114233 G. L. BAKER $15.7600 EA REQN NO CCR0494
2	EA	10	109	3613R	3	LABOR PLATE APG-140 7# #11907 G. L. BAKER $21.5300 EA REQN NO CCR0494
1	EA	10	109	3614R	4	ETTIBONE BRAKE DRUM #5345 G. L. BAKER $203.7900 EA REQN NO CCR0494
1	EA	10	109	3615R	5	DELCO BATTERY S/N 06742 #351 G. L. BAKER $45.7800 EA REQN NO CCR0494

203.7

PURSUANT TO SECTION 306 (N) OF THE RAIL PASSENGER SERVICE ACT, AS AMENDED, AMTRAK IS EXEMPT FROM STATE AND LOCAL TAXES ON PERSONAL PROPERTY. DO NOT INCLUDE SALES, USE OR SIMILAR STATE OR LOCAL TAXES WHEN INVOICING.

THIS PURCHASE ORDER IS SUBJECT TO THE TERMS AND CONDITIONS AS DETAILED IN NRPC FORM NUMBERS 69-REV. 4/75, 69-1A; 69-[illegible]; 69-[illegible] 69-1[illegible] 1483 AND 1356A, AS ATTACHED ( ) ALREADY IN YOUR POSSESSION ( ) OR AS OTHERWISE NOTED IN BODY OF PURCHASE ORDER ( ).

NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT

AUTHORIZED

BUYER	SR. BUYER	PURCHASING AGENT	MANAGER II	MANAGER I	DIRECTOR

RENDER INVOICE TOGETHER WITH ORIGINAL SHIPPING DOCUMENTS ★ AT TIME OF SHIPMENT SHOWING REQUISITION AND ORDER NUMBER TO: AMTRAK ACCOUNTS PAYABLE - P.O. BOX 8518 • PHILADELPHIA, PA. 19101

INVOICE TO

★ TRANSPORTATION CHARGES: IF TRANSPORTATION CHARGES ARE PAYABLE BY THE BUYER (I.E. PREPAY AND INVOICE) A COPY OF THE FREIGHT COMPANY'S BILL OF LADING AND INVOICE MUST ACCOMPANY THE SELLER'S INVOICE. FAILURE TO FORWARD THIS DATA MAY RESULT IN DELAYED PAYMENT OF THE SELLER'S INVOICE.

NRPC 30 (11/81)

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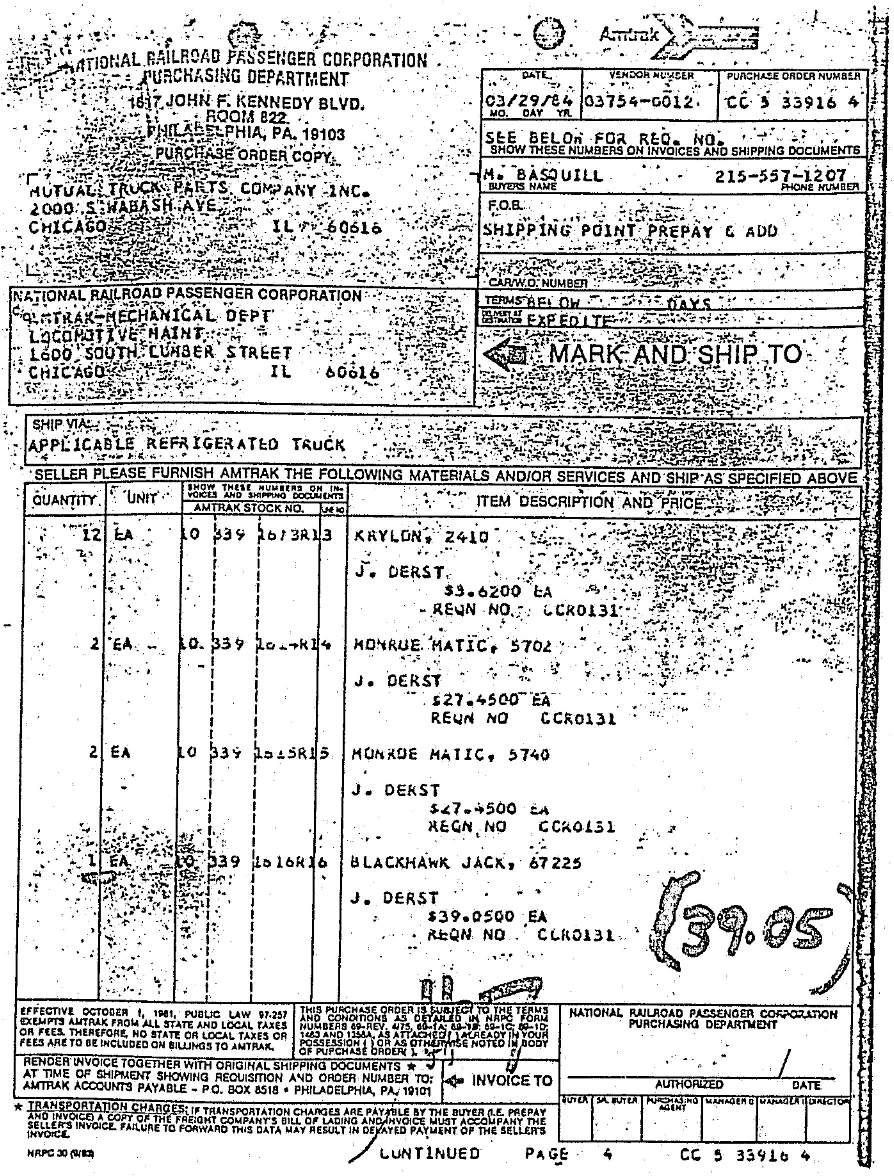


Amtrak

NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT
1617 JOHN F. KENNEDY BLVD.
ROOM 822
PHILADELPHIA, PA. 19103
PURCHASE ORDER COPY

MUTUAL TRUCK PARTS COMPANY INC.
2000 S WABASH AVE
CHICAGO IL 60616

DATE	VENDOR NUMBER	PURCHASE ORDER NUMBER
03/29/84 MO. DAY YR.	03754-0012	CC 5 33916 4

SEE BELOW FOR REQ. NO.
SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS

M. BASQUILL 215-557-1207
BUYERS NAME PHONE NUMBER

F.O.B.
SHIPPING POINT PREPAY & ADD

CAR/W.O. NUMBER

TERMS BELOW DAYS

DELIVERY AT DESTINATION EXPEDITE

MARK AND SHIP TO

NATIONAL RAILROAD PASSENGER CORPORATION
C/O AMTRAK-MECHANICAL DEPT
LOCOMOTIVE MAINT
1600 SOUTH LUMBER STREET
CHICAGO IL 60616

SHIP VIA
APPLICABLE REFRIGERATED TRUCK

SELLER PLEASE FURNISH AMTRAK THE FOLLOWING MATERIALS AND/OR SERVICES AND SHIP AS SPECIFIED ABOVE

QUANTITY	UNIT	SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS AMTRAK STOCK NO.	LINE NO.	ITEM DESCRIPTION AND PRICE
12	EA	10 339 1613R1	3	KRYLON, 2410 J. DERST $3.6200 EA REQN NO. CCR0131
2	EA	10 339 1614R1	4	MONROE MATIC, 5702 J. DERST $27.4500 EA REQN NO CCR0131
2	EA	10 339 1615R1	5	MONROE MATIC, 5740 J. DERST $27.4500 EA REQN NO CCR0131
1	EA	10 339 1616R1	6	BLACKHAWK JACK, 67225 J. DERST $39.0500 EA REQN NO CCR0131

(39.05)

EFFECTIVE OCTOBER 1, 1981, PUBLIC LAW 97-257 EXEMPTS AMTRAK FROM ALL STATE AND LOCAL TAXES OR FEES. THEREFORE, NO STATE OR LOCAL TAXES OR FEES ARE TO BE INCLUDED ON BILLINGS TO AMTRAK.

THIS PURCHASE ORDER IS SUBJECT TO THE TERMS AND CONDITIONS AS DETAILED IN NRPC FORM NUMBERS 69-REV. 4/75, 69-1A, 69-1B, 69-1C, 69-1D, 1463 AND 1358A, AS ATTACHED ( ) ALREADY IN YOUR POSSESSION ( ) OR AS OTHERWISE NOTED IN BODY OF PURCHASE ORDER ( ).

RENDER INVOICE TOGETHER WITH ORIGINAL SHIPPING DOCUMENTS ★ AT TIME OF SHIPMENT SHOWING REQUISITION AND ORDER NUMBER TO: AMTRAK ACCOUNTS PAYABLE - P.O. BOX 8518 • PHILADELPHIA, PA. 19101

INVOICE TO

NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT

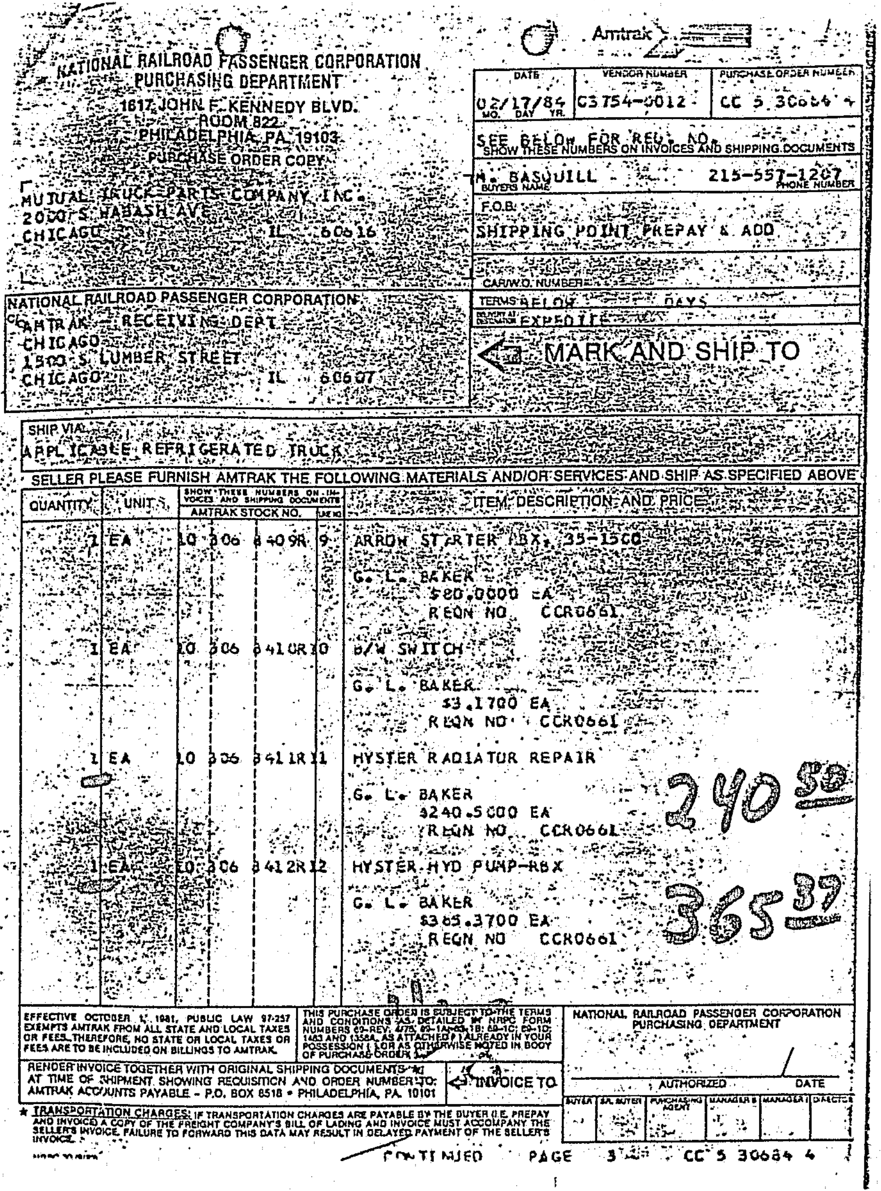
AUTHORIZED DATE

BUYER	SR. BUYER	PURCHASING AGENT	MANAGER G	MANAGER I	DIRECTOR

★ TRANSPORTATION CHARGES: IF TRANSPORTATION CHARGES ARE PAYABLE BY THE BUYER (I.E. PREPAY AND INVOICE) A COPY OF THE FREIGHT COMPANY'S BILL OF LADING AND INVOICE MUST ACCOMPANY THE SELLER'S INVOICE. FAILURE TO FORWARD THIS DATA MAY RESULT IN DELAYED PAYMENT OF THE SELLER'S INVOICE.

NRPC 30 (9/83)

CONTINUED PAGE 4 CC 5 33916 4



Amtrak

NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT
1617 JOHN F. KENNEDY BLVD.
ROOM 822
PHILADELPHIA, PA. 19103
PURCHASE ORDER COPY

MUTUAL TRUCK PARTS COMPANY INC.
2000 S. WABASH AVE
CHICAGO IL 60616

DATE	VENDOR NUMBER	PURCHASE ORDER NUMBER
02/17/84 MO. DAY YR.	C3754-0012	CC 5 30684 4

SEE BELOW FOR REQ. NO.
SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS

M. BASQUILL 215-557-1207
BUYERS NAME PHONE NUMBER

F.O.B.
SHIPPING POINT PREPAY & ADD

CAR/W.O. NUMBER

TERMS BELOW DAYS

DELIVERY AT DESTINATION EXPEDITE

NATIONAL RAILROAD PASSENGER CORPORATION
C/O AMTRAK - RECEIVING DEPT
CHICAGO
1500 S. LUMBER STREET
CHICAGO IL 60607

MARK AND SHIP TO

SHIP VIA
APPLICABLE REFRIGERATED TRUCK

SELLER PLEASE FURNISH AMTRAK THE FOLLOWING MATERIALS AND/OR SERVICES AND SHIP AS SPECIFIED ABOVE

QUANTITY	UNITS	SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS AMTRAK STOCK NO.	LINE NO	ITEM DESCRIPTION AND PRICE	
1	EA	10 306 8409R	9	ARROW STARTER RBX. 35-1500 G. L. BAKER $80.0000 EA REQN NO CCR0661	
1	EA	10 306 8410R	10	B/W SWITCH G. L. BAKER $3.1700 EA REQN NO CCR0661	
1	EA	10 306 8411R	11	HYSTER RADIATOR REPAIR G. L. BAKER $240.5000 EA REQN NO CCR0661	240^{50}
1	EA	10 306 8412R	12	HYSTER HYD PUMP-RBX G. L. BAKER $365.3700 EA REQN NO CCR0661	365^{37}

EFFECTIVE OCTOBER 1, 1981, PUBLIC LAW 97-257 EXEMPTS AMTRAK FROM ALL STATE AND LOCAL TAXES OR FEES. THEREFORE, NO STATE OR LOCAL TAXES OR FEES ARE TO BE INCLUDED ON BILLINGS TO AMTRAK.

THIS PURCHASE ORDER IS SUBJECT TO THE TERMS AND CONDITIONS AS DETAILED IN NRPC FORM NUMBERS 69-REV. 4/75, 69-1A-63, 1B; 69-1C; 69-1D; 1483 AND 1358A, AS ATTACHED ( ) ALREADY IN YOUR POSSESSION ( ) OR AS OTHERWISE NOTED IN BODY OF PURCHASE ORDER.

NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT

AUTHORIZED DATE

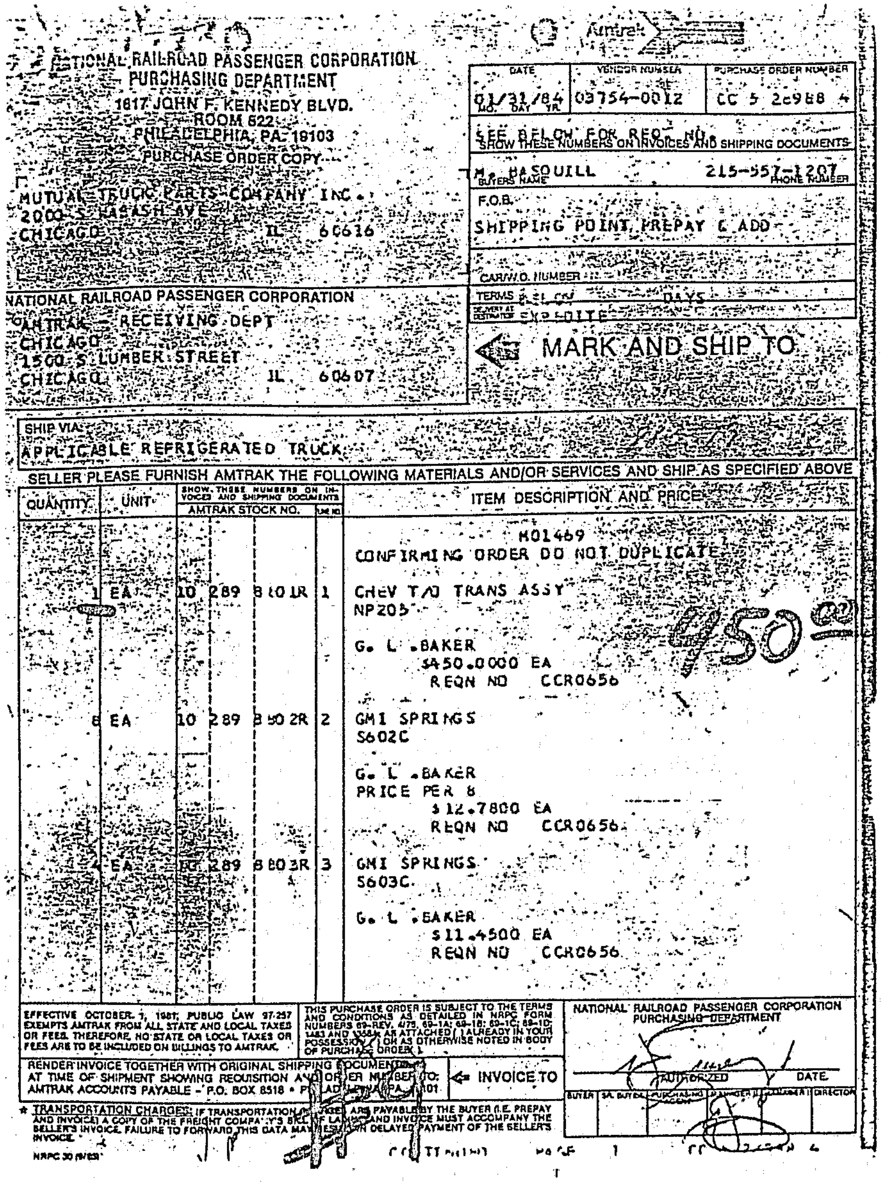
BUYER	SR. BUYER	PURCHASING AGENT	MANAGER B	MANAGER I	DIRECTOR

RENDER INVOICE TOGETHER WITH ORIGINAL SHIPPING DOCUMENTS AT TIME OF SHIPMENT SHOWING REQUISITION AND ORDER NUMBER TO: AMTRAK ACCOUNTS PAYABLE - P.O. BOX 8518 • PHILADELPHIA, PA. 19101

INVOICE TO

★ TRANSPORTATION CHARGES: IF TRANSPORTATION CHARGES ARE PAYABLE BY THE BUYER (I.E. PREPAY AND INVOICE) A COPY OF THE FREIGHT COMPANY'S BILL OF LADING AND INVOICE MUST ACCOMPANY THE SELLER'S INVOICE. FAILURE TO FORWARD THIS DATA MAY RESULT IN DELAYED PAYMENT OF THE SELLER'S INVOICE.

