

SURFACE TRANSPORTATION BOARD 06/03/98 FD#33388 1-60

UNITED STATES OF AMERICA

+ + + + +

SURFACE TRANSPORTATION BOARD

+ + + + +

ORAL ARGUMENT

+ + + + +

CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND NORFOLK
SOUTHERN RAILWAY COMPANY -- CONTROL AND OPERATING
LEASES/AGREEMENTS-CONRAIL INC.
AND CONSOLIDATED RAIL CORPORATION

STB FINANCE DOCKET NO. 33388

+ + + + +

WEDNESDAY

JUNE 3, 1998

+ + + + +

WASHINGTON, D.C.

+ + + + +

The Public Hearing convened at The Surface
Transportation Board, 1925 K Street, N.W., Room 760,
at 10:00 a.m.

BEFORE:

LINDA J. MORGAN, Chairman

GUS A. OWEN, Vice-Chairman

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

www.nealrgross.com

C-O-N-T-E-N-T-S

Page

Opening Remarks	
Chairman Morgan	6
Vice Chairman Owen	15

MEMBERS OF CONGRESS

Daniel Renberg	
on Behalf Senator Arlen Specter	22
Senator John Warner	30
Representative Bud Shuster	24
Representative John LaFalce	45
Representative Tom Bliley	31
Representative John Boehner	52
Representative Jerrold Nadler	174
Representative Tillie Fowler	40
Representative Jack Quinn	57

PRIMARY APPLICANTS

CSX Corporation and Norfolk Southern Corporation	
David Goode	68
John Snow	86
Richard Allen	114
Betty Jo Christian	134
Dennis G. Lyons	157

FEDERAL GOVERNMENT PARTIES

U.S. Department of Justice	
Michael Harmonis	199
U.S. Department of Transportation	
Paul Samuel Smith	210

BROAD SHIPPER INTERESTS

The National Industrial Transportation League	
Nicholas J. DiMichael	232

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

C-O-N-T-E-N-T-S

PageBROAD SHIPPER INTERESTS

The Fertilizer Institute	
Michael McBride	248
Chemical Manufacturers Association	
Scott N. Stone	252
Thomas E. Schick	262
Society of the Plastics Industry, Inc.	
Scott N. Stone	
Thomas E. Schick	

SPECIFIC SHIPPER INTERESTS

AK Steel Corporation	
Frederic L. Wood	285
ASHTA Chemical	
Inajo Davis Chappell	289
Eastman Kodak Company	
Byron Olsen	296
Joseph Smith & Sons, Inc.	
Jeffery O. Moreno	301
Millennium Petrochemicals Inc.	
Michael Ferro	306
Citizens Gas & Coke Utility	
F. Ronalds Walker	312

COAL

Centerior Energy Corporation [First Energy Corp.]	
Christopher Mills	326

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
 1323 RHODE ISLAND AVE., N.W.
 WASHINGTON, D.C. 20005-3701

C-O-N-T-E-N-T-S

	<u>Page</u>
<u>COAL</u>	
Consumers Energy Company	
Kevin J. Dowd	333
Eighty-Four Mining Company	
Martin W. Bercovici	337
Niagara Mohawk Power Corporation	
John K Maser, III	344
Orange and Rockland Utilities, Inc.	
John M. Cutler, Jr	349
American Electric Power Service Corporation	
Michael F. McBride	355
<u>PASSENGER AND COMMUTER INTERESTS</u>	
American Public Transit Association	
Arthur Gazetti	367
Northern Virginia Transportation Commission & Potomac and Rappahannock Transportation Commission (VRE)	
Kevin M. Sheys	371
Metro-North Commuter Railroad	
Walter E. Zullig Jr.	376
<u>OTHER RAILROADS</u>	
Illinois Central Railroad Company	
Myles Tobin	393
Ann Arbor Railroad	
Karl Morell	405
New England Central Railroad, Inc.	
Karl Morell	411

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

C-O-N-T-E-N-T-S

	<u>Page</u>
<u>OTHER RAILROADS</u>	
Bessemer & Lake Erie Railroad Company William Sippel	417
Housatonic Railroad Company Edward Rodriguez	419
Livonia, Avon & Lakeville Railroad Corporation Kevin M. Sheys	447
Philadelphia Belt Line Railroad Company Charles A. Spitulnik	452
Reading, Blue Mountain & Northern Railroad Company Eric Hocky	458
New York & Atlantic Railway Mark H. Sidman	462
Gateway Western Railway Company William Mullins	467

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

C-O-N-T-E-N-T-S

PageNEW YORK/NEW JERSEY

State of New York	
William L. Slover	474
New York City Economic Development Corporation	
Charles A. Spitulnik	481
Erie-Niagara Rail Steering Committee	
John K. Maser III	486
Genesee Transportation Council	
Doug Midkiff	492
Southern Tier West Regional Planning and Development Board	
Paul Lamboley	496

CHICAGO

Wisconsin Central, Ltd.	
Robert Wheeler	511
Elgin, Joliet & Eastern Railway Company, Transtar, Inc., and I&M Rail Link	
William Sippel	517
Illinois International Port District	
Richard F. Friedman	523

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

P-R-O-C-E-E-D-I-N-G-S

(10:05 a.m.)

MR. WILLIAMS: Good morning. Please come to order.

CHAIRMAN MORGAN: Well, that was a nice moment of silence; thank you. There will not be any more of those for the next two days.

Good morning. We are here today and tomorrow to hear oral argument in the CSX/NS/Conrail merger proceeding.

We will discuss and vote on this case in a voting conference next Monday.

This merger is, in many ways, unprecedented. It is unprecedented in its size with 44,000 miles of rail line covered by the application, which itself amounted to almost 15,000 pages. It is unprecedented in its range, with 24 states and the District of Columbia affected.

It is unprecedented in terms of the number of private sector agreements reached, including agreements with three major rail unions and the nation's largest shipper organization and a number of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 agreements regarding the environment and safety.

2 It is unprecedented in terms of the number
3 of parties, more than 150; the number of speakers at
4 this argument, around 70; the length of the arguments,
5 two very full days; and the number of Members of
6 Congress speaking at the argument, around 20.

7 And it is unprecedented in that the Board
8 has already issued some 85 decisions.

9 Also unprecedented is the way in which the
10 Board has handled the safety and environmental issues
11 in this case. The Board issued the first full
12 environmental impact statement in a merger proceeding.

13 The EIS was expansive in scope, covering
14 3,000 pages, and addressing a variety of environmental
15 issues over a broad section of the nation.

16 And there was close cooperation between
17 the Board and the Department of Transportation in
18 developing unprecedented safety integration plans.

19 And finally, the applicants would say that
20 this merger is unprecedented because it would redraw
21 the rail map in the East, completing a process begun
22 by Congress to resurrect rail service in the East

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 after the failure of the Penn Central, and would do so
2 in a pro-competitive way that will produce \$1 billion
3 in quantifiable public benefits.

4 In assessing major merger transactions,
5 the Board is directed by law to approve mergers that
6 it finds are in the public interest.

7 In determining whether a merger is in the
8 public interest, the Board must consider at least five
9 factors: The effect of the merger on the adequacy of
10 transportation to the public; the effect on the public
11 interest of including or failure to include other rail
12 carriers in the area involved in the proposed
13 transaction; the total fixed charges that result from
14 the proposed transaction; the interest rail carrier's
15 employees affected by the proposed transaction; and
16 finally, whether the proposed transaction will have an
17 adverse effect on competition among rail carriers in
18 the affected region or in the national rail system.

19 The Board has broad authority to impose
20 conditions to alleviate anti-competitive effects or
21 harm to essential rail service or to mitigate
22 potential environmental impacts. And it must impose

1 labor-protective conditions to mitigate the harm to
2 non-management employees who are adversely affected by
3 the transaction.

4 The law thus places many issues before us
5 when carriers propose major financial transactions.

6 Today and tomorrow we will hear about
7 these issues from a broad spectrum of interests.

8 Much discussion will focus on competition.
9 There is a general view that this merger, if approved,
10 will provide new competition in certain areas.

11 However, we will hear today that that is
12 not the end of it.

13 Some of the speakers will want us to act
14 in a way that they believe maintains the competition
15 they already have today.

16 Some will argue that they will be
17 competitively disadvantaged because of the merger, if
18 approved without additional changes, will provide new
19 options to their competitors, and thus we should act
20 so as to equalize their competitive position.

21 Some will argue that we should use this
22 proceeding to add even more competition in certain

NEAL R. GROSS

COURT REPORTER, J AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 areas beyond the proposal before us today.

2 All of these issues are serious and we
3 take them seriously.

4 Some of the discussion will focus on the
5 need to retain essential rail services. A number of
6 short line and regional carriers and their customers
7 will argue that any approval of this merger must
8 assure that services that these carriers provide to
9 their shippers not be disrupted by actions of the
10 merging carriers that divert traffic away from their
11 smaller connecting railroads.

12 We are sensitive to the role that the
13 smaller railroads play in serving the shipping public.

14 Other discussion will focus on
15 environmental and safety issues. This merger, if
16 approved, will shift traffic patterns and should also
17 divert from truck to rail which would increase the
18 rail traffic moving through certain communities.

19 As I said, our environmental section
20 issued an extensive EIS, for which I compliment them.

21 The Board will review the arguments about
22 environmental impacts carefully as it considers its

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 final disposition of the EIS.

2 Discussion will also center on operational
3 and service issues, including the interaction between
4 freight and passenger service.

5 The parties today will ask us to monitor
6 carefully the implementation of any merger that may be
7 approved to insure that it is implemented safely and
8 in a way that enhances rather than disrupts good
9 service.

10 Obviously, these issues are important and
11 we take them seriously.

12 Finally, we will hear about the potential
13 impact of the proposed transaction on rail employees.

14 Some rail labor interests support the
15 merger while others have concerns about its
16 potentially adverse impact on employees.

17 We take the concerns of rail labor
18 seriously.

19 In this case, the Board has been faced
20 with many complex and challenging issues, and I look
21 forward to our dialogue today and tomorrow in
22 resolving these issues before us in a way that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 promotes the public interest.

2 Before we begin the oral argument, I do
3 need to address a procedural matter that has come up
4 within the last 24 hours. On Monday, one of the
5 applicants filed a document, CSX-152, which indicates
6 the applicant's willingness to accept additional
7 conditions.

8 Yesterday, Indianapolis Power and Light
9 Company moved to strike that document for a variety of
10 reasons, including that it is untimely, that it
11 contains extensive argument, and that it improperly
12 seeks to bind IPL by a settlement that the railroad
13 reached with another party but that IPL rejected.

14 Vice Chairman Owen and I are granting the
15 motion to strike and the pleading will be stricken.
16 The Board encourages settlements and although the
17 federal rules of evidence may limit a party's right to
18 disclose another party's offer of settlement, it does
19 not foreclose the applicants at this argument from
20 advising the Board of concessions that they are
21 willing to make.

22 CSX-152, however, is not a settlement and

1 it has been filed well after the close of the record
2 in this proceeding and therefore will be rejected.

3 Now, quickly, let me run through some
4 hearing procedures. We will be here late into the
5 evening today and tomorrow; we will take breaks.

6 I want to emphasize that during these
7 breaks as well at the conclusion of the oral argument
8 there will be no contact between Board members and
9 staff and the parties, the media and the general
10 public about the substance of the case or the oral
11 arguments.

12 We have divided the witness list into
13 panels; I will call panels up as appropriate and some
14 panels will be split up, given the seating at the
15 witness table.

16 I remind the speakers to adhere to the
17 time allotments and pay close attention to the lights.
18 Board members will be asking questions either during
19 your presentation or at the end.

20 We have also provided a podium for those
21 speakers who wish to use it. However, you may speak
22 from your chair if you wish.

1 Before we begin, I should note that we
2 have several Members of Congress who will be speaking,
3 some today and some tomorrow. I welcome all of you
4 and look forward to hearing what you have to say.

5 I now recognize the Vice Chairman for any
6 comments he may have.

7 VICE CHAIRMAN OWEN: Thank you, Madam
8 Chairman.

9 I would like to preface my remarks this
10 morning by noting that the Chairman lays the
11 groundwork and guidelines for the hearing and she will
12 do that throughout the hearing. I will take care of
13 a lot of the generalities, so with that I have some
14 remarks I would like to make this morning.

15 I am looking forward to an insightful and
16 provocative discussion today about the merits of what
17 may very well turn out to be the most significant rail
18 merger in recent history.

19 Make no mistake about it, history will
20 reflect that this merger, if approved, may represent
21 a major turning point toward improving not just the
22 economic health of the eastern half of the nation, but

1 of the nation as a whole.

2 Specifically, we have an opportunity today
3 to make a major contribution to the commercial
4 transportation infrastructure of our nation that will
5 last beyond our lifetimes.

6 This contribution can have a lasting
7 impact on future generations and our ability as a
8 nation to continue to lead the world into the next
9 century and beyond.

10 Our commercial transportation
11 infrastructure will determine if we, as a nation, will
12 be able to compete in the international market place
13 and produce jobs and opportunities for our citizens.

14 Maintenance of a viable freight railroad
15 system is essential. Such systems touch just about
16 every aspect of our economy. Thus, each and every
17 participant here today must realize the responsibility
18 that they have in representing their constituents, be
19 they shippers, utilities, labor, management,
20 shareholders, financial institutions, government,
21 communities, ports, manufacturers, farmers, truckers,
22 consumers and much, much more.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I will speak more about the specific
2 responsibility that I think we all have here today.
3 The sheer size, scope, demographic and geographic
4 reach of this merger is unprecedented. Will it lead
5 to substantial operating cost savings, improved rail
6 service, enhanced competitive options, and
7 enhancements to the quality of life is ultimately what
8 we must decide with your help.

9 Likewise, we must rely on your arguments
10 today to illuminate fully and resolve competing
11 interests with respect to the impacts of this proposed
12 merger on rail employees, communities and the
13 environment.

14 This is your opportunity to develop
15 further the record of fully airing the issues and
16 conflicting points of view that the STB must resolve.

17 As you well know, the benchmark, indeed
18 the one question that must be asked in the contest of
19 such mergers, is whether it is in the public interest.

20 Controlling federal statutes as well as
21 judicial pronouncements by and large set forth the
22 scope of the agency's analysis.

1 You all know what scope the legal,
2 economic and environmental analysis consist of, so I
3 won't belabor that point here.

4 However, from my point of view, what is
5 not etched in stone and where there is tremendous room
6 for public input is in the process. In this regard I
7 cannot emphasize enough that you here today are
8 charged with the responsibility to bring to this
9 discussion meaningful and productive dialogue.

10 If approved, this merger is only going to
11 work for the benefit of the nation. If railroads,
12 large and small, shippers, laborers, and impacted
13 communities sit down and accurately assess their
14 interests and then propose solutions, while they may
15 not be the most ideal, nevertheless they come as close
16 as possible to being beneficial to everyone.

17 This, I believe, is a responsibility and
18 an obligation that we all must endeavor to fulfil.

19 It has been argued that there is much
20 about this proposed merger to like. It may be
21 indisputable that this merger will bring competition
22 to parts of the East and the Northeast where for many

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 years it has been nonexistent.

2 Ports and impacted commercial districts
3 should experience prosperity never before realized.

4 Freight rates should stabilize if not fall
5 altogether.

6 Given the proposed new level of
7 competition and shippers' options that I expect to
8 hear about today, the environment and quality of life
9 would also be enhanced given the number of trucks that
10 should be eliminated from the nation's highways as a
11 result of the merger, no matter how fast Congressman
12 Shuster builds highways.

13 On the other hand, we need only look at
14 the recent service problems in the West to realize
15 that all of the positive attributes discussed above
16 could amount to no more than a simple wish list and
17 attempts to achieve them could turn into a nightmare
18 if competing interests are not reconciled, the
19 computer-based asset distribution tracking information
20 systems are not timely brought on line, if appropriate
21 safety and environmental enhancements are not
22 achieved, if infrastructure improvements are not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 contemplated, planned and timely implemented, and
2 last, but not least, if a well-trained, dedicated yet
3 flexible work force is not given its appropriate place
4 in the mix.

5 On the latter point let me just say that
6 labor had a stake in this and should rightfully be
7 heard.

8 A dedicated work force will be one of the
9 key ingredients to the success of an endeavor of this
10 kind.

11 Corporate America's right to plan for and
12 take steps to enhance the bottom line. But corporate
13 America must not forget its labor forces upon whose
14 blood, sweat and tears to which corporate America's
15 prosperity can be attributed.

16 This industry is perhaps unique in view of
17 its special relationship with its labor forces. It
18 owes a lot to its labor forces and should respond in
19 kind.

20 Thus, at a minimum, I expect to hear today
21 that labor and management is at least predisposed or
22 committed to working out their differences.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Let me repeat something I said moments
2 ago. Management has the right to expect a dedicated,
3 flexible work force. But it is also true that labor
4 has a right to count on some degree of stability, for
5 after all, the economic health and livelihood of
6 entire families can be impacted by improved
7 labor/management decisions.

8 This statute, this agency and the courts
9 have made it very clear that management must not
10 affect its labor force in such instances more than
11 what is necessary to achieve the public transportation
12 benefits of such transactions.

13 As you well know, there are recognized
14 procedures in place designed to smooth out most bumps
15 in this road before resorting to federal relief.

16 Accordingly, I also expect to hear today
17 not just that there yet remains some areas of
18 differences, but also the parties have come to the
19 bargaining table with respectable positions and good
20 faith efforts to do not only what is best for them but
21 what is best for the nation as a whole.

22 So, with that I say let's begin the day

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and I will turn it back over to the Chairman.

2 I wish you all the best, that we come out
3 of this with reconciled differences and able to work
4 together so that we do not have the snafus that we
5 have in the West, because I do not want them back at
6 this agency's doorstep.

7 Thank you.

8 CHAIRMAN MORGAN: Thank you, Vice Chairman
9 Owen.

10 We will now proceed with the schedule.

11 Before we begin with the formal
12 presentations from Members of Congress, Daniel Renberg
13 of Senator Arlen Specter's staff will submit Senator
14 Specter's remarks for the record. He was, of course,
15 scheduled to testify but he is in the hospital and we
16 send our best wishes to him.

17 Please proceed.

18 MR. RENBERG: Thank you, Chairman Morgan.

19 It is with great trepidation that I come
20 here before you to represent Senator Arlen Specter in
21 a legal proceeding.

22 As you know, something like this surgery

1 is the only thing that could have kept him from being
2 here given his activity on this issue.

3 The Board may be pleased to know that he
4 continues to recover well from his surgery. Just
5 yesterday he complained to his family that there is no
6 squash court in the coronary care unit.

7 With your permission, I will just briefly
8 summarize what is in the document which we have
9 submitted, a written statement.

10 Senator Specter continues to have
11 significant concerns about the potential impact of the
12 breakup on Pennsylvania and the Northeast, in
13 particular. As he said, there is no more significant
14 issue for Pennsylvania than the Conrail takeover.

15 He also says in his written statement, at
16 this date he continues to believe that it is unclear
17 whether consummation of the transaction is necessarily
18 in the public interest, which is the legal standard
19 that you are dealing with.

20 His statement talks about the effect on
21 Conrail employees, Pennsylvania communities, shippers,
22 other Pennsylvania railroads, the port, trucking

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 companies, commuter and inner-city passenger rail
2 service, rail safety and the environment.

3 He was greatly appreciative that you
4 allowed a staffer like me to come up and present them.

5 CHAIRMAN MORGAN: Well, you have presented
6 them well. Thank you.

7 VICE CHAIRMAN OWEN: Would you take the
8 Senator our best and hopes that he has a speedy
9 recovery?

10 MR. RENBERG: I will. Thank you.

11 CHAIRMAN MORGAN: We will now proceed with
12 the first group of Members of Congress.

13 I would like Senator Warner, Congressman
14 Shuster and Congressman Bliley to come up.

15 I think I would like to begin with you,
16 Chairman Shuster since you are the creator and
17 authorizer of the Board and our fate is in your hands.

18 And since we are so non-controversial
19 these days that is probably pretty easy to handle.

20 But we are honored to have you and I know
21 this is of great interest in the pending matter.

22 REPRESENTATIVE SHUSTER: Thank you very

1 much, Madam Chairman and Mister Vice Chairman. I
2 certainly appreciate the opportunity to be here.

3 I want to commend you on what I believe to
4 be an outstanding job of this Board, thus far.

5 I might comment, with regard to building
6 highways, one of the reasons that we want to build
7 these modern highways is so we can have better hookups
8 with rail terminals as well as seaports and airports
9 so that we can have a more productive and better
10 America in which to live.

11 I am here today to express my strong
12 support for the proposed acquisition of Conrail by
13 Norfolk Southern and CSX.

14 From both a national and a regional
15 perspective, this transaction is a significant net
16 plus. Conrail has done an excellent job with the
17 resources available to it. But it does not have the
18 capital resources so vital in an industry that is
19 beginning to experience a capacity crunch. And
20 indeed, Norfolk Southern and CSX can provide the
21 capital necessary to draw on to meet the future
22 infrastructure needs of the railroad.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Indeed, in my judgement, Conrail cannot
2 survive in the long run, standing alone.

3 Competitively, bringing two healthy rail
4 carriers into the Northeast is a major advance for the
5 region and the nation.

6 I first came to Congress as we were
7 struggling with the aftermath of the Penn Central and
8 other northeastern rail bankruptcies. Indeed, I was
9 deeply involved in the creation of Conrail.

10 Much of our effort was successful because
11 Conrail came out of this disaster and was able to
12 stand on its own feet as a private sector railroad.

13 But some of the potential competitive
14 options for northeastern rail shippers that we hoped
15 for just didn't materialize.

16 This left Conrail without a major regional
17 rail competitor. That is why bringing Norfolk
18 Southern and CSX into the region holds the potential
19 for greater competition between two large railroads
20 having the needed capital resources, as is already the
21 case in the West and Southeast.

22 This transaction, on a competitive basis,

1 is clearly in the public interest. Having Conrail
2 succeeded by NS and CSX is also good for Pennsylvania.
3 Many Conrail facilities, including the Altoona and the
4 Hollidaysburg shops, are among the crown jewels of the
5 system that was rebuilt after Penn Central.

6 And I am very pleased that the NS
7 operating plan includes a continued and an expanded
8 role for these highly productive facilities and their
9 highly skilled work forces.

10 As to the highly trained Conrail workers
11 in my district and elsewhere, I am very pleased that
12 NS and CSX are going forward with efforts to negotiate
13 implementing agreements as soon as possible.

14 Any change in corporate control inevitably
15 produces some uncertainties that affect the employees.
16 But I am confident that both the carriers and the
17 unions can work out any differences in the context of
18 well-established procedures for implementing the
19 transaction, once approved by the STB.

20 I would also note that I am perhaps the
21 only Member of Congress appearing today who has
22 actually worked as a laborer on the railroad,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 specifically what was affectionately known as a gandy
2 dancer for the maintenance of way.

3 So, I have had some hands-on experience,
4 literally.

5 Safety is always a prominent concern in
6 railroad, and as the law contemplates, the Department
7 of Transportation has filed its comments with the
8 Board on this and other issues. This Board will
9 undoubtedly give those comments due consideration.

10 I do want to emphasize, however, that
11 Congress specifically transferred all safety
12 regulatory authority from the ICC to the Department of
13 Transportation in 1966.

14 If there are specific operational safety
15 requirements that are supported by the facts and are
16 warranted on a sound cost/benefit basis, the
17 Department of Transportation's Federal Railroad
18 Administration has all the authority it needs to
19 impose such requirements without enlisting the Surface
20 Transportation Board as a surrogate.

21 And finally, I want to commend both
22 members of the STB, Chairman Morgan and Vice Chairman

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Owen, for their diligent work in analyzing and
2 processing this very complicated application. Just a
3 glance at the volumes of information in the
4 application should persuade anyone that this is a very
5 highly complex matter.

6 Yet, the STB has struck an excellent
7 balance between expeditious handling of the case on
8 the one hand, and giving all the interested parties an
9 opportunity to be heard, on the other.

10 Perhaps the most important point I can
11 make is that delay would be very, very costly. If
12 this transaction is delayed it will be costly in terms
13 of operating efficiency, in terms of service to
14 shippers, and in terms of productivity. Indeed, I am
15 told that as each day goes by it costs \$1 million a
16 day for each of the two railroads involved in the
17 transaction.

18 So, delay that is something that would be
19 very, very harmful.

20 This is a carefully crafted agreement, it
21 is consistent with the STB's policy of encouraging
22 voluntary private sector resolution of conflicts.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Your performance shows that Congress
2 definitely got it right when we opted for a
3 bipartisan, decisionally-independent body with a
4 bipartisan membership and staggered statutory terms.

5 I thank you very much for the opportunity
6 to appear here today.

7 CHAIRMAN MORGAN: Thank you, Chairman
8 Shuster.

9 First of all, let me say that the
10 successes that you talk about in handling this case
11 are really due the employees here at the Board. They
12 are a fine group of people. All 135 of them work very
13 hard and it is really to their credit, so I thank you
14 for those comments.

15 Thank you very much.

16 I noticed Congresswoman Fowler has joined
17 us. If you would like to come up to the table?

18 Senator Warner, would you like to speak
19 next?

20 SENATOR WARNER: Madam Chairman, to my
21 right is the dean of the Congressional Delegation from
22 Virginia. I would not want to transgress on that high

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 post.

2 CHAIRMAN MORGAN: I have worked in the
3 Senate; I feel I have to accommodate Senators.

4 SENATOR WARNER: You are very nice. I
5 will defer to my colleague, then follow.

6 REPRESENTATIVE BLILEY: I don't know what
7 that is going to cost me, Madam Chairwoman, but I am
8 sure it is going to be expensive.

9 CHAIRMAN MORGAN: Well, it won't cost me
10 anything; it is between you two.

11 REPRESENTATIVE BLILEY: Chairman Morgan,
12 Vice Chairman Owen, it is my pleasure to appear before
13 you today to urge that the Board approve the
14 application filed by CSX and Norfolk Southern to
15 acquire Conrail.

16 I make this suggestion because I firmly
17 believe that this acquisition will be good for the
18 nation and yield benefits to shippers, consumers and
19 the economy as a whole.