CONTINUED PAGE 3 CC 5 30684 4



NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT
1817 JOHN F. KENNEDY BLVD.
ROOM 822
PHILADELPHIA, PA 19103
PURCHASE ORDER COPY

Amtrak

DATE 01/31/84 MO. DAY YR.	VENDOR NUMBER 03754-0012	PURCHASE ORDER NUMBER CC 5 26988 4

SEE BELOW FOR REQ. NO.
SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS

M. PASQUILL — BUYERS NAME — 215-557-1207 — PHONE NUMBER

F.O.B.
SHIPPING POINT, PREPAY & ADD

CAR/W.O. NUMBER

TERMS — DAYS

DELIVERY AT DESTINATION EXPEDITE

MUTUAL TRUCK PARTS COMPANY INC.
2000 S WABASH AVE
CHICAGO IL 60616

NATIONAL RAILROAD PASSENGER CORPORATION
AMTRAK - RECEIVING DEPT
CHICAGO
1500 S LUMBER STREET
CHICAGO IL 60607

MARK AND SHIP TO

SHIP VIA
APPLICABLE REFRIGERATED TRUCK

SELLER PLEASE FURNISH AMTRAK THE FOLLOWING MATERIALS AND/OR SERVICES AND SHIP AS SPECIFIED ABOVE

QUANTITY	UNIT	SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS AMTRAK STOCK NO.	LINE NO.	ITEM DESCRIPTION AND PRICE
				M01469 CONFIRMING ORDER DO NOT DUPLICATE
1	EA	10 289 8101R	1	CHEV T/O TRANS ASSY NP205 G. L. BAKER $450.0000 EA REQN NO CCR0656 450 00
8	EA	10 289 8502R	2	GMI SPRINGS S602C G. L. BAKER PRICE PER 8 $12.7800 EA REQN NO CCR0656
4	EA	10 289 8803R	3	GMI SPRINGS S603C G. L. BAKER $11.4500 EA REQN NO CCR0656

EFFECTIVE OCTOBER 1, 1981, PUBLIC LAW 97-257 EXEMPTS AMTRAK FROM ALL STATE AND LOCAL TAXES OR FEES. THEREFORE, NO STATE OR LOCAL TAXES OR FEES ARE TO BE INCLUDED ON BILLINGS TO AMTRAK.

THIS PURCHASE ORDER IS SUBJECT TO THE TERMS AND CONDITIONS AS DETAILED IN NRPC FORM NUMBERS 69-REV. 4/75, 69-1A; 69-1B; 69-1C; 69-1D; 1483 AND 1368A AS ATTACHED ( ) ALREADY IN YOUR POSSESSION ( ) OR AS OTHERWISE NOTED IN BODY OF PURCHASE ORDER.

NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT

AUTHORIZED — DATE

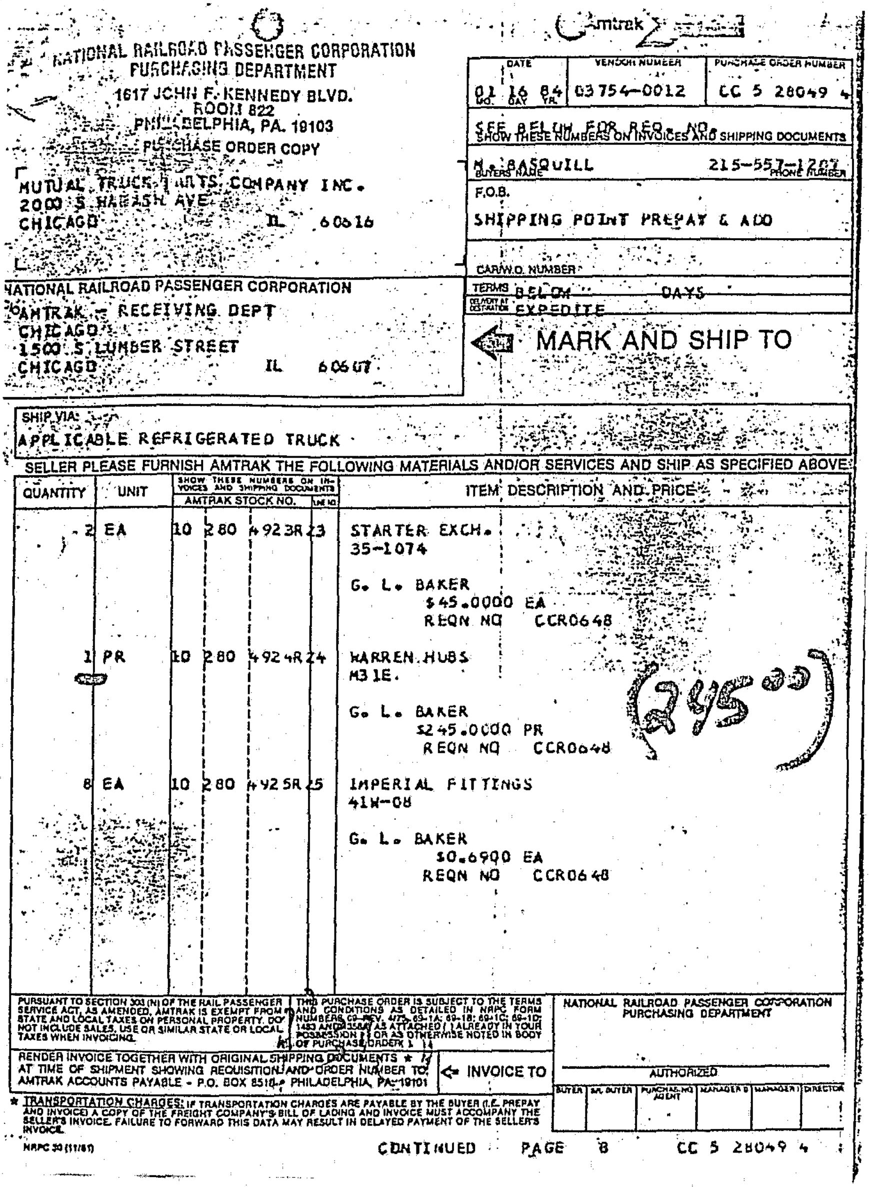
BUYER	SR. BUYER	PURCHASING AGENT	MANAGER	DIRECTOR

RENDER INVOICE TOGETHER WITH ORIGINAL SHIPPING DOCUMENTS AT TIME OF SHIPMENT SHOWING REQUISITION AND ORDER NUMBER TO: AMTRAK ACCOUNTS PAYABLE - P.O. BOX 8518 • PHILADELPHIA, PA 19101 ⇐ INVOICE TO

* TRANSPORTATION CHARGES: IF TRANSPORTATION CHARGES ARE PAYABLE BY THE BUYER (I.E. PREPAY AND INVOICE) A COPY OF THE FREIGHT COMPANY'S BILL OF LADING AND INVOICE MUST ACCOMPANY THE SELLER'S INVOICE. FAILURE TO FORWARD THIS DATA MAY RESULT IN DELAYED PAYMENT OF THE SELLER'S INVOICE.

NRPC 30 (9/83)

CONTINUED PAGE 1 CC 5 26988 4



NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT
1617 JOHN F. KENNEDY BLVD.
ROOM 822
PHILADELPHIA, PA. 19103
PURCHASE ORDER COPY

Amtrak

DATE	VENDOR NUMBER	PURCHASE ORDER NUMBER
01 16 84 MO. DAY YR.	03754-0012	CC 5 28049 4

SEE BELOW FOR REQ. NO.
SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS

BUYERS NAME: M. BASQUILL
PHONE NUMBER: 215-557-1207

F.O.B.: SHIPPING POINT PREPAY & ADD

CAR/W.O. NUMBER:

TERMS: BELOW DAYS

DELIVERY AT DESTINATION: EXPEDITE

MUTUAL TRUCK PARTS COMPANY INC.
2000 S WABASH AVE
CHICAGO IL 60616

NATIONAL RAILROAD PASSENGER CORPORATION
AMTRAK - RECEIVING DEPT
CHICAGO
1500 S LUMBER STREET
CHICAGO IL 60607

MARK AND SHIP TO

SHIP VIA: APPLICABLE REFRIGERATED TRUCK

SELLER PLEASE FURNISH AMTRAK THE FOLLOWING MATERIALS AND/OR SERVICES AND SHIP AS SPECIFIED ABOVE:

QUANTITY	UNIT	SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS AMTRAK STOCK NO.			LINE NO.	ITEM DESCRIPTION AND PRICE
2	EA	10	280	4923R	23	STARTER EXCH. 35-1074 G. L. BAKER $45.0000 EA REQN NO CCR0648
1	PR	10	280	4924R	24	WARREN HUBS M31E. G. L. BAKER $245.0000 PR REQN NO CCR0648
8	EA	10	280	4925R	25	IMPERIAL FITTINGS 41W-08 G. L. BAKER $0.6900 EA REQN NO CCR0648

(245^{00})

PURSUANT TO SECTION 303 (N) OF THE RAIL PASSENGER SERVICE ACT, AS AMENDED, AMTRAK IS EXEMPT FROM STATE AND LOCAL TAXES ON PERSONAL PROPERTY. DO NOT INCLUDE SALES, USE OR SIMILAR STATE OR LOCAL TAXES WHEN INVOICING.

THIS PURCHASE ORDER IS SUBJECT TO THE TERMS AND CONDITIONS AS DETAILED IN NRPC FORM NUMBERS 69-REV. 4/75, 69-1A; 69-1B; 69-1C; 69-1D; 1483 AND 1358A (AS ATTACHED ( ) ALREADY IN YOUR POSSESSION ( ) OR AS OTHERWISE NOTED IN BODY OF PURCHASE ORDER ( ).

RENDER INVOICE TOGETHER WITH ORIGINAL SHIPPING DOCUMENTS * AT TIME OF SHIPMENT SHOWING REQUISITION AND ORDER NUMBER TO: AMTRAK ACCOUNTS PAYABLE - P.O. BOX 8510 - PHILADELPHIA, PA. 19101

INVOICE TO

NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT

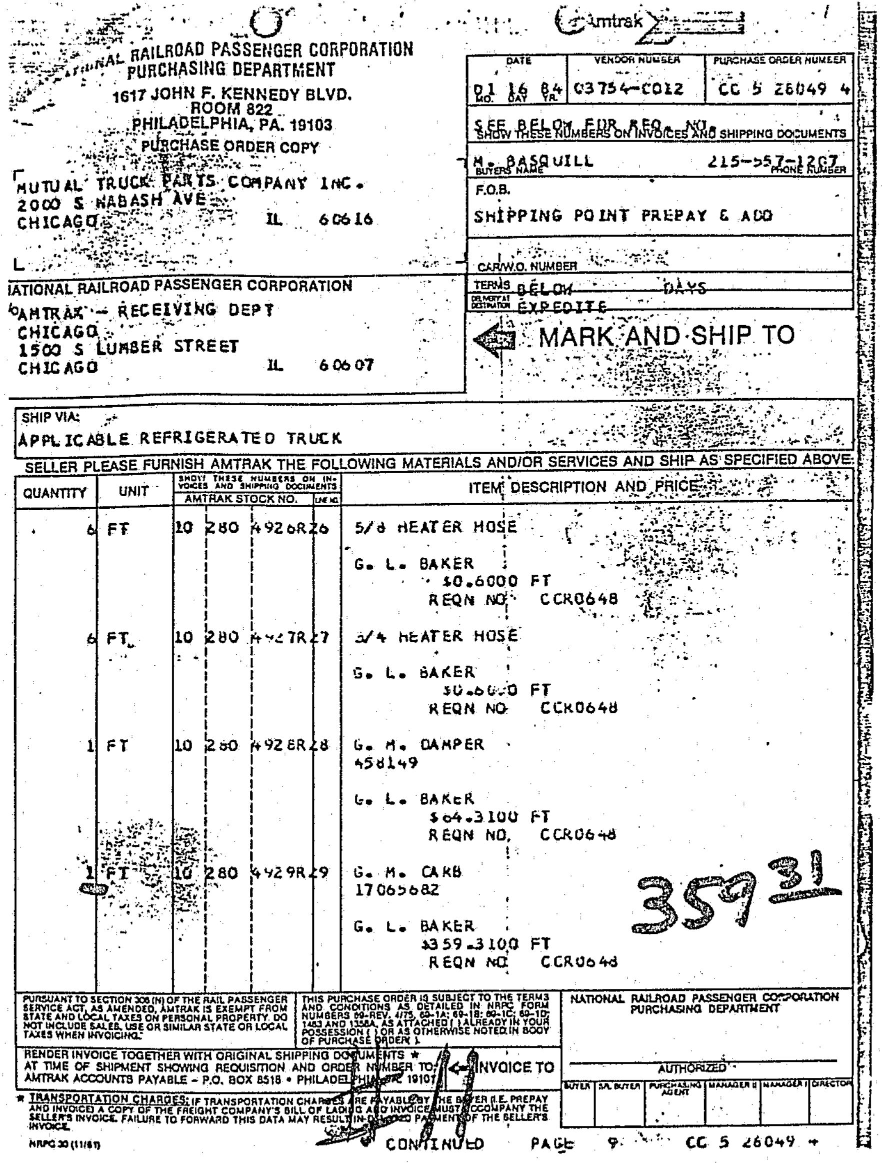
AUTHORIZED

BUYER	SR. BUYER	PURCHASING AGENT	MANAGER B	MANAGER A	DIRECTOR

* **TRANSPORTATION CHARGES:** IF TRANSPORTATION CHARGES ARE PAYABLE BY THE BUYER (I.E. PREPAY AND INVOICE) A COPY OF THE FREIGHT COMPANY'S BILL OF LADING AND INVOICE MUST ACCOMPANY THE SELLER'S INVOICE. FAILURE TO FORWARD THIS DATA MAY RESULT IN DELAYED PAYMENT OF THE SELLER'S INVOICE.

NRPC 30 (11/81)

CONTINUED PAGE 8 CC 5 28049 4



Amtrak

NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT
1617 JOHN F. KENNEDY BLVD.
ROOM 822
PHILADELPHIA, PA. 19103
PURCHASE ORDER COPY

DATE	VENDOR NUMBER	PURCHASE ORDER NUMBER
01 16 84 MO. DAY YR.	03754-C012	CC 5 26049 4

SEE BELOW FOR REQ. NO.
SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS

M. BASQUILL 215-557-1267
BUYERS NAME PHONE NUMBER

F.O.B.
SHIPPING POINT PREPAY & ADD

CAR/W.O. NUMBER

TERMS ~~BELOW DAYS~~
DELIVERY AT DESTINATION ~~EXPEDITE~~

MUTUAL TRUCK PARTS COMPANY INC.
2000 S WABASH AVE
CHICAGO IL 60616

ATIONAL RAILROAD PASSENGER CORPORATION
AMTRAK - RECEIVING DEPT
CHICAGO
1500 S LUMBER STREET
CHICAGO IL 60607

MARK AND SHIP TO

SHIP VIA:
APPLICABLE REFRIGERATED TRUCK

SELLER PLEASE FURNISH AMTRAK THE FOLLOWING MATERIALS AND/OR SERVICES AND SHIP AS SPECIFIED ABOVE:

QUANTITY	UNIT	SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS AMTRAK STOCK NO.			UE IC	ITEM DESCRIPTION AND PRICE
6	FT	10	280	4926R	26	5/8 HEATER HOSE G. L. BAKER $0.6000 FT REQN NO CCR0648
6	FT	10	280	4927R	27	3/4 HEATER HOSE G. L. BAKER $0.6000 FT REQN NO CCR0648
1	FT	10	280	4928R	28	G. M. DAMPER 458149 G. L. BAKER $64.3100 FT REQN NO. CCR0648
1	FT	10	280	4929R	29	G. M. CARB 17065682 G. L. BAKER $359.3100 FT REQN NO CCR0648

359 31

PURSUANT TO SECTION 306 (N) OF THE RAIL PASSENGER SERVICE ACT, AS AMENDED, AMTRAK IS EXEMPT FROM STATE AND LOCAL TAXES ON PERSONAL PROPERTY. DO NOT INCLUDE SALES, USE OR SIMILAR STATE OR LOCAL TAXES WHEN INVOICING.

THIS PURCHASE ORDER IS SUBJECT TO THE TERMS AND CONDITIONS AS DETAILED IN NRPC FORM NUMBERS 69-REV. 4/75, 69-1A; 69-1B; 69-1C; 69-1D; 1483 AND 1358A, AS ATTACHED ( ) ALREADY IN YOUR POSSESSION ( ) OR AS OTHERWISE NOTED IN BODY OF PURCHASE ORDER ( ).

NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT

AUTHORIZED

BUYER	SR. BUYER	PURCHASING AGENT	MANAGER II	MANAGER I	DIRECTOR

RENDER INVOICE TOGETHER WITH ORIGINAL SHIPPING DOCUMENTS * AT TIME OF SHIPMENT SHOWING REQUISITION AND ORDER NUMBER TO: AMTRAK ACCOUNTS PAYABLE – P.O. BOX 8518 • PHILADELPHIA, PA. 19101 ← INVOICE TO

* TRANSPORTATION CHARGES: IF TRANSPORTATION CHARGES ARE PAYABLE BY THE BUYER (I.E. PREPAY AND INVOICE) A COPY OF THE FREIGHT COMPANY'S BILL OF LADING AND INVOICE MUST ACCOMPANY THE SELLER'S INVOICE. FAILURE TO FORWARD THIS DATA MAY RESULT IN DELAYED PAYMENT OF THE SELLER'S INVOICE.

NRPC 30 (11/81)

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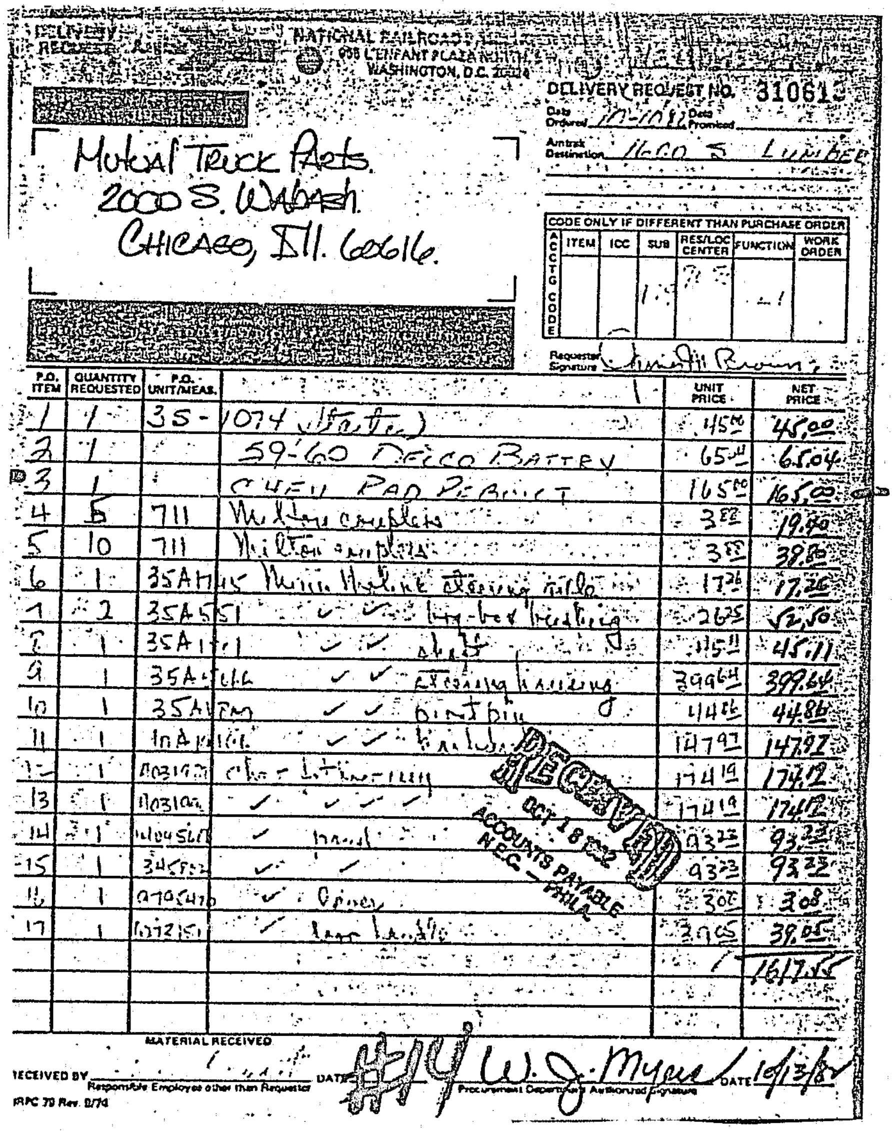


DELIVERY REQUEST

NATIONAL RAILROAD
955 L'ENFANT PLAZA NORTH
WASHINGTON, D.C.

DELIVERY REQUEST NO. 31061

Date Ordered 10-10-82 Date Promised

Amtrak Destination 1600 S. Lumber

Mukal Truck Parts.
2000 S. Wabash.
Chicago, Ill. 60616.

CODE ONLY IF DIFFERENT THAN PURCHASE ORDER

ACCTG CODE	ITEM	ICC	SUB	RES/LOC CENTER	FUNCTION	WORK ORDER
			[illegible]	[illegible]	[illegible]	

Requester Signature

P.O. ITEM	QUANTITY REQUESTED	P.O. UNIT/MEAS.		UNIT PRICE	NET PRICE
1	1	35-	1074 (Starter)	45^{00}	45.00
2	1		59-60 DELCO BATTERY	65^{04}	65.04
3	1		CHEV PAD REBUILT	165^{00}	165.00
4	5	711	Milton couplers	3^{88}	19.40
5	10	711	Milton couplers	3^{88}	38.80
6	1	35AH45	[illegible] steering [illegible]	17^{26}	17.26
7	2	35A551	✓ ✓ tie-bar bushing	26^{25}	52.50
8	1	35A1[illegible]	✓ ✓ shaft	45^{11}	45.11
9	1	35A[illegible]	✓ ✓ steering linkage	399^{64}	399.64
10	1	35A[illegible]	✓ ✓ [illegible]	44^{86}	44.86
11	1	10A[illegible]	✓ ✓ [illegible]	147^{97}	147.97
12	1	A0319[illegible]	[illegible]	174^{19}	174.19
13	1	A0310[illegible]	✓ ✓ ✓ ✓	174^{19}	174.19
14	1	1004561[illegible]	✓ [illegible]	93^{23}	93.23
15	1	345[illegible]	✓ ✓	93^{23}	93.23
16	1	0705476	✓ Cover	3^{08}	3.08
17	1	1072151	✓ [illegible]	39^{05}	39.05
					1617.55

RECEIVED
OCT 18 '82
ACCOUNTS PAYABLE
N.E.C. — PHILA.

MATERIAL RECEIVED

ECEIVED BY ____________ DATE ____________
Responsible Employee other than Requester

#14 W. J. Myers DATE 10/13/82
Procurement Department Authorized Signature

RPC 79 Rev. 8/74

DELIVERY REQUEST [illegible] NATIONAL RAILROAD [illegible]
400 L'ENFANT PLAZA NORTH, S.W.
WASHINGTON, D.C. 20024

DELIVERY REQUEST NO. 310636

Date Ordered 9-16-82 Date Promised

Amtrak Destination 1400 S. Lumber
Chicago, Ill.
60616

Motor, Trucks Parts

CODE ONLY IF DIFFERENT THAN PURCHASE ORDER						
ACCT'G CODE	ITEM	ICC	SUB	RES/LOC CENTER	FUNCTION	WORK ORDER
			[illegible]	[illegible]	[illegible]	

Requester Signature

P.O. ITEM	QUANTITY REQUESTED	P.O. UNIT/MEAS.		UNIT PRICE	NET PRICE
1	2	[illegible]	[illegible]	3.29	6.58
2	1	[illegible]	[illegible]	12.06	12.06
3	1	[illegible]	[illegible]	33.77	33.77
4	1	[illegible]	[illegible]	2.04	2.04
5	1	[illegible]	[illegible] kit complete	1504.00	1504.00
6	1	—	[illegible]	[illegible]	[illegible]
7	1	[illegible]	[illegible]	7.40	7.40
8	2	[illegible]	[illegible]	68.55	137.10
9	1	[illegible]		74.77	74.77

RECEIVED
OCT 12 1982
ACCOUNTS PAYABLE
N.E.C. — PHILA.

RECEIVED
OCT 12 1982
ACCOUNTS PAYABLE
N.E.C. — PHILA.

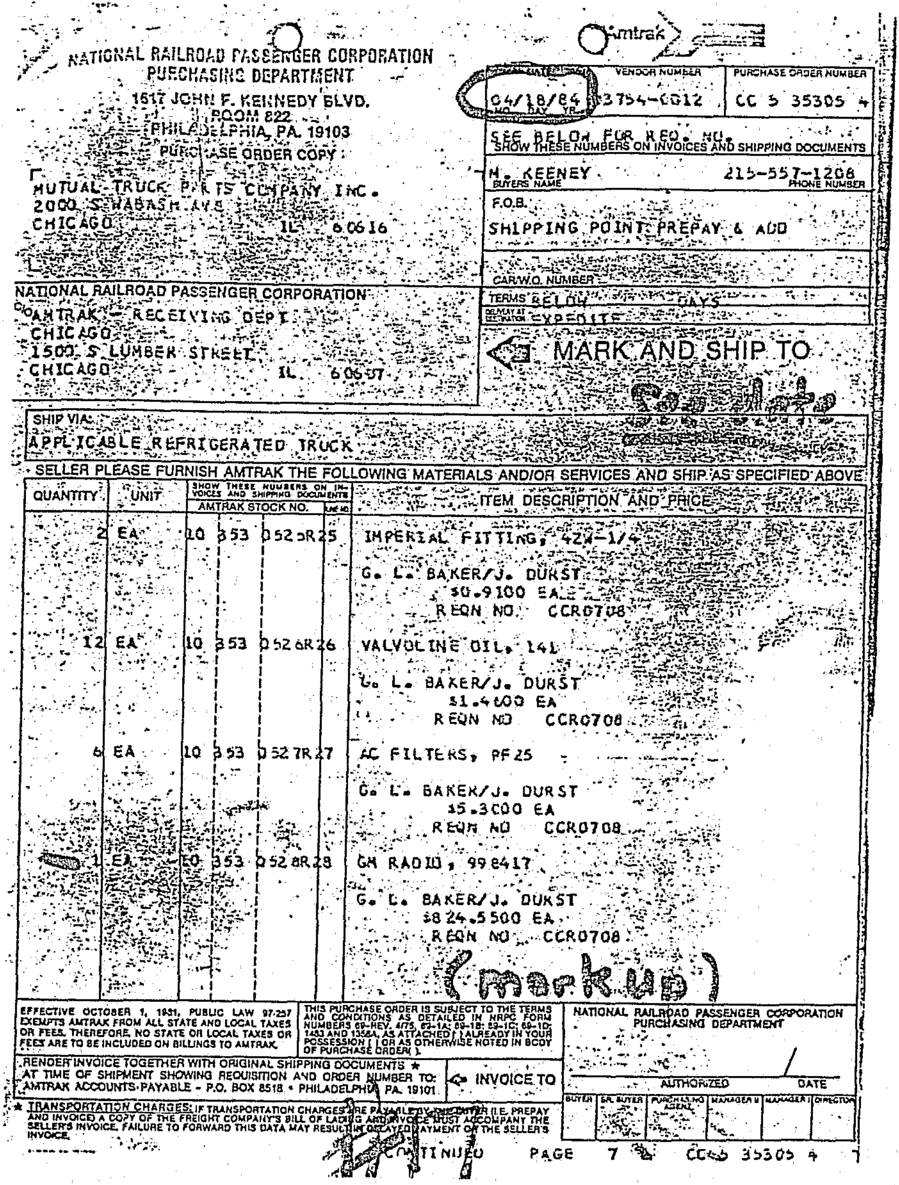
MATERIAL RECEIVED

RECEIVED BY ______ Responsible Employee other than Requester DATE ______

W. J. Myers DATE 9/27/82
Procurement Department Authorized Signature

NRPC 79 Rev. 9/74

2. RECEIVING DEPT. COPY—(UPON RECEIPT OF MAT'L SIGN & FORWARD TO ACCOUNTS PAYABLE)



NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT
1517 JOHN F. KENNEDY BLVD.
ROOM 822
PHILADELPHIA, PA. 19103
PURCHASE ORDER COPY

Amtrak

ORDER DATE	VENDOR NUMBER	PURCHASE ORDER NUMBER
04/18/84 MO. DAY YR.	3754-0012	CC 5 35305 4

SEE BELOW FOR REQ. NO.
SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS

M. KEENEY — BUYERS NAME
215-557-1208 — PHONE NUMBER

F.O.B.
SHIPPING POINT PREPAY & ADD

CAR/W.O. NUMBER

TERMS BELOW DAYS

DELIVERY AT DESTINATION EXPEDITE

MUTUAL TRUCK PARTS COMPANY INC.
2000 S WABASH AVE
CHICAGO IL 60616

NATIONAL RAILROAD PASSENGER CORPORATION
C/O AMTRAK — RECEIVING DEPT
CHICAGO
1500 S LUMBER STREET
CHICAGO IL 60607

MARK AND SHIP TO

SHIP VIA:
APPLICABLE REFRIGERATED TRUCK

SELLER PLEASE FURNISH AMTRAK THE FOLLOWING MATERIALS AND/OR SERVICES AND SHIP AS SPECIFIED ABOVE

QUANTITY	UNIT	AMTRAK STOCK NO. (SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS)	LINE NO.	ITEM DESCRIPTION AND PRICE
2	EA	10 353 0525R	25	IMPERIAL FITTING, 42W-1/4 G. L. BAKER/J. DURST $0.9100 EA REQN NO CCR0708
12	EA	10 353 0526R	26	VALVOLINE OIL, 141 G. L. BAKER/J. DURST $1.4600 EA REQN NO CCR0708
6	EA	10 353 0527R	27	AC FILTERS, PF25 G. L. BAKER/J. DURST $5.3000 EA REQN NO CCR0708
1	EA	10 353 0528R	28	GM RADIO, 998417 G. L. BAKER/J. DURST $824.5500 EA REQN NO CCR0708

(mark up)

EFFECTIVE OCTOBER 1, 1981, PUBLIC LAW 97-257 EXEMPTS AMTRAK FROM ALL STATE AND LOCAL TAXES OR FEES. THEREFORE, NO STATE OR LOCAL TAXES OR FEES ARE TO BE INCLUDED ON BILLINGS TO AMTRAK.

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NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT

AUTHORIZED — DATE /

RENDER INVOICE TOGETHER WITH ORIGINAL SHIPPING DOCUMENTS ★ AT TIME OF SHIPMENT SHOWING REQUISITION AND ORDER NUMBER TO: AMTRAK ACCOUNTS PAYABLE - P.O. BOX 8518 • PHILADELPHIA PA. 19101

INVOICE TO

BUYER	SR. BUYER	PURCHASING AGENT	MANAGER II	MANAGER I	DIRECTOR

★ TRANSPORTATION CHARGES: IF TRANSPORTATION CHARGES ARE PAYABLE BY THE BUYER (I.E. PREPAY AND INVOICE) A COPY OF THE FREIGHT COMPANY'S BILL OF LADING AND INVOICE MUST ACCOMPANY THE SELLER'S INVOICE. FAILURE TO FORWARD THIS DATA MAY RESULT IN DELAYED PAYMENT OF THE SELLER'S INVOICE.

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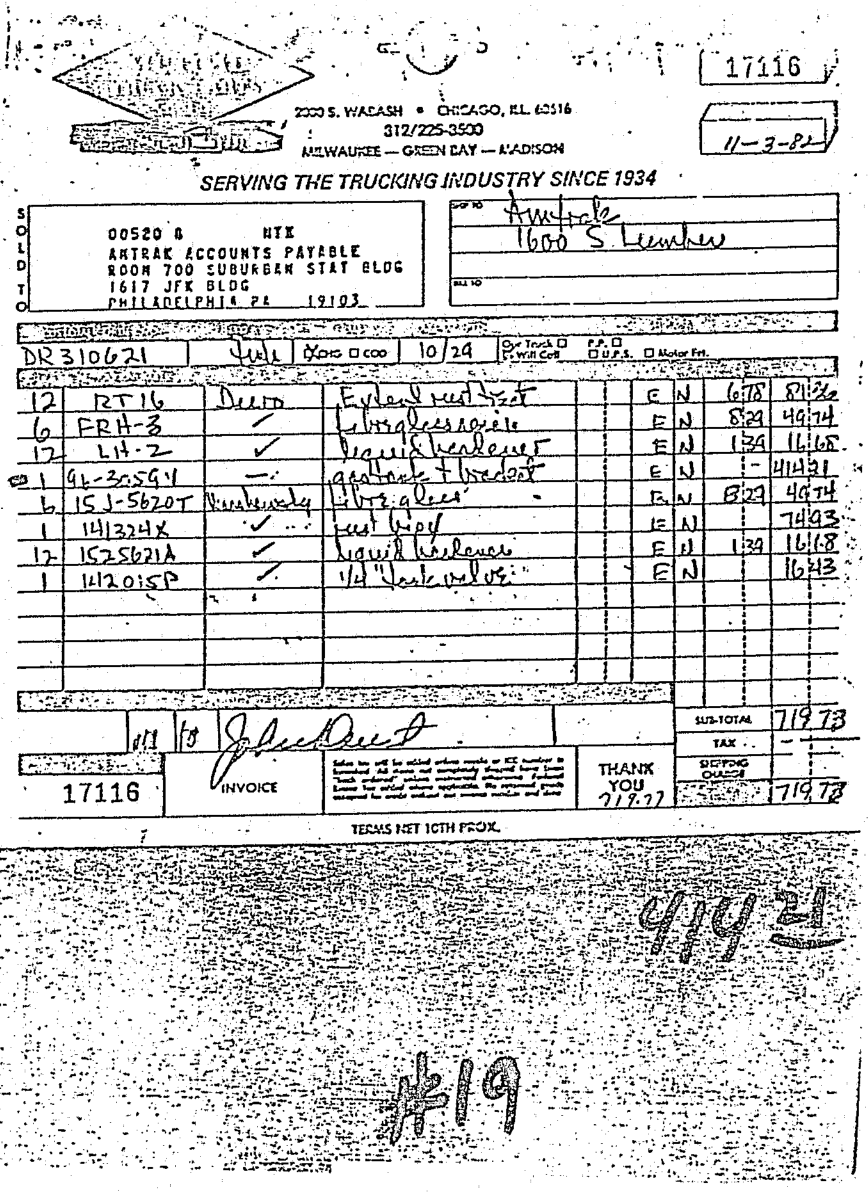


17116

11-3-82

2000 S. WABASH • CHICAGO, ILL. 60616
312/225-3500
MILWAUKEE — GREEN BAY — MADISON

SERVING THE TRUCKING INDUSTRY SINCE 1934

SOLD TO
00520 8 NTK
AMTRAK ACCOUNTS PAYABLE
ROOM 700 SUBURBAN STAT BLDG
1617 JFK BLDG
PHILADELPHIA PA 19103

SHIP TO Amtrak
1600 S. Lumber

BILL TO

DR310621 | [illegible] | ☒ [illegible] ☐ COD | 10/29 | Our Truck ☐ / Will Call ☐ | P.P. ☐ / ☐ U.P.S. | ☐ Motor Frt.