20 Let me begin by offering a few comments
21 regarding CSX.

22 As you may know, CSX is headquartered in

1 Richmond, Virginia which I am proud to represent in
2 the House. CSX is an outstanding corporate citizen
3 and a tremendously important part of the economic life
4 of my district and of Virginia.

5 Today, CSX alone employees 1,600 Virginia
6 residents, serves almost 1,500 industries and other
7 businesses in Virginia and is a critical part of the
8 economic infrastructure of our Commonwealth.

9 I believe that this acquisition should be
10 approved because it is founded on growth. CSX will
11 grow its business by helping its customers to grow
12 theirs.

13 It should actually lead to more
14 competition, not less, as some of its critics have
15 claimed.

16 The acquisition combines for both CSX and
17 Norfolk Southern, two geographically distinct but
18 complementary rail properties into one with greater
19 range and reach.

20 As a result, CSX will acquire two arms of
21 the Conrail system, adding more than 4,000 miles of
22 new track to its network.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 It is striking to note that there is very
2 little overlap between Conrail and the CSX and Norfolk
3 Southern systems; only 29 miles across the entire
4 system. This alone speaks volumes to the pro-
5 competitive nature of this transaction.

6 The new CSX network will offer rail
7 customers more operations and greater efficiency. For
8 the first time, CSX customers will have good through
9 routes to every major market in the eastern United
10 States.

11 The new CSX network will stretch from New
12 Orleans to New York and from Miami to Montreal.

13 Virginia businesses will be direct
14 beneficiaries of extended market reach. With single
15 rail carrier service from Richmond to Boston,
16 Petersburg to Albany, Newport News to Buffalo, and
17 Charlottesville to Syracuse.

18 This long haul system offers a number of
19 advantages. The number of rail interchanges will be
20 reduced, saving as much as 24 hour transit time on
21 some of the longer haul routes.

22 Hundreds of miles will be eliminated from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 some routes as CSX will shift traffic to more
2 efficient lines, formerly operated by Conrail.

3 In many places along the heavily traveled
4 I-95 corridor, particularly the re-vitalized rail
5 network will offer customers an alternative to trucks.
6 More than 26,0000 truckloads will be delivered
7 annually from Virginia highways to CSX rails. So you
8 see, rail customers will have their goods carried more
9 efficiently and the overall level of competition is
10 likely to increase.

11 I know from my conversations with John
12 Snow, and others at CSX, that the company is dedicated
13 to a very high level of service on the new system.
14 The officers and employees of CSX have been planning
15 for the transition for more than a year and have set
16 in motion deliberate steps to anticipate and eliminate
17 problems before they occur.

18 Like you, I have heard from many of my
19 colleagues about the problems with the rail system in
20 the western United States. I have been assured that
21 CSX has been studying these problems so that they will
22 not be repeated in the East.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 For example, CSX has been purchasing
2 locomotives in trying to anticipate the demand of its
3 customers. In addition, most Conrail employees will
4 remain on the job, bringing their experience to the
5 new CSX system.

6 Madam Chairman, these employees are to be
7 commended for keeping morale high and operating their
8 railroad safely during this process.

9 That said, I am concerned that any future
10 delay could undermine their future ability to continue
11 functioning in such an exemplary manner.

12 To say that this acquisition is important
13 to CSX and Norfolk Southern is obvious. Given the
14 advantage it should produce for customers, given the
15 efficiencies it should generate, and given the
16 employment benefits that should result from the
17 acquisition, I urge to approve this application
18 without burdensome conditions that would undermine
19 many of its benefits so that an improved rail system
20 in the East can become a reality.

21 I thank you for the opportunity to present
22 these views to you today and would be glad to respond

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 to any questions you might have.

2 Thank you, Madam Chairman.

3 CHAIRMAN MORGAN: Well, thank you very
4 much. I think your statement is very clear; you are
5 very much in support. We will take that very much to
6 heart.

7 Thank you for joining us.

8 REPRESENTATIVE BLILEY: Thank you.

9 CHAIRMAN MORGAN: Senator Warner, would
10 you like to go next.

11 SENATOR WARNER: Thank you very much,
12 Madam Chairman.

13 Given what my colleague has said, I think
14 I could best participate in this hearing by asking if
15 I could submit my statement for the record and make a
16 few observations, thereby shortening this procedure,
17 but in no way lessening my sincerity in appearing here
18 today.

19 CHAIRMAN MORGAN: Absolutely.

20 SENATOR WARNER: As a matter of fact, I
21 say back during the course of those excellent opening
22 statements by you and the Vice Chairman to reflect on

1 two things, if I might be personal.

2 First, we could use your firm hand in
3 running hearings in the Senate. Those statements were
4 direct, to the point and substantive where most of
5 ours are strictly posturing.

6 CHAIRMAN MORGAN: I have been on the other
7 end of some of those, I might add.

8 SENATOR WARNER: Yes, I know, I am
9 familiar with that.

10 But given the decorum and the manner in
11 which you and the Vice Chairman approach this, I
12 depart this hearing with a sense of confidence that
13 this Board has the ability to fairly and objectively
14 make this very important decision.

15 It is terribly important for reasons
16 stated by colleagues here today, but I would like to
17 add two additional, to the extent that I have any
18 expertise in the Senate in the area of defense, to
19 which I have devoted my lifetime.

20 I travel a great deal throughout the world
21 and recognize that it is a very troubled world,
22 becoming increasingly so, and that the United States

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 will soon be faced with additional expenditures and to
2 seek additional efficiencies in its defense spending.

3 You might ask how that impinge on this
4 important decision?

5 We are proud in Virginia, going back to
6 the very formation of our republic, that Virginia
7 ranks either second, third or fourth in terms of total
8 defense spending; the number of bases, we have the
9 largest naval base in the world, one of the largest
10 air force, and several of the largest army bases, all
11 of which are served by this transportation system.

12 I have known these two railroads. CSX and
13 Norfolk Southern, all my life. In the audience today
14 are the current chief operating officers, and
15 preceding them have been similarly distinguished
16 individuals. We are fortunate in that sense, that
17 these two companies have had only the finest.

18 They bring before this board in their
19 respective applications for the Conrail system, I
20 think integrity unparalleled in our system.

21 They can bring about with this merger
22 those efficiencies that can help invoke savings in

1 defense and make for a stronger overall defense
2 system.

3 Secondly, the world has changed a great
4 deal during the course of my 20 years in the Senate
5 and it is now a one-world market. Each morning when
6 we awaken, the other half of the world is about to
7 settle down for the night, having been in direct
8 competition in every facet of our everyday life. And
9 to the extent we have a more efficient transportation
10 system is the extent to which we can survive in this
11 one-world market.

12 I happen to be privileged to be chairman
13 of the Infrastructure Surface Transportation System
14 and work with Chairman Shuster on the highway bill.

15 We did bring about an historic landmark
16 piece of legislation in the Senate recognizing the
17 need for greater spending in surface transportation
18 for one reason. That is to allow the American
19 citizens to have a more efficient and a safer
20 transportation system on its highways, so that we can
21 compete in this one-world market.

22 The remaining link, in my humble

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 judgement, is to make a similar system with the rail.

2 With that I conclude and again feel quite
3 confident that this decision will be made fairly and
4 objectively and in the broad interest of our country.

5 I thank the Chairman, I thank the Vice
6 Chairman.

7 CHAIRMAN MORGAN: Thank you for your
8 confidence; we appreciate it. Thank you both for your
9 comments from Virginia.

10 Congressman LaFalce, I understand that you
11 would like to make some remarks. Why don't we hear
12 from Congressman Fowler first and you can join us.

13 I am trying to keep this running.

14 REPRESENTATIVE FOWLER: I like the way you
15 run meetings.

16 CHAIRMAN MORGAN: I just have to make sure
17 I get everybody right.

18 REPRESENTATIVE FOWLER: Chairman Morgan,
19 Vice Chairman Owen, I really appreciate the
20 opportunity to offer my views in support of the CSX
21 Norfolk Southern application to acquire Conrail.

22 As a member of the Railroad Subcommittee,

1 I have followed these proceedings with keen interest.

2 The transaction has been the subject of
3 many discussions, both formal and informal among our
4 subcommittee members.

5 I hope that after examining all of the
6 evidence, and I know that you have stacks and stacks
7 of it, that you will come to the same conclusion that
8 I have. Namely, that this is a good proposal being
9 brought forward by two strong and well run railroads
10 and that it will have enormous benefits for shippers
11 and communities across the eastern United States, and
12 indeed across the country.

13 As you probably know, CSX Transportation
14 is based in my home town of Jacksonville, Florida.
15 So, as both a Representative in Congress and a former
16 president of the Jacksonville City Council, I have had
17 a long and very satisfying relationship with CSX and
18 its people.

19 This is a fine organization that will do
20 all it can to honor its commitments to make this
21 transaction a good one for shippers, employees and the
22 communities in which it operates.

1 But I wouldn't have taken this extra step
2 of coming to appear before you today, however, if
3 CSX's civic record was the only basis on which I could
4 recommend approval of this application.

5 I am here because after sitting through
6 several hearings, markups and meetings of my own on
7 Capitol Hill on the subject of rail service, rail
8 deregulation, shipper interests, labor relations and
9 rail safety, I am convinced that the CSX and Norfolk
10 Southern proposed acquisition of Conrail will be good
11 for the country's transportation system as a whole.

12 The extended reach of a new single line
13 service will improve efficiency, will cut transit
14 times and open new market opportunities. Truck
15 congestion on our highways will be produced and
16 further air quality deterioration in our crowded urban
17 areas will be avoided.

18 This transaction may, in fact, offer the
19 best and broadest package of public interest benefits
20 of any rail acquisition in recent memory.

21 Many parties will be coming before you
22 today and in the next several days, I gather, seeking

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 special conditions.

2 As a member of the Transportation and
3 Infrastructure Committee, I am acutely aware that some
4 rail labor organizations have proposed to impair the
5 Board's ability to bring those broad public benefits
6 to fruition by withholding the Board's statutory
7 authority to exempt a person from laws and contracts,
8 "as necessary to let that person carry out the
9 transaction."

10 Rail mergers and consolidations cannot be
11 implemented without modifications to existing
12 collective bargaining agreements. So the Board must
13 retain this pre-emption authority.

14 The Supreme Court, itself, has held that
15 without this process, "rail carrier consolidations
16 would be difficult if not impossible."

17 That does not mean that the railroads can
18 run roughshod over labor agreements. As you know,
19 there is a process in place which the railroads must
20 follow to obtain modifications.

21 The railroads must negotiate implementing
22 agreements with their unions. Where those direct

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 negotiations fail, unresolved issues are subject to
2 arbitration by a neutral third party, and that
3 arbitration is subject to review by the STB and
4 thereafter by the courts.

5 I hope that the Board will resist this
6 effort to defeat the very efficiencies and benefits
7 that the proposed transaction would yield.

8 In conclusion, I also want to commend the
9 Board for its very thorough review of this
10 transaction. In particular, the environmental review
11 has been the most extensive in the history of the
12 Board, and the suggested conditions are truly
13 unprecedented.

14 As a member of the Railroad Subcommittee,
15 I know that your resources are limited and that you
16 truly deserve our appreciation for the level of
17 professionalism you have demonstrated in managing this
18 very complicated process.

19 I urge you to give expeditious approval to
20 this transaction.

21 Again, thank you for giving me the
22 opportunity to speak before you in favor of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 pending application.

2 CHAIRMAN MORGAN: Thank you for your
3 compliments and your were very attentive with several
4 Board reauthorization hearings and I appreciate that
5 as well. So, thank you for joining us. Congressman
6 Boehner I understand you joined us, so why don't you
7 come up and I'll hear from Congressman LaFalce first.

8 REPRESENTATIVE LAFALCE: Good. Thank you
9 very much Madam Chairman and distinguished members of
10 the Board. I'm very pleased to testify today
11 regarding the impact on my district of the CSX and
12 Norfolk Southern application to acquire Conrail. My
13 district includes approximately one third of the city
14 of Buffalo. It goes up into Niagara Falls and over
15 east to Lockport and actually into the city of
16 Rochester.

17 I am very concerned about my district, its
18 railroad service and the very high cost of that
19 railroad service that I think has been a considerable
20 detriment, especially to the business community in
21 western New York.

22 When northeastern freight railroads went

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 bankrupt in the 1970s, the United States Railway
2 Association explicitly stated that the preferred
3 alternative would be for the Niagara Frontier to be
4 served by at least two rail carriers. CSX's
5 predecessor, Chessie System, was scheduled to service
6 our region, along with Conrail. However, because
7 Chessie was unable to acquire the necessary rail
8 lines, a Conrail monopoly was created that has not
9 served us well.

10 Although the Niagara Frontier is one of
11 the largest rail markets, generating over one half
12 billion dollars in annual rail freight in 1995, the
13 lack of competition resulting from this monopoly has
14 had a stifling effect on many of our area's
15 businesses.

16 Conrail has restricted the availability of
17 reciprocal switching to the majority of rail shippers
18 in the region and the reciprocal switching charges for
19 those shippers that have had access averaged \$450.
20 Now that's three times the national average. I do not
21 have to tell you what that does to competition.

22 From 1980 to 1997 in one of my counties

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 along, Niagara County, over 15,000 jobs were lost.
2 Now it's difficult to establish absolute causality,
3 but there is no question that the high cost of rail
4 service was a significant contributing factor.

5 This Board now has a tremendous
6 opportunity, and I'm hoping that you will take
7 advantage of that opportunity. Remedy this situation
8 for us. Set conditions that would require CSX and
9 Norfolk Southern to provide the Niagara Frontier with
10 the sam type of service that they plan to provide to
11 Conrail's other major markets, shared access. You
12 have this opportunity, you have this power. Please do
13 this.

14 I've heard from so many businesses in my
15 district who fear that the proposal will place them at
16 a severe competitive disadvantage to their competitors
17 in Detroit, in Philadelphia, in New Jersey. Now we
18 don't want better conditions than Detroit,
19 Philadelphia, New Jersey, etc., etc. But we do not
20 want to be the only major market in the Northeast that
21 does not have shared access. That would be unfair and
22 you can prevent that unfairness. You can give us what

1 every major market in the Northeast will have, shared
2 access.

3 Let me just look at a few of my
4 industries. Niagara Mohawk Power Corporation has what
5 is known as the Huntly Station, in my home town, the
6 town of Tonawanda. They're almost exclusively
7 dependent on rail deliveries for coal to fuel the
8 plant. Coal transportation costs are approximately 35
9 percent of the total delivered fuel costs to this
10 Huntly Station, constitutes a major component of the
11 price of electricity in western New York.

12 The Huntly station competes with plants
13 owned by utilities in the shared access areas. Under
14 the acquisition proposal, CSX would be the sole
15 provider of rail service to Huntly. Whereas utilities
16 located in other areas would have shared access, they
17 can obtain rail service from both CSX and Norfolk
18 Southern. We believe that the competition is the best
19 way to lower rates. These other areas will have
20 competition and we will not. We believe we will
21 suffer on account of that and you have the power to
22 remedy that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Take Niagara County, we have about 80
2 large businesses that rely upon rail shipping in
3 Niagara County. Delphi Harrison Thermal Systems, a
4 division of General Motors. It employs almost 7,000
5 individuals. It's our largest employer. New York
6 State Electric & Gas contributed over \$14 million in
7 taxes annually to Niagara County. Numerous chemical
8 companies in Niagara County, whether it's Occidental,
9 Dupont, you name it.

10 All of these companies are heavily
11 dependent upon affordable transportation and would
12 suffer from the same type of unfair disadvantage as a
13 result of the differential rail rates that would allow
14 their competitors to reduce costs while theirs remain
15 the same.

16 The Erie Niagara Chautauqua Rail Steering
17 Committee has refiled -- has filed a request for
18 conditions, calling upon the Board to require the
19 applicants to create a shared access are in the
20 Niagara Frontier that would permit head to head
21 competition between CSX and Norfolk Southern. Why
22 not? Other major markets have it, will have it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 The Steering Committee has also suggested
2 that the Board increase competition by mandating more
3 trackage rights for other rail lines and by requiring
4 reasonable charges for reciprocal switching. All of
5 these are compatible. All of these are supplementary.
6 They are not exclusive. You can order all three,
7 shared access, additional trackage rights and
8 reasonable switching fees.

9 I'm also concerned about the lack of
10 competition that would result in Rochester and other
11 communities in Monroe and Orleans County under this
12 proposal. In this eastern portion of my district I
13 have many high tech firms. And a large percentage of
14 the freight shipped in and out of the region does move
15 by truck. However, there are certain supplies that
16 cannot be handled by truck and must rely upon rail
17 service.

18 For example, Eastman Kodak receives large
19 volumes of coal and other bulk raw materials and
20 supplies by rail. Conrail removed its intermodal
21 facilities from Rochester in 1992. But it still
22 controls the majority of track that runs through those

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 two eastern counties of mine.

2 And as in Erie and Niagara, Conrail is
3 virtually the only carrier with switching access to
4 the industrial sidings of many of Rochester industries
5 because the high switching charges prohibit other
6 railroads such as Rochester & Southern Railroad from
7 participating in competitive traffic.

8 So for this eastern portion, I strongly
9 support the recommendations of the Genessee
10 Transportation Council for the Board to encourage the
11 applicants to grant reasonable trackage rights and
12 switching fees when it will provide an opportunity for
13 competitive service.

14 You have the power and I ask you to
15 exercise it wisely and prudently. Thank you.

16 CHAIRMAN MORGAN: Thank you. I was going
17 to turn to Congressman Boehner next.

18 VICE CHAIRMAN OWEN: [Off mike] Can I ask
19 a question of him first? Are the rates competitive
20 now?

21 REPRESENTATIVE LAFALCE: They are not
22 unfortunately.

1 VICE CHAIRMAN OWEN: [Off mike] --
2 Conrail, is that the reason they are not --

3 REPRESENTATIVE LAFALCE: That's right
4 because we have not had competition the rates have
5 been three times the national average. This is an
6 opportunity to remedy that situation and to go back to
7 the situation that was called for initially by the
8 United States Railway Association when they said we
9 should be served, the Niagara Frontier, by two rail
10 carriers. And unfortunately that didn't happen.

11 CHAIRMAN MORGAN: Congressman Boehner?

12 REPRESENTATIVE BOEHNER: Madam Chairwoman,
13 it's a pleasure to appear before you and Vice Chairman
14 Owen this morning to urge the Board to approve the
15 acquisition of Conrail by CSX and Norfolk Southern
16 Corporations.

17 As a member of Congress representing the
18 Eighth District of Ohio, I have strong interests in
19 the direct effects of this transaction on my
20 constituents. Located in the western part of the
21 state, the Eighth District is home to farming, steel
22 mills, plants manufacturing automobile bodies, machine

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 tools and a variety of other metal parts.

2 Our citizens produce goods that must be
3 shipped to market and to other plants for processing
4 in the finished products and rail transportation is an
5 essential component of our economic well being.

6 Because of these constituent needs, I've
7 taken a careful look of the service route combinations
8 that will occur from this acquisition. Major routes
9 from the East Coast and the Northern Midwest will
10 traverse Ohio, connecting St. Louis with the East
11 Coast and Miami will be linked to Detroit or various
12 locations in Ohio and Chicago will be tied to the
13 Southeastern United States through Cincinnati.

14 The network that will be produced will be
15 integrated and efficient. And because interchange of
16 traffic between carriers will be significantly
17 reduced, traffic will move more easily through Ohio
18 and transit time will be improved.

19 The changes will also mean improved
20 traffic and safety conditions on our local roads. In
21 Miami County alone these improvements will save
22 taxpayers as much as \$100,000 annually in road

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 maintenance costs and they will reduce traffic on
2 local highways by as much as 800,000 truck miles every
3 year.

4 This transaction will also bring new
5 private sector infrastructure development to Ohio.
6 CSX alone intends to invest about \$175 million in
7 capital improvements in Ohio and major facilities at
8 the Collinwood Yard facility in Cleveland, and at
9 Willard will further expand the CSX system. CSX has
10 already invested \$6 million in a new rail connector in
11 Sydney, Ohio that will help make the entire Shelby
12 County area more attractive for local development and
13 economic growth.

14 These indicators tell me that the
15 transaction will be good for the Eighth District of
16 Ohio and our entire state. But it's just not Ohio
17 that will be aided by this transaction. Because of
18 its unprecedented pro-competitive nature, the
19 acquisition of Conrail by CSX and Norfolk Southern
20 will be good for the nation as a whole. Competition
21 will be significantly enhanced by having two strong
22 railroads, railroads that are roughly equal in size

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and scope competing with each other in the East.

2 Business opportunities will be created
3 through economic development that the transaction will
4 produce. Customers will be able to reach into new
5 markets for their products and raw materials and
6 options for rail service, especially intermodal
7 freight and coal, I think, will be improved.

8 As a strong advocate for enhancing the
9 ability of the private sector to expand and create
10 jobs, I'm extremely enthusiastic about this
11 acquisition. However, I would respectfully urge
12 caution to not encumber the transaction with
13 burdensome conditions that would reduce many of the
14 benefits it offers to the public, or agree to
15 proposals that would thwart the ability of the parties
16 to successfully implement the transaction.

17 Some who have participated in this matter,
18 for example, are arguing for labor protection over and
19 above the established package. A package that is
20 already amongst the most generous in the Nation.
21 Others suggest the Board should reverse its practice
22 of permitting necessary modifications to labor

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nes-gross.com

1 agreements through a process that provides for
2 arbitration between labor and management.

3 These proposals and other proposals like
4 them are unwarranted. Burdening the transaction by
5 embracing them, I don't think would be in our best
6 interest.

7 CSX and Norfolk Southern are two strong
8 companies and they are two good corporate citizens.
9 CSX currently operates rail freight throughout our
10 state and employs a good sized workforce in Ohio. The
11 company is dedicated to safe and efficient rail
12 service and I'm confident that both CSX and Norfolk
13 Southern will follow through on their commitments
14 because they have got proven track records of having
15 done so.

16 I'm also confident they will do so safely
17 because both have consistently proven that the safety
18 of their employees and the communities they serve are
19 of paramount concern.

20 I urge you to approve the transaction and
21 to help unleash the potential that this new rail
22 network offers to business and consumers alike. The

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 citizens of the Eighth District of Ohio and the Nation
2 as a whole stand to be the direct beneficiaries of
3 your favorable action. And I thank you for permitting
4 me the time this morning to come before you and to
5 give this testimony.

6 CHAIRMAN MORGAN: Well thank you for
7 joining us and giving us your views of support for the
8 transaction before us. Congressman Quinn?

9 REPRESENTATIVE QUINN: Good morning.

10 CHAIRMAN MORGAN: I'm still listening.

11 [Laughter.]

12 REPRESENTATIVE QUINN: Well thank you.

13 CHAIRMAN MORGAN: Remember our last
14 conversation?

15 REPRESENTATIVE QUINN: I remember our last
16 conversation and I wanted to begin by saying thank
17 you. We are reversed roles I guess this morning. The
18 last time we met --

19 CHAIRMAN MORGAN: It's all right, don't
20 worry.

21 REPRESENTATIVE QUINN: I'm comfortable,
22 actually I'm more comfortable here than I was the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 other time.

2 CHAIRMAN MORGAN: Maybe it's so.

3 REPRESENTATIVE QUINN: And as a member of
4 the Transportation Infrastructure Committee and the
5 Railroad Subcommittee, let me say thanks to you for
6 your open and frank discussion with us a couple of
7 weeks ago on reauthorization. Also thank you for
8 allowing me some time in a prepared statement here
9 this morning, and I know you have a lot to listen to
10 these next few days.

11 And also thank you for allowing me to join
12 my colleague John LaFalce. We split Buffalo, he and
13 I. I have about two thirds of the city, all within
14 Erie County. John goes over toward Rochester and our
15 Senators will be in later. But we deeply appreciate
16 that and your help for us in the last setting.

17 As you know over the past year I have
18 repeatedly voiced my concerns about the Norfolk
19 Southern CSX acquisition and its economic impact on
20 the western New York business community and the future
21 economic viability.

22 From a personal experience, competition we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 know is a key issue in any proposed rail merger or
2 acquisition, but it is doubly so involving
3 transactions I believe with Conrail. If you look at
4 a national rail map, Conrail for most of the
5 northeastern United States has been the only game in
6 town. And since Penn Central and other northeastern
7 freight railroads went bankrupt back in the 1970s.

8 I think that this accounts for the initial
9 enthusiasm, at least in principle, for much of the
10 Northeast when it became known that the Conrail route
11 system would be acquired by two healthy railroads, CSX
12 and the Norfolk Southern. As usual though, we've said
13 this before, the devil is in the details. And that's
14 where I expect most of the focus to be on as the Board
15 moves toward a final decision on this transaction
16 later this month and this summer.

17 The core of the CSX NS national division
18 of Conrail is to undo the merged route systems of the
19 old New York Central and the Pennsylvania Railroad.
20 For many areas that means restoration of some
21 competition that was lacking under Conrail.

22 But in other areas such as upstate New

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 York, as you've heard John LaFalce mention, the New
2 York Central and Pennsylvania did not really overlap
3 so that some serious competition concerns remains.
4 Encouraging, the applicants have addressed some of the
5 concerns on access or trackage rights with at least
6 one of the Canadian railroads seeking to expand its
7 territory as well as the announced National Industrial
8 Transportation League, the NIT League settlement. But
9 I think more of those accommodations are needed.

10 In western New York, we've mentioned the
11 tri-county coalition that's been comprised of both
12 public and private entities who joined forces to make
13 access and therefore lower shipping costs as part of
14 the merger. As John mentioned it's called the Erie-
15 Niagara-Chautauqua Counties Rail Steering Committee
16 and they filed a request for conditions with the STB
17 to consider as part of the review of the cost of doing
18 business in western New York.

19 The Steering Committee submission is a
20 document that's almost two inches thick, detailing
21 their concerns and possible solutions. As you know,
22 the Steering Committee will address some of those

SURFACE TRANSPORTATION BOARD

06/03/98

FD#33388

61-120

1 specifics in testimony before the Board later today.

2 I am here though because Conrail has had
3 a pretty good deal in western New York. The prices
4 allowed by that quote good deal, which coincidentally
5 were provided by the federal government, have driven
6 traffic away from railroads and made western New York
7 essentially non-competitive. Until the recent
8 accommodation in the NIT League settlement, reciprocal
9 switching charges averaged about \$450 in western New
10 York, three times the national average. And you heard
11 John talk about that a few minutes ago.

12 Even though that settlement made a good --
13 a bad situation better, it's been estimated that the
14 luxury of the decreased reciprocal switching charges
15 will only be enjoyed by 20-30 percent of the
16 businesses that are affected and will be affected by
17 the acquisition. So we are still not quite there yet.
18 Improvements, but not quite there as far as I'm
19 concerned.

20 The proposed transaction does not solve
21 the problems in the Buffalo area yet, and we are
22 hoping that that's what you will consider in your

1 deliberations. We are in desperate need of restored
2 competition, not only on a railroad to railroad basis,
3 but on a region to region basis and this transaction
4 is the way to get us there.

5 A number of local area businesses, union
6 and government leaders have expressed their interest
7 to me for a reasonable argument that the merger plans
8 do not establish a fair and competitive rail system on
9 our Niagara Frontier. Historically we know that when
10 Conrail was created in 1976, the Buffalo area was
11 selected by the United States Railway Association
12 under its proposed preferred alternative, to receive
13 two carrier competitive rail service by what became
14 Conrail and by CSX's predecessor the Chessie System.

15 That preferred status which would have
16 created two carrier competitive service around the
17 Buffalo area never became reality. It just never
18 happened because of the inability to reach a labor
19 agreement back then. So the competition that was
20 planned never really happened for Buffalo and western
21 New York.

22 Currently the Buffalo area would be the

1 largest metropolitan area that was originally
2 scheduled to receive competitive rail service under
3 the USRA's preferred approach that will remain without
4 competitive service for most of the traffic in the
5 area.

6 This is unacceptable. It's a reality of
7 the proposed merger and it puts western New York, we
8 believe, to tremendous competitive disadvantage on a
9 region to region basis.

10 The STB currently has the authority to
11 promote enhanced rail competition. Yet in previous
12 mergers approved by the Board and before that the ICC,
13 those competitive rail to rail considerations weren't
14 as apparent as we had hoped.

15 We agree, it's this Agency's primary duty
16 to protect the public interest, not solely the
17 interest and concerns of the railroads. And you've
18 made that clear, Madam Chair. Those interests include
19 the health of the railroads themselves. But the STB
20 should also consider how the lack of competition will
21 affect the public as a whole, including businesses and
22 communities as both my colleagues have mentioned here

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 before me.

2 Thirdly, the experience of the nation's
3 shippers under the current provisions of the Stagger's
4 Act and under the post-merger situations, should
5 define the actions of the Board in regard to this
6 acquisition. Over 20 years ago, the federal
7 government forced the virtual monopoly of Conrail on
8 the western New York community that I represent.

9 At home in western New York, many people
10 in local government and business were sitting at the
11 switch when the recommendation of the United States
12 Railway Association for their proposed preferred
13 alternative which would have introduced two carrier
14 competitive rail service was dismissed. As a result,
15 the monopoly bears partial responsibility for the
16 deterioration of the manufacturing base, the exodus of
17 jobs that John LaFalce talked about, and the economic
18 downturn experienced in western New York for over 20
19 years.

20 I urge this Board to give its most serious
21 consideration to the information provided later on by
22 the Steering Committee and use its established, as yet

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 untapped, authority to promote enhanced rail
2 competition. The Board has broad authority under the
3 Interstate Commerce Act to impose conditions upon the
4 railroad acquisition transaction to ensure that it is
5 consistent with the public interest. And I feel very
6 strongly that the evidence that will be presented by
7 the Steering Committee later today shows that the
8 proposed transaction is not consistent with the public
9 interest because it fails to provide the balanced
10 competition for the Niagara Frontier and western New
11 York.

12 Please don't allow western New York and
13 the Niagara Frontier to be left out again as it was 20
14 years ago. I ask you to act within your powers to
15 make the current proposal which is good for part of
16 the affected rail system, make it great for the entire
17 system and include us this time around.

18 Madam Chair, I thank you for the
19 opportunity to be with you this morning, and
20 appreciate the opportunity to conduct my remarks.

21 CHAIRMAN MORGAN: Well thank you and I
22 appreciate your appearance and that of your colleague,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Congressman LaFalce. And apparently the issues
2 relative to Buffalo and the surrounding areas are very
3 much in our record and we have spent a lot of time on
4 those issues and I think it's fair to say that a
5 summary of your position is that the competition that
6 you almost got before you'd like to get now.

7 REPRESENTATIVE QUINN: Thank you, Madam.
8 Actually I could have summarized that in about a page.
9 I want to --

10 CHAIRMAN MORGAN: You've got to get right
11 to it.

12 REPRESENTATIVE QUINN: Well, and I want to
13 thank you for the two boxes of books you all sent over
14 to us to review too. My staff --

15 CHAIRMAN MORGAN: Well if we have to
16 review them, you do too.

17 REPRESENTATIVE QUINN: Poor Mike has been
18 up now for three weeks trying to read it all. But
19 thank you very much and I appreciate the summary.

20 CHAIRMAN MORGAN: Thank you.

21 VICE CHAIRMAN OWEN: Congressman, before
22 you leave. On that -- does it not have to do a little

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 bit with the infrastructure that's lacking there --
2 the infrastructure you currently have is pretty much
3 utilized by passenger service?

4 REPRESENTATIVE QUINN: Well, absolutely.
5 And the infrastructure is there. But again, we think
6 we can make best use of the infrastructure that's
7 there and any improvement if we have the competition.
8 That's all that we are asking for.

9 VICE CHAIRMAN OWEN: Careful, the word
10 competition means a lot of things, but does not mean
11 loaded box cars --

12 REPRESENTATIVE QUINN: I understand.

13 VICE CHAIRMAN OWEN: Or a factory that's
14 putting goods out.

15 REPRESENTATIVE QUINN: I understand.

16 VICE CHAIRMAN OWEN: It's --

17 REPRESENTATIVE QUINN: Be careful what you
18 ask for.

19 VICE CHAIRMAN OWEN: Thank you very much.

20 REPRESENTATIVE QUINN: Thank you.

21 CHAIRMAN MORGAN: Thank you. I think we
22 have finished the first round of members of Congress.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 If we get some more, we will try to fit them in.

2 Let us now turn to the primary applicants.
3 First round, you have 60 minutes and I understand that
4 Mr. Goode you will have four minutes, Mr. Snow you
5 will have 11 minutes, Mr. Allen you will have 26
6 minutes, Ms. Christian I understand you will have 8
7 eight minutes, and Mr. Lyons you will have 11 minutes.

8 And I've also been cautioned by the
9 lawyers that I must keep everyone to the minutes so
10 that no railroad gets more than the other railroad
11 during this 60 minutes. So I will try to do my best.

12 MR. SNOW: Shows we are competitors.

13 CHAIRMAN MORGAN: That's right.

14 MR. GOODE: And the fact that I have four
15 and John has 11 is as it should be. [Laughter.]

16 CHAIRMAN MORGAN: I have no comment.

17 MR. GOODE: Shall I simply proceed?

18 CHAIRMAN MORGAN: I think you can proceed,
19 Mr. Goode.

20 MR. GOODE: Chairman Morgan, Vice Chairman
21 Owen, thank you for allowing me to have the
22 opportunity to speak on behalf of the entire Norfolk

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Southern community of employees, customers and
2 shareholders to urge your support of a transaction
3 which we regard as truly historic and an opportunity
4 for all of the constituencies involved.

5 My remarks here will be very brief, before
6 turning the heavy lifting over to our counsel, Richard
7 Allen. I will merely ask you to keep in mind three
8 things as you listen patiently to the many parties who
9 will be speaking over the next two days.

10 First, I ask you to remember that the
11 support for this transaction really is overwhelming.
12 Statements supporting the transaction have been
13 submitted by more than 2,200 shippers, 100 railroads,
14 ten states, 350 public officials, the National
15 Industrial Transportation League, the United
16 Transportation Union and the Brotherhood of Locomotive
17 Engineers and many others. That says more about the
18 merits of the transaction than I could.

19 Although much of what you will be hearing
20 over the next two days will be expressing different
21 sentiments about it. I think it is important that
22 that discussion not leave a false impression and I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 know you certainly won't forget the many who have
2 urged you to approve this transaction speedily and in
3 the form that has been proposed.

4 Second, although there are still some,
5 you've already heard and will hear, who ask that the
6 transaction be significantly restructured, I wish to
7 assure you that it's not for lack of effort on Norfolk
8 Southern's part and I believe CSX's as well to
9 reasonably accommodate all the concerns that have been
10 expressed.

11 John Snow and I and many others at Norfolk
12 Southern and CSX have devoted a great deal of time and
13 effort in that regard. We have succeeded in reaching
14 a large number of settlements with affected parties,
15 including the NIT League, the WTU and BLE, as I
16 mentioned, Port Authority of New York and New Jersey.
17 I'm happy to report recently the city of Cleveland and
18 the other communities in the Cleveland area, AMTRAK,
19 New Jersey Transit, just to mention a few. There are
20 many others.

21 Our success has been due to the efforts of
22 a lot of people and I'm quick to include in that the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 encouragement of the Board's active encouragement and
2 its well known, very commendable preference for
3 privately, negotiated agreements over regulatory
4 prescriptions. And I assure you we will continue to
5 work towards agreements, not only with labor but with
6 other affected parties as we go forward with this
7 transaction.

8 Third, our top priority at Norfolk
9 Southern is to ensure that the transaction is
10 implemented safely, smoothly and without service
11 disruptions. Norfolk Southern has a well deserved
12 reputation for safety, efficiency and service. But
13 that has not made us complacent and it will not make
14 us complacent. Far from it. We know that things can
15 go wrong and we know that this transaction presents
16 special challenges.

17 For those reasons, we've had hundreds of
18 people and a great many teams working full time for
19 well over a year planning for implementation in the
20 most meticulous detail and working not only with our
21 colleagues at CSX, but with our colleagues at Conrail
22 to ensure a safe and efficient transition. That is an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 ongoing process to which I have devoted my own
2 particular attention and considerable amount of money
3 and effort on the part of Norfolk Southern employees
4 at early stages.

5 I can assure you that no one, no
6 organization has a greater interest in seeing the
7 transaction implemented properly than Norfolk
8 Southern. I urge you to approved the transaction as
9 we have proposed it. Thank you.

10 CHAIRMAN MORGAN: Thank you, and what I
11 think I'd like to do is as each person speaks, if I
12 have a question or two I'd like to ask you at that
13 point since I think you divided up my issues pretty
14 well. And my questions will not come out of your
15 time, so don't worry about that.

16 Mr. Goode, let me just ask you a couple of
17 questions now if I might. Obviously in your statement
18 and in discussions about this pending matter, there
19 has been a lot of talk about the implementation
20 process and making sure that if this merger is
21 approved that things go smoothly. And you are
22 personally involved in that and I -- certainly that's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 important to hear.

2 But what is the key, do you think, to
3 making sure that if we approve this merger it happens
4 smoothly?

5 MR. GOODE: I think the key to is to make
6 sure that we have indeed done the advance planning and
7 done the work and gotten a good head start on the
8 whole combination of factors that will be required to
9 make this work smoothly. And that includes making
10 sure that the information systems and the control
11 systems are planned in advance, are implemented, are
12 working properly and tested before we complete the
13 transaction and do it. And as we have mentioned on a
14 number of occasions, we have along with CSX and
15 Conrail implemented the process towards getting ahead
16 of the curve on that, do it properly.

17 Second, it's obviously important that we
18 have the implementing agreements from labor
19 organizations and we've worked hard to do that. I
20 think it's important that we make sure that we have
21 anticipated the capacity needs that we will have from
22 the benefit as we realize the benefits of this

1 transaction and gotten a head start, as we have tried
2 to do on getting those investments made. On both
3 Norfolk Southern's side and CSX's side we have already
4 begun. And we have worked closely with Conrail to try
5 to coordinate our efforts to get some of those
6 investments made early.

7 So we believe that they key to this, to
8 doing this safely and in such a way that service is
9 improved and certainly not disrupted is to get as much
10 advance start on this. We've tried to do that and we
11 will continue to do this in the time that we have
12 available.

13 CHAIRMAN MORGAN: Now you mentioned, of
14 course, labor implementation and so forth. What are
15 you doing to ensure a continued culture of safety as
16 between labor and management if this merger is
17 approved throughout this transition?

18 MR. GOODE: Well the first thing that we
19 have done is already begin to work closely with
20 Conrail so that we are careful at the beginning that
21 we understand Conrail's safety culture, Conrail's
22 concerns on the -- I'll just speak for the Norfolk

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Southern side -- on the part of the system that we
2 will acquire.

3 We have undertaken already to begin having
4 teams of our employees visit and work with the safety
5 groups at Conrail in order to address the ways that we
6 can interlock and implement the concerns for employee
7 safety as well as for safe operations in the
8 communities. We already have an extensive effort
9 that's been going on in doing that.

10 I must say that we've heard a lot of talk
11 about the problems of mixing -- merging the culture of
12 two rail organizations. And I must say the more I see
13 of it, the more I think that in the areas of safety
14 and the areas of customer service, there are far more
15 similarities between Conrail and Norfolk Southern than
16 there are differences. I think that in both
17 properties you see, and the same is true of CSX as
18 well, you see very high degree of concern for employee
19 safety and a long tradition of working toward safety
20 improvements and impressive records of bringing,
21 achieving better results in the safety area.

22 So we have been working very hard to make

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 sure that we are careful to make sure that this is a
2 transaction that takes the best of the best and
3 improves safety.

4 CHAIRMAN MORGAN: One last question. You
5 will hear today concern from shippers that the
6 financial arrangements associated with this deal will
7 cause rates to go up. Will you need to raise your
8 rates particularly as it relates to captive shippers?
9 If this merger is approved?

10 MR. GOODE: If we are right about this,
11 the key to this from a financial standpoint of the
12 transaction, and the plan reflects this and we have
13 published a lot to support this. The key to this is
14 growth in business. It's new business. And it's
15 achieving the efficiencies that we will achieve from
16 better service lanes and having the scope of these
17 systems together.

18 We believe, and our studies and
19 projections tell us, that we will be able to achieve
20 the benefits from this in such a way that it's a very
21 good transaction financially for our shareholders and
22 it pays off very well. And we have not assumed that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we will be increasing any rates in order to do that.

2 As you well know, rates are a very
3 competitive thing in the transportation business
4 today. We will be competing not only with CSX, but
5 with trucks, with other modes of transportation. It's
6 a very competitive environment. It's an environment
7 in which rates have gone down over the last several
8 years. I've stated publicly again and again that I
9 don't see that curve changing. I see that that's been
10 a factor that has helped our industry and Norfolk
11 Southern itself succeed and I believe that the future
12 is devoted on our property towards making the same
13 kind of good resolution for everybody happen in the
14 future. And I certainly believe that's going to be
15 the result of this transaction.

16 I believe we are going to look back on
17 this, and while many people said that the price last
18 year looked like a high number, I believe we will look
19 back in a few years and regard this as one of the
20 great investments in rail history.

21 CHAIRMAN MORGAN: Thank you, do you have
22 any questions before I move to Mr. Snow?

1 VICE CHAIRMAN OWEN: [Off mike.] Yes, I
2 would like to go back to what the Chairman was
3 touching upon here. Many see scenario here that we
4 found before us, all the speakers that we need to
5 really lead us through the complete operation here,
6 the tracking and the computers -- I guess I better
7 turn it on. Lead me to the complete operation of
8 tracking, the computers, labor implementing
9 agreements, contract shippers, and also the shared
10 assets area. We talk about blending an operation in
11 here of major significance. It's going to have a
12 major impact upon the transportation infrastructure of
13 our nation. It will reduce costs, it will cut
14 shipping time as such, if everything works properly.

15 But to move into that in the rapid fashion
16 as some may proceed. I would like to see you and each
17 speaker as we go through it, kind of lead us through
18 this to make certain that we don't hear the stories
19 that we are hearing still in California or Arizona or
20 Houston. Yes, I saw six of my cars go by, they were
21 loaded last week. And they are sitting on a siding 45
22 miles away and they have to run them another 70 miles

1 to get them back to me. And I can't get them back.

2 This ties into the tracking, the
3 coordination of the computer systems of Conrail and of
4 CSX, NS and also the shipper's problems too. And then
5 how does that work when you split up three of these
6 SSR's out here as independent agencies by and large
7 and you are assigning locomotives, crews, and possibly
8 marketing for particular months?

9 I see a very complex situation and I would
10 like for us to feel sure about it when we finish this
11 hearing, feel fairly comfortable that you know how you
12 are going to lead us through this process here and how
13 you are going to do it.

14 MR. GOODE: Well, we will see if we can
15 build blocks as we go along today. Let me, and let me
16 maybe start by saying that you are absolutely right.
17 This is a very complex transaction and that's why we
18 did start with -- first on Norfolk Southern by the
19 creation of a number of teams to work with Conrail.
20 Then very quickly by working with CSX on joint teams
21 who worked together and addressed all of the building
22 blocks in this transaction from a management

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 standpoint.

2 I think that there are well over 100 teams
3 that address each one of the -- each specific area.
4 Everything from car accounting to the various pieces
5 of the information system. I talk about the
6 information systems, but there are a number of
7 individual teams working on individual pieces of that.

8 And we do it in a combination of ways
9 because we address not only the combination of Conrail
10 and Norfolk Southern and Conrail and CSX into the new,
11 into the two new systems, but also we have then
12 addressed the management of the shared asset areas
13 which is both a separate joint management effort and
14 one that interacts very closely with the other, with
15 the other systems.

16 So it's for that reason that we did things
17 like for example, very early named the management
18 team, the senior management team for the shared assets
19 areas, in agreement with CSX and working together and
20 working with the people at Conrail. And you will have
21 noted that we involved -- that we did that with a
22 combination both of Conrail people who were

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 experienced in the operation of the areas, and with
2 other people who had experience both in operating in
3 that -- in the area, the shared asset area, but also
4 people who had experience in working in combined
5 terminal operations.

6 So we tried -- and we then added to that
7 a number of experienced Conrail employees and began to
8 put the team together so that that team could then
9 plan for the operations in the shared asset area,
10 which has been ongoing and will continue to be ongoing
11 right up to the time that we are confident that all of
12 these pieces, all of these building blocks are in
13 place to make the implementation work both safely and
14 efficiently from a service standpoint. And we are
15 mindful that that will take time.

16 On the other hand, we are also mindful
17 that we can't allow it to take too much time because
18 we are in a transition period for Conrail. So that --
19 and that's a transition period that cannot go on
20 forever because in the sense that leaves Conrail and
21 its people in state of limbo.

22 So there is a balance here that we need to

1 achieve from a management overall coordination
2 standpoint in order to make this work properly. And
3 that's why we have involved so many people in the
4 advanced planning for this.

5 And as we go on, we can add as much
6 detail, I guess, as you'd like us to about the various
7 types of systems and how we are putting them together.

8 VICE CHAIRMAN OWEN: In other words, you
9 will be keeping the Conrail employees on --
10 probably losing employees through the attrition
11 process to insure that the continuity, there's a
12 continuity flow there in that particular geographic
13 area.

14 MR. GOODE: Oh, absolutely. I should be
15 very quick to say that we have just in the last month,
16 for example, we have for the basic Conrail operating
17 management employees, the train masters, the
18 superintendents, the assistant superintendents, we
19 have extended job offers because we wanted to be
20 confident that we had -- that we had these people to
21 continue in place, both on the Norfolk Southern side
22 of the system and on the CSX side of the system and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 I'm happy to report that we have achieved a very high
2 acceptance rate. It's over 94 percent on the Norfolk
3 Southern side of the house. I don't know the CSX
4 number, but I'm confident it is also a very high
5 number. We're insured that we have a continuity of
6 the basic on the ground operating management of
7 Conrail. That's why we will be offering continuing
8 jobs to the Conrail operating employees in these
9 areas.

10 The basic approach is to make sure that we
11 retain the talent and the expertise and the knowledge
12 on the two sides of the system and in the shared asset
13 areas and having done that, then coordinate it for
14 efficiency and the benefits of the operation with the
15 Norfolk Southern and CSX operations. And that -- it's
16 an incremental process and one that I think of again
17 as building blocks and making sure that we have all
18 these blocks in place, step by step and in an orderly
19 manner so that we're in a position to move forward
20 confidently, that we're going to have a safe operation
21 and one that certainly will not disrupt service but
22 will make it better.

1 We are more than mindful of the experience
2 of the experience of the last year. I've said that I
3 know we would have devoted a lot of time and attention
4 and advanced planning and early training and all of
5 the things that will make this work properly in any
6 event, but we do look around us, we are mindful of
7 what's going on in the industry and that we are
8 mindful that puts an even greater burden on us and
9 it's one that we're prepared to assume and do the job
10 properly. We know that not only your eyes, but the
11 eyes of an awful lot of other people are on Norfolk
12 Southern and CSX to do this right and I'm confident we
13 will, but I'm equally confident that I will spend a
14 lot more sleepless nights than I already have along
15 with a lot of people at Norfolk Southern to make sure
16 that it happens.

17 VICE CHAIRMAN OWEN: One last quick
18 question. What are some of the lessons you have
19 learned from some of the problems from the west that
20 might be applied to the east and recognizing that the
21 railroads and the west have some very talented
22 railroad people?

1 MR. GOODE: That's right. And the first
2 thing I've learned is don't be too confident. Be
3 confident, but also be prepared because you know that
4 things are going to happen and our basic approach,
5 having looked around us, I guess, is that we want to
6 prepare to deal, expeditiously, with the unexpected
7 things that we know will happen. I don't know what
8 the problems, what the precise problems that arise are
9 going to be and we hope to minimize them, but on the
10 other hand, we know that things are going to happen
11 and our denotation is to creating a structure that
12 will be able to create early warning systems, early
13 indications when something is not working the way it
14 should be and be prepared to deal quickly and honestly
15 and forthrightly with those. That's the structure
16 that we're trying to create which we hope will -- and
17 believe will make this a smoother transaction than
18 what we've seen.

19 VICE CHAIRMAN OWEN: I think your four
20 minutes are up.

21 (Laughter.)

22 CHAIRMAN MORGAN: Thank you, Mr. Goode.

1 Mr. Snow?

2 MR. SNOW: Thank you very much. I greatly
3 appreciate the opportunity to appear before you today
4 to offer some thoughts on this transaction. It's been
5 a long and difficult process. It's put a lot of
6 strains, I know, on the resources of the STB. It's
7 likewise put a lot of strain on the resources of
8 Norfolk Southern and CSX. But I think it's been worth
9 the effort. It won't surprise you to know that I feel
10 that the transaction we've put before you is a
11 terrific one, a compelling transaction, one that
12 materially advances the public interest in good,
13 efficient, sound, competitive, environmentally
14 advanced transportation service and safe
15 transportation service.

16 The benefits of this transaction, I think,
17 have been spoken to and I hope are widely perceived.
18 The Chairman and Vice Chairman in their opening
19 comments alluded to the unprecedented nature of this
20 transaction. I'm not aware of any rail transaction or
21 for that matter any merger in American industrial
22 history that's created so much competition, that has

1 taken a formerly dominant region of the country and
2 made it competitively based. I'm not aware of any
3 merger that has ever promised so much to so many.

4 It's a merger though that's the result of
5 an awful of give and take between the Norfolk Southern
6 and CSX. It didn't come about haphazardly. It's a
7 quintessential byplay of market forces and private
8 negotiations and private interests. As we sought our
9 advantage, and Norfolk Southern sought their
10 advantage, there was enormous give and take, all
11 against the backdrop of realizing the necessity for
12 competitive balance in the east and competitive
13 balance, particularly in the former, what we hope will
14 be the former Conrail region.

15 We think we have created that kind of
16 balance, for the first time, really in 30 years and
17 there have been allusions to the lost opportunities of
18 the past. I was in the Department of Transportation
19 those opportunities were lost, argued hard and long
20 for the Coleman Plan to create a division of the
21 estates of the bankrupt properties rather than to
22 create the so-called big Conrail. The time wasn't

1 ripe then. It is ripe now.

2 This merger has some other aspects that
3 are particularly important. It's a growth merger.
4 You've heard that. It's a merger that creates
5 opportunities for jobs. It's a merger that creates
6 the opportunity to unlock the inherent advantages of
7 rail service which we have not been able to offer the
8 shipping public in the eastern half of the United
9 States, fundamentally because Conrail pursued its own
10 economic interest in east-west flows and had little
11 economic incentive or interest in pursuing north-south
12 flows.

13 What this merger does is create a system
14 of single line service, competitive single line
15 service over virtually the entire eastern half of the
16 United States for the first time ever. And
17 competitive, single line service is a great boon to
18 the shipping public. Whenever the shippers are given
19 the opportunity for single line service over joint
20 line service, they prefer it enormously and that's
21 shown by all the market data, all the market share
22 data that indicates strongly that rail market share

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 participation is much higher in those instances where
2 we compete on the basis of single line service versus
3 joint line service. Now that's a huge highway truck
4 market out there that's available to us. It's going
5 to give us a chance to do something we at CSX have not
6 been able to do throughout my entire history with the
7 company and that's grow the business, give shippers
8 additional opportunities and grow the business.

9 Most of my career, unfortunately, with CSX
10 has been spent in things like downsizing,
11 streamlining, contracting and shrinking. As I come to
12 the final years of my period in this industry that
13 I've devoted to, I am absolutely thrilled with the
14 prospect that we will be able to leave as our heritage
15 the prospect for growth and new and good jobs in the
16 railroad business.

17 It's probably also worth noting that we're
18 making tremendous investments in inner cities, be it
19 Cleveland, Chicago, New York, the Bronx. It's not
20 talked about often, but it's one of the great benefits
21 of this merger that areas that don't often receive
22 infusions of capital investment and new jobs will

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 receive those infusions because of this transaction.
2 And of course, the merger is enormously pro
3 environment. As we move traffic off highways and put
4 it on railways and take advantage of the energy
5 efficiencies of railroads vis-a-vis motor carriers,
6 it's a tremendous improvement in the environmental
7 outlook for the country. So we think the merger
8 benefits here are literally unprecedented.