12	RT16	[illegible]	[illegible]	E	N	6.78	81.36
6	FRH-3	✓	[illegible]	E	N	8.29	49.74
12	LH-2	✓	liquid sealant	E	N	1.39	16.68
1	96-30594	—	[illegible]	E	N	-	414.21
6	15J-5620T	[illegible]	Fibreglass	E	N	8.29	49.74
1	141324X	✓	[illegible]	E	N		74.93
12	1525621A	✓	liquid sealant	E	N	1.39	16.68
1	142015P	✓	1/4" check valve	E	N		16.43

SUB-TOTAL	719.73
TAX	—
SHIPPING CHARGE	
	719.73

11 | 10 | J. [illegible]

17116

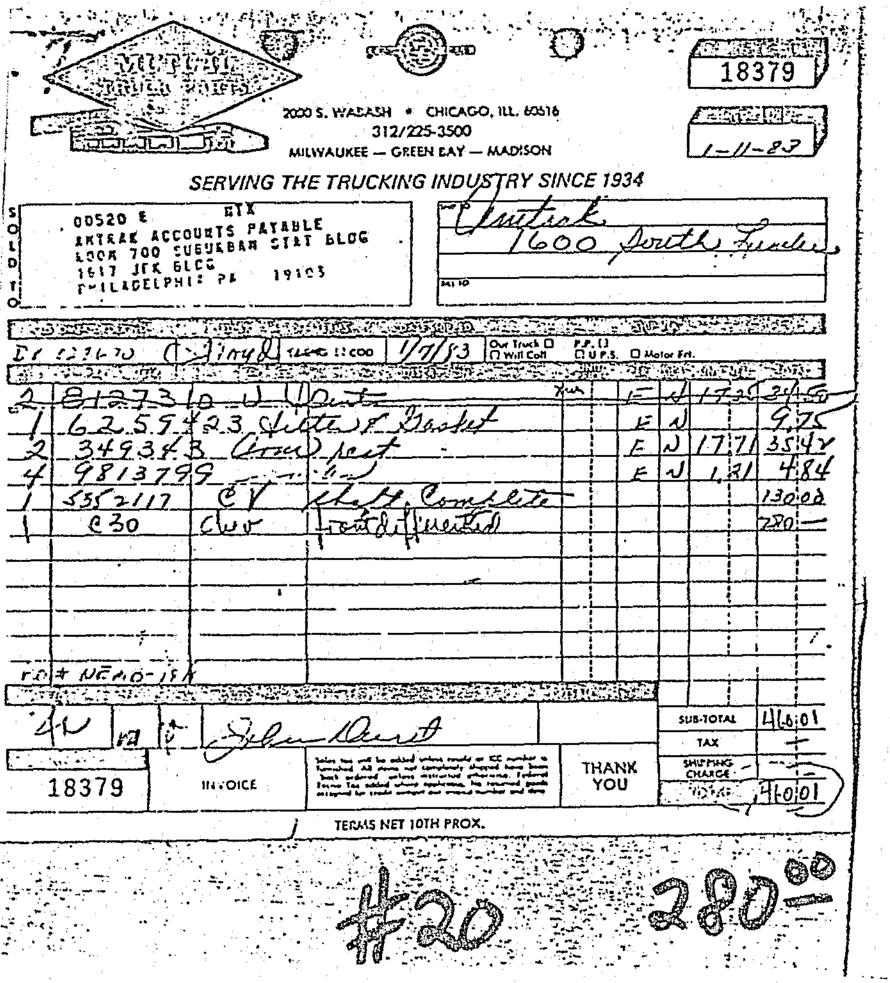
INVOICE

THANK YOU
719.77

TERMS NET 10TH PROX.

414 21

#19



18379

1-11-83

2000 S. WABASH • CHICAGO, ILL. 60616
312/225-3500
MILWAUKEE — GREEN BAY — MADISON

SERVING THE TRUCKING INDUSTRY SINCE 1934

SOLD TO
00520 E   ETX
AMTRAK ACCOUNTS PAYABLE
ROOM 700 SUBURBAN STAT BLDG
1617 JFK BLDG
PHILADELPHIA PA   19103

Amtrak
1600 South Lumber

DT 123670   Lloyd   TLEAG 11 COD   1/7/83   Our Truck ☐ ☐ Will Call   P.P. ☐ ☐ U.P.S. ☐ Motor Frt.

~~2~~	~~8127310~~	~~U Joint~~		~~E~~	~~N~~	~~17.25~~	~~34.50~~
1	6259423	Filter & Gasket		E	N		9.75
2	349343	Cross kit		E	N	17.71	35.42
4	9813799	" "		E	N	1.21	4.84
1	5552117	CV	Shaft Complete				130.00
1	C30	Chev	Front differential				280.—

RO # NEMO-15K

JW   RB

SUB-TOTAL 460.01
TAX —
SHIPPING CHARGE —
TOTAL 460.01

18379   INVOICE   THANK YOU

TERMS NET 10TH PROX.

#20   280.00

MUTUAL TRUCK PARTS Co., Inc.

ENGINE REBUILDERS

2000 S. WABASH • CHICAGO, ILL. 60616
312/225-3500
MILWAUKEE — GREEN BAY — MADISON

INVOICE NO. 19355

INVOICE DATE 4-8-83

SERVING THE TRUCKING INDUSTRY SINCE 1934

APR 6 1983

00520 E NTX
AMTRAK ACCOUNTS PAYABLE
ROOM 700 SUBURBAN STAT BLDG
1617 JFK BLDG
PHILADELPHIA PA 19103

SHIP TO Amtrak
1600

BILL TO

CUSTOMER ORDER NO.	FILLED BY	TERMS	DATE SHIPPED	SHIP VIA
DR-310749	[illegible]	☒ CHG ☐ COD	3/17	Our Truck ☐ ☒ Will Call P.P. ☐ ☐ U.P.S. ☐ Motor Frt.

QTY	PART NUMBER	MFR	DESCRIPTION	UNIT PRICE	PER	DCT	UNIT NET	TOTAL
1	PF20	AC	filters (case of 24)				4.04	96.96
1	RE56193	EIS	m/cyl [illegible]		E	N		36.50
6	44XLS	AC	plugs		E	N	1.47	8.82
4	P203	"	filter		E	N	4.68	18.72
3	A71C	"	"		E	N	5.12	15.36
8	C-87	"	plugs		E	N	1.47	11.76
1	D423R		rotor		E	N		1.58
1	B440	Bendflex	lite		E	N		2.40
1	WT203	Blue	Gauge		E	N		5.21
10	BH-18	"	Terminal		E	N	1.09	10.90
1	F227	Continental	RB Hook ?		E	N		368.00
1	Glue		Primer red		E	N		30.60

PRICED BY	EXT.	BY	SIGNED FOR	RESALE/ICC NO.		
	VM	PS	John [illegible]		SUB-TOTAL	606.81
					TAX	
					SHIPPING CHARGE	
					TOTAL	606.81

INVOICE NO. 19355

OFFICE COPY

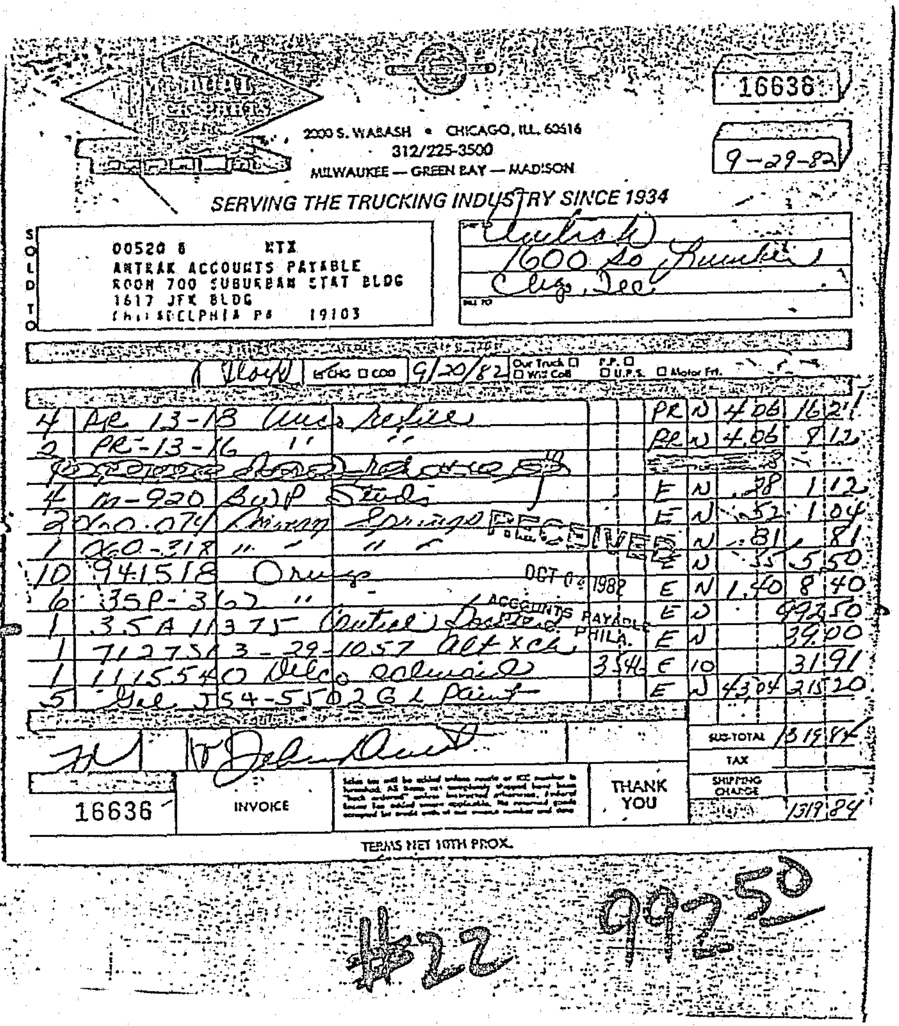
Sales tax will be added unless resale or ICC number is furnished. All items not completely shipped have been "back ordered" unless instructed otherwise. Federal Excise Tax added where applicable. No returned goods accepted for credit without our invoice number and date.

THANK YOU

TERMS NET 10TH PROX.

368

#21



16636

2000 S. WABASH • CHICAGO, ILL. 60616
312/225-3500
MILWAUKEE — GREEN BAY — MADISON

9-29-82

SERVING THE TRUCKING INDUSTRY SINCE 1934

SOLD TO
00520 8 NTX
AMTRAK ACCOUNTS PAYABLE
ROOM 700 SUBURBAN STAT BLDG
1617 JFK BLDG
PHILADELPHIA PA 19103

SHIP TO
Amtrak
1600 So [illegible]
Chg, Ill

BILL TO

[illegible] ☑ CHG ☐ COD 9/20/82 ☐ Our Truck ☐ Will Call ☐ P.P. ☐ U.P.S. ☐ Motor Frt.

4	PR 13-13	[illegible]		PR	N	4.06	16.24
2	PR-13-16	" "		PR	N	4.06	8.12
~~[illegible]~~							
4	M-920	B&P Studs		E	N	.28	1.12
2	[illegible]0.074	[illegible] Springs		E	N	.52	1.04
1	[illegible]0-318	" "		E	N	.81	.81
10	941518	Orings		E	N	.55	5.50
6	35P-362	"		E	N	1.40	8.40
1	35A11375	(Outside) [illegible]		E	N		992.50
1	712756	3-29-1057 Alt Xch		E	N		39.00
1	1115540	Delco solenoid	3.54	E	10		31.91
5	Gal. J54-5502	GL Paint		E	N	43.04	215.20

RECEIVED
OCT 04 1982
ACCOUNTS PAYABLE
PHILA.

SUB-TOTAL	1319.84
TAX	
SHIPPING CHARGE	
	1319.84

16636 INVOICE

THANK YOU

TERMS NET 10TH PROX.

#22 992.50

MUTUAL TRUCK PARTS Co., Inc.

2000 S. WABASH • CHICAGO, ILL. 60616
312/225-3500
MILWAUKEE — GREEN BAY — MADISON

INVOICE NO. 20276

INVOICE DATE 5-27-83

SERVING THE TRUCKING INDUSTRY SINCE 1934 MAY 27 1983

005208 HTX
AKTRAK ACCOUNTS PAYABLE
P O BOX 8518 -
PHILADELPHIA PA 19101

SHIP TO Amtrak
1600 S. Lumber
Chicago

BILL TO

ket Accep- H-01469

OMER ORDER NO.	FILLED BY	TERMS	DATE SHIPPED	SHIP VIA
20494	[illegible]	☒ CHG ☐ COD	5/18	Our Truck ☐ ☒ Will Call P.P. ☐ ☐ U.P.S. ☐ Motor Frt.

PART NUMBER	MFR.	DESCRIPTION	UNIT PRICE	[illegible]	DSC.	UNIT NET	TOTAL
11907	Lubriplate	APG-140-7#				21 53	43 06
5345	Pettibone	brakedrum					203 79
351	Delco	battery S/N-06742					45 78
—	—	6 qt battery acid					2 95
4L08TH	Durnell	collar				82 25	164 50
4L08THS	Durnell	✓				79 20	158 40

[illegible]	[illegible]	[illegible]	SIGNED FOR	RESALE/ICC NO.
	vm	J.T.	John Durst	

SUB-TOTAL	~~[illegible]~~
TAX	618 48
SHIPPING CHARGE	—
TOTAL	618 48

INVOICE NO. 0276

OFFICE COPY

Sales tax will be added unless resale or ICC number is furnished. All items not completely shipped have been "back ordered" unless instructed otherwise. Federal Excise Tax added where applicable. No returned goods accepted for credit without our invoice number and date.

THANK YOU

TERMS NET 10TH PROX.

203.79
164.50
158.40

#23

MUTUAL TRUCK PARTS CO., INC.

2000 S. WABASH • CHICAGO, ILL. 60616
312/225-3500
MILWAUKEE — GREEN BAY — MADISON

SERVING THE TRUCKING INDUSTRY SINCE 1934

20699

INVOICE DATE 7-20-83

JUL 20 1983

065203 KTX
AMTRAK ACCOUNTS PAYABLE
P O BOX 8518
PHILADELPHIA PA 19101

SHIP TO Autrek
1600 Lumber
Chgo

BILL TO

ORDER NO.	FILLED BY	TERMS	DATE SHIPPED	SHIP VIA
43903	PR	☒ CHG ☐ COD	7/7/83	Our Truck ☐ ☒ Will Call P.P. ☐ ☐ U.P.S. ☐ Motor Frt.

PART NUMBER	MFR.	DESCRIPTION	UNIT PRICE	QTY	DEL	UNIT NET	TOTAL
D —	Dodge	1985 radiator - recore					165—
DR472	—	brake shoes set					47.25
R77207	—	brake shoes set					27.96
D154	—	disc pad set					26.57
W 70-286		disc pads set					27.96
R45TS8	AC	plugs				2.43	19.44
86287N	—	spring adjuster					95.48

	DATE	BY	SIGNED FOR	DEALER'S NO.
	MH	JR	John Elliott	

SUB-TOTAL	409.66
TAX	—
SHIPPING CHARGE	
TOTAL	409.66

INVOICE NO. 0699

OFFICE COPY

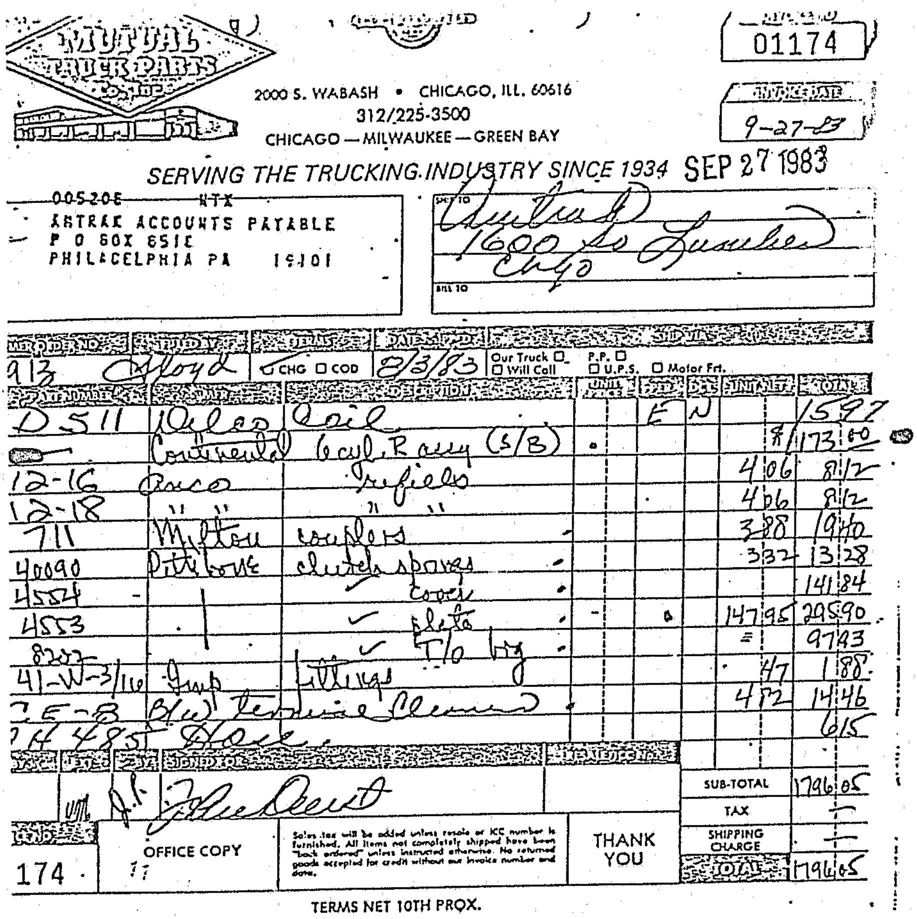
Sales tax will be added unless resale or ICC number is furnished. All items not completely shipped have been "back ordered" unless instructed otherwise. Federal Excise Tax added where applicable. No returned goods accepted for credit without our invoice number and date.