9 We've also heard you, I must say. We've
10 listened to you, Madam Chairman and Mr. Vice Chairman,
11 in your guidance, in your suggestions, in your policy
12 that we reach out and try and accommodate concerns
13 wherever we can. Despite the many benefits of this
14 merger there are some people who have raised questions
15 about various aspects of it. I don't think there are
16 many people who seek to have it upended, but there are
17 a number of parties, many that you will hear from and
18 some that you have heard from who seek certain
19 conditions or changes.

20 We have had, I must say, the most
21 extensive dialogue, I think it's fair to say, in the
22 history of railroad mergers and probably of mergers of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 any kind, unprecedented, enormous in their scope and
2 sweep. I must say I was up around 1:30 last night
3 discussing one particular outreach issue with one
4 particular community and I think we're getting very
5 close with that one. But whether it's local
6 communities or states or transit authorities or short
7 lines or Amtrak or ports or shippers and shipper
8 representatives or rail labor or regional railroads or
9 environmental groups or the FRA and the DOT, we have
10 been in a continuous dialogue for the better part of
11 the last year with those parties. And I will say as
12 a result, we've entered into many win-win situations.
13 We've certainly enriched the dialogue that we've had
14 with many parties who have a deep interest in this
15 transaction and -- and this is the critical point --
16 we've clearly made it better. We've come to
17 understand community concerns better. We've come to
18 understand the concerns of transit authorities and
19 commuters. We've come to understand concerns of
20 labor. In each one of those instances, I think we're
21 working out effective ways to resolve those concerns.
22 As a result, we've got a better merger

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 proposal for you today than the one we filed a year
2 ago. It's better in its environmental aspects. It's
3 better in its community impact aspects. It's better
4 in its safety impacts. In fact, I think it's fair to
5 say that never before in the history of rail mergers
6 has there been such sweeping environmental reviews or
7 so much required in the way of mitigation. Some meant
8 to be mandated, some the result of private
9 negotiations. Never before has there been such prior
10 planning on safety or such sweeping safety reviews and
11 that also makes the merger stronger and in response,
12 Mr. Vice Chairman, your question to Mr. Goode, I think
13 puts us in a much stronger foundation to move forward.
14 Never before have there been so many councils,
15 dialogues, conversations and they're going to
16 continue. An agreement with the NIT League calls for
17 a continuing Conrail council which will review issues
18 dealing with the implementation of the merger. We
19 have agreements with the Port of New York and New
20 Jersey for the same purpose. They've been very
21 helpful to us in addressing how the shared asset area
22 in northern New Jersey will operate. We intend to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 have labor councils and other shipper councils.

2 But despite all of this outreach, some
3 issues remain unresolved. There are many parties who
4 are seeking this or that modification in the form of
5 conditions. Our legal team is going to address those
6 issues in more detail, but let me just offer a couple
7 of observations. First, this merger agreement, as I
8 said in my opening moments, is the product of intense
9 negotiations between private parties each seeking
10 their own advantage but in the process promoting a
11 larger set of public interests: competition, better
12 service, jobs, environmental advantage and so on. I'm
13 very concerned that what's being sought by a number of
14 the parties would disrupt that fundamental bargain
15 that Norfolk Southern and CSX struck, undermine the
16 operating plan and undermine our ability to yield the
17 real and full benefits of this merger. Chicago is an
18 example. There are before you petitions to undo the
19 operating plan in Chicago. Chicago, the operating
20 plan for Chicago that lies before you is the product
21 of very extensive set of accommodations between the
22 Norfolk Southern and CSX. Norfolk Southern takes the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 main leg of Conrail through there and made a number of
2 accommodations to us so that we'd be able to be a
3 balanced competitor. If that is upset, then we can't
4 be the balanced competitor. Comparable points can be
5 made about other places like Buffalo.

6 My time is up. Let me close by saying I
7 give you my pledge that we are going to implement this
8 merger effectively. We know that's on your mind
9 properly so and we have put enormous effort into
10 making sure that will be done and I give you my pledge
11 that it will be done and I'd be happy to answer
12 questions on that and any other subject.

13 Thank you very much.

14 CHAIRMAN MORGAN: Thank you, Mr. Snow.
15 First of all, let me say that of course it's very
16 important to have your personal commitment. As I said
17 to Mr. Goode earlier, if we do approve this merger
18 that it will, the transition will be smooth, so I
19 certainly appreciate that.

20 Let me just go through a couple of points
21 that you made and follow up with a couple of
22 questions, if I might.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 You have talked about the proposal that is
2 before the Board today, not only your original
3 application, but also the added value that you
4 indicate has come from settlement agreements and you
5 talk about hesitating to do much more to the plan that
6 is before us and of course you've heard from the
7 Members of Congress, from say the Buffalo area and
8 we'll hear from other shippers and users who are
9 asking for more competition in the public interest and
10 as we sit here, the two of us, trying to pursue the
11 public interest and promote the public interest and we
12 hear requests for more competition in the public
13 interest, we obviously have a tough challenge in light
14 of some of your comments.

15 If you were in our seat, how would you
16 look at that issue?

17 MR. SNOW: I'd look at it in the totality
18 of the transaction and I'd ask myself, I think, the
19 basic question are the parties who are seeking more
20 making a compelling case for it in light of the
21 standards that the Agency has applied in the past.
22 Take Niagara Buffalo. Niagara Buffalo are much better

1 off because of this transaction. I heard Congressman
2 La Falce talk about his desire to be put in the
3 situation he would have been put in if there'd been a
4 division back in 1976. Well, in fact, there is a
5 division. The Norfolk Southern will take the Erie
6 Lackawana, Erie Lackawana line, the former Erie
7 Lackawana line that was made part of Conrail and we
8 will take the former New York Central line that was
9 combined in Conrail. You will have two carriers. In
10 addition, in addition, the position of the CP and the
11 CN are both strengthened as competitors in that market
12 through agreements we have reached with those rail
13 systems, and through the arrangement we've reached
14 with the NIT League, reciprocal switching charges will
15 be, if the merger is approved, reduced and reduced
16 significantly.

17 So I think there is a clear, by any
18 measure, augmentation of competition in the Buffalo
19 Niagara area. Now the question is why aren't I as
20 well off as I could be if you made me as well off as
21 somebody else will be? Why can't I be New Jersey?
22 Why can't I be Detroit? The fundamental problem with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that question is that we go to the fundamental
2 economic and operating logic of the transaction by
3 making every place a shared asset area. The shared
4 asset areas and that's essentially what the Congress
5 people from that region are asking for, the shared
6 asset assets were again the product of this effort on
7 the part of Norfolk Southern and CSX to one, create
8 competitive balance in places that we felt it was
9 essential, but two, and more importantly, it was
10 simply the result of how we bargain to get into places
11 we felt we had to be. And we simply couldn't find any
12 other way to be where we needed to be and wanted to be
13 and felt we had to be such as northern New Jersey
14 without creating a shared asset area. So it is the
15 product of the very negotiations, those shared asset
16 areas are the product of the very negotiations that
17 produce the transaction in the first place.

18 I frankly don't think that because have
19 made some places better off with shared asset areas we
20 have any obligation to make everybody a shared asset
21 area. In a way it would penalize virtue to do so.

22 CHAIRMAN MORGAN: But again, I think

1 getting back to comments that were made earlier, I
2 think people view the Board's role here as adding
3 competition everywhere we can because that is a good
4 thing and if we don't, then we are not enhancing
5 competition, that we are restrictively implementing
6 our law in such a way that competition is not promoted
7 the way it should be.

8 MR. SNOW: I understand that position, but
9 to carry it to its extreme, it's the argument that
10 open access should be generally available as a
11 condition of any merger so any applicant who comes
12 forward with a merger case should understand that what
13 he faces is a generalized, open access, trackage
14 rights shared asset areas across the system. I think
15 that would chill private parties' interest in coming
16 forward with beneficial and highly attractive
17 transactions such as this one.

18 I would add one further point that I think
19 needs to be considered by the Board. This transaction
20 will result in lower rates. You've heard David Goode
21 talk about that. We've made the world more
22 competitive through this transaction, assuming it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 proposed.

2 We're also making tremendous investments
3 to make sure this merger works well. On the records,
4 you know, talked about \$700 million of additional
5 capital for transition. In addition to all that, we
6 have engaged in a number of private settlements which,
7 while beneficial, are costly and those private
8 settlements with places like Berea, Cleveland,
9 Chicago, New York, Philadelphia, on and on and on and
10 there are many, many of them are amounting to tens of
11 millions of dollars of added cost for this
12 transaction. The transaction is one that makes
13 economic sense, but there's no large economic surplus
14 in this transaction any more, if there ever was and in
15 position of further burdensome conditions and
16 certainly the request of Buffalo would be burdensome.
17 The requests of the parties seeking to change the
18 operating plan in Chicago are very burdensome. If
19 those occur, they run the risk of destroying the
20 underlying economic and financial logic of this
21 transaction and thereby precluding us from being in
22 the position to make the investments and put in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 capital infusions that are necessary to make this
2 system work in accordance with the operating plan
3 we've presented you and therefore precludes us from
4 making available the full range of the public benefits
5 which we think are so compelling.

6 CHAIRMAN MORGAN: So what I hear you
7 saying then is in promoting the public interest we are
8 to balance the integrity of the deal against the
9 particular interest being presented to hopefully come
10 out with something that's in the public interest in
11 general. Is that about --

12 MR. SNOW: I think the deal is very much
13 in the public interest. There's a larger public
14 interest to be served by this transaction and many of
15 the requests for conditions undercut the broad public
16 benefits and substitute the interests of the few for
17 the many and therefore, I think, strike the wrong
18 balance in the overall transaction, yes. I'd agree
19 with you.

20 CHAIRMAN MORGAN: Let me move on to the
21 dialogue that you discussed and in particular the
22 council that is part of the NIT League agreement,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Conrail Transaction Council, I believe it's called?

2 MR. SNOW: Yes.

3 CHAIRMAN MORGAN: Which is part of the
4 agreement that you reached with shippers. Do you have
5 something similar to that for labor? Obviously,
6 you've had negotiations on-going. Some unions have
7 almost come to terms. Others have not. So you have
8 a lot of labor matters on-going here.

9 MR. SNOW: We have a number of labor
10 matters. We've come to resolution now with four or
11 five and several very large ones, our two largest
12 operating unions and we're enormously pleased with
13 that and we think we're making progress on the
14 remaining ones. We're of the view that we will not
15 start the transaction, if it's approved, until we have
16 all necessary agreements in place. We're anxious to
17 get them. And in effect, we have a dialogue, but it's
18 not one labor council, it's a series of labor councils
19 in effect underway, rather than one grand labor
20 council. There would be a counterpart to the NIT
21 League.

22 But certainly the dialogue with the unions

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and with the Brothers is absolutely essential going
2 forward. We're doing that on a number of things, on
3 safety for sure. The FRA rail labor and CSX
4 consultative process is underway. It's producing real
5 benefits for us. The safety review process with labor
6 management and the FRA that led to the safety plan
7 which we submitted, I think, is an indication of how
8 far we're prepared to go in embracing rail labor in
9 making sure this merger has a strong safety
10 foundation. And I want to emphasize we don't intend
11 to end it, assuming we have approval, with approval.
12 It's going to be an on-going part of how we manage our
13 activities at CSX.

14 CHAIRMAN MORGAN: But as with a shipper
15 council, it's important to have a labor council or
16 councils?

17 MR. SNOW: I think it's critical to have
18 open, clear dialogue of the sorts you're suggesting
19 with rail labor, absolutely.

20 CHAIRMAN MORGAN: Let me turn to
21 operations for a minute. You've touched on a couple
22 of things in your opening remarks. One of the issues

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that has been raised I think as a result of the boon
2 in the economy that we're seeing which is clearly
3 affecting transportation, if this merger were approved
4 with the economy being what it is and clearly the hope
5 for traffic diversions off of the highways on to the
6 rails what plans have you made relative to capacity to
7 make sure that this increased traffic by virtue of the
8 economy and by virtue of the claimed diversions will
9 be there in place to handle what you may face if we
10 approve this merger?

11 MR. SNOW: One of the things we're doing
12 right now is accelerating a lot of capital
13 expenditures and transition expenses so that we will
14 be ready. And that's impacting our 1998 earnings
15 quite noticeably as it impacted our fourth quarter of
16 1997. But we view this as very prudent expenditures
17 that will pay dividends long term. We're accelerating
18 acquisition of locomotives and if I remember the
19 numbers right, we've accelerated so that we will buy
20 over the next year and a half or so 300, roughly 300
21 locomotives.

22 Right now we are hiring and training a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 large number of supervisory people and T and E people,
2 so we'll have trained engineers and trainmen running
3 close to 1,000 surplus people in the sense that they
4 wouldn't be there except for the transaction on CSX
5 today. We're running 120 percent of our normal T and
6 E staffing, transportation and engine operation
7 staffing.

8 We're building what we view as the best
9 rail freight infrastructure in the world between
10 Chicago and Cleveland, given the division Norfolk
11 Southern took. NS took the New York Central line, the
12 former New York Central line between Chicago and
13 Cleveland and we're upgrading the old B & O line to be
14 a 70 mile an hour double track all the way from
15 Chicago to Cleveland and then it's double tracked on.
16 So we will have a 70 mile an hour double tracked rail
17 system from Chicago to Boston and New York. We think
18 it's the best in the world.

19 All of this is being done now, being
20 forward loaded, being accelerated so that it will be
21 ready and be capable of accommodating the growth that
22 we certainly hope for and anticipate.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN MORGAN: And you will have enough
2 employees by that time?

3 MR. SNOW: I can guarantee you we will
4 have enough employees. As I say, we're at 120 percent
5 of T and E right now and you might say isn't that an
6 awfully big burden. Well, it certainly shows up on
7 the operating income statement, but we think it's the
8 prudent thing to do and over the long term attrition
9 rates will, I think as the Vice Chairman suggested to
10 somebody in something I read that he said, attrition
11 rates will come into play here and allow us to adjust
12 the work force longer term over the next three or four
13 years to whatever the requirements might be. But we
14 are going into this transaction with a sizeable bulge
15 of capacity, be it manpower or locomotives or signal
16 systems or track and rolling stock.

17 CHAIRMAN MORGAN: Now you touched on a
18 couple of other areas, shared assets, Chicago. These
19 are areas where we will hear concerns from users about
20 operations in those areas, for example, the chemical
21 folks very concerned about what could happen in the
22 shared assets area. Chicago, a key gateway, concerns

1 about it today, concerns about it if we were to
2 approve the merger. You want to talk a little bit
3 more -- you mentioned it in your statement, but
4 clearly these are important areas.

5 MR. SNOW: They're all important areas.
6 On Chicago, I think this transaction makes Chicago a
7 much better rail center. We, as I say, it's an
8 intricate set of relationships between Norfolk
9 Southern and CSX in Chicago. They essentially take
10 over the former Conrail operations there. We, in
11 turn, are making very sizeable investments,
12 approaching \$100 million in Chicago in order to expand
13 yard capacity, signal systems, double track of lines
14 and fundamentally upgrade the infrastructure.

15 Now the infrastructure there today is not
16 all that it should be. Chicago is a periodic
17 bottleneck in rail operations. As a result of what
18 we're proposing and it's all laid out in the operating
19 plan, Chicago will become a much better rail operating
20 center. We're going to be modifying our operating
21 plan in Chicago in cooperation with western railroads
22 whereby we'll have run through trains to them rather

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 than doing as much yarding and terminal operations as
2 we do today. That will free up resources in the belt
3 lines. We're expanding our yard capacity and
4 upgrading, making investments in the IHB. We're going
5 to make Chicago a much better place.

6 Now we have to make it a much better place
7 if we're going to be competitive with Norfolk
8 Southern, given the division that occurred under the
9 basic agreement. That's why I talked about the need
10 for, to keep in mind the intricacies of the
11 transaction itself and the operation plan as you
12 consider the conditions that are being sought, because
13 a grant of some of those conditions that are being
14 sought in Chicago would literally destroy our ability
15 to be an effective competitor of Norfolk Southern.

16 Shared asset areas, a product, as I say of
17 our commercial interests and financial interests in
18 both serving those regions, New York City, northern
19 New York, New York metropolitan area, southern New
20 Jersey and so on and simply not finding any other way
21 to accommodate it and do it except the creation or
22 establishment of these shared asset areas. So they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 were, they were the product of our efforts to try and
2 each advance our commercial interests and financial
3 interests, serve those areas, get access to those
4 customers and the only way we could find to do it was
5 born of necessity, was the only way we could find to
6 do it.

7 CHAIRMAN MORGAN: And then the only other
8 area related to operations that I want to ask you
9 about is contracts. Clearly we have differing views
10 on the record as to how we proceed with respect to the
11 abrogation of contracts that shippers have entered
12 into with Conrail.

13 Is this an operational issue? Is this a
14 competitive issue? Is it both?

15 How do you view that issue from your --

16 MR. SNOW: This is the so-called 2.2(c)
17 issue?

18 CHAIRMAN MORGAN: Right.

19 MR. SNOW: Yes. I think it's
20 fundamentally an issue of making sure we're able to
21 have a smooth and effective implementation of the
22 merger plans, a smooth start up. If all of those, if

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we had a Sadie Hawkins Day on all those contracts, and
2 they just all popped open, all at once, I could see
3 chaos in the eastern rail network because we wouldn't
4 know what traffic best flows on us. I don't think
5 Norfolk Southern would have any way of knowing what
6 traffic best flowed on them. We wouldn't be able to
7 coordinate the marketing efforts with the underlying
8 operating plans and make the appropriate adjustments
9 between the traffic we seek and the traffic we're able
10 to handle well and I could see a disaster scenario if
11 all that traffic comes open. We each rush in as we --
12 we're competitors, we go after it. I can tell you
13 that. We rush in not really knowing the
14 circumstances, bid on things we can't handle and then
15 disappoint the customers, disappoint the shippers and
16 they come back to you and say what a terrible merger.
17 They can't do what they said they could do.

18 I think it's also a matter of fundamental
19 fairness. After all, we're stepping into Conrail's
20 shoes, each taking a part. Conrail negotiated those
21 contracts and in many cases, I'm sure, made
22 concessions to the shippers to get the long term

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 contract or else how did APL end up with a dollar a
2 year access to the facility of Kerney Yard.

3 So it seems to me it's very difficult and
4 one sided and unfair to simply say well, shippers who
5 want to can simply abandon their contracts and go
6 free, but the most important thing, aside from the
7 fairness is simply my great concern. I think it's
8 shared by NS and David that we would greatly
9 complicate the smooth and seamless start up that we're
10 both counting on and working so hard towards. So it's
11 essentially an operating problem.

12 CHAIRMAN MORGAN: Thank you. Questions?

13 VICE CHAIRMAN OWEN: I just have a couple
14 here. What's going on in Cleveland?

15 MR. SNOW: You heard me talk about the wee
16 hours of the morning. That was Cleveland. I had a
17 very good meeting yesterday with Mr. Goode and I
18 actually had a very good meeting with Congressman
19 Kusinich and Governor Gornovich and signed a number of
20 agreements with the Mayors of the Cleveland suburbs,
21 Lakewood and Rocky River and Berea and places like
22 that, bringing to a close, I think their concerns

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 about the merger and I'm told Congressman Kusinich
2 will appear later and speak to that.

3 On Cleveland itself, I spent an hour and
4 a half, close to two hours with Mayor White yesterday.
5 I think he and I have really, just the two of us
6 alone, I think we've narrowed those differences very
7 significantly. I talked to him last night around
8 midnight and then we went into getting the details
9 finalized. Our staffs are working on it right now and
10 I'm very hopeful, Mr. Vice Chairman, that today we
11 will present you with an agreement between CSX and
12 Cleveland as the Norfolk Southern has been able to do.

13 VICE CHAIRMAN OWEN: One other question,
14 a couple of others. You make something about of the
15 shared assets and then competition of Buffalo and up
16 in that area. Is it really that important in light of
17 maybe the infrastructure may not be there and maybe
18 the shipping is not there. Maybe the customers are
19 not there?

20 MR. SNOW: Well, we would view -- we think
21 we've given enormous concessions to the Buffalo area
22 in terms of making it more competitive and that's one

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of those points where CSX, whereas Norfolk Southern
2 largely steps into Conrail's shoes in Chicago, we step
3 into Conrail's shoes in Buffalo, albeit under much
4 more competitive conditions, as they do in Chicago.

5 I don't think a shared asset area really
6 works there. I don't think it's justified and it
7 would -- it really would undermine in a very
8 substantial and significant way the very bargain that
9 Mr. Goode and I struck on this transaction.

10 VICE CHAIRMAN OWEN: One final question.
11 The Chairman talked about labor for some time there.
12 The question has been raised via labor with us, what
13 happens with the new safety program that FRA is
14 working with you on now and both of you are doing
15 quite well with it and following along and working
16 with the unions on it. But the big question is what
17 about the whistle blowers, somebody that brings it to
18 somebody's attention, how are they protected?

19 MR. SNOW: I'm glad you asked that because
20 we have just entered into what I think will be a model
21 program, made possible really by the leadership of
22 Clarence Monan of the BFLE and President Charlie

1 Little of the UTU to change the old environment of
2 grievances and discipline and focus on individual
3 responsibility and accountability and cooperation in
4 the whole area of safety.

5 I think we really have had a breakthrough
6 with the UTU and the BFLE which promises enormous
7 benefits to both of us for the long term. We engage
8 in an awful lot of disciplinary work and grievance
9 work in the safety arena that deals with modest and
10 minor infringements. What we're really saying let's
11 get away from all this court martial environment and
12 move to an environment in which people take
13 accountability and the unions take accountability and
14 in which we have what we call a time out session with
15 an employee who has run afoul of some regulation.
16 Other employees say remember that time out program CSX
17 and we established? Let's take time out. Let's talk
18 about what just happened. You know what you did, you
19 know what rule you ran afoul of. You know what the
20 consequences of that might be, far removed from
21 management and far removed from the typical discipline
22 and grievance procedure. I'm really -- one of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3731

1 things that you never intended I think is part of all
2 this, but which is a by product of the dialogue you've
3 asked us to get into, is the beginning of a new
4 compact with rail labor, between rail labor and rail
5 management, the dawning of a new, if you pardon an
6 overdrawn phrase, cultural era in which the culture is
7 just going to be different and that's a tremendous
8 promising set of things that are going on right now.
9 It really is a direct outcome of the dialogue that you
10 prodded us into and guided us towards.

11 VICE CHAIRMAN OWEN: Thank you.

12 CHAIRMAN MORGAN: Thank you. We've spent
13 a lot of time with each of you, but it's important
14 that you're here and that you are responding to these
15 questions and we appreciate it. The lawyers are
16 important too, but --

17 (Laughter.)

18 No, you're not? Okay. I guess now we
19 will turn to the lawyers. I think Mr. Allen, you are
20 next.

21 MR. ALLEN: Thank you, Chairman Morgan,
22 Vice Chairman Owen. My name is Richard Allen and I'm

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 speaking on behalf of Norfolk Southern Corporation and
2 Norfolk Southern Railway Company in this proceeding.

3 As Mr. Goode has said, the application,
4 we seek your approval for a transaction that we regard
5 as truly historic. Since the collapse of the Penn
6 Central and seven other northeast railroads more than
7 20 years ago, most of the northeastern United States
8 has been served by only one class, one railroad,
9 Conrail. Under the transaction we're asking you to
10 approve, Norfolk Southern and CSX will divide between
11 them the use and operation of most of Conrail's 10,500
12 mile rail system and each of them will integrate the
13 lines and assets that are allocated to it into its own
14 system. In addition, Norfolk Southern and CSX will
15 both use and serve shippers on some 700 miles of three
16 shared asset areas, northern New Jersey, southern New
17 Jersey, Philadelphia and Detroit and CSX will also
18 have access to shippers on 190 miles of lines which
19 will be allocated to Norfolk Southern in the coal
20 fields of Pennsylvania and West Virginia that were
21 formerly served by the Monongahela Railroad.

22 As has been said a number of times already

1 this morning, the benefits of this transaction are
2 enormous and in many respects unprecedented. First,
3 what sets this transaction apart? Most from previous
4 rail consolidations, of course, is the unprecedented
5 increase in direct rail to rail competition that it
6 will bring about without any reductions in competition
7 elsewhere.

8 Shippers in New Jersey, Philadelphia,
9 Detroit and the Monongahela coal fields that are
10 currently served only by one class one railroad will
11 gain direct rail service from two class one railroads
12 Norfolk Southern's economic witness, Dr. Barry Harris
13 has estimated that more than \$700 million in annual
14 freight movements that are now served by Conrail at
15 either the origin or destination will have two
16 independent and competitive routings after this
17 transaction.

18 Perhaps most importantly from a
19 competitive standpoint in our view, is that the
20 transaction will result in two strong and evenly
21 balanced rail systems that will compete vigorously
22 with each other in almost all and every part of their

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 far-reaching systems.

2 After the transaction, Norfolk Southern
3 will operate a system of 21,400 route miles. CSX will
4 operate 23,100 miles. Today, of the four main rail
5 routes between the northeast and the midwest, Conrail
6 has three and CSX has one. After the transaction, CSX
7 and NS will each have two.

8 The transaction divides Conrail's
9 east-west routes furthermore in a way that insures
10 that neither railroad will be precluded from competing
11 in the major markets with each other because of excess
12 circuitry.

13 The transaction also insures that each
14 railroad will have adequate line capacity and adequate
15 terminal capacity which is vital for healthy
16 competition.

17 The transaction will also greatly increase
18 applicants' competitiveness with other transportation
19 modes and particularly trucks. NS and CSX estimate
20 that the transaction will enable them to divert a very
21 substantial amount of traffic from the overburdened
22 highways in the eastern United States.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Their conservative estimate is that the
2 transaction will result in almost a million fewer long
3 haul truck trips every year over the eastern highways.
4 Norfolk Southern, in particular, looks forward to new
5 opportunities to compete for intermodal traffic,
6 because that's the fastest growing segment of our
7 business. Between 1988 and 1995, Norfolk Southern's
8 intermodal business increased 94 percent and this
9 transaction will certainly help us continue that
10 trend.

11 The principal benefits to the transaction,
12 apart from increased rail competition, of course, will
13 result from the greatly expanded Norfolk Southern and
14 CSX systems.

15 As Mr. Goode observed in his opening
16 statement in the application, railroads are network
17 industries and their most effective when they connect
18 the markets that their customers want to serve. The
19 expansion of Norfolk Southern and CSX systems will
20 enable them to provide their customers will far more
21 extensive single line service, many more direct
22 routes. This will translate into more reliable

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 service, lower cost, reduce transit times, greater
2 equipment utilization.

3 Based on 1995 traffic and other data,
4 applicants estimate that the quantified public
5 benefits resulting from these lower operating costs
6 and other shipper benefits will be almost \$1 billion
7 a year.

8 No party in this proceeding has seriously
9 challenged these public benefits or the applicants'
10 quantification of them. These quantified public
11 benefits don't include the probably even greater
12 benefits that we haven't attempted to quantify. Those
13 include a significantly enhanced economic development
14 opportunities for industries in the eastern United
15 States as a result of the more efficient and more
16 competitive transportation system.

17 The unquantified benefits also include
18 very substantial environmental and safety benefits.
19 If, as we expect this transaction results in a million
20 long haul truck trips fewer per year. That's going to
21 reduce highway congestion, fuel consumption, air
22 pollution. The final environmental impact statement

1 that was issued on May 22nd, estimates that that
2 reduction in truck traffic will result in
3 approximately 1600 fewer highway accidents that would
4 otherwise have resulted in about 130 personal injuries
5 and 31 fatalities per year.

6 We think the best evidence of the merits
7 of this transaction is of course the very widespread
8 support that it's received. More than 3,000 parties
9 have submitted statements supporting this transaction,
10 including more than 100 railroads in 11 states.

11 That support reflects not only the merits
12 of the transaction, but as both Mr. Goode and Mr. Snow
13 have stated, applicants made very substantial efforts
14 to address the reasonable concerns that have been
15 expressed by parties through settlements with them.
16 As Mr. Snow and Mr. Goode have indicated applicants
17 have been very conscious of the Board's strong
18 preference for private negotiation and settlement of
19 disputes between railroads and the constituencies they
20 serve over governmentally mandated solutions to those
21 disputes. Applicants have heeded that admonition.
22 As of late February when the briefs were filed in this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

SURFACE TRANSPORTATION BOARD

06/03/98

FD#33388

121-180

1 case, applicants had reached settlements with
2 approximately 40 parties, including 16 railroads, two
3 of applicants' largest unions, the United
4 Transportation Union, the Brotherhood of Locomotive
5 Engineers, and the country's largest shipper
6 association, the National Industrial Transportation
7 League.

8 As we have detailed in our rebuttal
9 statement in our briefs, the NIT League settlement
10 addresses most of the major concerns that had been
11 expressed by shipper parties in this case. These
12 include concerns about five subjects: first,
13 implementation of the transaction; second, the
14 allocation of Conrail's transportation contracts
15 between Norfolk Southern and CSX; third, shippers that
16 will be losing single line service; four, maintenance
17 of reciprocal switching and switching charges; and
18 fifth, post-approval oversight by this Board.

19 In the NIT League settlement, applicants
20 have made concessions that go -- commitments that go
21 far beyond anything that the Board or the ICC has ever
22 imposed on railroads by way of conditions in previous

1 cases. It is a negotiated settlement and therefore it
2 does not contain everything that every shipper or
3 every shipper group in this case might have wished,
4 nor does it contain perhaps everything that the
5 applicants might have wished. It is, after all, a
6 negotiated settlement. But it does resolve the major
7 shipper concerns in a reasonable way.

8 If this Board is satisfied that the
9 provisions of that agreement are not plainly
10 unreasonable, then I submit it should reject the
11 requests that are still being made by a number of
12 parties to rewrite or add provisions that deal with
13 particular subjects addressed in the LIT League
14 settlement. I include in that category requests by
15 parties like the Chemical Manufacturers Association
16 that want the Board to impose, for example, different
17 provisions dealing with switching or different
18 provisions dealing with shippers that will be losing
19 single line service.

20 Granting such requests to rewrite various
21 provisions of the NIT League settlement would not
22 contribute to the process of private negotiation and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 settlement that this Board has very wisely encouraged.

2 Since the briefs were filed, applicants
3 have continued their efforts to resolve the concerns
4 of parties through private negotiations and they've
5 reached some very important additional settlements.
6 These include settlements with the Port Authority of
7 New York and New Jersey, Amtrak, SEPTA, all of which
8 are parties that have a vital interest in the
9 operations of the shared asset areas.

10 Norfolk Southern and CSX have also reached
11 settlements with the city of Indianapolis, PEPCO, the
12 Fertilizer Institute, Arco Chemical and the Southern
13 Tier West Regional Planning and Development Board.

14 In addition, applicants have also reached
15 settlements with a number of communities that have
16 expressed environmental concerns with this
17 transaction. In that connection, Norfolk Southern has
18 reached settlements with approximately a dozen
19 communities and these include most recently
20 settlements with the City of Cleveland and with the
21 surrounding communities of Bersa, Bay Village, Rocky
22 River and Lakewood. By these agreements, Norfolk

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Southern has agreed to undertake a number of actions,
2 including the connection of a segment of track known
3 as the Clydesville Connection which will enable it to
4 route trains in a way that preserve the basic aspects
5 of the transaction and the operating plan, but reduces
6 the anticipated train frequencies in certain areas.

7 These agreements with Cleveland and
8 surrounding communities go far beyond what the final
9 environmental impact statement has recommended for
10 Cleveland, the Cleveland area.

11 With respect to the final environmental
12 impact statement, Ms. Christian will discuss in
13 greater detail CSX's views about the FEIS and the
14 FEIS' recommended mitigation. Norfolk Southern is
15 generally in agreement with CSX on those matters.

16 Yesterday, both Norfolk Southern and CSX
17 filed with the Board written comments on the FEIS and
18 the recommended mitigations.

19 In Norfolk Southern's case those written
20 comments seek clarification of a number of the
21 proposed mitigation conditions and also some minor
22 modifications to some conditions that we think would

1 better serve the basic purposes that SEA had for those
2 mitigation conditions. We have served those comments,
3 both railroads have served those comments on all
4 parties of record and we have additional copies
5 available here today.

6 I'd like to say a few words about the
7 steps Norfolk Southern and CSX are taking to prepare
8 for the implementation of this transaction which has
9 been of concern to some parties and to the Board this
10 morning.

11 Mr. Goode and Mr. Snow have both spoken to
12 the very high priority that CSX and Norfolk Southern
13 place upon insuring that the transaction is
14 implemented efficiently and without serious service --
15 safely, and without serious service disruptions.

16 The efforts in that regard have been
17 extraordinary and I think unprecedented for any
18 previous rail consolidation. I think in some part due
19 to the fact that both, all the applicants are fully
20 aware that the most intense scrutiny is going to be
21 given to their performance of the implementation of
22 this transaction.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 At NS, the implementation planning process
2 is coordinated by Norfolk Southern's Vice President
3 Nancy Fleischman who provided a verified statement in
4 our rebuttal statement describing in considerable
5 detail the activities of Norfolk Southern in terms of
6 planning for the implementation of this transaction.
7 That process has continued unabated. There are
8 currently 131 separate interdepartmental teams and
9 subteams at Norfolk Southern working on implementation
10 plans and activities. These teams cover all aspects
11 of the anticipated integration of Conrail and NS
12 operations and operations in the shared asset areas
13 from customer billing, car movement systems, equipment
14 billing, payroll systems, etcetera.

15 Just to pick a couple of those out from
16 our master list for purposes of illustration, just to
17 give you some idea of the activities that are going
18 on: Team 7, for example, is the Miscellaneous Billing
19 Team and its stated mission is to integrate all bills
20 currently produced by Conrail nonrevenue, in sourcing,
21 rent and scrap billing systems into NS Miscellaneous
22 Billing systems. Team 21C is the Operating Systems

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Subteam of the shared asset areas and its mission is
2 to establish and operating system that supports an
3 environment that meets our customers' needs by
4 providing information to all parties in a safe,
5 efficient, accurate, and cost effective manner. And
6 the Operating Integration Subteam is designed to
7 assure that effective transition allowing the
8 operation of trains to and from NS and CSX on a
9 scheduled basis so that congestion is minimized and
10 crew and asset utilization is optimized.

11 There is an Employee Communications Team,
12 No. 35, and its job is "to design and implement an
13 employee communication program that promotes trust,
14 teamwork and shared goals and responsibilities among
15 NS and Conrail employees."

16 As Ms. Fleischman said in her statement in
17 our rebuttal statement, the enumeration of these teams
18 and the description of their functions cannot begin to
19 convey the intense activity underway at Norfolk
20 Southern and the achievement that those efforts have
21 already made. One principle that is central to
22 Norfolk Southern's implementation planning activities

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 is the principle we call Conrail peer review. Under
2 this principle, proposals that are developed by
3 various NS teams are subject to review and critique by
4 their Conrail counterparts to make sure that those
5 proposals would work at Conrail and to date, the vast
6 majority of NS's implementation teams have had peer
7 review meetings with their Conrail counterparts.

8 With respect to implementation, as it's
9 been said, it's also very important that the
10 transaction be implemented as soon as possible after
11 approval and applicants' efforts are directed to that
12 objective as well. That objective is as important to
13 shippers and to the public as it is to the applicants.

14 With respect to the all important issue of
15 safety, I would stress that the Agency with the
16 primary responsibility for rail safety, the Federal
17 Railroad Administration has consulted very closely
18 with the applicants, has reviewed the applicants'
19 plans and reports that it's fully satisfied.

20 As DOT states in its brief in this case,
21 "because FRA intends to monitor vigilantly the
22 applicants' safety performance, in our view safety is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 no longer an issue with which the Board need to be
2 concerned."

3 The other implementation concerns that
4 have been expressed are reasonably addressed in
5 applicants' settlements with NIT League, Amtrak and
6 other parties. In those agreements, applicants have
7 agreed to take certain actions before they commence,
8 divided operations and they've agreed to recommend
9 board oversight of the implementation process for a
10 three year period.

11 All of the applicants' efforts, of course,
12 cannot absolutely guarantee that problems will not
13 occur. No one can guarantee that. As Mr. Goode said,
14 we're not complacent. But if problems do occur, it's
15 not for lack of the most careful planning on the part
16 of NS, CSX and Conrail. This Board has correctly
17 recognized and stated that government cannot operate
18 private businesses as well as private businesses
19 themselves. For that reason, we submit that the Board
20 should reject the request by some parties that it
21 impose conditions that would go well beyond what
22 applicants have agreed to in the NIT League settlement

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and would have this Board review and dictate the
2 details and timing of the implementation process.

3 Most of the parties you'll be hearing
4 from, of course, either oppose the transaction or seek
5 conditions on it. We don't discount or denigrate
6 their concerns, even though we do believe they're
7 unfounded. I'll address most of those specific
8 comments and requests in the rebuttal tomorrow, but
9 after they've spoken and only make a few general
10 comments here.

11 First, the Board's policies with respect
12 to imposing conditions in transactions like this are
13 long-standing and have been consistently applied in
14 every consolidation proceeding for at least the last
15 20 years. Those policies proceed from the Board's
16 recognition as the ICC said in the Burlington
17 Northern/Santa Fe merger case that "conditions
18 generally tend to reduce benefits of a consolidation."
19 Based on that recognition, the bedrock principle of
20 the Board's policy on conditions is the conditions
21 will not be imposed unless they're shown to be
22 necessary to remedy harms to competition or to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 essential rail services that are caused by the
2 transaction. That's the bedrock principle. That
3 means several things. It means the condition should
4 not be imposed to try to remedy pre-existing
5 conditions that are unrelated to the merger. It also
6 means, as the Board has held, the conditions are not
7 to be imposed in order to make a party requesting the
8 conditions better off than he was before. And they
9 should not be imposed to prevent a competing railroad
10 from losing revenues or even from going out of
11 business.

12 We submit that history has clearly
13 demonstrated the soundness of the Board's policy. The
14 railroad industry today is immeasurably stronger and
15 more competitive than it was 30 years ago. While
16 there are fewer major railroads today, rail rates have
17 generally declined over that period and railroads are
18 far more competitive with other modes than they were.
19 A number of parties seeking conditions in this case
20 are seeking conditions in this case for reasons that
21 are squarely at odds with the central principle of the
22 Board's policy. Those include parties who are asking

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 for conditions to remedy pre-existing problems or to
2 create more competition for those parties than exists
3 today, for example, by asking the Board to require the
4 applicants to extend the shared asset areas to include
5 them. These requests which Mr. Lyons is going to
6 discuss more fully are understandable, but
7 fundamentally misguided. The Board's long-standing
8 policy is clearly correct for at least two reasons.
9 First, as Mr. Snow indicated, if the Board were to
10 impose conditions on transactions in order to remedy
11 pre-existing conditions or to give parties more
12 competitive options than they had before, that would
13 greatly deter transactions subject to the Board's
14 jurisdiction contrary to long-standing congressional
15 policy.

16 Second, if the Board were to do so, there
17 would be no where the Board could responsibly draw the
18 line. For example, if the Board were to grant the
19 request of one party for a condition, giving it direct
20 access to two railroads, even though it only had
21 access to one railroad before the transaction such as
22 for example, Eighty-Four Mining Company in this case,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 there simply is no rational basis to distinguish one
2 such request for another or no rational basis for the
3 Board to deny all similar requests by all such parties
4 who want to make themselves better off than they were
5 before.

6 In sum, this is a transaction that the
7 public benefits of which are manifest and largely
8 undisputed. Support for the transaction is widespread
9 and opposition is limited. The largest shipper group,
10 the National Industrial Transportation League, many
11 individual shippers support this transaction. Most
12 railroads support the transaction. The Department of
13 Justice and the Department of Transportation do not
14 oppose the transaction or dispute its basic benefits
15 and the concerns that they have expressed are
16 relatively minor. The transaction is clearly
17 consistent with the public interest and it should be
18 approved.

19 Thank you very much.

20 CHAIRMAN MORGAN: Thank you. Ms.
21 Christian, would you like to go next? Welcome back.
22 Of course, we're a new quarter since we last saw you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. CHRISTIAN: I have to confess I missed
2 hearing you, Chairman Morgan.

3 CHAIRMAN MORGAN: Well, you know, we are
4 here. We are here.

5 MS. CHRISTIAN: Thank you very much and
6 Vice Chairman Owen. I'm going to in my portion of the
7 argument address strictly the environmental issues.
8 Mr. Lyons, after that, on behalf of CSX will be
9 addressing the competitive and the other issues.

10 As Chairman Morgan has already pointed
11 out, this is the first railroad consolidation case in
12 which the Board or the ICC has prepared a full fledged
13 environmental impact statement and it's certainly a
14 comprehensive one. I don't have any doubt it will
15 clearly satisfy all requirements of NEPA.

16 But that's important when you focus upon
17 the task of the Board because unlike the situation of
18 with an environmental assessment where, as here, we
19 have a full fledged EIS, the task of the Board is one
20 of balancing and that means balancing not only the
21 environmental benefits, but also the transportation
22 and the economic benefits against the adverse

1 environmental impacts from the transaction.

2 Now there are two key points concerning
3 this balancing that I want to emphasize. First, as
4 the FEIS correctly concluded, this transaction has
5 major environmental benefits on a system wide basis
6 largely due to the fact that we will be diverting some
7 million truckloads of traffic every year off the
8 highways. Mr. Allen has already alluded to those.
9 They include a reduction on fuel consumption,
10 improvement in air quality, fewer highway accidents,
11 including fewer highway deaths, a reduction of the
12 risk of hazardous materials accidents and an
13 enhancement of rail safety.

14 Second, and equally important, the FEIS
15 also concluded that on a system wide basis there will
16 be no significant adverse environmental impacts. Now
17 this is important to the Board's balancing because the
18 only adverse environmental impacts that have been
19 identified are local in nature, and these have to be
20 balanced against the system wide environmental
21 benefits, as well as the transportation and economic
22 benefits that the other parties have discussed.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Now we have raised a number of points
2 concerning the EIS, the FEIS and our comments that
3 have been filed and this morning I want to highlight
4 just a few points.

5 First, there were several parties,
6 including Cleveland where as you know, we hope we'll
7 have a settlement, but we don't quite have it yet; the
8 Four Cities, and several parties representing New York
9 area interests, who argue that changes in the
10 applicants' operating plan ought to be required in
11 order to address local environmental impacts. All of
12 these requests ought to be denied as the FEIS
13 recommends.

14 Mr. Snow has already explained the
15 critical importance of both Cleveland and Chicago to
16 the operations of these railroads and he's done it
17 better than I ever could. Basically, any bottleneck
18 in Cleveland could have a major impact on east-west
19 traffic flows and as far as the Four Cities are
20 concerned which, of course, are the eastern gateway to
21 Chicago, Chicago is as it has been for decades not
22 only critically important to these applicants, but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 it's the major interchange point between the eastern
2 and the western roads. So problems getting in and out
3 of Chicago would impact the entire transcontinental
4 rail network.

5 Now the FEIS has concluded that the
6 reroutings proposed by all of these parties would
7 create major operational problems and with that we
8 totally agree. With respect to environmental issues,
9 the FEIS concluded that the claimed environmental
10 consequences in New York which was mainly increased
11 truck traffic will not, in fact, occur. And it's
12 also concluded that the adverse environmental impact
13 on the greater Cleveland area and the Four Cities
14 which were generally noise, vehicle delay at grade
15 crossings and issues associated with hazardous
16 material transport can be mitigated without requiring
17 any changes in the operating plan.

18 In those circumstances requiring any
19 change in the operating plan clearly would not be in
20 the public interest and I can't emphasize how
21 important this is.

22 The railroads themselves, their operating

1 personnel have designed these operating plans. They
2 know the strengths and the weaknesses of their own
3 systems. They know what they need to render good
4 service. They also know what they need to compete
5 with each other and with trucks. These operating
6 plans were very carefully crafted to insure the
7 efficient integration of the Conrail lines into CSX
8 and NS.

9 We've already had some discussion this
10 morning about the situation that we've all been
11 watching that's occurred in the west. Nobody wants a
12 repeat of that in the east. And I think this is an
13 extremely important point, these operating plans are
14 critical to the success of this transaction and it's
15 critical that they be allowed to implement the
16 operating plans as they have planned.

17 To put this in perspective, I simply
18 remind the Board that the number of trains that are
19 going to be moving through the most heavily traveled
20 lines in these areas, for example, through the short
21 line in Cleveland, is no greater than at many other
22 points on the existing Conrail system.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Over 1,000 miles of Conrail track
2 presently carry over 40 trains a day. That's the
3 amount that will be going over the short line. So the
4 implementation of these operating plans is not going
5 to result in any disproportionate impact on these
6 particular cities, particularly in light of the
7 mitigation that's been recommended.

8 Now the second issue I want to discuss is
9 noise. The FEIS recommends specific noise mitigation
10 measures including noise barriers and sound insulation
11 of buildings for all segments resulting in a
12 particular noise threshold. This is a radical
13 departure from the Board's own prior precedence and
14 there's no justification for it. In both BN/SF and
15 UP/SP, the Board required consultation with local
16 officials with respect to noise impacts, even though
17 in those cases there was only an environmental
18 assessment which meant that all significant
19 environmental impacts had to be mitigated. The only
20 reason that the FEIS gives for a different result here
21 is the statement that increases in train traffic are
22 more substantial, but this simply is not factually

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 accurate. The increases are greater than in BN/SF and
2 UP/SP only with respect to four out of the 14 routes
3 where mitigation is recommended. All four of those
4 are in the greater Cleveland area. And the applicants
5 have voluntarily offered to implement the recommended
6 mitigation with respect to those four.

7 With respect to the other ten, the
8 increase is no greater than it was in BN/SF or UP/SP.
9 That's clearly shown on the chart that was submitted
10 and the comments that were filed with you yesterday,
11 thus, there is no basis for departing from prior
12 precedent.

13 And from a policy standpoint, we would
14 also submit that requiring explicit creation of noise
15 barriers is simply not warranted. This is embarking
16 on new territory in the railroad industry. Unlike
17 highways, noise barriers, not only are not common,
18 they're almost unheard of. There are none at the
19 present time on the NS, the CSX or the Conrail systems
20 and as a matter of fact, the only one that we're aware
21 of anywhere in the United States is one on the Alameda
22 corridor which involved new construction and

1 significantly is being paid for by federal funds and
2 when I talk about the cost, we're talking about
3 something like \$1 million a mile.

4 In addition, it's not clear how effective
5 noise barriers will be on the railroad industry.
6 Unlike highways, a lot of the noise is not at ground
7 level. It's up involving horns and emissions for
8 locomotives and in addition, putting up these barriers
9 creates their own safety problems. You have to be
10 able to get to the tracks to get on the right of way
11 to do things like clearing snow and you simply can't
12 -- you can have problems if you have barriers in place
13 on a narrow railroad right of way.

14 If I may, I'd like to add one final point
15 and that concludes environmental justice. The
16 applicants have no objection whatsoever to
17 implementing the environmental conditions that have
18 been recommended and in fact, they'll do it
19 voluntarily. But they do not agree with the FEIS'
20 conclusion that there are any disproportionate impacts
21 on minorities or low income communities. The
22 applicants took the Conrail lines as they have existed

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 for decades. The lines are where they are. The
2 traffic is going to move over those lines, depending
3 on where they need to go and the most efficient way of
4 getting them there. They go through high income and
5 low income communities. They go through racial
6 minority and nonminority communities. They're all
7 affected alike and while we have no objection to
8 implementing the mitigation, we do regard this finding
9 of disproportionate impact as one that is unfair to
10 the railroad industry and we would ask that the Board
11 disavow it.

12 Thank you.

13 CHAIRMAN MORGAN: Well, let me just follow
14 up, Ms. Christian, if I might on a couple of the
15 points that you made here. First of all, with respect
16 to the operating plans, particularly Cleveland and
17 Four Cities, the FEIS does not recommend altering the
18 operating plans in any significant way so you support
19 that position as has been articulated in the final
20 EIS?

21 MS. CHRISTIAN: Yes, we support that
22 position, yes. That is, with respect to Cleveland, we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 support alternative 2 which includes Norfolk
2 Southern's voluntary clause.

3 CHAIRMAN MORGAN: That's right. The
4 second point that you made which relates to noise
5 barriers and sound insulation, as I understand your
6 position you would have preferred that the FEIS do
7 what we did in BN/Santa Fe and UP/SP which was to
8 direct consultation. Is that what you're saying?

9 MS. CHRISTIAN: That is correct, Chairman
10 Morgan.

11 CHAIRMAN MORGAN: As opposed to actually
12 directing certain activities as they relate to noise.

13 MS. CHRISTIAN: That's exactly correct,
14 Chairman Morgan.

15 CHAIRMAN MORGAN: Of course, you
16 understand that through the whole comment period, one
17 of the big issues in several of the communities was
18 noise, so obviously the FEIS was responding to a
19 significant issue that had been brought to the Board.

20 MS. CHRISTIAN: That's absolutely correct,
21 and we are certainly prepared to work with those
22 communities to consult with them to do whatever

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 appears to be appropriate to mitigate noise. And in
2 fact, as I indicated in the Cleveland area, which is
3 the place where train increases really will be
4 substantial, the applicants had voluntarily agreed to
5 embark upon sound insulation for the buildings and in
6 some areas noise barriers. So they're prepared to
7 implement that in Cleveland.

8 In the other areas, quite candidly, we
9 don't think there is extreme. Just to give you an
10 example on one Norfolk Southern route the increase in
11 trains goes I believe from 30 to 32, so you're talking
12 about an increase of two trains a day in areas that
13 already have very extensive train traffic. We think
14 in those areas it's far more appropriate to do, as you
15 did in the two prior merger cases where I would remind
16 you all significant environmental impacts had to be
17 mitigated because it was only in EA and consulting
18 with local officials.

19 Let me just give you an example of how
20 this can affect a decision to create noise barriers.
21 For example, frequently a railroad line in some areas
22 will be going through what we call a cut, that is, it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 will be down below grade. Now to a certain extent the
2 cut itself acts as a noise barrier there. That's the
3 sort of thing that needs to be taken into account. In
4 other areas, if there's to be any mitigation at all,
5 you can do it by extensive planting of trees, for
6 example, if there is sufficient space between the
7 right of the way and the houses. So it's a very
8 localized, very individualized determination and it's
9 something that ought to be worked out between the
10 railroads and the individual communities.

11 CHAIRMAN MORGAN: Well, I certainly
12 understand your position. I do think, however, that
13 the comparison between the two prior mergers and this
14 one is not -- doesn't completely square because
15 clearly this merger involves a lot of more densely
16 populated areas and increased train traffic, but
17 again, I understand where you're coming from and
18 certainly the Board will look at that in the context
19 of this analysis of the FEIS.

20 MS. CHRISTIAN: Thank you.

21 CHAIRMAN MORGAN: Now the last point you
22 made was environmental justice and of course part of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the finding with respect to environmental justice is
2 the finding of a disproportionate impact relative to
3 other areas, so we did make that finding, not we, but
4 the section of environmental analysis did make that
5 finding in order to then get to the ultimate actions
6 that were directed. Do you not agree with that?

7 MS. CHRISTIAN: The concern, Chairman
8 Morgan, is we think that it is a comparison of apples
9 and oranges. The comparison that was drawn in the
10 FEIS was between, for example, minority communities
11 located right along the railroad tracks and other
12 nonminority communities in the same county that were
13 further away from the tracks. Well, of course, a
14 community that's 20 miles away from the railroad track
15 is going to experience less impact than one that's
16 right alongside the track. We think the correct
17 comparison should have been between the minority or
18 the low income communities that were adjacent to the
19 track and the high income communities and the
20 nonminority communities that were also alongside the
21 track in the same area. There certainly are some.
22 This is not a situation in which the tracks go only

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 through low income and minority areas. They don't.
2 They go through a mixture of minority, nonminority, of
3 lower income, higher income. And when you look at
4 communities situated in a similar proximity to the
5 tracks, there is no difference in the impact. High
6 income communities are being subjected to just as much
7 of a noise increase when that train comes down the
8 track going from A to B as the minority community is.
9 And that's our point, that there is impact of course
10 on everybody, but there is no disproportionate impact
11 on the minorities. And this is something that
12 candidly, Chairman Morgan, it's a matter of principle
13 with the railroad industry. As Mr. Snow mentioned,
14 the railroads have continued to go into the inner
15 cities. They serve the inner cities as well as the
16 suburbs. This is an industry that has not pulled out.
17 It's also an industry that historically has always
18 provided jobs to people to help lift them out of
19 poverty. They're still doing that. And to have this
20 industry and these two applicants in particular, stand
21 accused of having perpetuated a disproportionate
22 impact on minorities and low income people quite

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 candidly we feel strongly about it. We don't think
2 it's a fair assessment and it really is an important
3 point to ask that that be deleted. As I've said at
4 the beginning, we're happy to implement the conditions
5 that have been recommended. We voluntarily will agree
6 to do so, but it's a matter of our good name.