THANK YOU

TERMS NET 10TH PROX.

165
26 57
27 96
95 48

#24



MUTUAL TRUCK PARTS CO. INC.

2000 S. WABASH • CHICAGO, ILL. 60616
312/225-3500
CHICAGO — MILWAUKEE — GREEN BAY

SERVING THE TRUCKING INDUSTRY SINCE 1934 SEP 27 1983

01174

INVOICE DATE 9-27-83

~~005206 NTX~~
AMTRAK ACCOUNTS PAYABLE
P O BOX 8516
PHILADELPHIA PA 19101

SHIP TO Amtrak
1600 So Lumber
Chgo

BILL TO

CUSTOMER ORDER NO.	FILLED BY	TERMS	DATE SHIPPED	SHIP VIA
913	Floyd	☑ CHG ☐ COD	8/3/83	☐ Our Truck ☐ Will Call ☐ P.P. ☐ U.P.S. ☐ Motor Frt.

PART NUMBER	MFR	DESCRIPTION	UNIT	QTY	DISC	UNIT NET	TOTAL
D511	Delco	Coil		E	N		15.97
	Continental	6 cyl. R assy (S/B)				8/	1173.00
12-16	Ausco	refills				4.06	8.12
12-18	" "	" "				4.06	8.12
711	Milton	couplers				3.88	19.40
40090	Pittbone	clutch spares				3.32	13.28
4554		✓ cover					141.84
4553		✓ plate				147.95	295.90
8202		✓ T/O brg				=	97.43
41-W-3/16	Imp	fittings				.47	1.88
CE-8	Blu	terminal cleaner				4.82	14.46
7H 485	Dave						6.15

SIGNED FOR Johnelleert

SUB-TOTAL	1796.05
TAX	—
SHIPPING CHARGE	—
TOTAL	1796.05

174 ·

OFFICE COPY

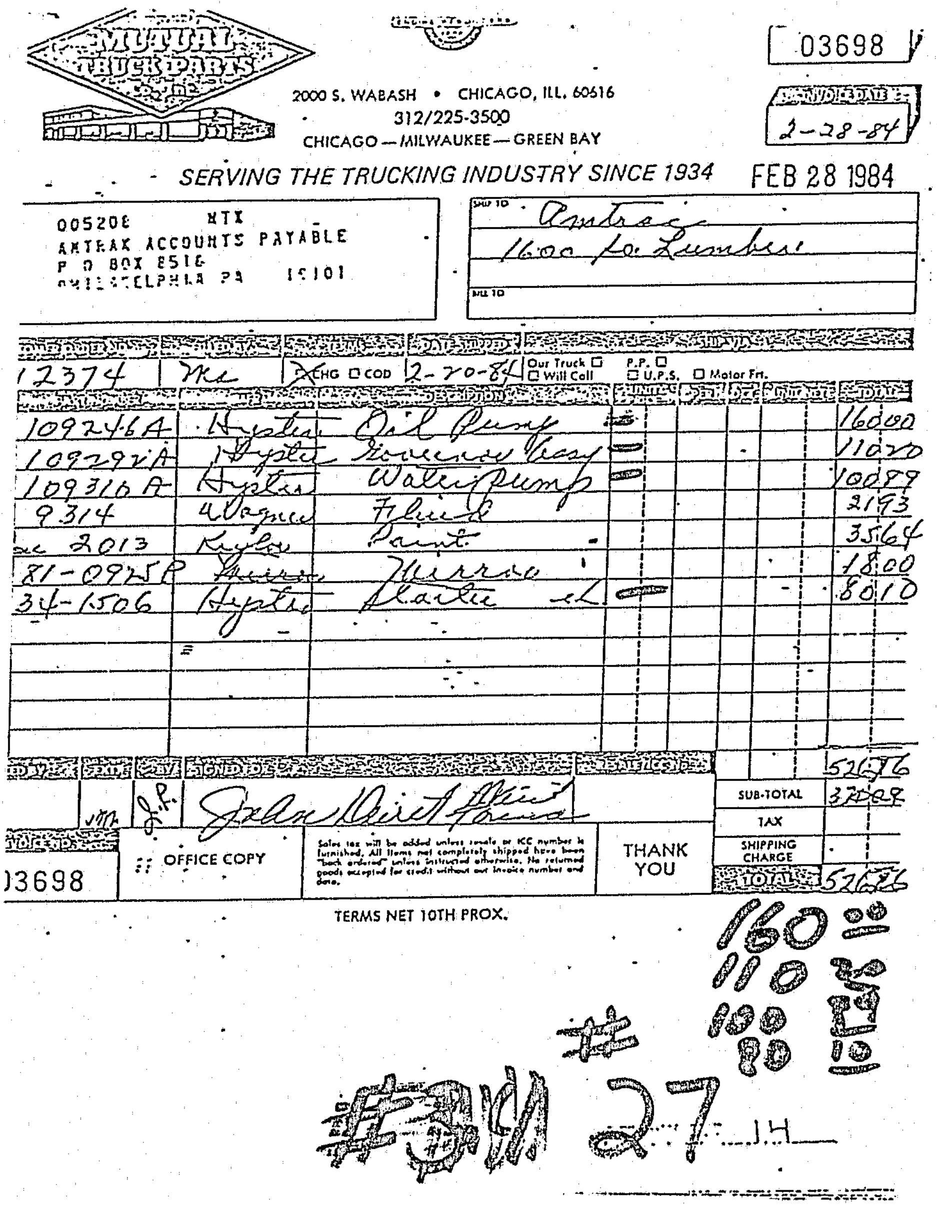
Sales tax will be added unless resale or ICC number is furnished. All items not completely shipped have been "back ordered" unless instructed otherwise. No returned goods accepted for credit without our invoice number and date.

THANK YOU

TERMS NET 10TH PROX.

1173.00

#25



MUTUAL TRUCK PARTS

2000 S. WABASH • CHICAGO, ILL. 60616
312/225-3500
CHICAGO — MILWAUKEE — GREEN BAY

03698

2-28-84

SERVING THE TRUCKING INDUSTRY SINCE 1934

FEB 28 1984

005208 MTX
AMTRAK ACCOUNTS PAYABLE
P O BOX 8516
PHILADELPHIA PA 19101

SHIP TO Amtrac
1600 So Lumber

BILL TO

12374 | Mc | ☒ CHG ☐ COD | 2-20-84 | ☐ Our Truck ☐ Will Call ☐ P.P. ☐ U.P.S. ☐ Motor Frt.

109246A	Hyster	Oil Pump	160.00
109297A	Hyster	Governor Assy	110.20
109316A	Hyster	Water pump	100.89
9314	Wagner	Fluid	21.93
2013	Krylon	Paint	35.64
81-0925P	Mirror	Mirror	18.00
34-1506	Hyster	Starter	80.10
			526.76

J.F. John Dieti Asst Foreman

SUB-TOTAL	370.29
TAX	
SHIPPING CHARGE	
TOTAL	526.76

03698

OFFICE COPY

Sales tax will be added unless resale or ICC number is furnished. All items not completely shipped have been "back ordered" unless instructed otherwise. No returned goods accepted for credit without our invoice number and date.

THANK YOU

TERMS NET 10TH PROX.

160.00
110.20
100.89
80.10

#

#BN 27 1H

02933

MUTUAL TRUCK PARTS Co. Inc.
2000 S. WABASH • CHICAGO, ILL. 60616
312/225-3500
CHICAGO — MILWAUKEE — GREEN BAY

INVOICE DATE 12-21-83

DEC 21 1983

SERVING THE TRUCKING INDUSTRY SINCE 1934

005206 - ATX
AMTRAK ACCOUNTS PAYABLE
P O BOX 8516
PHILADELPHIA PA 19101

SHIP TO AMTRAK
~~[illegible]~~ 1600 S. Lumber
Chicago

SOLD TO

ORDER NO.	CALLED BY	TERMS	DATE SHIPPED	SHIP VIA
	Jule	☒ CHG ☐ COD	12/20	Our Truck ☐ ☒ Will Call P.P. ☐ ☐ U.P.S. ☐ Motor Frt.

PART NUMBER		DESCRIPTION					TOTAL
BA60	Murray	Pulley					26.48
HQX1"	✓	Bushing					8.72
107275A	Hyster	diff assy				[redacted]	596.43
107292A	✓	RH brake assy				[redacted]	156.24
107293B	✓	LH ✓ ✓				[redacted]	156.24

SIGNED FOR

RESALE/ICC No.

SUB-TOTAL	944.11
TAX	—
SHIPPING CHARGE	—
TOTAL	944.11

INVOICE NO. 2933

OFFICE COPY

Sales tax will be added unless resale or ICC number is furnished. All items not completely shipped have been "back ordered" unless instructed otherwise. No returned goods accepted for credit without our invoice number and date.

THANK YOU

TERMS NET 10TH PROX.

596.43
156.24
156.24

#28

2030 S. WABASH • CHICAGO, ILL. 60616
312/225-3500
CHICAGO — MILWAUKEE — GREEN BAY

SERVING THE TRUCKING INDUSTRY SINCE 1934

03195

INVOICE DATE
1-30-84

00520E NTX
AMTRAK ACCOUNTS PAYABLE
P O BOX 8516
PHILADELPHIA PA 19101

SHIP TO Amtrak
1600

BILL TO

CUSTOMER ORDER NO.	FILLED BY	TERMS	DATE SHIPPED	SHIP VIA
5338884	Juh	☒ CHG ☐ COD	12/28/83	Our Truck ☐ ☑ Will Call ☐ P.P. ☐ U.P.S. ☐ Motor Frt.

QTY.	PART NUMBER	MFR.	DESCRIPTION	UNIT PRICE	PER	DISC.	UNIT NET	TOTAL
1	NP205	Chev	T/O Trans assy					450 —
8	S-602C	GMI	Springs					12 78
1	S-603C	✓	✓		4			11 46
1	22-5242	—	Chev tailpipe					34 55
1	360011	GM	hinge hanger					4 83
1	14034513	GM	Hanger	195077				7 96
1	14007142	GM	Hanger					7 75
1	360932	GM	hose					30 19
1	A970	Blue Point						4 70
1	6131	"	Cord					1 58
4	C-86	A-C	Plugs				1 47	5 88
1	MS-2750	MC	Cord Gasket					4 51

PRICED BY	EXT.	CK'D BY	SIGNED FOR	RESALE/ICC NO.
			John Dierst	

SUB-TOTAL 575 69
TAX —
SHIPPING CHARGE
TOTAL 575 69

INVOICE NO.
03195

INVOICE

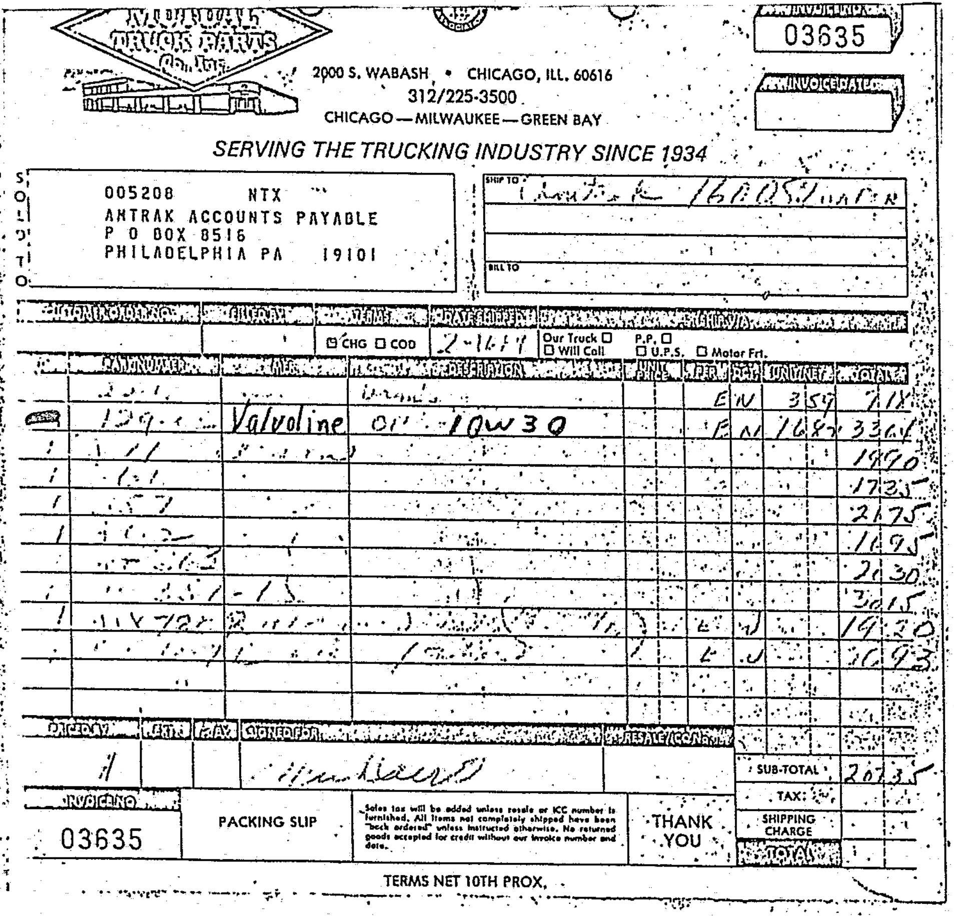
Sales tax will be added unless resale or ICC number is furnished. Items not completely shipped have been "back ordered" unless instructed otherwise. No returned goods accepted for credit without our invoice number and date.

THANK YOU

TERMS NET 10TH PROX:

#30

450



TRUCK PARTS Co., Inc.

2000 S. WABASH • CHICAGO, ILL. 60616
312/225-3500
CHICAGO—MILWAUKEE—GREEN BAY

SERVING THE TRUCKING INDUSTRY SINCE 1934

INVOICE NO. 03635

INVOICE DATE

SOLD TO:
005208 NTX
AMTRAK ACCOUNTS PAYABLE
P O BOX 8516
PHILADELPHIA PA 19101

SHIP TO: Amtrak 16005 [illegible]

BILL TO

CUSTOMER ORDER NO.	FILLED BY	TERMS	DATE SHIPPED	SHIP VIA
		☑ CHG ☐ COD	2-14-??	Our Truck ☐ ☐ Will Call P.P. ☐ ☐ U.P.S. ☐ Motor Frt.

QTY	PART NUMBER	MFR.	DESCRIPTION	UNIT PRICE	PER	DISC	UNIT NET	TOTAL
	[illegible]		[illegible]		EN		3 59	7 18
	129-[illegible]	Valvoline	oil 10W30		EN		16 82	33 64
1	[illegible]	[illegible]						19 90
1	[illegible]							17 35
1	[illegible]							21 75
1	[illegible]							11 95
	[illegible]							21 30
1	[illegible]-13							30 15
1	11X72[illegible]	[illegible]	[illegible]		E	N		19 20
	[illegible]		[illegible]		E	N		36 93

ORDERED BY	EXT'D	PRICED BY	SIGNED FOR	RESALE/ICC No.
1			[illegible]	

SUB-TOTAL 207 35
TAX:
SHIPPING CHARGE
TOTAL

INVOICE NO. 03635

PACKING SLIP

Sales tax will be added unless resale or ICC number is furnished. All items not completely shipped have been "back ordered" unless instructed otherwise. No returned goods accepted for credit without our invoice number and date.

THANK YOU

TERMS NET 10TH PROX.

#3

Amtrak

NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT
1617 JOHN F. KENNEDY BLVD.
ROOM 822
PHILADELPHIA, PA. 19103
PURCHASE ORDER COPY

DATE 4/11/83 MO. DAY YR.	VENDOR NUMBER	PURCHASE ORDER NUMBER
SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS		
BUYERS NAME [illegible]		PHONE NUMBER [illegible]
F.O.B. [illegible]		
CAR/W.O. NUMBER		
TERMS		
DELIVERY AT DESTINATION		

[illegible] PNEUMATIC
[illegible] COUNTRY CLUB DR
[illegible] IL [illegible]

Chicago Pneumatic

NATIONAL RAILROAD PASSENGER CORPORATION
C/O [illegible]
[illegible]
[illegible] STREET
[illegible] IL [illegible]

MARK AND SHIP TO

SHIP VIA: [illegible] OVER [illegible]

SELLER PLEASE FURNISH AMTRAK THE FOLLOWING MATERIALS AND/OR SERVICES AND SHIP AS SPECIFIED ABOVE

QUANTITY	UNIT	SHOW THESE NUMBERS ON INVOICES AND SHIPPING DOCUMENTS AMTRAK STOCK NO.	LINE NO.	ITEM DESCRIPTION AND PRICE
				[illegible]
[illegible]	[illegible]	[illegible]	1	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
1	EA	[illegible]	[illegible]	[illegible] #5 Spline Impact Wrench $1004 each
2	[illegible]	[illegible]	[illegible]	[illegible] Screwdriver In line Nut Runners $532 each = $1064
2	EA	[illegible]	[illegible]	REVERSIBLE [illegible] Reversible Production Drill $175.00 each = $350

PURSUANT TO SECTION 306 (N) OF THE RAIL PASSENGER SERVICE ACT, AS AMENDED, AMTRAK IS EXEMPT FROM STATE AND LOCAL TAXES ON PERSONAL PROPERTY. DO NOT INCLUDE SALES, USE OR SIMILAR STATE OR LOCAL TAXES WHEN INVOICING.	THIS PURCHASE ORDER IS SUBJECT TO THE TERMS AND CONDITIONS AS DETAILED IN NRPC FORM NUMBERS 69-REV. 4/75, 69-1A; 69-1B; 69-1C; 69-1D; 1483 AND 1358A, AS ATTACHED ( ) ALREADY IN YOUR POSSESSION ( ) OR AS OTHERWISE NOTED IN BODY OF PURCHASE ORDER ( ).