7 CHAIRMAN MORGAN: Well, and I certainly
8 understand that. I mean this is a legal determination
9 not a moral determination.

10 MS. CHRISTIAN: Right.

11 CHAIRMAN MORGAN: We are not morally
12 determining that either of these companies is somehow
13 affecting minorities in some negative way. This is an
14 executive order that the Board has to implement in the
15 context of the environmental justice and that is one
16 of the standards. So -- but in any event, I
17 understand where you're coming from.

18 Before I move to Mr. Lyons, do you have
19 any --

20 VICE CHAIRMAN OWEN: Yes, I was just
21 wondering, Ms. Christian, do you have any negotiations
22 going on now with the noise barriers in any of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 communities?

2 MS. CHRISTIAN: Any one? I'm going to
3 defer this, if I may, to Mr. Snow who is certainly
4 much closer to that than I am.

5 MR. SNOW: Yes, we are in discussions with
6 Cleveland that possibly could lead to our acquiescence
7 in some barriers that the city would construct and
8 maintain over some short spans.

9 MS. CHRISTIAN: I believe Vice Chairman
10 Owen that only three of these lines may be CSX lines
11 and the others are NS lines and so if there's anything
12 that NS wants to add on that issue.

13 MR. GOODE: I'm not aware of any
14 additional negotiations of noise barriers.

15 VICE CHAIRMAN OWEN: Did you not provide
16 though \$10 million in \$2 million increments over five
17 years?

18 MR. GOODE: We provided --

19 VICE CHAIRMAN OWEN: I thought the
20 assumption was in reading that maybe that was for
21 noise abatement?

22 MR. GOODE: Yes, some of -- the agreement

1 that we had with Cleveland includes some money for
2 noise abatement and the creation of some barriers.
3 I'm not --

4 VICE CHAIRMAN OWEN: Discretion there that
5 could go into the general fund and could be used for
6 --

7 MR. GOODE: There is some discretion in
8 the agreement, but it involves mitigation of noise
9 issues for the city of Cleveland.

10 MR. SNOW: That's the same with us. Mr.
11 Vice Chairman, where the mayor would have broad
12 discretion to use the money as he thought best for the
13 city to deal with mitigation issues of noise.

14 MS. CHRISTIAN: But certainly, if you were
15 to modify the condition to require consultation with
16 local officials, these consultations would take place
17 and we would -- obviously, you would still be here if
18 there was any complaint that we were not negotiating
19 in good faith.

20 VICE CHAIRMAN OWEN: With your experience
21 in transportation, I'm very limited in this field, are
22 there any legal impediments to this Agency mandating

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 noise barriers in some places?

2 MS. CHRISTIAN: Well, we think --

3 VICE CHAIRMAN OWEN: If we ever came to
4 that?

5 MS. CHRISTIAN: We think it's
6 inappropriate. I'd almost go so far as to say there's
7 a strict legal barrier, but certainly the EPA and the
8 FRA regulate noise extensively. And they have decided
9 as a conscious policy decision that noise for
10 railroads should be mitigated at the source. That is,
11 in the locomotives and the railcars themselves, rather
12 than through noise barriers and sound insulation.
13 They have rejected noise barriers and sound insulation
14 as an appropriate means of mitigation.

15 And I think part of the reason for that is
16 the nature of the noise. First of all, your loudest
17 noise is horns, and for safety reasons you can't say
18 don't sound the horn. And the second thing is that,
19 unlike highways, the locomotive is up high, and so
20 your noise from the locomotive is actually going to be
21 above the level of a lot of these now sound barriers.

22 So what people are working on is

1 locomotives that will emit less noise, doing things
2 like, for example, substituting continuous welded rail
3 for a jointed rail. That's being done on all of the
4 new construction. That CSX is embarking upon. And
5 that in itself will lower noise levels by about
6 5 decibels.

7 But see, this is the way that you can
8 lower noise on railroads. Highways you don't have
9 that sort of option, so they resort to barriers. But
10 the conclusion of EPA and FRA has been that's the way
11 you do it. You should not resort to barriers.

12 VICE CHAIRMAN OWEN: In my experience I
13 don't see how a noise barrier is going to reduce the
14 sound hardly because that train goes through -- it
15 seems like no matter what you put up, you're going to
16 feel the vibration and you're going to hear it, if
17 you're that close.

18 MS. CHRISTIAN: I think that's a fair
19 assessment. And to the extent that you can mitigate
20 what's the best way to do it, well, we would say one
21 way is as we're doing, to go to welded rail,
22 continuous welded rail. That does help substantially.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Other ways have to do with the new
2 generations of locomotives that are coming out, and
3 that the roads will be acquiring. And that will help
4 get the noise down.

5 But, I have to agree with you on a
6 personal level, Vice Chairman Owen, that I don't think
7 these barriers really do that much.

8 VICE CHAIRMAN OWEN: Now, do you work at
9 the local level on the safety issues also, with
10 reference to crossing -- these things that are
11 safe --

12 MS. CHRISTIAN: That is another area that
13 we've addressed -- I did mention it this morning.
14 It's another area that we have addressed in the
15 comments that we filed.

16 Now, in the safety area, what the FEIS did
17 was prescribe very explicit grade crossing
18 improvements, even down to the type of gate to put at
19 what particular crossing. But then went beyond that
20 and said, but if the applicants reach an agreement
21 with the local and state officials, that that would be
22 an acceptable substitute if it met two conditions.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 The two conditions were that it be in the same
2 facility and that it acquire an equivalent level of
3 improvement in safety.

4 Now, in our comments we have asked that
5 those two conditions be eliminated, at least partly
6 because we think it's confusing, is it's going to lead
7 to disagreements over what's in the same vicinity and
8 what's an equivalent level of protection.

9 But fundamentally, I think that the
10 approach there made sense in terms of deferring
11 wherever possible to the state and local officials
12 that the railroads normally work. But this is what
13 you do in rail crossings generally with respect to
14 grade crossing safety; the states take the lead. The
15 railroads go out with them, with their personnel. The
16 states then set a list of priorities for improving
17 grade crossings in the state. And then they decide,
18 based on on-the-ground inspections what you need.

19 Do you need a four-quadrant gate? Some
20 places that's very useful, some places it really
21 doesn't work. Medium barriers. That works fine in
22 some places, can actually be a safety hazard in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 others.

2 So this is an area where we think it is
3 far best to leave it, wherever possible, to the state
4 and the local communities to work with the railroads,
5 and come up with a satisfactory solution. And after
6 all, when you get to grade crossing safety it's really
7 more of a highway problem than it is a railroad
8 problem, in that when you have a collision, the one
9 that comes out the worse is the motorist, not the
10 train.

11 VICE CHAIRMAN OWEN: I agree.

12 CHAIRMAN MORGAN: But let me just follow
13 up on that. Clearly, our responsibility in analyzing
14 this transaction is to make sure that it is
15 safely -- (coughing) -- and we have a responsibility
16 to analyze the environmental issues, and to respond in
17 a way that we feel will ensure that those issues are
18 attended to.

19 And that's why -- for example, the grade
20 crossing issue. There are different ways you can go.
21 Obviously, the SEA chose to actually direct action as
22 it relates to grade crossing, because there was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 concern there about safety. Similarly with noise,
2 that is an environmental issue. You raise the FRA, of
3 course, but their jurisdiction and ours are different
4 as it relates to this particular matter. We are
5 responding to environmental issues.

6 MS. CHRISTIAN: We think that SEA
7 performed a very valuable service in what it did, in
8 terms of developing the recommendations. Our only
9 point is that in the end -- and this is totally
10 appropriate under NEPA -- having performed these
11 analyses and having developed the recommendations,
12 it's entirely appropriate then for this board to say,
13 now that we have given you all this input, it's for
14 the states and the local communities to decide exactly
15 what should be done at the local level.

16 We've given you our ideas. In the case of
17 grade crossings, for example, we've decided
18 Crossing X, we think is probably a priority, and that
19 it deserves a four-quadrant gate, for example. But in
20 the end we think that it really should be a matter for
21 the states and the local communities, who are right
22 there on the ground, so to speak, to reach the final

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 decision.

2 But certainly, what SEA has done is not
3 only an exhaustive job, but a very valuable job.

4 CHAIRMAN MORGAN: Well, you say that the
5 states and localities, that's where it should be, but
6 of course a lot of the states and localities have
7 asked us to do what is in there. So, I just make that
8 point.

9 MS. CHRISTIAN: I understand.

10 CHAIRMAN MORGAN: Thank you very much.

11 MS. CHRISTIAN: Thank you.

12 CHAIRMAN MORGAN: Mr. Lyons.

13 MR. LYONS: Thank you.

14 Chairman Morgan, Vice Chairman Owen, you
15 have heard Mr. Allen tell us about the benefits of the
16 transaction, and I think those are largely
17 noncontroversial. They have not been very much
18 controverted by any of the opponents or the persons
19 seeking conditions on the transaction.

20 I will be a little more controversial and
21 will try and discuss two issues about which there has
22 been controversy, first the shared assets area;

1 second, Section 2.2(c) of the Transaction Agreement.

2 As to the three shared asset areas, it is
3 agreed that those are unique; that no one has done
4 that before in a rail combination. Their benefits
5 don't really have to be mentioned. For those who are
6 within them, the benefits are very obvious. The
7 benefits for those who are not in them are a little
8 less obvious, but they're also true. Because if
9 someone is single served by rail outside those shared
10 asset areas, the competition within the shared asset
11 area is a constraint on the carrier as to what the
12 carrier can charge, and as to the level of service
13 that that carrier can provide.

14 No carrier ever made money by letting its
15 soul-served patron be put out of business. No rail
16 carrier made money by permitting, through neglect or
17 through malpricing, permitting its sole-served patron
18 from draying over into the shared asset area and
19 shipping from there.

20 So there are indirect effects of the
21 shared asset areas. The DOT discussed those in its
22 filing, and Dr. Colt for the applicants also in his.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 The greatest popularity, however, of the
2 shared asset areas was the flood of filings by many,
3 many interests who wanted to have shared asset areas
4 themselves, who wanted the share asset areas extended
5 to include them, who wanted special shared asset areas
6 for themselves.

7 These filings we believe were made,
8 despite the warnings from the Board, in contravention
9 of two principles that the Board has always followed,
10 and which its predecessor has always followed.
11 Namely, that no one is entitled to be better off after
12 a rail combination than they were before it. And
13 second, that the Board does not consider that there is
14 competitive harm in improving one community's rail
15 situation, while leaving another in status quo.

16 And in order to overcome that hurdle that
17 the Board's precedence lay down, there have been
18 various formulations by the various interests who have
19 supported violating those principles.

20 The one I'd like -- the best and perhaps
21 the most candid was the one made in the filing on
22 behalf of the Buffalo and the Niagara Coalition, and

1 here it is, from page 27 of their brief.

2 "Having left the genie out of the bottle,
3 the applicants cannot and should not be permitted to
4 arrogate to themselves the function of determining
5 where competition should or should not be provided."

6 Let me give you a shorter version of that.
7 The shorter version is, "No good deed ought to remain
8 unpunished."

9 We want to have genies let out of the
10 bottle. We want to encourage people to let them out
11 of the bottle. Here, as Mr. Snow made plain, the
12 reason for doing this was, not altruism; it was not
13 making a donation to the poor and to the neglected.
14 The reason for the shared asset areas were that there
15 were places where both of these competitors wanted to
16 be, and where they would not permit the other to be
17 without them being there as fully themselves.

18 And there were some such areas. A balance
19 was struck after long and vigorous negotiations, and
20 that balance was reached.

21 Now, there happened to be three areas in
22 particular in which my client, CSX, appears to be the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 target for a creation of a shared asset area or an
2 extension of a shared asset area.

3 One is the Buffalo area, where despite
4 what was said this morning, competition has been
5 reintroduced to the same extent that the 1975 final
6 system plan, which was not implemented, brought it.
7 The Erie Lackawana lines were allocated to the C&O in
8 that case. It couldn't do it because of the labor
9 difficulties. Those lines are allocated to Norfolk
10 Southern at the present time. The old New York
11 Central lines will be going to CSX.

12 According to their own filings, by the
13 group that has made the plea, about half of the points
14 in the area are open to reciprocal switching. The
15 reciprocal switching rates they have told us -- which
16 is entirely correct by Conrail. We're very high.
17 They were at \$450, and they have been dropped in the
18 Conrail locations to \$250. There has been some
19 concessions to the Canadian railroads, and they will
20 be large players.

21 That area like the other two areas -- the
22 other two areas I'm going to touch on are Indianapolis

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and the area to the east of the Hudson River. And
2 those areas will be better off also than they were
3 before the transaction, which means that they're
4 better off than under the Board's precedence. They
5 have to be made.

6 There is a surplus that has been
7 introduced here. Some of it has been costly, but
8 there is a surplus value that has been introduced into
9 the competition.

10 In Indianapolis our additional proposal
11 replicated and enhanced the competition that exist
12 beforehand. Beforehand, Conrail was on the ground,
13 CSX had access to a number of the shippers, only
14 through reciprocal switching. The reciprocal
15 switching charges were famous Conrail reciprocal
16 switching charges. They will \$390 a car.

17 We have put -- Norfolk Southern has been
18 placed in, but the reciprocal switching charges for it
19 in replicating CSX's old role has been reduced, so
20 that they will be the lower of cost-based or \$250 a
21 share. And the \$250 a share was introduced only on
22 Monday with the settlement with the City of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Indianapolis.

2 And while I recognize that our other
3 proposal of that day has been stricken by the Board,
4 I would like to say on behalf of CSX, that we still
5 tender and we still present as a condition, which we
6 are agreeable to having the Board impose, the proposal
7 that is recorded in that filing, which if there is no
8 agreement to it in terms of making a contract with the
9 utility in question, we would put in as a tariff, and
10 give them the protection for the 20 years that is set
11 forth in that filing. And that again makes the
12 situation better and more permanent than it is today,
13 and improves the situation there.

14 Or the East of the Hudson situation, the
15 melancholy fact is that manufacturing has declined in
16 New York City; that New York City itself as a port,
17 there has been a shift to northern New Jersey. And
18 the great infrastructure, and the great industrial
19 infrastructure, and the port infrastructure, and the
20 oil tanks, and the railyards are all over there. And
21 if you drive along the Jersey Turnpike, you will see
22 that. You will see little else.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 And that is a condition. It is an
2 existing condition. A river runs through it. It is
3 the Hudson River. It is wide, it is deep, and there
4 is no railroad bridge over it until you get to Albany.
5 And those are the facts of geography and of the
6 present situation of the infrastructure.

7 Now, there has been a single assignment
8 east of the Hudson, a single allocation to CSX. Under
9 the old -- 95 percent of the rail moves are on the
10 west side, 5 percent out of the area are on the east
11 side.

12 I think it is fair to say Conrail did not
13 develop the market on the east side of the Hudson.
14 Why should it? It was the sole Class 1 rail carrier
15 on the west side of the Hudson, and if they didn't
16 like the service on the east side of the Hudson, they
17 could go over to the west side of the Hudson, and they
18 met Conrail again there.

19 This situation is quite different. We
20 have an incentivised CSX. CSX does not want to have
21 its customers to go over to the other side of the
22 Hudson, and it will do what it can to prevent that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 The picture would be better off. There is
2 much civic support for the East of the Hudson
3 proposals. There is very little shipper support, and
4 there are very few shippers. And you have to give an
5 incentivised railroad to deal with that situation on
6 the east side.

7 On Section 2.2(c) we have heard something
8 about antiassignment clauses. The Conrail contracts
9 are going to be assigned. There will be no more
10 Conrail running along all lines. Conrail will be
11 confined to the shared asset areas for its operations.

12 If the Board were to enforce the
13 antiassignment clauses -- and there are plenty of
14 them. I can't tell you how many there are, but the
15 great majority of the contracts have them. You can be
16 assured of that. And there are very, very many
17 contracts.

18 If I can conclude just this one thought.
19 If the Board feels that it should not override the
20 antiassignment clauses, then the logical remedy is to
21 deny approval of the transaction, because it is the
22 transaction that tears up the antiassignment clauses.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Instead, what the Board should concentrate
2 on is, what is a fair way of having the contracts
3 performed by the successors, as they must be. What is
4 an orderly way? What way will prevent upsets, and
5 congestion, and chaos on day one? What approach
6 will -- to the extent that one can once Conrail is
7 gone, and there must be an assignment, what approach
8 will be the fairest? And that is the approach of
9 holding everyone to their bargains, and not simply the
10 railroads.

11 My time is over.

12 CHAIRMAN MORGAN: Thank you.

13 You talk about tiered assets, Buffalo,
14 East of the Hudson, and contracts. And after you all
15 finish, we have Congressman Nadler, who I'm sure will
16 want to respond on East of the Hudson, so I'll leave
17 that to you.

18 But let me ask about Buffalo for a minute.

19 MR. LYONS: Yes?

20 CHAIRMAN MORGAN: Specifically, how is the
21 balance in Buffalo? You've talked about -- and I
22 think Mr. Snow earlier discussed that the competition

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 has been added in Buffalo as a result of this, and
2 that CSX and NS obviously have put together a deal
3 that incorporates access to the market. How is that
4 divided up right there?

5 MR. LYONS: I think it's fair to say that
6 there are more points, and I don't know the exact
7 percentage, more points that are directly served by
8 CSX afterwards than are served by Norfolk Southern.
9 There is quite extensive reciprocal switching, and the
10 reciprocal switch charges are lower.

11 The situation in Buffalo is not unusual.
12 The Commission's decisions are recognize the fact that
13 you very frequently have -- almost inevitably have two
14 railroads serving a metropolitan area, but most of the
15 shippers are sole served; that there is sole access.
16 In some cases there is reciprocal switching, and in a
17 number of cases you have stations that are closed to
18 reciprocal switching, and that's not available.

19 So the presence of CSX after this
20 transaction in Buffalo is larger than Norfolk
21 Southern. If it wasn't, Mr. Allen would be up here
22 saying what I am saying, if it was the other way

1 around.

2 CHAIRMAN MORGAN: Now, on contracts, I
3 think I hear you saying that if we do not override the
4 nonassignability clauses, that that's destructive to
5 the transaction. I don't think you used the word
6 "destructive", but I've used it for you.

7 MR. LYONS: The purpose of the transaction
8 is to take away Conrail's ability to perform the
9 contracts. Conrail will not be able to perform the
10 contracts. So if anyone thought that the
11 antiassignment clauses are sacred, and the Board could
12 not -- which I don't think is an issue -- or should
13 not override them, the logical thing for the Board to
14 do would be to turn the transaction down.

15 I think -- my point essentially is, that
16 the antiassignment clauses are a formality. They are
17 something that simply stands in the way of the Board's
18 powers and stands in the way of the transaction.

19 What we ought to be talking about is, what
20 is the fairest and the most efficient way of dealing
21 with this situation, where if the Board does what we
22 say is in the public interest, the transaction will be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 approved, Conrail will fall into a relatively minor
2 position, and the two railroads will succeed to the
3 contracts. And will we have a transition period in
4 which the contracts will run out, and while they're
5 running out the railroads will perform them in an
6 orderly fashion; or will we add to the strains on day
7 one, of a fruit basket upset of all the contracts, and
8 with everyone fighting for them, without regard to
9 their ability to perform them, without regard to the
10 fact that the two railroads themselves have each half
11 of Conrail, and they do not have quite the same
12 latitude of performance of the contracts that Conrail
13 had. Because Conrail could get you from New York to
14 Chicago in a great variety of ways.

15 The two railroads of course can, at least
16 the same number, but each of them does not have the
17 same number of routes that Conrail has. So the
18 situation is very complex in terms of who starts out
19 where. The competitive process will be there from day
20 one, because everyone will be looking at the renewals
21 of the contracts, and that will be a disciplining
22 factor.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 The deal initially negotiated to change
2 the operator is a contributing factor, but with the
3 pooling of the 50/50 contracts, the ones that can be
4 performed by either party, and with the temporary
5 device of having those assigned, so that the process
6 can be jump started, and the situation can start
7 itself, and then the competitive battle can go on for
8 the renewals with the assigned party trying to give as
9 good service as possible, and with the contracts
10 rolling off one by one, so that you don't have stress
11 on the situation the first day.

12 That operationally is the ideal way, and
13 I think in fairness also that something here inside
14 tells me we should not let a carrier that got a
15 long-term, free, \$1 a year lease on a major industrial
16 facility, in a major industrial location, and pledged
17 itself to a set of rates with that in mind -- that we
18 shouldn't let the carrier say, heads, I win; tails you
19 lose. I like the lease, I don't like the contract.

20 CHAIRMAN MORGAN: But let me get back to
21 my first question. I don't think you're suggesting
22 that if we decide not to override the nonassignability

1 clauses, that we should deny the transaction.

2 MR. LYONS: Well, I think that's the
3 logical outcome of it. If you have that much respect
4 for the nonassignability clauses, then the logical way
5 is to let go on performing them. But that's
6 inconsistent with the rest of the transaction.

7 I think that in the sense of fulfilling
8 what the transaction must be, in that sense, which is
9 the real sense of what "necessary" means in the
10 section of the statute that we're both thinking about;
11 that it is necessary to do what the applicants are
12 proposing be done.

13 It is necessary in order to have an
14 orderly succession here, or a need to have any
15 succession, that the antiassignment clauses be
16 overridden. If they're not, among other things, there
17 could be an argument that you've got 600 or 1200
18 breaches of contract involved, because the parties
19 deliberately, and Conrail itself deliberately, put
20 itself in a position where it couldn't perform the
21 contracts anymore. And that is a breach of contract,
22 to put yourself in a position where you can't perform

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 a contract.

2 VICE CHAIRMAN OWEN: Well, you still leave
3 me a little bit confused. It just seems as though if
4 we did not override the assignability there, that
5 conceivably you would be able to go after that and
6 compete for those contracts.

7 MR. LYONS: There would be competition.
8 What you would have is competition which would -- I
9 think the windfall for the shippers, because they had
10 for benefits under the Conrail contract, traded off
11 their freedom to step outside of the contract whenever
12 they wanted to. And so you would have a windfall by
13 it, because you would not be holding them to their
14 deals. You would also have the operational
15 difficulties that have been described, and which
16 Mr. Snow also alluded to in his remarks, and which the
17 verified statements from both parties, both applicants
18 have indicated.

19 I cannot say that the Board is powerless
20 to say okay we like this deal, but restart all the
21 contracts on day one. That's a solution. I think it
22 is a destructive and inequitable solution. But the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 question as to whether an individual shipper has an
2 antiassignment clause, which the DOT made a lot
3 of -- they were the first party really to make that
4 suggestion seriously, and that's what I've been
5 responding to.

6 I think the DOT focused on that, and the
7 private shippers caught on. After that, the APL had
8 not made any point of the antiassignment clauses
9 before then, but they started talking about them at
10 that stage.

11 We ought to look at this as a matter of
12 record, and not as a matter of the technicality of who
13 has an antiassignment clause and who does not. And
14 basically this is a situation where Conrail is going
15 away, and it's going away for everyone. And the two
16 carriers are coming in, and they're coming in for
17 everyone. And the ones with antiassignment clauses
18 and the ones without should not be treated
19 differently. That's the only point I'm making.

20 CHAIRMAN MORGAN: Thank you all. We've
21 spent a lot of time, but this is important. These are
22 important questions, and we are going to be hearing

1 from a lot of other people throughout today, and
2 tomorrow. And I know we'll be back with you at the
3 end of it all, and I'm sure we'll have some more
4 conversation on some of these issues.

5 I appreciate it.

6 Congressman Nadler, I appreciate your
7 patience, but we had to get through this panel. And
8 you've heard some interesting comments that you might
9 want to respond to. I think you have some folks with
10 you, so why don't you come on up after we've moved
11 this panel on.

12 REPRESENTATIVE NADLER: Madam Chairwoman,
13 members of the Board, I want to thank you for this
14 opportunity to express my views.

15 I believe most people know why I am here
16 today, but first I want to mention one other area of
17 this transaction that I believe should be of some
18 concern to this Board.

19 I'm concerned, as are many others, that
20 there may be an attempt to substitute a discipline
21 program for a true safety program.

22 Statements by the FRA and the General

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Accounting Office have pointed out that they believe
2 there may be an under-reporting of accidents and
3 injuries. Many railroad workers believe this to be
4 true. They believe this is a result of disciplinary
5 threats being used to intimidate injured workers into
6 not reporting accidents and injuries.

7 If this is true, it prevents members of
8 Congress and federal regulators from having the
9 necessary information to enact the laws and
10 regulations that are needed to promote, and to
11 guarantee rail safety. And I think it would be very
12 necessary if the Board would address this subject and
13 its conditions for approval of this application,
14 should you approve the application.

15 Madam Chairperson, the petition I have
16 submitted, joined by 23 other members of the House of
17 Representatives, points out that almost 40 percent of
18 intercity freight in the United States travels by
19 rail. But in the area defined by New York City, Long
20 Island, Westchester, and Puttnam Counties, and lower
21 Connecticut, the figure is not 40 percent, it's
22 2.8 percent. This is an historical anomaly because it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 used to be at the national average until the late
2 '60s.

3 In a region of more than 12 million
4 people, almost everything we produce and consume goes
5 in and out by truck. This tremendous dependence on
6 trucking has given parts of our city an asthma death
7 rate eight times the national average. It has
8 polluted our air, congested our streets and roads,
9 helped make our port uncompetitive, and added to the
10 cost of everything we consume, and for that matter to
11 the cost of everything we produce.