RENDER INVOICE TOGETHER WITH ORIGINAL SHIPPING DOCUMENTS ★ AT TIME OF SHIPMENT SHOWING REQUISITION AND ORDER NUMBER TO: AMTRAK ACCOUNTS PAYABLE – P.O. BOX 8516 • PHILADELPHIA, PA. 19101

⇐ INVOICE TO

NATIONAL RAILROAD PASSENGER CORPORATION
PURCHASING DEPARTMENT

AUTHORIZED

BUYER	SR. BUYER	PURCHASING AGENT	MANAGER II	MANAGER I	DIRECTOR

★ TRANSPORTATION CHARGES: IF TRANSPORTATION CHARGES ARE PAYABLE BY THE BUYER (I.E. PREPAY AND INVOICE) A COPY OF THE FREIGHT COMPANY'S BILL OF LADING AND INVOICE MUST ACCOMPANY THE SELLER'S INVOICE. FAILURE TO FORWARD THIS DATA MAY RESULT IN DELAYED PAYMENT OF THE SELLER'S INVOICE.

NRPC 30 (11/81)

[illegible] PAGE [illegible]

CONSIGNEE COPY

Chicago Contractors Supply

Chicago Contractors
Amtrak
Supply

PURCHASE/MATERIAL REQUISITION

ALL SHADED BLOCKS MUST BE COMPLETED PRIOR TO SUBMISSION TO PURCHASING.

Page 1 of 1

PURCHASE REQUISITION

REQ. NO.	DATE	MAT'L CLASSIFICATION: EXPENSE	CAPITAL	INV.	COMMODITY
C.C. 20536	6-6-83	✓			4501

Blanket AGREEMENT No.	PREVIOUS PO NO.	BUYER (Name & No.)
0-00968		

TO: GENERAL SUPERVISOR

LOCATION

MATERIAL REQ'D BY:
NAME Baker/Brown
DATE MAT'L REQUIRED

Ship To/Deliver To (Show complete Name and Address) C.C.

Director Material ☐

Ultimate Consignee: (Show complete Name and Address) 04

Telephone No. 930-4139

I.C.C.	SUB	RES/LOC CENTER	FUNCTION	WORK ORDER	APPROVED C.A.R.
	501	7053	1821		

MATERIAL REQUISITION

REQ NO.	TC (Circle One)	DATE	STORE FROM	GANG FROM
	4_ 8_			

MATERIAL TRANSFER

TRANS. INV. NO.	TC	DATE	STORE FROM	GANG FROM	STORE TO	GANG TO
	3					

5115283

Line No.	QUANTITY	U/M	STOCK CODE NO. / MAT'L LOCATION	PCS. BAL.	COND YES/NO	DESCRIPTION	MATERIAL VALUE	SHOP ORDER	VEHICLE/UNIT NO.	IF CREDIT ENTER FIG.
1	1	EA				#5306 2 SPEED Band SAW	$341.50	[redacted]		

PURPOSE ORDERED

Confirming Order

Do Not Duplicate

Kaufl 6/7/83 (CY)

(Part 5115283

36

PURCHASE/RELEASE	TRANSFER	ORIGINATOR	REQUISITION AUTHORITY
APPROVED BY	SIGNATURE	SIGNATURE	

APPENDIX 5

TO: Chairwoman Cardiss Collins, Government Operations Committee,
Subcommittee on Government Activities
United States House of Representatives
Washington, D.C. 20515

IN RE: Committee Investigation of Amtrak

FROM: Orville Elza

I, ORVILLE ELZA, UNDER OATH DO HEREBY DEPOSE AND SAY AS FOLLOWS:

1. I was employed by Amtrak from March 1975 until June 30, 1981. From March, 1975 until January, 1977 I served in various machinist unionized positions in several Chicago facilities. From January, 1977 I served in Amtrak management until my resignation. At that time I was in the position of Material Requirements Administrator for the Western Region (Indiana/Illinois border to the Pacific Ocean), which I held starting January, 1978.

2. My role as Material Requirements Administrator for the Western Region was to facilitate proper use and supply of locomotive materials to maintain safe and on-time operation of Amtrak's locomotive equipment. In order to perform my job it was essential that I perform the following tasks:

a. Issue a steady availability of needed inventory by estimating anticipated consumption and replacement of locomotive-related parts and materials and comparing actual inventory outflow to those projections.

b. Expedite procurement and delivery of essential parts required to restore out-of-service locomotives back to service.

c. General troubleshooting and investigating to account for unexpected depletion of inventories in order to reduce waste and theft of Amtrak inventories.

I spent most of my time on the job doing ordering and inventory control. I would describe my job as liaison between Amtrak's Mechanical Department, (the consumer of a large and varied inventory of specialized parts and materials) the Purchasing Department (supplier) and the Materials Handling Department (storage and inventory).

3. In early 1977 shortly after I became Material Requirements Administrator for Chicago, a blanket purchase order was signed in Washington for the purchase of "Valdo" a miracle fuel additive which was supposed to do everything. The Tampa, Florida company which manufactured "Valdo" sent a representative to Chicago to monitor our use of the product. This representative of the vendor was given authorization by Amtrak to sign "delivery requests". On his signature alone, orders involving large quantities (55 gallon drums) of "Valdo" were processed, I would estimate that many hundreds of drums were delivered to Chicago. This product was being used nationwide at all points where Amtrak locomotives were being

During the first couple of months of usage a General Electric factory representative at Woodcrest Diesel Shop in Illinois began to detect damage in the GE diesel engines. He ordered Amtrak to stop using Valdo or face cancelled warranty coverage for related damage. Amtrak refused. In fact, the Valdo representative explained the problems as arising from use of insufficient quantities of Valdo. At this point the Valdo representative increased the Amtrak delivery requests for the product he was selling.

Eventually Amtrak ordered all use of Valdo to end. The damage was corrected by replacing the fuel injectors. Meanwhile Chicago alone ended up with 2200 gallons of Valdo which we were ordered to dispose of by incineration in powerhouse boilers. I do not know how the remainder of Amtrak's holdings of Valdo were disposed of following this order.

Mr. Art Chambers and Mr. Frank Conte, both high officials in the Amtrak engineering department, were instrumental in the decision to establish system wide use of Valdo. I do not know how it was arranged for a supplier representative to get authorization to sign Amtrak delivery requests. These delivery requests were automatically paid through blanket purchase orders. I ~~believe~~ suspected there was a connection between Mr. Conte, Mr. Chambers, and the Valdo manufacturer.

4. In approximately 1977, Amtrak created a special facility in its Beech Grove, Indiana operations to overhaul and repair journal boxes. Journal boxes are used to support the locomotive weight on the axles. There are eight to twelve journal boxes on each of Amtrak's locomotives. To the best of my knowledge this new facility cost Amtrak $2 million, but was never utilized by Western Regional locomotive facilities while I worked at Amtrak. This is because a few months later Amtrak established a unit exchange program with A.F.S. Company, a supplier in California, which provided Amtrak with rebuilt journal boxes. I attempted to investigate the matter by questioning Mr. James Brown, who ordered me to "keep my nose out of it". This contract appeared irregular to me because Amtrak was purchasing services, although it had already invested substantial sums of time and money to perform these services in-house.

5. On February 1, 1980 James Brown was promoted and transferred to Chicago as Manager of the Locomotive Facility.

6. Prior to this promotion, Mr. Brown made numerous visits to Chicago to learn the operation. On one of these visits, late Saturday evening, Mr. Brown approached me and requested me to accompany him on a short drive to find some milk. He expressed fear that he would get lost in Chicago, which was then new to him. He and I drove together to a neighborhood gas station and purchased some milk. On our way back to the 16th Street facility I discussed with Mr. Brown that only one to one and a half years earlier I was a general foreman earning $25,000 per year and that my responsibilities were now greater although my pay lower as a Material Requirements Administrator. I asked him if he would accept my transfer to again become a general foreman. He responded:

> "Well Orville, I don't understand why you make the money you make. But with me as the Manager and you as the Material Requirement Administrator, there is no reason for either one of us to be poor. Please do not request that General Foreman's job now and give me a chance."

At that instant we arrived at 16th Street and I went back to my job. Mr. Brown went home. I interpreted his remark then to mean that he would try to get my salary increased, although not immediately.

7. Shortly after Mr. Brown assumed the duties of Manager of the locomotive facility he informed me that he had received a bid from an industrial cleaning company to steam and chemically clean the entire diesel shop from floor to ceiling, inside and out. This was irregular because the shop was relatively new and normally this type of cleaning would be done by Amtrak laborers during periods of low workload. Amtrak owned or could easily have rented every required piece of equipment to perform this job. Mr. Brown informed me that he had agreed to a price which I recall as being between $25,000 and $45,000. This was beyond his $5,000 signing authority. I was astonished at how high the price was.

Realizing he could not sign for such a large contract, Mr. Brown instructed me to break the agreement into as many $5,000 pieces as necessary to permit signing by him alone. I followed his instruction and prepared a sequentially numbered set of purchase requests at approximately $5,000 each for his signature. That day he instructed me to telephone the vendor directly to arrange for them to begin work the following Monday. I made the requested arrangements. The vendor started the job without an approved purchase request and was at least half-finished when the purchase requests were denied by Material Control because of the irregularity created by the sequentially numbered $5,000 requests.

Mr. Brown telephoned me at home and told me that I had better make sure the vendor got paid, even if I had to take out a second mortgage on my home.

I checked with Material Control which informed me that Mr. Brown had violated procedures prohibiting "stringing" contracts and that he knew this was prohibited. Mr. Brown held me accountable and became very angry and offensive when I advised him that I was unable to obtain the approval that Material Control had denied him.

Within a short while Mr. Brown was able to obtain the required approval to pay the vendor. Mr. Brown informed me at a later Date ~~that~~ that Frank Abate had "taken care of" the purchase order for him. Mr. Abate was then Vice President and Chief Mechanical Officer.

8. In working with the Purchasing Department I had numerous opportunities to observe their operation. Until approximately 1978 it was the standard practice to award contracts on the basis of low bid among at least three bidders. However, beginning in 1978 the Mechanical Department began to identify a "suggested vendor" or "only known vendor" on many of its purchase orders. For the next two to three years, every day I would see one or more purchase orders approved by the Purchasing Department where a higher bidder was awarded the contract although the low bidder would have supplied the identical parts at a lesser cost to Amtrak. In addition, I noted numerous occasions where purchase contracts were awarded sole source without seeking second and third bids. This was in violation of company procurement procedures.

9. When I was in Chicago, Mr. Brown was constantly being told by such Amtrak purchasing and materials department officials as Bill Barnett, Paul Batt, and Charles Frenault that his requests were in violation of company purchasing procedures. After denying many of Mr. Brown's purchase orders, they were usually overruled by their corproate superiors.

10. Amtrak has always had ambivalence in following its policies toward procurement through federal GSA. For example, vehicles are routinely purchased outside of GSA, and when purchasing restrictions are in effect, Amtrak managers simply lease vehicles under their contracting authority. Although all basic office supplies are readily available to Amtrak in Chicago through nearly GSA outlets, at the time I was at Amtrak they maintained blanket purchase orders for procuring supplies at a higher cost through Boise Cascade Company. I believe this was because deluxe and top-of-the-line office equipment is not readily available through GSA.

11. In 1978 Amtrak used a Chicago company named Power Parts to obtain numerous and large quantities of small, but essential, locomotive parts. I would estimate that Amtrak did $500,000 worth of business annually with Power Parts. At one time Mr. James Brown was negotiating with Mr. Jack Musel, a Power Parts sales representatives for the assembly and supply of truck repair kits for the SW-1 Switch Engines in Chicago. I estimate this would have represented approximately $24,000 of additional business for Power Parts.

During these negotiations Mr. Brown instructed me to call Mr. Musel and inform him that he needed two tickets to a sold-out performance of singer Barry Manilow. Mr. Musel informed me that he was not able to obtain these tickets for Mr. Brown, although he would have done so if they were available. Mr. Brown did not requisition the purchase of the kit assemblies from Power Parts.

12. Approximately thirty days later, at the beginning of the Chicago Bears football season, Mr. James Brown asked me how difficult it was to get well-located Bears tickets. I told him that good seats were difficult to buy. He instructed me to call Mr. Musel of Power Parts to come by the Amtrak facility "to break bread". "Break bread" was Mr. Musel's expression for treating Amtrak officials to a quick lunch. When Mr. Musel arrived he and Jim Brown, William Rogers, Pat Driscoll went to lunch. Upon their return Mr. Gary Baker stated that Mr. Brown had offered Amtrak's airbrake hose business to Power Parts for four season tickets to the Chicago Bears' game. One week later Mr. Musel, while visiting 14th Street, told me that Mr. Brown had promised him the airbrake hose business for four Chicago Bears tickets. Mr. Musel on another occasion informed me that Mr. Brown since that time had used Mr. Baker to communicate his personal requests.

13. Following my departure from Amtrak I had a conversation with "Mac" McGuinness, owner of McGuinness Welding and Fabrication Co., a Chicago area Amtrak vendor. When I asked him if he was still doing a lot of business with Amtrak, he stated to me: "I'm not doing that much work for Mr. Brown because he was too expensive to work for."

14. Mr. Brown often used me to perform personal favors for him while I was on company time. One time I spent two full days identifying real estate agents and areas in DuPage County, Illinois to permit Mr. Brown to shop for a new home. He insisted that the areas I selected be the most exclusive in DuPage County, which itself is the most affluent county in Illinois. He was shopping for a home with five bedrooms, three car garage, full fenced yard with an in-ground swimming pool.

15. On another occasion Mr. Brown instructed me to purchase two full bouquets of fresh flowers for his wife and the wife of Mr. Hampton, a visiting Amtrak friend from Mr. Brown's days on the Northeast Corridor. I purchased and arranged the delivery of these flowers as requested. When I requested him to reimburse me, Mr. Brown stated: "If you want the money back, put it on your expense account and I will sign it. I did not do so, and was never reimbursed.

16. Prior to Mr. Brown's arrival in Chicago, a Dodge van was assigned to me as Material Administrator. I had used the van to pick up parts and materials for the Chicago locomotive shop and to shuttle hostler crews. When Mr. Brown arrived he ordered a new Chevy Van to replace the Dodge I had been using. When the new Chevy Van arrived he kept the keys and began to use the vehicle strictly for personal use. When I complained, he instructed me to use my private car and to bill Amtrak for mileage.

Later the van disappeared for two weeks during which Mr. Brown was on vacation. I later learned from Peter Schlax, my boss, that he told Mr. Brown's boss Mr. Preski that he had evidence that Mr. Brown had used the Amtrak-owned van on vacation to the East Coast. On August 5, 1980 Mr. Brown, believing it was I who had reported him, came to me shaking and filled with tears of anger, accusing me of reporting him. I stated that I hadn't reported him but he wouldn't believe me. He told me "I should shut up because it was his nickel". He then stated: If you see me or my family in Bolingbrook (Illinois), you should walk to the other side of the street and not try to talk to them because "I will rip your heart out." He then stated he'd like me to leave the property to engage me in a fist-fight. I reported this entire incident in writing to Mr. Brown's boss, Mr. R. J. Preski, and requested assurances that Mr. Brown stay away from me. Mr. Preski never acknowledged or responded to my letter.

17. In the late 1970's over a 5-year period Amtrak traded in over 100 SDP40F electric diesel locomotives with steam generators for brand-new F40PH electric diesel locomotives with head end power. Through a blunder in purchasing these new locomotives, Amtrak ended up owning approximately 150 traction motors. These motors were priced at about $22,000 a piece at that time.

Recognizing the waste in holding so large an inventory of these high-priced parts, the Regional Manager for Locomotives Power instructed me to do an inventory and daily control on the use of these motors. His goal was to ascertain the proper stock level so that our inventory reflected our needs and no more. To establish the inventory control data system I inspected the Chicago, New Orleans, Denver and Redondo Junction facilities. On my trips I found at least 100 traction motors in the Western Region. Redondo, a mere turn-around-point, had 45 traction motors. Chicago, the main hub diesel facility had 30. When I calculated the use of traction motors for Chicago I calculated 3 per week, assuming regular and proper maintenance. Chicago alone maintained over $1/2 million surplus inventory.

When I reported this to the Regional Manager for Locomotive Power, he informed me that additional motors were then being purchased from Electromotive Division (GM) in LaGrange and Motorcoil a Pennsylvania-based company.

The Regional Manager then met with Mr. Brown regarding responsibility for the indefensible ordering of traction motors. He also reported the problems to Mr. Preski who was then Vice President for the Western Region and Assistant Chief Mechanical Officer under Frank Abate.

18. When I returned from my trip to survey traction motor inventories I learned from Mr. Peter Schlax that Amtrak had a blanket purchase order arrange with with Motorcoil. Through this contract, traction motors could be obtained on one signature only with no signing authority restrictions. I informed Mr. Schlax of our surplus inventory and he explained that the new order was coming from Corporate Headquarters.

19. This decision to purchase traction motors from Motorcoil seemed extremely irregular to me. At this time Motorcoils chief competitor Electromotive Division (GM) offered a superior product, had distribution centers throughout the country (unlike Motorcoil) and most importantly, had traceable serial numbers to permit easy determinations of warranty claims. From a later conversation regarding this decision with William Wonnell, who was then a retired Regional Manager of Locomotives, I learned that the decision could be better understood if one realized that Mr. Frank Conte, a former Amtrak assistant chief mechanical officer, was part-owner of Motorcoil.

20. In spring of 1981, upon the retirement of John Jeffries, Richard Van Buskirk was named by either Joe Crawford or Frank Abate as Manager of Locomotives West. He reported directly to Regional Vice President Preski. Mr. Van Busburk remained in the position for approximately six weeks. During this short period, Mr. Van Buskirk fired Mr. Brown. Shortly thereafter Mr. Brown was reinstated and Mr. Van Buskirk was demoted.

21. I first learned that Mr. Van Buskirk had fired Mr. Brown from Charles Riley, Sr. Upon learning this I spoke directly with Mr. Van Buskirk who told me that he had fired Mr. Brown and ordered him to leave for several reasons:

(1) Mr. Brown had caused a locomotive failure by failing to do proper maintenance and then lied about it to him.

(2) Mr. Brown was not capable of performing as a manager in terms of supervising employees.

(3) Mr. Brown had already been relieved of his authority to conduct employee discipline investigations because he was prejudging the employees and denying them fair hearings.

(4) He doubted Mr. Brown's honesty and suspected him of stealing Amtrak property.

I believe Mr. Brown was gone about 2-3 days. Mr. Crawford came in from Washington and arranged to have Mr. Brown reinstated. Mr. Crawford made several more trips to Chicago and shortly thereafter Mr. Van Buskirk was demoted and removed to the Brighton park facility. He no longer had authority over Mr. Brown.

22. In order to understand why Mr. Van Buskirk's tenure was so short, it is necessary to explain what occurred during this six week period.

The Regional Manager of Locomotive Power for the Western Region (Richard Van Buskirk) asked me to look into the usage of high-dollar material items. The first priority item on that list was "turbochargers." Our use of these units was four per year which we both agreed was high for our relatively small and recently purchased fleet. After checking inventory on this unit, I found one to be in stock which was foolish, since the item cost $55,000 and could be obtained within 12 hours from a nearby supplier.

Upon inspection of records to determine the reason for the high rate of failure of these turbochargers, I discovered that the maintenance was being incompletely performed. Specifically, the oil filter relief valve was not being replaced annually as required by regulation. I determined this by checking inventory movement of this part. I found that over 5 years only one such valve had been ordered and it was still in stock.

23. I supplied this information to Mr. Van Buskirk who later informed me that he had notified Mr. Preski, Vice President and Assistant Chief Mechanical Officer. This was very serious. First, this meant that Amtrak maintenance of its federally-purchased locomotives was not being done. Secondly, this meant that Amtrak officials who were signing annual FRA maintenance reports, which described all requierd tasks, were being falsified.

24. In several of other respects I found seriously deficient maintenance occurring. From my inventory research I found that in many instances, oil filters were not being changed and I also found some serious irregularities in oil usage as well. In addition I found serious safety defects resulting from maintenance of air-brakes which was both improper and in violation of FRA safety regulations. The train control system which incorporates the "dead man" safety feature was also not being properly maintained. I reported all of these deficiencies to Mr. Van Buskirk. He told me he had forwarded this information to Mr. Preski.

25. I also investigated lubricating oil irregularities for Mr. Van Buskirk. The Amtrak diesel facility maintains its supply of new lubricating oil through blanket purchase orders with suppliers. By 1980, Mr. Richard Van Buskirk, suspecting irregularities, instructed me to study the doubled consumption of lubricating oil in the locomotive facility and he instructed Peter Schlax to study irregularities in the purchasing of fuel oil from high bidders instead of low bidders. The new lubricating oil was purchased under blanket purchase orders then under the control of Gary Baker who was the Material Requirements Administrator for the Chicago Locomotive Facility. On his signature alone, he could generate "delivery requests" which were drawn against already allocated funds assigned to blanket purchase order contracts. I reported to Mr. Van Buskirk that the only explanation for dramatic doubling of lubrication oil consumption was that only some of the Amtrak-purchased oil was going into our tank. The rest was either not delivered or drop-shipped (diverted) somewhere else.

26. I also investigated the loss of salvage oil for Mr. Van Buskirk.

From January 1977 until January 1978 I had served as Chicago Material Requirements Administrator. Thus, I was Gary Baker's predecessor. During this one year period I had the responsibility to purchase all new oil and I observed how salvage drain oil was handled. This oil was stored in an underground tank until it registered 1500 gallons, at which time we called Material Control which requested pickup by a salvage oil dealer who paid Amtrak for the salvage oil by sending a check directly to the corporate accounting office.

In studying oil consumption in 1980 for Mr. Van Buskirk, I found that Amtrak purchases (under blanket purchase orders) of new oil had doubled without any corresponding increase in the regional locomotive fleet. Moreover, upon examining the salvage drain oil sales, I discovered that over a six month period Amtrak had received no credit or payment for salvage drain oil.

From my experience during 1977, there should have been at least 300 gallons of salvage oil per 1000 gallons of new oil purchased. The tank used to store salvage oil should have been at the 1500 gallon pick-up point every 3-4 weeks assuming 1977 levels of consumption of new oil. If all the new oil being purchased was indeed being used for locomotives the 1500 gallons of drain oil should have been available for resale at least every 2 weeks. Thus, I would conservatively estimate 20,000 gallons of drain oil was missing.

I turned my findings over to Mr. Peter Schlax who had become my boss because Amtrak had demoted and transferred Mr. Van Buskirk away.

27. Mr. Schlax later informed me that he had turned over all of his and my findings to Mr. Preski. Shortly thereafter the corporation assigned Mr. Pat Driscoll to replace Mr. Van Buskirk. With no explanation, Mr. Driscoll took away all of my duties and authority to investigate material usage and requirements. In particular, he stated that "I would do only what he told me to do when he told me to do [illegible]." Although I continued to be stationed in Chicago, my duties henceforth were confined to making coffee and doing office errands. Because I had no duties I had a lot of time to read maintenance books. This lasted two or three months.

28. One example of my duties while working for Mr. Driscoll follows.

Mr. Driscoll became involved in an altercation while drunk at an exit ramp off the highway. Mr. Driscoll was arrested and taken into police custody. His Amtrak-owned (GSA surplus) vehicle was missing. Mr. Brown requested that Mr. Baker and I search for the car. Through the Chicago police I found that the Amtrak vehicle had been towed to a private impoundment lot.

I paid $63 to the towing company from my pocket. Later the Amtrak Purchasing Department in Chicago reimbursed me from petty cash the full amount on the basis of my receipt.

Within a few months, Mr. Driscoll and a number of other managers were invovled in the purchase of cut-rate stolen commuter rail tickets. Most of the implicated managers received letters of reprimand. I believe Mr. Driscoll was the only implicated manager who avoided even a letter of reprimand.

29. On one occasion I was sent to California to "evaluate material". On my return train ride, I chatted with a passenger who inquired aggressively about Mr. Brown. I refused to answer any of his questions about Chicago or Mr. Brown. When I returned to Chicago, Mr. Preski informed me that the passenger had contacted Mr. Preski and Mr. Brown complaining that I had accused Mr. Brown of theft. I denied the charge. I was never able to question my accuser. Amtrak never brought charges against me. Mr. Driscoll sent me home for a month with pay to reconsider whether I would "play ball with them". At the end of the month Mr. Preski called me at home and asked me to come to his office. At this meeting Mr. Preski transferred me to Mr. Brown's shop. He did so even though I reminded him that Mr. Brown had threatened to tear out my heart.

I complied with the transfer and reported to Mr. Brown. In receiving me, Mr. Brown warned me that if he and I "did not play ball together" he would have me fired or I would resign. I immediately tendered my resignation effective two weeks later. I had no duties for two weeks and then left on April 8, 1981, remaining on the payroll until June 30, 198~~5~~1.

30. Feeling that I had been treated unjustly I searched for an avenue to communicate the theft and mismanagement at Amtrak. When I learned that Amtrak had a member of its Board of Directors, Crete Harvey, living in suburban Chicago, I contacted her. She arranged for two Amtrak police investigators from the Northeast Corridor to interview me. At that interview which was not taped, I gave them very basic information to give them a clear idea of what I knew. This interview occurred outside my then current place of employment in their sedan. They took very few notes. About 4-6 weeks later I was called for an interview at Chicago's Union Station where I gave a taped statement to another Amtrak investigator who asked me even fewer questions. He eventually sent me away after thirty minutes. I was never again contacted by Amtrak investigators. It was not until investigators working for the Congressional subcommittee questioned me about Mr. Brown, Mr. Preski and Mr. Baker that I was again involved in an investigation of financial crimes at Amtrak in Chicago.

I CERTIFY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, UNDER PENALTY OF PERJURY.

Orville E. Elza
ORVILLE ELZA

SUBSCRIBED AND SWORN TO BEFORE ME THE 27 DAY OF February, 1985.

My Commission Expires Nov. 29, 1986
My commission expires

APPENDIX 6

CASE NO.: 8-0134(82)2700

OFFICE OF INVESTIGATIONS

REPORT STATUS

DATE CASE OPENED: July 1, 1982

	DATE DUE:	DATE RECEIVED:
PRELIMINARY REPORT:	Jul 8, 1982	Jul 7, 1982
FIRST PROGRESS REPORT:	Aug 9, 1982	Aug 13, 1982
SECOND PROGRESS REPORT:	Sep 8, 1982	Nov 1, 1982
THIRD PROGRESS REPORT:	Oct 8, 1982	
EXTENSION GRANTED:		
SUPPLEMENTAL:		
SUPPLEMENTAL:		
SUPPLEMENTAL:		
SUPPLEMENTAL:		
SUPPLEMENTAL:		

DISSEMINATION OF INFORMATION:

DATE	TYPE OF INFORMATION RELEASED	RELEASED TO	PURPOSE	RELEASED BY

RDF

RECEIVED
NOV 29 1982
OFFICE OF INVESTIGATIONS

Amtrak

OFFICE OF INVESTIGATIONS
INVESTIGATION REPORT

SUBJECT OR TITLE OF INCIDENT
JAMES MARTIN BROWN
DOB: APR 10, 1945
SSN: 115-34-3926
AMTRAK
Chicago, IL

OFFENSE: Confidential

CASE NO: 8-0134 (82) 2700

DATE OF OFFENSE: JUL 1, 1982

DATE THIS REPORT: NOV 1, 1982

INITIAL SUPPLEMENT (NO.): ( ) (2)

DISPOSITION: PENDING ( ) CLOSED (X)

SPECIAL AGENT: Edward C Rhodes S/A EDWARD C. RHODES

SUPERVISOR/APPROVAL: C/I PETER W. STEIL

DATE APPROVED: 11-26-82

DETAILS:

1. On (WED) OCT 13, 1982, Mr. ALLAN W. (unk) KURMAN (Public Affairs Director-WCFL-Chicago Radio Station) was interviewed at his office, 300 North State, Chicago, IL by Special Agents ROBBIN A. BOLLENBACH and EDWARD C. RHODES. Mr. KURMAN stated to the best of his knowledge, he met ORVILLE ELZA (former Amtrak employee) on a train trip in early 1981. Mr. KURMAN talked to ELZA for about 1-1/2 hours, during which time ELZA was very critical of Amtrak's maintenance program and JAMES BROWN. Mr. KURMAN mentioned the conversation to "someone at Amtrak" but does not remember to whom. (See Attachment A.)

2. On (TUE) OCT 26, 1982, the writer interviewed JACK (unk) MUSSELL (Sales Representative-Amtrak Vendor, telephonically (phone (312) 772-4600). Mr. MUSSELL said that he knows JAMES BROWN but only slightly, having had lunch with BROWN a "couple of times." Mr. BROWN has never attempted to obtain a kickback from Mr. MUSSELL, and on one occasion Mr. BROWN refused Mr. MUSSELL's offer of two tickets to a sporting event. (See Attachment B.)

3. Mr. ELZA has made charges that JAMES BROWN approached Amtrak Vendors in the Chicago area for kickbacks, also, Amtrak employees who would not go along with BROWN's method of doing business, were fired or forced to resign. Investigation in this case has failed to substantiate any of the charges as made by ELZA. This case is being closed with the submission of this report.

ATTACHMENTS:
A. Memo of interview of ALLAN W. KURMAN.
B. Memo of interview of JACK MUSSELL.

Distribution:
Headquarters
C/I Baltimore
S/A Chicago

[illegible]

Amtrak

OFFICE OF INVESTIGATIONS
MEMORANDUM OF ORAL INTERVIEW

ERSON INTERVIEWED:

ALLAN W. KURMAN
Public Affairs Director
Chicago Radio Station WCFL
Chicago, IL

ATE OF INTERVIEW: OCT 13, 1982

LACE OF INTERVIEW: 300 NORTH STATE ST., CHICAGO, IL

NTERVIEWED BY: S/A's R. A. BOLLENBACH and E. C. RHODES

ATE MEMORANDUM PREPARED: (WED) OCT 13, 1982

ARRATIVE:

On (WED) OCT 13, 1982, Mr. ALLAN W. KURMAN (Public Affairs Director-WCFL-Chicago Radio Station) was interviewed by S/A's BOLLENBACH and RHODES. Mr. KURMAN was asked if he had taken a train trip from the western United States to Chicago in early 1981 (possibly March), and if so, did he remember talking to ORVILLE ELZA. Mr. KURMAN had in fact, taken the above described trip and had talked to an Amtrak employee. KURMAN did not remember the employee's name, however, his description of the circumstances and the individual correspond very closely to ORVILLE ELZA.

KURMAN stated he talked to ELZA on two occasions on the trip for a total time of approximately 1-1/2 hours. KURMAN reported that ELZA made several derrogatory statements about the maintenance program at Amtrak. Mr. KURMAN has met JAMES BROWN several times, and mentioned to ELZA that he (KURMAN) was "somewhat friendly" with BROWN. ELZA then began to belittle BROWN and his abilities in the maintenance field. Mr. ELZA also stated that thousands of gallons of fuel were being wasted by the Chicago maintenance operation. During Mr. KURMAN's initial meeting with ELZA on the train, ELZA was in the company of a young lady, and appeared to have been drinking. Mr. KURMAN was of the impression that ELZA was trying to impress the young lady. KURMAN stated that after returning to Chicago, he mentioned the incident with ELZA to "someone at Amtrak", but was unsure as to whom. Mr. KURMAN stated he had had no further contact with ELZA.

MITTING AGENT S/A EDWARD C. RHODES

CASE NO. 8-0134(82)2700 Page 1 of

Amtrak

OFFICE OF INVESTIGATIONS
MEMORANDUM OF ORAL INTERVIEW

ERSON INTERVIEWED:
JACK (UNK) MUSSELL
Sales Representative
Power Parts Company
1860 N. Wilmot Ave.,
Chicago, IL

ATE OF INTERVIEW: (TUES) OCT 26, 1982

LACE OF INTERVIEW: Chicago, IL

NTERVIEWED BY: S/A EDWARD C. RHODES

ATE MEMORANDUM PREPARED: OCT 26, 1982 (TUES)

ARRATIVE:

On (TUE) OCT 26, 1982, the writer interviewed telephonically JACK MUSSELL, Sales Representative, Power Parts Company. Mr. MUSSELL said that he knows JAMES BROWN (Amtrak-Chicago) from a professional standpoint. MUSSELL has taken BROWN to lunch a "couple of times", however, BROWN has never approached MUSSELL for kickbacks.

Mr. MUSSELL advised the writer that his company, Power Parts Company, provides the Sales Representatives with tickets (individual tickets) to various sporting events (hockey, football, basketball, etc.). These tickets are then given out by the Sales Representatives, usually one or two at a time, to individuals that the Sales Representatives deal with. On one occasion MUSSELL was going to leave two tickets for someone at Amtrak. MUSSELL, however, could not remember for whom he was leaving the tickets, but thought they may have been for ORVILLE ELZA. Mr. MUSSELL stated that perhaps the tickets may have been for an individual named ROGERS. However, he does not remember ROGERS full name. The individual who was to receive the tickets was not there, and MUSSELL attempted to leave the tickets with JAMES BROWN. BROWN refused to accept the tickets, stating that it would be illegal for him to accept the tickets.

Mr. MUSSELL is certain that neither JAMES BROWN, nor anyone else at Amtrak has ever approached him for a kickback. He went on to advise that his dealings with BROWN had been from a purely professional standpoint and in the one instance when he was to leave sporting event tickets, Mr. BROWN became quite upset.

BMITTING AGENT S/A EDWARD C. RHODES

CASE NO. 8-0134(82)2700

Page 1 of

ATT'L F

Amtrak

OFFICE OF INVESTIGATIONS
INVESTIGATION REPORT

SUBJECT OR TITLE OF INCIDENT JAMES MARTIN BROWN DOB: APR 10, 1945 SSN: 115-34-3926 Amtrak Chicago. IL	OFFENSE: Confidential CASE NO: 8-0134(82)2700	DATE OF OFFENSE JUL 1, 1982
	DATE THIS REPORT AUG 13, 1982	INITIAL SUPPLEMENT (NO.) ( ) (1)

DISPOSITION PENDING (x) CLOSED ( )	SPECIAL AGENT Edward C Rhodes S/A EDWARD C. RHODES	SUPERVISOR/APPROVAL C/I PETER W STEIL	DATE APPROVED 11/21/82

SYNOPSIS:

On Friday, JUL 23, 1982, ORVILLE ELZA (former Amtrak employee) was reinterviewed. Mr. ELZA supplied the name of a local radio employee who had helped "set him up". Mr. ELZA stated JAMES BROWN had threatened him in mid 1980 and ELZA had given letters to various people in the Chicago Mechanical Department about this threat. Mr. ELZA identified a vendor that he said BROWN had attempted to shake down. Attempts were made to locate an investigator from the Illinois Attorney General's Office that ELZA said contacted him. Case continues in Chicago in an attempt to confirm or deny Mr. ELZA'S charges.

RECEIVED
OCT 22 1982
OFFICE OF INVESTIGATIONS

RECEIVED
OCT -7 1982
OFFICE OF INVESTIGATIONS

RECEIVED
OCT 21 1982
OFFICE OF INVESTIGATIONS
BALTIMORE, MD.