12 The Surface Transportation Board has a
13 broad obligation to produce a rail system that serves
14 the national interest. A proposal that continues the
15 existing total lack of service to more than 12 million
16 people, better than 5 percent of the nation's
17 population, is totally unacceptable.

18 I have personally been involved in
19 attempts to increase rail freight service in the New
20 York region for almost 20 years. Every time a
21 proposal's been advanced to enhance our rail freight
22 infrastructure, even with public money, to save this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 railyard, or to make capital improvements to that one,
2 the major objection raised has always been "Conrail
3 won't serve it".

4 In this proposal CSX will succeed to
5 Conrail's position east of the Hudson River. In
6 papers filed before this Board CSX similarly promises
7 know substantial service east of the Hudson River.
8 Both CSX and Norfolk Southern promise in their
9 proposal to serve the region east of the Hudson, by
10 truck drayage from New Jersey.

11 The applicants say that 1,800 additional
12 trucks a day -- because of improved service in New
13 Jersey, 1,800 additional trucks a day will come to the
14 railyards in northern New Jersey, in close proximity
15 to New York City, but across the Hudson River, from
16 it.

17 We know every traffic study, every study
18 shows that two-thirds of the traffic to those
19 railyards, two-thirds of the traffic carried from
20 those railyards and to them, originates or is destined
21 east of the Hudson River, New York City, Long Island,
22 Westchester, or lower New England.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Nobody knowledgeable of local traffic
2 patterns can conclude anything other than that about
3 two-thirds, maybe three-fifths, but at least
4 three-fifths or two-thirds of those 1,800 additional
5 truck trips a day will cross the George Washington
6 Bridge, will cross northern Manhattan, and the South
7 Bronx, and will go elsewhere in New York City, or Long
8 Island, or southern New England, or Westchester. And
9 add immeasurably to the air pollution in northern
10 Manhattan and the South Bronx.

11 The final environmental statement, which
12 says there will be no additional truck trips, except
13 de minimus is simply wrong; that no one rationally can
14 conclude that you can have 1,800 additional truck
15 trips a day to northern New Jersey, New York City area
16 rail terminals without having most of them coming
17 through New York City, and adding to our environmental
18 burden.

19 So this alliance says that we are seeking
20 relief against the principle; that no one is entitled
21 to be better off after a rail consolidation than
22 before, I would dispute that principle in a moment.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 But the fact is we will be substantially worse off,
2 because of 1,000 to 1,200 additional truck trips a day
3 through our city, as a result of this, if our
4 application is not granted.

5 This provides our region not only with no
6 economic environmental improvement, but it threatens
7 to make substantially an environmentally intolerable
8 situation for the next century. And I would point out
9 to you that we point out in our brief, that this board
10 has a substantial obligation under the National
11 Environmental Protection Act, not to do anything that
12 will worsen the environmental situation. In fact, you
13 have to take, along with other federal agencies,
14 primary consideration of environmental impacts to
15 improve this situation in your decisions.

16 This board must use its consideration of
17 the merger proposal to mandate that adequate rail
18 service be provided to this huge region east of the
19 Hudson River in New York and Connecticut. The Board
20 has the statutory responsibility to do so, and I would
21 submit, in the national interest must exercise it.

22 Now, Mr. Lyons said a few moments ago, "It

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is not the job of the Board to determine where there
2 should be competition." I submit, it is precisely the
3 responsibility of the Board to do exactly that. It is
4 the responsibility of this board to ensure that the
5 railroads fulfill their common carrier responsibility
6 to provide service to all accessible markets. It is
7 the responsibility of this board to ensure that the
8 railroads, that the two applicants, do not conspire to
9 hold an entire region of the country hostage to a lack
10 of rail service, and thereby condemn it to
11 environmentally and economically destructive reliance
12 on trucking.

13 Mr. McHugh in a few minutes will address
14 the statutory basis for this contention, as does our
15 brief; the two contentions being, that it is your
16 responsibility to ensure, to the maximum extent
17 possible, that there is rail competition, and that the
18 common carrier obligations of the railroads to provide
19 service to every place that has shippers that need
20 that service is met to the maximum extent feasible.
21 And not simply, that if we've had a disastrous
22 situation, since the final systems plan was

SURFACE TRANSPORTATION BOARD

06/03/98

FD#33388

181-240

1 unfortunately adopted in the way it was in 1975, that
2 that be perpetuated for all eternity.

3 I would point out to you, finally -- I
4 would remind the Board that the United States
5 Department of Transportation in its brief, filed
6 February 23rd in this proceeding, urged the Board to
7 direct the applicants to meet with the congressional
8 delegation to find an adequate way of addressing our
9 concerns. And failing success in such a negotiation,
10 Federal DOT urged this board to grant our petition.
11 In other words, they don't agree with Mr. Lyons.

12 So I urge the Board to do so. And unless
13 you have questions for me now, I'll introduce to
14 discuss the issue in more detail, and especially the
15 statutory basis, Mr. McHugh.

16 CHAIRMAN MORGAN: Well, let me just -- one
17 question. Clearly, the basis of your recommendation
18 is that you want to get some of the truck traffic off
19 of the highways and put it on the railroads. Is that
20 in essence the policy that --

21 REPRESENTATIVE NADLER: Yes, we have --

22 CHAIRMAN MORGAN: -- you are espousing?

1 REPRESENTATIVE NADLER: -- the largest
2 freight market in the world. It is almost entirely
3 served by truck. Studies have shown that 98 million
4 tons a year of freight would be readily available to
5 the railroads; that is, it's going far enough, it's
6 the right type of commodity. It would be cheaper to
7 ship it by rail than by truck, if there were rail
8 service.

9 We've been faced with a railroad monopoly,
10 for 25 years has refused to provide the rail service,
11 has had no interest in it, and we must be rescued from
12 that. And this proposal as it is, simply says that
13 CSX will succeed to the monopoly position of Conrail,
14 east of the Hudson River, for New York City, Long
15 Island, Westchester, Puttnam, and Connecticut, for
16 that matter Rhode Island.

17 They will have the same monopoly. They
18 have said in their application they propose no
19 increase in service, and the two applicants have said
20 they will serve the region east of the river,
21 12 million people, the largest freight market in the
22 world, by truck drayage across the river.

1 Truck drayage across the river is
2 incredibly environmentally -- and that means across
3 the city before you get to the river -- is incredibly
4 environmentally destructive, incredibly economically
5 destructive to us, and is intolerable.

6 And since they also say in their
7 application that they anticipate 1,800 additional
8 truck trips a day, not a year -- that translates into
9 I think about 375,000 truck trips a year additionally,
10 you can do the math -- that 1,800 additional truck
11 trips a day to those northern New Jersey rail
12 terminals, adjacent to New York, or across the river
13 from New York, they are saying that another
14 three-fifths or two-thirds of that will be an
15 additional 1,000 to 1,200 truck trips a day through
16 the city of New York.

17 That mean an additional -- probably
18 another third. We now have a death rate 8 times the
19 national average from asthma. They'll make it 11 or
20 12 times the national average of death rates from
21 asthma.

22 So I frankly don't understand how the SEA

1 section here said that there would be no environmental
2 impact. There will be a tremendous environmental
3 impact. There is no way of saying, as the applicants
4 do, we will have 1,800 additional truck trips a year
5 to the northern New Jersey railheads, without also
6 saying that you're going to have 1,000 to 1,200
7 additional truck trips a year from the east side of
8 the Hudson River, which means essentially across the
9 George Washington Bridge.

10 So we are going to be very damaged
11 environmentally and economically by this. But even if
12 that weren't the case, it's the Board's
13 responsibility, when feasible, to make sure that a
14 major market is not simply not served by the
15 railroads.

16 I'll say one other thing. I have been
17 saying to CSX and to Norfolk Southern -- I think
18 Norfolk Southern hears it more clearly than CSX
19 does -- for the last several months, that we are
20 attempting to drag them kicking and screaming to the
21 bank. Because there are in fact 98 million tons of
22 freight going by truck that should go by rail. And

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 they'll make money on that, and they should make money
2 on that. And we want them to make money on that.

3 We want them to have our market. We want
4 the railroads to have our market. They will not.
5 They cannot if it means coming across the river by
6 truck. We want direct service, and we want
7 competitive service, and you have the statutory
8 responsibility, and Mr. McHugh will discuss the
9 statute in a moment to ensure that.

10 VICE CHAIRMAN OWEN: Yes. What about the
11 infrastructure? I had in some of our readings that
12 the infrastructure was not adequate for the freight
13 traffic, due to the fact that you had so much
14 passenger service; due to the fact also the tunnels
15 were inadequate to accommodate the appropriate size of
16 freight cars.

17 REPRESENTATIVE NADLER: Okay. There are
18 several parts to your question, sir. I'll answer them
19 all.

20 Number one, the infrastructure is not
21 adequate in toto. If we were going to take all
22 98 million tons of that freight, and try to put it on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the rails tomorrow or within a year, there's no way
2 the infrastructure could handle it.

3 The infrastructure's inadequate for
4 several reasons. One, Conrail has pursued an
5 irresponsible policy of tearing up too many tracks.
6 We used to have, for example, in northern New Jersey,
7 four -- on the Lehigh Valley -- Mr. McHugh can discuss
8 this in greater detail, if you wish or if he
9 wishes -- four tracks, two railroads, to passenger.

10 VICE CHAIRMAN OWEN: Now remember, Conrail
11 came about because of a lot of bankrupt railroads.

12 REPRESENTATIVE NADLER: They came about
13 because of bankrupt railroads, but what they have
14 done -- they've overdone it. What they have done,
15 they took those four tracks, they tore up the two
16 passenger tracks, and they put the passengers on the
17 freight tracks. Then they tore up one of the two
18 freight tracks, and made it only one track.

19 Clearly, there will have to be, over the
20 next 20 or 30 years, infrastructure investment, number
21 one. Number two, we know that there is about 40,000
22 to 50,000 cars a year available from geographic Long

1 Island now, if proper service would be given, that
2 would immediately switch over.

3 Now, if we switched all 98 million tons,
4 you're talking about 800,000 to 900,000 cars. But
5 that's over a long time period; 40,000 to 50,000 is
6 available now. The current infrastructure can handle
7 that, and gradually we should add infrastructure to
8 handle the rest.

9 I'll say secondly, the State and City of
10 New York and also the State of New Jersey has shown a
11 willingness over the years to invest in
12 infrastructure, in rail infrastructure. The
13 investment to some extent has been wasted because of
14 Conrail's refusal to serve it. To some extent it's
15 been misdirected because there was no strong railroad
16 in the area that was saying what it wanted or needed.
17 But we've invested a lot of money, and we will
18 continue to be willing to do that.

19 The ISTEA Act, that just passed both
20 houses, that the president said he will sign, contains
21 \$14 million for investment and upgrading the rail flow
22 system across the harbor, which is part of this, which

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is the heart of our application.

2 It contains \$3.5 million for a study of a
3 rail freight tunnel, which the City of New York has
4 already undertaken, that is the study, and is about
5 half-way through.

6 VICE CHAIRMAN OWEN: I've seen that
7 proposal.

8 REPRESENTATIVE NADLER: And I believe the
9 Port Authority's going to reverse its historic
10 opposition to that in about three months.

11 So we're going to build the
12 infrastructure, but the basic answer is, there's
13 adequate infrastructure for what has to be done now.

14 Mr. McHugh can discuss this in more
15 detail, because my time is --

16 VICE CHAIRMAN OWEN: Is your time
17 separate?

18 You can go ahead as far as I'm concern,
19 make the transition.

20 REPRESENTATIVE NADLER: Okay, well, John.
21 Thank you.

22 MR. MCHUGH: Thank you, Congressman

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Nadler.

2 VICE CHAIRMAN OWEN: Now tell me, how that
3 \$14 million is going to get to that \$1 billion tunnel.

4 MR. MCHUGH: Well, the \$14 million has
5 nothing to do with the tunnel. The \$14 million is
6 specifically allocated to rehabilitate the car floats,
7 which are the existing system.

8 Now, as the Congressman said, the existing
9 infrastructure can handle the existing freight that's
10 available today, and then some. We have an
11 infrastructure which is essentially last century. It
12 does not handle the large cars. Substantial work has
13 to be done. Some of that work has been done.

14 The State of New York invested
15 \$300 million in increasing the clearances on the
16 Hudson line, only to discover refused to serve it.
17 That's what the Congressman is talking about. As a
18 result of their refusal that has not been used to
19 date.

20 What we have here is we have a very
21 unusual transaction. First of all, we have two
22 solvent major carriers coming in to dismember a third

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 solvent carrier. This board and its predecessor have
2 never faced this before. We have them saying it's
3 going to increase competition throughout the
4 northeast, and yet they're leaving 1/20th of the
5 nation, 5 percent of the nation, off the railroad map
6 of the United States, and they are replacing Conrail,
7 which has refused to serve the area -- they have the
8 track, they just won't use it -- with CSX, which in
9 its environmental submission says it is not going to
10 anything differently than Conrail. We have to assume
11 we've got the same problem we've had for the last
12 25 years.

13 That problem has caused our industrial
14 base to deteriorate almost completely, as CSX has
15 pointed out. We have a river that's run through it.
16 Nobody's crossed the river. Well, we used to cross
17 the river by car float, and Conrail basically was
18 allowed out of the car float business, as Penn Central
19 was allowed to abandon that.

20 What we want to do is put all that back
21 together, and get a temporary patch on the tire until
22 this tunnel can be built. Now, maybe the tunnel will

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 come, and maybe it won't, but the success of the car
2 float operation will have a lot to do with the
3 political arguments that can be made for them.

4 Now, the applicants have said that you do
5 not have an obligation to put any person in a better
6 position than they were before. I submit to you that
7 those precedents are based upon an major Class 1
8 solvent taking over an insolvent, or a weak carrier,
9 such as the SP deal. In those deals, certain
10 trade-offs had to be made for the national interest.

11 We submit to you that leaving the world's
12 largest transportation market and 5 percent of the
13 nation's population out of the transaction is not in
14 the public interest. First of all, there are
15 98 million tons of railroad-appropriate freight that
16 these carriers desperately need to pay the bills
17 they're going to incur for the capital costs they're
18 picking up in this transaction.

19 That 98 million tons of freight, if they
20 got the usual railroad share, would be about
21 1,750,000 trucks a year off of the highway system, not
22 just of New York, but the entire nation. Plus, when

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the biggest market in the country is totally
2 truck-dependent, that has a significant effect on the
3 rail market share throughout the nation and the
4 overall efficiency of the transportation system, as a
5 whole.

6 So we are talking about a market that
7 needs service, not just for the benefit of the
8 citizens of New York, and the people in the Bronx who
9 are dying of asthma, but for the nation's benefit,
10 because it makes the entire transportation system
11 sounder, and gets a tremendous number of trucks off of
12 the highways. So, it's well worth doing.

13 Now, they say you don't have the power.
14 Well, we have CSX coming in here and saying, we're
15 going to continue to refuse to serve this market. I
16 submit to you that that's a violation of their common
17 carrier obligation. They can't continue to pitch the
18 freight in from New Jersey, when it has tremendous
19 environmental and detrimental effects. And you have
20 the power under your statutes to remove a carrier from
21 a situation where they're not providing service. You
22 certainly have the power in this transaction not to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 put somebody, who tells you in advance they're not
2 going to do anything, in possession of the operation.

3 So, we're saying that you have the power,
4 and indeed the Supreme Court -- if there's any doubt
5 about it, and any doubt about the interpretation of
6 the statutes in our briefs, the Supreme Court in the
7 Chevron USA v. Natural Resources Defense Council,
8 which your council has cited in many cases, has given
9 you the authority to interpret your statutes to give
10 you the authority to get the job done.

11 Now, one of the jobs that has to be done
12 here, is the world's largest market has to be served,
13 and we have to reindustrialize New York for many
14 reasons, one of which is to stop killing 11 people out
15 of every 100,000 in the Bronx County at the present
16 time.

17 Now, we understand fully that the rail
18 system east of the river needs modification.

19 VICE CHAIRMAN OWEN: I had to start using
20 my inhaler. You keep talking about asthma.

21 (Laughter)

22 MR. MCHUGH: It is something that's

1 serious. One of the problems we have is, when we in
2 New York who have asthma rates as high as we have, see
3 somebody say an increase is de minimus; when you're
4 already killing 11 out of every 100,000 in a borough
5 with a million people in it, there's no such thing as
6 de minimus. And the environmental criteria that
7 you're using when they ignore that overwhelming fact,
8 there's no such thing as de minimus.

9 Now, the rail system -- what we're asking
10 is essentially that the shared assets area be
11 extended. We are asking for essentially a change in
12 the management of only 12 miles of track overall,
13 actually adding 12 miles to this transaction. And
14 that is the car floats from Bayonne to the Brooklyn
15 waterfront, and then the track to the center of
16 Queens, which is Fresh Pond. North of there, under
17 10907(c), or your general jurisdiction, we're asking
18 that rather than give these tracks north of that point
19 to CSX, which is refusing to serve it, you give it to
20 the shared assets operator, which at least has the
21 mixed responsibility, and has some opportunity to get
22 the job done. They're the only one in sight.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Now, we haven't had service here for a
2 long time. We've been available to come in under
3 these statutes a long time ago, we just couldn't reach
4 anybody. There was no way, with Conrail reaching out
5 a thousand miles from our city to get a friendly
6 operator in there.

7 Now, that they've got us within 2 miles of
8 a friendly operator, on the other side of the river;
9 and we only have to transfer 12 miles of track -- and
10 not just the track, only the rights. We're not asking
11 that anything be transferred, we're asking that
12 overhead rights be granted to responsible operators.
13 And we have to solve some of the problems that have
14 occurred because of Conrail's pattern of nonservice.

15 We have put in place some relatively weak
16 operators in Brooklyn and Queens. They simply have
17 not been able to do the job. They are qualified for
18 a transfer under 10907(c). We're not asking for that.
19 We're asking for them to be left in place, and that
20 you just give overhead trackage responsibility to the
21 majors, and let them work out the arrangements between
22 themselves and those people to actually pay for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 operation, or do the upgrades.

2 The City and State of New York has shown
3 itself willing to add -- to do some of the capital
4 work needed. If the properties do not change hands,
5 they belong to the City and State of New York, and the
6 money is available, and will be put in there. It
7 can't be put in now because they deem it to be money
8 wasted because these operators can't do the job.

9 So, we're asking for a relatively small
10 adjustment to this huge program. We're giving these
11 people access to basically 1,750,000 truckloads
12 freight, 55,000 carloads tomorrow morning, as soon as
13 they open service, and it will grow continuously.
14 With their marketing capacity, we expect they will
15 successfully attack our market. There will be a
16 marked environmental change, which will make up for
17 the intermodal traffic, which will have to continue.

18 Now, Congressman Shays addressed the issue
19 of roadrailers to Penn Station. That is also a
20 critical factor. This is an intermodal market. We
21 have 200-pound packages per day, per block, in the
22 City of New York. That's intermodal traffic. And the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 roadrailer is a way to get that, and it's a way to get
2 that in New England also. And the State of New York
3 will address the issue of the east bank of the river.

4 Let me tell you, of the 98 million tons of
5 freight, two-thirds originate or is destined in the
6 southeastern states. So we have a roadrailer traffic
7 that go due west for intermodal service, we have the
8 floats that go south for two-thirds of the traffic,
9 and we need the river line to go to Chicago and to
10 Montreal for the east-west freight on -- efficient.
11 That's the only intermodal route we can have to
12 Chicago at the present time other than roadrailers.

13 There are three spokes to this wheel. The
14 wheel will not stand without all three of them. Thank
15 you very much.

16 CHAIRMAN MORGAN: Is that -- you're just
17 assisting. Okay.

18 MR. MCHUGH: Oh, did you have any
19 questions?

20 CHAIRMAN MORGAN: No, I think that the
21 Congressman and I had a good exchange about what the
22 basis is for this, and you and I have had an exchange

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in another hearing about this. So, I think I'm well
2 versed in the issue, and certainly there's a lot in
3 the record. And we will be hearing from other folks
4 later on about this.

5 Certainly, I appreciate your
6 appearance --

7 REPRESENTATIVE NADLER: Thank you.

8 CHAIRMAN MORGAN: -- and I know your
9 commitment to this particular issue. And thank you.

10 VICE CHAIRMAN OWEN: Well, I think the
11 railroads have been listening to all of your comments
12 today, so I think if you do the job out there, and
13 bring it to them, they're happy to haul your freight,
14 if they can do it. Make a profit at it.

15 REPRESENTATIVE NADLER: Thank you.

16 CHAIRMAN MORGAN: Thank you.

17 I think what we're going to do is take a
18 15-minute break. And then we will be back at 2:15.

19 (Whereupon, the foregoing matter went off
20 the record at 1:58 p.m)

21 MR. WILLIAMS: Please be seated and come
22 to order.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN MORGAN: Let's go now to the
2 Federal Government parties. First of all we have the
3 Department of Justice, Michael Harmonis. Is that
4 correct?

5 MR. HARMONIS: Yes, it is.

6 CHAIRMAN MORGAN: You have 10 minutes.

7 MR. HARMONIS: Thank you.

8 CHAIRMAN MORGAN: I did pronounce your
9 name correctly?

10 MR. HARMONIS: You did. My name is
11 Michael Harmonis. I am an attorney with the United
12 States Department of Justice.

13 It is the position of the Department of
14 Justice that the proposed transaction raises
15 significant competition problems in several markets
16 involving coal shipments to electric utility plants.
17 These markets are located in Indiana and Maryland. In
18 reach of them, the number of competitors would
19 effectively decline from two to one after the
20 transaction.

21 The total volume of commerce in the
22 markets that we have focused on in these two to one

1 markets is well over \$80 million. It is important
2 that the Board remedy these situations because a
3 monopoly railroad almost certainly will charge
4 significantly higher rates than would two competing
5 railroads.

6 The Department of Justice recommends that
7 the Board restore competition that would otherwise be
8 lost by imposing a relief in the form of short
9 segments of trackage connection and buildout rights as
10 specified in our papers. We request modest but
11 effective relief to ensure two railroad service in
12 these markets.

13 Now if I may, I would like to just briefly
14 summarize our case by mentioning a few important
15 points. The Stout Plant of Indianapolis Power and
16 Light Company near downtown Indianapolis is a two to
17 one situation. The applicants have argued that IPL is
18 served by only one railroad. That is the CSX
19 controlled Indiana railroad. Conrail they say is not
20 really a competitive force at Stout. So Stout they
21 say is a one-to-one situation. But this argument is
22 simply at odds with the facts.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 The record evidence demonstrates that
2 Conrail does and has competed for business at the
3 Stout plant. The Stout plant has benefited from that
4 competition. The record demonstrates that the Stout
5 plant pays 20 percent less for rail rates than what it
6 would but for the Conrail competition.

7 Conrail, I might add, is able to compete
8 so effectively at the Stout plant because Stout has
9 the realistic option to build out to Conrail.

10 If the Board were to permit Indiana
11 Railroad to have a destination monopoly at Stout, the
12 Stout plant is going to pay significantly higher rail
13 rates. Trucks are not competitive at Stout. Stout
14 has not received a single pound of coal by truck for
15 the past several years. There is good reason for
16 that. The record demonstrates the truck
17 transportation is significantly more costly than rail
18 transportation. Those higher truck costs would be
19 passed onto the Stout plant in the form of higher
20 transportation rates.

21 Now the applicants have recognized that
22 there are problems at the Stout plant. They have

1 suggested a number of remedies. But all of their
2 remedies, every remedy they have suggested so far,
3 ones they have put on the record and those that are
4 not on the record is simply inadequate for the
5 purposes.

6 The applicants would grant or would have
7 the Board grant Norfolk Southern trackage rights over
8 CSX into the Hawthorne Yard. That is going to be
9 ineffective because it is not going to give Norfolk
10 Southern the means to compete with Indiana Railroad at
11 the Stout Plant.

12 The way the remedy is set up, Norfolk
13 Southern by carrying coal either from Indiana from
14 Illinois or from Kentucky would have to travel twice
15 as far as Indiana Railroad to serve the Stout plant.
16 Norfolk Southern would also have problems in the
17 Hawthorne Yard that Conrail has been able to avoid
18 because it has the option of Stout building out to it.

19 To prevent against the monopoly that will
20 exist after this transaction as a consequence of this
21 transaction, the Board should grant to Norfolk
22 Southern the means to be able to compete as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 effectively as Conrail can now at the Stout plant.
2 The way to do that, as specified in our brief, is to
3 give Norfolk Southern the same easy access to the
4 Stout Plant as Conrail now enjoys.

5 Another of our significant concerns is the
6 Potomac Electric Power Company, PEPCO. If CSX is
7 permitted by this Board to acquire the Conrail line
8 into the Morgantown plant of PEPCO without conditions,
9 then CSX will become the sole provider of
10 transportation to PEPCO's three most efficient plants.
11 PEPCO could no longer then be in a position to
12 substitute that power back and forth between Dickerson
13 and Morgantown plants in order to defeat CSX's anti-
14 competitive price increases at either plant.

15 PEPCO will become a two-to-one shipper and
16 CSX a destination monopolist. CSX will have the
17 incentive to charge PEPCO monopoly rates for coal
18 transportation to its most efficient plants.

19 Now the applicants have argued that PEPCO
20 was not a two-to-one shipper on the theory that the
21 relevant market for PEPCO's purposes is the entire PGM
22 power pool. But the record evidence demonstrates that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the price and transmission constraints are such that
2 the PGM power pool will not constrain CSX's rates.

3 The price of power from the PGM is
4 considerably higher than PEPCO's variable costs of
5 producing power at its most efficient plants, with the
6 price of PGM power ranging from 1.5 to as much as
7 eight times more than PEPCO's variable costs for
8 producing the same amount of power at its own plants.
9 Obviously under those circumstances when PGM
10 electricity costs that much, it can not substitute
11 effectively for electricity that PEPCO itself can
12 produce. So CSX will be in a position to extract much
13 higher rates from PEPCO, notwithstanding the power
14 pool.

15 The applicants have also argued that PEPCO
16 can constrain CSX's rates by installing barge
17 onloading facilities at Morgantown. The applicants
18 make much of the fact that PEPCO could build such a
19 facility. But the question here for competitive
20 purposes is not whether PEPCO could build such a
21 facility, but whether they likely would under the
22 circumstances. Again, the record demonstrates the

1 capital costs, the time involved, and Norfolk
2 Southern's apparent lack of interest in this project
3 makes it unlikely that PEPCO would build such a
4 facility. So PEPCO really does not have a realistic
5 barge alternative at Morgantown.