DETAILS

1. On Friday, July 23, 1982, ORVILLE ELZA was reinterviewed by C/I P.W. STEIL and S/A EDWARD C. RHODES in Joliet, Illinois. Mr. ELZA supplied the business card of an ALLAN W. KURMAN of Chicago radio station WJJD-WJEZ, who according to ELZA, had helped set him up. ELZA was returning from Redondo Beach in early 1981 and was approached on the train by KURMAN, who asked about the maintenance program at Amtrak. ELZA responded that the program was not sufficient. ELZA stated KURMAN passed this information to PAM DICKSON (Public Information Representative-Chicago, IL) who in turn passed it to BROWN. As a result of this ELZA was forced to resign by BROWN. Prior to this incident ELZA stated he had had problems with BROWN, and on one occasion BROWN had threatened him. Someone had turned BROWN in for personal use of a company van and BROWN thought it was ELZA. During a "heated discussion" BROWN had threatened to "rip ELZA'S heart out", and invited ELZA off Amtrak property to fight. ELZA supplied letters to R. PRESKI, J. JEFFERIES, P. SCHLAX, and R. L. VANBUSKIRK in reference to this incident. Mr. ELZA stated BROWN and others were keeping favorite vendors in business, and would then use this connection to obtain football tickets, concert tickets, etc. At the time ELZA left Amtrak (April 1981), BROWN had been promised season tickets to the Chicago Bears football games by the Turco Company if he purchased a parts washer machine for approximately $10,000.00 to $20,000.00. ELZA does not know if the machine was purchased. ELZA said BROWN had also attempted to obtain concert tickets from JACK MUSSELL, a salesman for Power Parts Company. During Mr. ELZA'S second interview he gave a description of the investigator from TY FAHNER'S office (Illinois Attorney General), who had contacted ELZA about ELZA'S charges. ELZA said the investigator was approximately 6'2" tall, 35, brown hair, and worked out of a Joilet office.

2. On Friday, July 23, 1982, C/I P.W. STEIL and the writer contacted the Joilet office of the Illinois Attorney General, Consumer Fraud Division. The secretary (name not obtained) said she was unaware of any investigator in the Joilet area matching the description as supplied by ELZA. It was suggested that

contact be made with HERB BROWN, Executive Assistant to the Illinois Attorney General, who had personal knowledge of all investigators. On Wednesday, July 28, 1982, at 10:00 AM, the writer phoned Mr. BROWN and supplied him with the physical description as given by ELZA. Mr. BROWN stated he knew all investigators for the Illinois Attorney General's Office and was certain this description matched none of them, he would however, check personnel files and phone the writer with the results. On July 28, 1982, at 1:00 PM, Mr. BROWN phoned the writer and said a check of personnel files had confirmed that no investigator, matching the description as supplied by ELZA, worked for the Illinois Attorney General's Office.

3. On July 28, 1982, at 10:10 AM a telephonic check with WJJD (Plough Broadcasting Company, Inc.) a Chicago radio station, disclosed that ALLAN W. KURMAN worked for WCFL. WCFL is a Chicago radio station located at 300 North State, phone (312) 836-1000. An attempt was made to contact KURMAN, he was however out of town.

4. On Thursday, July 29, 1982, at 11:20 AM, the writer interviewed P.E. SCHLAX, (Manager, Locomotive Maintenance-Chicago) in his Office at 1400 South Lumber, Chicago. Mr. SCHLAX, who now occupies a staff position in the Chicago Mechanical Department, said he has little if any contact with procurement activities, and therefore has no knowledge of shake downs and/or kickbacks. SCHLAX has never heard of anything that would indicate JAMES BROWN was involved in this area. Mr. SCHLAX said ORVILLE ELZA and JAMES BROWN did not get along and mentioned an argument between the two in the summer of 1980. During the argument, BROWN invited ELZA "off the property" to fight. A few days later ELZA gave SCHLAX and "everyone else " a letter concerning the argument. On Friday, July 30, 1982, Mr. SCHLAX provided the writer with a copy of this letter.

5. On Thursday, August 5, 1982, a check of procurement files at 1500 South Lumber indicated that since 1979 procurement in Chicago has purchased approximately $8,000.00 worth of product, from Turco Products, in the form of cleaner and paint striper. A check of procurement records in Beech Grove, Indiana, on August 10, 1982, indicated that in 1978 a parts washer was purchased from Turco for $87,300.00. Since 1978 Beech Grove has made additional purchases of approximately $2,060.00 worth of cleaner solvent.

PENDING

Case: 8-0134(82)2700
Page 4 of 4

ATTACHMENTS

1. Memo of Interview of ORVILLE ELZA on July 23, 1982.
2. Memo of Interview of P.E. SCHLAX on July 29, 1982.
3. Interoffice Memo, dated August 8, 1980, to R.J. PRESKI, SR. from ORVILLE ELZA, Subject, incident of August 5, 1980.

DISTRIBUTION:

Corporate Headquarters
C/I, Baltimore
S/A RHODES

OFFICE OF INVESTIGATIONS
MEMORANDUM OF ORAL INTERVIEW

RSON INTERVIEWED: ORVILLE (NMN) ELZA

TE OF INTERVIEW: Friday, July 23, 1982, 1:00 PM

ACE OF INTERVIEW: Joliet, Illinois.

TERVIEWED BY: C/I P.W. STEIL and S/A EDWARD C. RHODES

TE MEMORANDUM PREPARED: July 27, 1982

RRATIVE:

On July 23, 1982, Mr. ORVILLE ELZA was reinterviewed by C/I P.W. STEIL and S/A EDWARD C. RHODES. Mr. ELZA was now at his place of employment, the Joliet Correctional Institute. The three participants of the interview then traveled to an area approximately 2 miles from the Correctional Institute where the interview was held in the vehicle assigned to the Chicago, Office of Investigations, (this travel was due to Mr. ELZA'S desire to be interviewed away from his place of employment, in an attempt to find a cool, shady area wherein to conduct the interview).

Mr. ELZA had in his possession a business card of ALLAN W. KURMAN, Public Affairs Director, Chicago Radio Station WJJD-WJEZ. ELZA said KURMAN was the individual who had approached him when he (ELZA) was returning from Redondo Beach in early 1981. (See Memorandum of Oral Interview of ORVILLE ELZA, date of interview, July 2, 1982.) ELZA had attempted to contact KURMAN in the past with no success. It was ELZA'S contact with KURMAN which lead to ELZA'S transfer to a position under JAMES BROWN, Manager of Locomotive Maintenance-Chicago. ELZA said that prior to this time he had problems with Mr. BROWN, and on one occasion

MITTING AGENT S/A EDWARD C. RHODES

CASE NO. 8-0134(82) Page 1 of [illegible]
2700

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BROWN had made a direct threat. In 1980 someone had turned BROWN in for using a company van, for personal use, while on vacation. BROWN thought ELZA had turned him in and approached ELZA. In the resulting conversation BROWN had threatened to rip ELZA'S heart out. ELZA hand-delivered letters describing this incident to R. PRESKI, J. JEFFERIES, P. SCHLAX, and R.L. VANBUSKIRK.

ELZA stated that BROWN and others were keeping favorite vendors in business. To illustrate this, ELZA said approximately 40 traction motors from Motorcoil were stock piled at Redondo Beach at a time when usage was about 2 or 3 a week. In another instance Amtrak was buying journal boxes from a Redondo Beach firm while Beech Grove was set up to refurbish used ones. BROWN would use this connection with the varius vendors/salesman to obtain football tickets, concert tickets, etc. In early 1981, Turco Chemical had promised BROWN season tickets to the Chicago Bears football games if BROWN would purchase a parts cleaner from them. ELZA did not know if the parts cleaner had been purchased, but paperwork for the cleaner had been submitted before ELZA left Amtrak in April 1981. BROWN approached JACK MUSSELL, salesman for Power Parts Company, for concert tickets for BROWN and his wife. Mr. ELZA stated that, not only were there attempts to obtain kickbacks, but that the waste and inefficiency in the Maintenance Program was criminal in itself.

Mr. ELZA was asked if he could supply any additional information in reference to the investigator from the Illinois Attorney General's Office, who had contacted him. ELZA said he had met the investigator at a political party, in a private residence, and the investigator stated he worked out of the Joilet office. ELZA described the investigator as a white male, 35, 6'2" tall, with brown hair.

OFFICE OF INVESTIGATIONS (
MEMORANDUM OF ORAL INTERVIEW

RSON INTERVIEWED: P.E. SCHLAX

TE OF INTERVIEW: July 29 and 30, 1982, (Thursday and Friday)

ACE OF INTERVIEW: 1400 South Lumber/.210 South Canal,
Chicago, Illinois

TERVIEWED BY: S/A EDWARD C. RHODES

TE MEMORANDUM PREPARED: August 2, 1982

RRATIVE:

On Thursday, July 29, 1982, the writer interviewed P. (PETE) E. SCHLAX (Manager, Locomotive Maintenance-Chicago) at 1400 South Lumber, Chicago. Mr. SCHLAX was interviewed in reference to any possible knowledge he may have of kickbacks from vendors to Amtrak Management Personnel. Mr. SCHLAX said he is now unofficially in a staff position (no exact title), and as such has no direct contact with vendor/procurement. SCHLAX has heard no rumors of Amtrak Management Personnel assigned to Chicago attempting to shake down vendors.

In response to a question concerning JAMES BROWN and kickbacks, SCHLAX said he had never heard of BROWN having any involvement in this area. SCHLAX added that he did not care for BROWN, and considered him incompetent, but would give BROWN "the benefit of the doubt". When BROWN first transferred to Chicago, as a result of his incompetency, the Acting Superintendent of Locomotive Maintenance, R.L. VANBUSKIRK, had told SCHLAX he was going to get rid of BROWN. A few weeks later VANBUSKIRK was gone. SCHLAX said he did not know who was taking care of BROWN, but he wished he did so he could have that person take care of him. Mr. SCHLAX was asked if he knew former Amtrak employee ORVILLE ELZA, and the relationship between ELZA and BROWN.

MITTING AGENT S/A·E.C. RHODES

CASE NO. 8-0134(82) Page 1 of
2700

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Case: 8-0134(82)2700
Page 2 of 2

SCHLAX described ELZA as being very competent in the position he held while with Amtrak, he added that at times ELZA did have a tendency to "blow things out of proportion". The relatinship between ELZA and BROWN was poor at best. In the summer of 1980 BROWN and ELZA had an argument in an office near SCHLAX. SCHLAX overheard portions of this argument, and stated BROWN wanted ELZA to go off the property with him to fight. A few days later ELZA gave a letter to "everyone" in reference to the argument. ELZA hand-delivered a copy of the letter to SCHLAX. SCHLAX said someone had reported that BROWN was using a company van for his personal use, and BROWN thought ELZA had turned him in.

In early 1981, ELZA had been returning from a business trip out West and was approached on the train by an employee from a local (Chicago) radio station. SCHLAX said he did not know what was discussed (if anything) during this contact, but word got back to BROWN that ELZA was "bad mouthing" BROWN and the Maintenance Program. A short time later ELZA was tranferred to BROWN'S control.

SCHLAX has heard that PAM DICKSON, (Public Information Representative-Chicago), supplied the train ticket to the radio station employee. The employee reported his contact with ELZA to DICKSON, who in turn reported to BROWN.

On July 30, 1982, Mr. SCHLAX provided the writer with a copy of the letter he (SCHLAX) received from ELZA.

7-30-82 NATIONAL RAILROAD PASSENGER CORPORATION
LCA

INTEROFFICE MEMO

DATE: August 8, 1980

TO: Mr. R. J. Preski, Sr.

FROM: Orville E. Elza

SUBJECT: Incident of August 5, 1980

CONFIDENTIAL

On August 5, 1980, at approximately 10:00 AM, I, Orville E. Elza, was working on the files by Mr. John Jeffrey's office. Mr. James Brown approached and asked to have a discussion with me in Mr. Jeffrey's office since Mr. Jeffrey was not there. Mr. Brown closed the door to the office because he did not want anyone to hear what he had to say. The conversation was about that he did not appreciate someone turning him in for using the van and that the van was legally in the shop for repairs. Mr. Brown did not listen or allow me to speak and tell him that I did not turn him in. He said, "for me to shut up because he was going to talk because it was his nickel". The next statement Mr. Brown made was "if I see him in Bolingbrook with his wife or his family, I should walk to the other side of the street and not try to talk to them because he would rip my heart out".

He indicated he wanted to go off the property and fist fight, and to all these statements I did not reply as he was crying and shaking and I could tell he was under a great deal of mental strain and I was afraid any comments might have caused him to hurt someone or himself.

To verify that this happened, you can ask Ms. Emily Stermer, who, by accident, walked into the office and saw Mr. Brown talking at me on this day.

If at all possible, I would appreciate some assurance that this type of incident will not occur again with Mr. Brown.

Orville E. Elza

cc: J. Jeffrey

Amtrak

ATTCH 3

Case: 8-0134(82)2700

UNDEVELOPED LEADS

This case is continued for an interview of ALLAN W. KURMAN and JACK MUSSELL.

Amtrak

OFFICE OF INVESTIGATIONS
MEMORANDUM OF ORAL INTERVIEW

ERSON INTERVIEWED: ORVILLE ELZA
W/M DOB: February 14, 1947

ATE OF INTERVIEW: August 17, 1982 (Tuesday) 9:00 PM (EDST)

LACE OF INTERVIEW: ELZA RESIDENT - (312) 759-7719

NTERVIEWED BY: C/I P. W. STEIL

ATE MEMORANDUM PREPARED: August 17, 1982

ARRATIVE:

On above date and time, writer contacted Mr. ELZA by telephone relative to his allegations of bribery-kickbacks, etc. made on July 2 and July 23, 1982, to S/A RHODES and writer.

Writer advised Mr. ELZA, the allegations made by him during above interviews and persons supplied by him as supporting witnesses to these allegations, had failed to date to support his statements relative to criminal activity by Mr. JAMES BROWN, et al. Writer inquired whether he (ELZA) had any additional investigative avenues to provide.

At this point, Mr. ELZA interrupted and became loud and profane, stating "I don't have to prove any god damn thing any more, I am sick and tired of talking about it. You people don't give a shit and I am tired of Amtrak's attitude."

Mr. ELZA related, had we checked the McGINNIS WELDING situation and the snow plows. Writer advised, Mr. McGINNIS had been interviewed and denied any knowledge of kickbacks and was in fact, doing work on snow plows for AMTRAK.

Mr. ELZA responded profanely (unable to recall exact response), and then inquired whether we had checked the situation reference the CUBS season tickets (baseball.)

BMITTING AGENT C/I P. W. STEIL

8-0134(82)2700
CASE NO.

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Writer advised in the July 23 interview, he (ELZA) had related the season tickets were for the BEARS (football), to which Mr. ELZA again became loud and profane, stating "I'll give it to Mr. O'BRIEN's office." On inquiring as to the identity of Mr. O'BRIEN, Mr. ELZA stated, "you don't know who Mr. O'BRIEN is? "I'm sick and tired of it, I don't want to mess with it any more." He terminated the conversation by hanging up. Writer did not endeavor to recontact Mr. ELZA due to his extreme emotional condition.

Amtrak

OFFICE OF INVESTIGATIONS
MEMORANDUM OF ORAL INTERVIEW

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IBMITTING AGENT C/I P. W. STEIL

8-0134(82)2700
CASE NO.

Page 1 of 2

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NATIONAL RAILROAD PASSENGER CORPORATION

INTEROFFICE MEMO

DATE: August 18, 1982
Case No. 8-0134(82)2700

TO: P. F. Mickey, Jr.

FROM: R. C. Ingalls

SUBJECT: ORVILLE ELZA

At 9:00 PM on August 17, 1982, P. W. STEIL of our office telephonically contacted Mr. ORVILLE ELZA. This conversation was the second request by our personnel for additional information regarding Mr. ELZA'S allegations of bribery and kickbacks made during an initial interview on July 2, 1982.

After being informed that the purported witnesses and leads he had provided had failed to support his contentions concerning illegal or wrongful conduct on the part of various Amtrak employees, Mr. ELZA was asked if he could provide any additional investigative avenues. At that point, Mr. ELZA became loud, abusive and profane. As our investigator continued his attempt to obtain further information, Mr. ELZA asked if we had checked on the improper use by Amtrak employees of vendor sponsored season tickets to Chicago CUBS baseball games. Our agent informed him that he (ELZA) had in the July 23 interview, related that the tickets in question were for Chicago BEARS football games. Mr. ELZA again became loud and profane, and terminated the interview by hanging up on our agent.

RCI:db

bcc: P. W. Steil

Amtrak

OFFICE OF INVESTIGATIONS
INVESTIGATION REPORT

RECEIVED
AUG 6 1982
OFFICE OF INVESTIGATIONS

SUBJECT OR TITLE OF INCIDENT Confidential	OFFENSE: Confidential CASE NO: 8-0134(82)2700	DATE OF OFFENSE (Thur) 1 July 1982	
	DATE THIS REPORT 7 July 1982	INITIAL SUPPLEMENT (NO.) (X) ( )	
DISPOSITION PENDING (X) CLOSED ( )	SPECIAL AGENT Edward C Rhodes Edward C. Rhodes	SUPERVISOR/APPROVAL C/I P. W. Steil	DATE APPROVED

SYNOPSIS:

Charges of "shakedowns and kickbacks" have been made by former Amtrak employee ORVILLE ELZA. Mr. ELZA states that management personnel in the Chicago maintenance facilities have demanded kickbacks from vendors in the Chicago area. Mr. ELZA also states that Amtrak employees who would not go along with this scheme were either forced to resign or were fired. L. H. McGINNIS owner of McGinnis Welding Service was interviewed, and stated his firm had not been the target of a "shakedown" as reported by Mr. ELZA. Two former Amtrak employees that ELZA identified as having been "forced out" were interviewed and failed to substantiate ELZA's charges. Case continues in Chicago for a re-interview of ELZA.

DETAILS:

Investigation in this case began on 2 July 1982, at 9:00 AM, with the arrival of C/I P. W. STEIL at Chicago's O'Hare Airport.

On 2 July 1982, at 10:00 AM, Mr. ORVILLE ELZA was interviewed at the Chicago-O.I. office by C/I P. W. STEIL and S/A EDWARD C. RHODES. Mr. ELZA was interviewed in reference to charges of "shakedowns and kickbacks" he is making, directed at Amtrak Management Personnel. ELZA stated that JAMES M. BROWN (Mgr. Locomotive Maintenance-Chicago) had told him "you play things our way and we will all be rich."

While employed by Amtrak, Mr. ELZA was responsible for the development of maintenance procedures and procurement of parts/materials for the diesel shops in Chicago. ELZA was told by his supervisor, R. L. VAN BUSKIRK (former Mgr. Turbo. Maint. Fac.-Chicago), to take a look at diesel maintenance from a materials usage standpoint. ELZA discovered that oil usage had increased by about 400% after BROWN's transfer to Chicago. This was made known to management in Chicago and Washington and "all were told to keep their mouth shut" according to ELZA.