6 The Department of Transportation in its
7 brief has also advanced an argument against PEPCO.
8 The Department of Transportation has argued that the
9 benefits of competition within the shared asset areas
10 could well spill over into areas outside the shared
11 asset areas, and that the spillover effect will give
12 CSX every incentive to provide PEPCO with competitive
13 rates after the transaction.

14 I think my short reply to the Department
15 of Transportation's argument on this point is that
16 there is no evidence, none whatsoever in the record,
17 none, to support either DOT's reasoning or its
18 conclusion.

19 I should also point out though that DOT's
20 argument in this respect, I believe, is based on the
21 incorrect assumption that CSX is willing to forego
22 monopoly profits after the transaction so that PEPCO

1 may continue to -- so they can continue to provide
2 PEPCO with the same level of service before and after
3 the transaction.

4 CSX's incentives in the end will be quite
5 to the contrary. If they behave like a rational
6 monopolist, they are more likely to restrict services,
7 providing PEPCO with less coal transportation and
8 higher prices. So CSX's incentives are really quite
9 the opposite of what is assumed by the Department of
10 Transportation's arguments.

11 That really concludes my prepared remarks.
12 If the Board has some questions, I would be happy to
13 try to answer them.

14 CHAIRMAN MORGAN: Just one. You have
15 obviously suggested certain remedies to address what
16 you perceive to be anti-competitive results --

17 MR. HARMONIS: Yes, yes.

18 CHAIRMAN MORGAN: -- resulting from this
19 merger if we approve it. With those conditions, if we
20 were to approve the merger with the conditions that
21 you have suggested, then how would you characterize
22 this merger, from a competitive respect.

1 MR. HARMONIS: Well, we did not look at
2 the transaction as a whole. So I am not in a position
3 to endorse it one way or the other. What we did is
4 what we always do when we do an anti-trust analysis.
5 We looked for what we thought would be the problems,
6 anything that would adversely affect competition.

7 What I can say is if the Board imposed the
8 conditions that we recommend, we would have no
9 objections to the transaction.

10 Actually, speaking of remedies, if I may
11 say, I am aware I learned this morning or yesterday
12 evening I believe, that PEPCO has entered into a
13 private settlement. I would like to emphasize that
14 PEPCO entered into a private settlement in no way
15 changes our recommendations here. I don't know the
16 terms of that settlement, but I do know that PEPCO
17 faces a two-to-one situation. I also know virtually
18 as certain as I could be even though I don't know the
19 terms, they didn't change that.

20 So their private settlement is not going
21 to change the fact that there's a two-to-one situation
22 that needs to be remedied there. We had suggested

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that the Board grant Norfolk Southern trackage rights
2 over the Conrail line that's going into Morgantown.
3 That recommendation would still stand.

4 VICE CHAIRMAN OWEN: Do you think via the
5 cooling agreement that a number of the utility
6 companies have around the country now that maybe the
7 two-to-one concept may not be applicable in certain
8 areas where if PEPCO could get energy from another
9 facility that had two-to-one?

10 MR. HARMONIS: If it could, yes, I do.
11 That's an important consideration.

12 VICE CHAIRMAN OWEN: Via the regional grid
13 system.

14 MR. HARMONIS: But we always have to -- we
15 can't generalize about that. We always have to look
16 on a case by case basis. For example, here we looked
17 at that. We looked to see if CSX were going to impose
18 monopoly prices against PEPCO. We asked ourselves would
19 PEPCO be able to go on grid. That is not something we
20 have to guess about. That is readily discernible. We
21 could look at the cost of electricity.

22 The record in this case made it clear just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 how much it would cost for PEPCO to get electricity on
2 the grid. It was much much much more expensive than
3 what it costs for them to produce themselves. So
4 theoretically yes, you can have a -- as long as the
5 utility that's facing the monopolist could get
6 electricity off of the grid at essentially the same
7 price they are paying now or maybe just a little bit
8 more, a percent more or whatever, then that would be
9 an effective constraint, but not otherwise.

10 In this case, we were talking about prices
11 to PEPCO that were ranging from 1.5 to eight times the
12 price that they pay, the price that it costs them to
13 produce the electricity.

14 VICE CHAIRMAN OWEN: Where do you get your
15 information from, the Aspen Institute or from FERC?

16 MR. HARMONIS: In this case our economist,
17 his information on this point came from FERC but also
18 in addition to FERC, from other publications. They
19 are cited in -- my brief on this point on the grid
20 cites to the testimony of Dr. Woodward. Dr.
21 Woodward's testimony is part of the record. His
22 verified statement covers these points. He cites --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 he gives the citations. But I know it was FERC
2 reports and there was other papers in addition to
3 FERC.

4 VICE CHAIRMAN OWEN: I was just wondering
5 for information. Thank you very much.

6 CHAIRMAN MORGAN: Thank you.

7 Mr. Smith? On behalf of the Department of
8 Transportation. You have 15 minutes.

9 MR. SMITH: Thank you very much. Chairman
10 Morgan, Vice Chairman Owen, good afternoon. My name
11 is Paul Samuel Smith. Today it is my privilege to
12 represent the United States Department of
13 Transportation.

14 The transaction before you is
15 unprecedented as you have mentioned. It promises
16 significant increases in intramodal rail competition.
17 Yet its potential adverse impacts require the
18 preparation of the first environmental impact
19 statement ever submitted in a rail consolidation
20 proceeding.

21 Today I will only address briefly the
22 competitive consequences of the transaction as the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Department sees them. Of course I will attempt to
2 answer any and all questions you may have on this or
3 other aspects of the case. I intend primarily to
4 stress what might be termed the broad environmental
5 implications of this application.

6 First as to competition. When past rail
7 merger applicants have contended that their
8 transaction would increase competition, they have
9 usually meant that they would achieve this through
10 means such as extended single line service or through
11 the substitution of a strong for a weak carrier. Here
12 however, the applicants intend literally to place two
13 large Class I railroads in head-to-head competition
14 into areas where previously there was only one. I am
15 speaking for the most part of course of the so-called
16 shared asset areas. We naturally support the
17 heightened competition that they represent.

18 But there are also uncertainties detailed
19 in our brief and in our comments in the draft EIS that
20 are involved with the creation of these areas,
21 particularly in the heavily urbanized regions involved
22 in this case.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 These uncertainties and the need to avoid
2 rail service problems in the east and midwest support
3 this Board's retention of oversight jurisdiction for
4 five years, which would enable the Board and
5 interested parties to monitor developments and if
6 necessary to address significant problems should they
7 arise.

8 The transaction will also reduce
9 competition by eliminating intramodal rail competition
10 in a few specific instances. It will replace some
11 single line service with joint line service in a
12 number of other cases. These situations are noted in
13 our brief. They warrant your correction.

14 My main emphasis today, however, will be
15 on what I termed before the broad environmental
16 consequences of the transaction. By that I primarily
17 refer to impacts related to safety, community life,
18 and passenger rail transportation.

19 The Department's most fundamental concerns
20 in this proceeding has been with safety. Within DOT,
21 the Federal Railroad Administration is the Federal
22 Government's overseer of railroad safety. Following

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 investigation of a series of incidents on the merged
2 UP/SP system and assessments of both CSX and NS, FRA
3 determined that the public interest required
4 preparation of detailed plans in order to ensure that
5 safety was maintained during implementation of any
6 approval the applicants may receive from this Board.

7 We were extremely gratified that the Board
8 agreed and that the applicants have cooperated so
9 thoroughly with FRA in producing the safety
10 integration plans or SIPs that were submitted in this
11 case. CSX and NS have assured DOT that they will
12 continue to work closely with the FRA following
13 receipt of any approval. We expect nothing less.

14 The Memorandum of Understanding between
15 the Board and the FRA has further clarified the action
16 that each agency would take in this regard. Barring
17 any unforeseen problems therefore, the Department
18 considers that safety and the implementation of this
19 transaction is no longer an issue with which the Board
20 need to be concerned.

21 The safety concerns do exist in other
22 aspects of the case. One is with an initial

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 recommendation contained in the draft EIS for a 15
2 minute separation between freight and passenger
3 trains. The final EIS fortunately abandons this
4 unworkable notion. We trust that it is no longer
5 under serious consideration.

6 Another safety concern is with the final
7 EIS suggestion that the Board condition its approval
8 by requiring the applicants to reserve certain AAR
9 guidelines in the carriage of hazardous materials. We
10 opposed making this a legal requirement in our
11 comments on the draft EIS and we still do.

12 Compliance with FRA and FRSPA regulations
13 provides the appropriate substantive levels of safety
14 on a uniform basis nationwide. The EIS recommendation
15 would effectively introduce another legally binding
16 requirement applicable to these applicants alone, and
17 would thus invite confusion and potential safety
18 risks. We ask that you reject it.

19 My final word on the subject of safety is
20 simply to repeat the caution that we expressed in our
21 brief. That is, that you should be aware of the
22 potential safety implications of conditions and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 mitigation options as you consider such measures.

2 On the subject of community impacts, this
3 transaction would generate and redirect large volumes
4 of traffic through areas previously experiencing much
5 lower levels of rail service. Resulting increases in
6 noise, vehicular delays, and vibrations, and the other
7 incidents of railroad operations will adversely affect
8 such communities, particularly in Indiana and the
9 region around Cleveland, Ohio, the center of the
10 Conrail X.

11 The creation of the shared asset area in
12 Northern New Jersey will also serve to exacerbate rail
13 related problems in New York City and those areas east
14 of the Hudson River. Rail traffic increases projected
15 in New Jersey translate into additional trucks draying
16 freight through New York City and this area.

17 These roadways are always choked with
18 traffic. The city is already a severe non-attainment
19 area under the Clean Air Act. Pertinent neighborhoods
20 already suffer inordinantly high levels of respiratory
21 illnesses.

22 Our brief contains specific

1 recommendations of appropriate mitigation measures in
2 this case. We are heartened that the final EIS has
3 remedied the shortcomings that led the draft EIS to
4 miss Fostoria, Ohio, and other communities and areas
5 likely to be affected by the transaction. We also
6 applaud the fact that the applicants have apparently
7 reached mutually agreeable resolutions to transaction-
8 related problems that so many affected communities.
9 This extends now to the city of Cleveland and NS, and
10 we are hopeful that this will finally result in an
11 agreement between CSX and that city as well.

12 The Secretary has personally taken a great
13 interest in this particular matter and has urged the
14 parties to strive to their utmost to reach agreement.
15 If the devil is in the detail, then unfortunately that
16 does not happen the way we hope it does. The Board
17 should nonetheless impose measures necessary to
18 mitigate those impacts. In the case of New York at
19 least, that includes consideration of the public
20 interest and viable real transportation east of the
21 Hudson River.

22 Finally, for reasons grounded in the

1 actual and potential impacts of this transaction on
2 community life. In our view the public interest again
3 requires retention of oversight jurisdiction by this
4 Board for five years. This again provides
5 opportunities for alerting the Board to unforeseen
6 consequences and for considering appropriate remedial
7 measures.

8 As to the effects of the transaction on
9 passenger rail transportation. That transportation,
10 both commuter and inner-city, is a vital national
11 interest. Huge expenditures of public and private
12 financial and human resources have been made and will
13 continue to be made to advancing this highly
14 efficient, environmentally superior mode of
15 transportation. Rail passenger service is most highly
16 developed in the areas most affected by this
17 transaction.

18 Furthermore, this transaction would
19 substitute two carriers with relatively little
20 experience dealing with passenger rail operations for
21 Conrail, the freight railroad with the most experience
22 in this area.

1 Again, the Department is encouraged by the
2 agreements NS and CSX have made with many affected
3 operators. But not all negotiations have reached
4 fruition. Even if they had, the public interest and
5 continued efficient coordination between passenger and
6 freight railroads and the continued smooth operation
7 of passenger and freight railroads demands that the
8 Board exercises oversight authority here as well.

9 I would also like to highlight the
10 transaction's effect on railroad employees. This
11 application is now supported by the organizations
12 representing the operating employees of the
13 applicants, nearly 50 percent of the combined
14 organized work forces.

15 We seek three things with respect to the
16 rail impacts of this transaction. The first is your
17 clarification that inclusion of changes to collective
18 bargaining agreements in the operating plans that may
19 be submitted by merger applicants does not imply pre-
20 judgement of the bargaining and arbitration processes
21 that follow regulatory approval under the New York
22 Dock protections.

1 The second is reaffirmation that New York
2 Dock's expedited processes for reaching implementing
3 agreements should be utilized.

4 The third is an enhancement of New York
5 Dock protections to afford a benefit akin to a
6 separation allowance for all employees who face
7 relocation to far and distant places as a result of
8 this transaction.

9 Such a relocation allowance would apply to
10 those few employees who find it extraordinarily
11 difficult to follow their work to entirely new areas
12 of the country. They should not be forced to end
13 their railroad careers as a direct result of this or
14 any other transaction such as this without some
15 financial protection.

16 The Department considers this step
17 necessary in light of the steady expansion of the
18 scope of Class I railroads in the roughly 20 years
19 since New York Dock was decided. Specifically, the
20 railroads of that time, including the applicants
21 before you or their counterpart, are much smaller
22 entities. Consequently, relocation was apt to occur

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 within a smaller radius. With the arrival of railroad
2 mega carriers, however, potential relocation distances
3 have increased dramatically. We suggest that a
4 corresponding adjustment to New York Dock protections
5 is appropriate.

6 In closing on the subject of railroad
7 labor, we ask the Board encourage the applicants, as
8 they have already mentioned today, to foster a free
9 flow of information with their employees on all safety
10 matters.

11 I would like to make two final points.
12 The first concerns the assignment of Conrail's shipper
13 contracts. Many of these contracts contain clauses
14 that on their face would prevent non-assignment
15 without shipper consent. Shippers have objected to
16 having these clauses voided.

17 The Department favors an approach to this
18 issue that recognizes both the legal rights that such
19 shippers have thereby attempted to preserve for
20 themselves, and the physical reality of railroad
21 systems. As is the case with the more typical merger
22 of two carriers into one, where Conrail shipper

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 contracts could only be performed by one railroad,
2 either CSX or NS but not both, then that railroad
3 should do so according to terms contained in the
4 existing contracts.

5 But in this atypical consolidation, where
6 either CSX or NS could physically perform the
7 transportation services, shippers with such contracts
8 should be allowed to choose which carrier would
9 fulfill the terms of their contracts with Conrail.

10 The last item I wish to address today
11 concerns the so-called acquisition premium that CSX
12 and NS have paid for Conrail. Whatever its exact
13 amount, the Department is persuaded there may be
14 legitimate concerns about the effects that such sums
15 would have on regulatory proceedings concerning
16 revenue adequacy determinations and the reasonableness
17 of railroad rates. But this is a prospect that would
18 not be limited to the instant transaction and so
19 should not be subject to conditions applicable to
20 these two railroads alone.

21 If you look on the Board's recently
22 initiated proceedings stemming from ex parte 575 that

1 addressed this subject on an issue-wide basis. That
2 concludes my prepared remarks. I will be pleased to
3 attempt to answer any questions you may have.

4 CHAIRMAN MORGAN: Thank you, Mr. Smith.
5 Just a couple of questions following up on some of
6 your comments. How does the Department view this
7 transaction overall competitively? You have obviously
8 raised some specific issues relative to the
9 transaction before us, but overall, how do you view
10 this transaction from a competitive perspective?

11 MR. SMITH: We think that the competitive
12 problems proposed by this transaction are the
13 exception rather than the rule. This is vastly
14 different from the Union Pacific/Southern Pacific
15 case. We think that the additional competitive spurs
16 represented by the shared asset area creation are much
17 to be applauded and to be introduced if possible in
18 light of the other aspects of this case of interest to
19 the Board and the parties.

20 The competition is as a problem at least,
21 relatively isolated instances that we have identified
22 in the brief. Those certainly deserve your attention

1 and we think correction. But they are not the
2 overwhelming factor that they appear to us to be in
3 the UP/SP case or even of a stature with those
4 presented in the BN/Santa Fe case.

5 CHAIRMAN MORGAN: Now you have talked
6 about the east of the Hudson issue specifically.

7 MR. SMITH: Correct.

8 CHAIRMAN MORGAN: Your position there is
9 that that is worthy of some sort of condition. With
10 respect to any other conditions that we have before
11 us, and we have many conditions that are being
12 requested, do you have any kind of comment on those,
13 any general approach that we might want to take on
14 other competitive conditions that have been suggested?

15 MR. SMITH: Our position on the
16 difficulties east of the Hudson are grounded in
17 community impacts as opposed to competitive impacts.
18 So I wouldn't offer a recommendation on competition
19 measures other than those contained in our brief and
20 that I briefly alluded to here.

21 We wouldn't have you address New York City
22 as so much a competitive problem as opposed to a

1 broader environmental problem. Although were you to
2 extend by some mechanism additional rail service into
3 that area, that would have the happy effect perhaps of
4 dealing with both the environmental implications that
5 we have seen and also the long-term railroad
6 difficulties that New York has faced.

7 CHAIRMAN MORGAN: Now with respect to
8 labor, you have made three points. One of which is
9 that if there is an override of a term in a collective
10 bargaining agreement that that should be done through
11 the New York Dock negotiation and arbitration process.
12 Is that one of the three points that I understand?

13 MR. SMITH: Yes. It is.

14 CHAIRMAN MORGAN: You have also discussed
15 the finances associated with the transaction and the
16 concern about the acquisition premium. I think I hear
17 you saying that with respect to this transaction, that
18 that should not be a concern, we need to look at the
19 way we assess revenue adequacy and so forth in another
20 setting. But with respect to this particular
21 transaction, the Department does not feel that that is
22 a concern?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. SMITH: We feel it's a concern that
2 warrants looking at on industry-wide more uniform
3 basis. It may well be that these applicants have paid
4 more for Conrail than other merger applicants have
5 paid for their partners. You may recall that in the
6 UP/SP case, there were some or in the BN/Santa Fe,
7 there was some bidding as between rails as to who
8 would eventually obtain Santa Fe as well at that
9 point. It's not unprecedented that the parties have
10 raised this type of a question. Perhaps it's the size
11 or the alleged size of the so-called premium that has
12 brought it more to the center stage.

13 We think conceptually it is an issue that
14 has to be explored. But again, it is not exclusive to
15 a single commercial deal.

16 CHAIRMAN MORGAN: Of course this issue has
17 been raised in this proceeding out of a concern for
18 rates. If the finances of the deal are such that some
19 shippers feel that the rates will go up as a result.
20 Is that a concern that the Department has in this
21 respect?

22 MR. SMITH: It is certainly a possibility

1 and therefore a concern. We think that nonetheless
2 the appropriate approach to it would be on a broader
3 basis, that it may be that in any reexamination of the
4 calculations that go into return on investment and
5 revenue adequacy and so forth that are used in rate
6 cases, that whatever standards might be ultimately set
7 would have a factually greater effect on cases arising
8 out of -- rather in cases brought against CSX and NS
9 post transaction. This is a practical matter that may
10 have that effect.

11 Again, we wouldn't impose on these two
12 railroads because they pay some billions of dollars
13 for Conrail, arguably more than they otherwise might
14 have or otherwise more than somebody else might have.
15 That they alone should be subject to having their rate
16 cases or their revenue adequacy determined differently
17 than the rest of the industry, which again has also
18 been accused of paying too much in the past, and
19 therefore, having to recoup it in some fashion, which
20 of course is generally alleged to be on the backs of
21 rail-dependent shippers who are captive.

22 CHAIRMAN MORGAN: Then lastly, with

1 respect to contracts, as I understand your position it
2 is sort of a mixture of some of what we'll hear.
3 There are those shippers who do not support an
4 override of contract non-assignability clauses. The
5 applicants have come before us requesting an
6 abrogation of that.

7 What I understand your proposal to be is
8 that if a contract is naturally going to go to one of
9 the carriers, then that should happen. If on the
10 other hand it could be available to both carriers,
11 then that should be put to a competitive situation
12 where the carriers and the shipper would vie for the
13 terms of transportation?

14 MR. SMITH: That's correct. We think that
15 these contractual clauses like other clauses in other
16 contracts are far more than a legal formality. That
17 in fact we would expect the law to otherwise enforce
18 the terms of the transaction between CSX and NS. The
19 terms of contracts are by policy and by law subject to
20 legal enforcement as a very positive good that is the
21 basis for all commercial transactions. That is the
22 basis for corrective actions when a railroad contract

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 is breached, since parties no longer come to you. It
2 is therefore far more than a formality.

3 In this case, what the applicants have
4 asked you to do is to breach another rule of law,
5 which is to permit them as horizontal competitors to
6 enter into an agreement between themselves as to how
7 they are going to divide up their customers. That
8 certainly is convenient, but it isn't something that
9 I would consider necessary under your statutory
10 standard for permitting that to happen and otherwise
11 to be avoiding these other clauses bargained for.

12 I have also heard this morning for
13 essentially the first time the concerns about
14 operational difficulties raised by this. If one looks
15 at the universe of these Conrail contracts, there are
16 three subsets. One performable only by CSX, one by
17 NS, and one subset by both of them. Now the
18 applicants themselves have said to you in the
19 beginning that when it comes to the first two of
20 those, that's exactly what they intend to do. The
21 ones who can transport that traffic only will. That
22 makes a great deal of sense. That mirrors your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 standard two-to-one merger situation.

2 But even that involves planning. It
3 involves going through the contracts which they
4 haven't had access too, allocating resources, learning
5 the terms of them. So we're talking about the third
6 subset only. For at this late date to have injected
7 claims of western style railroad debacles staring you
8 and the railroads in the face because they can't be
9 trusted to plan for the kind of contracts that they
10 will be competing for without regard to their capacity
11 to serve them, that doesn't make any sense. There
12 certainly isn't any record for that.

13 So I ask you to again to adopt our
14 position and to let the shippers that have tried to
15 preserve some protection for themselves that is
16 entitled to legal protection otherwise to that
17 protection and to choose which of the two carriers
18 will carry that freight under the terms of those
19 contracts.

20 CHAIRMAN MORGAN: Thank you, Mr. Smith.

21 Vice Chairman?

22 VICE CHAIRMAN OWEN: So you would disagree

1 with the railroads that will provide the deal would be
2 a deal breaker as such?

3 MR. SMITH: Yes. I certainly would.
4 Well, even they haven't said it's a deal breaker.
5 They just said it would be potentially chaotic.

6 VICE CHAIRMAN OWEN: One of them alluded
7 to it.

8 MR. SMITH: That would be something else
9 that again is nowhere on the record and I don't know
10 why. You have not permitted and I think properly so
11 the very end of the term kinds of attempts to include
12 things in that people that are concerned about this
13 should have been expressed earlier and examined. But
14 since they weren't and because it doesn't make
15 rational sense to have them ask you to stop them from
16 making a mess of the situation, it doesn't appeal to
17 me as the basis to make a decision.

18 CHAIRMAN MORGAN: One last question and
19 that is with respect to the Memorandum of
20 Understanding relative to safety monitoring. If we
21 approve this transaction, as you know, in the final
22 EIS, there is a copy of a Memorandum of Understanding

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 between the general counsel here at the Board and the
2 Department and the FRA. So that if we approve this
3 transaction, there is an agreement whereby FRA will
4 monitor the safety implementation of the transaction.

5 Do you care to comment?

6 MR. SMITH: We were pleased to enter into
7 that with you. It makes a great deal of sense in this
8 kind of juncture between the agencies. Yes, the FRA
9 does have plenary safety oversight authority. It for
10 very reasons does not now have extant black letter
11 regulations covering these kind of corporate
12 transactions. If it did, they would apply.

13 An ANPRM that we responded to, suggesting
14 a joint venture of some sort. If you decide
15 ultimately not to do that, we FRA are still committed
16 to moving forward on a rulemaking to cover just the
17 substantive area. For the moment at least, we think
18 that it's something that we can and should work out in
19 public interest. We have thus far.

20 MOU I think ties up a few loose ends and
21 specifies more in detail how it is that we will be
22 using the FRA's expertise and communications on a

1 constant basis with the applicants and reporting back
2 to you periodically and indeed, should problems arise.
3 Although again, the cooperation we have received since
4 this started from the applicants suggests that that's
5 less likely to happen.

6 CHAIRMAN MORGAN: Thank you very much, Mr.
7 Smith.

8 Now we will hear from broad shipper
9 interests. First, Nicholas DiMichael on behalf of the
10 National Industrial Transportation League. Michael
11 McBride on behalf of the Fertilizer Institute. Scott
12 Stone and Thomas Schick on behalf of the Chemical
13 Manufacturers Association, and also Scott Stone and
14 Thomas Schick on behalf of the Society of Plastics.

15 Mr. DiMichael you have five minutes.
16 Everyone on this panel has five minutes.

17 MR. DIMICHAEL: Thank you, Chairman
18 Morgan. Madam Chairman, Vice Chairman Owens, my name
19 is Nicholas DiMichael. I am here today representing
20 the National Industrial Transportation League.

21 The League has actively participated in
22 this proceeding from the very start. On October 21,

1 we filed substantial comments in request for
2 conditions along with the U.S. Clay Producers Traffic
3 Association and the Fertilizer Institute.

4 I have conferred with Mr. McBride who is
5 to follow me this afternoon. He and I have
6 coordinated our respective presentations. I am going
7 to be dealing in part with what the League has termed
8 safety net conditions to mitigate potential harm
9 flowing from these trends transaction. Mr. McBride
10 will also discuss aspects of that matter and will
11 focus his time on a portion of that, dealing with the
12 acquisition premium.

13 Before doing that though I would like to
14 briefly discuss the settlement agreement between the
15 League and the Norfolk Southern and CSX which the
16 League entered into on December 12, 1997 by which some
17 matters were compromised and settled and other matters
18 were specifically reserved.

19 In that settlement the carriers agreed,
20 among other things, to create a Conrail transaction
21 counsel to serve as a forum for constructive dialogue.
22 They promised to have certain operational

1 requirements, such as labor implementing agreements
2 and management information systems actually in place
3 prior to the closing date. They agreed to a
4 substantial reduction in certain reciprocal switching
5 charges and agreed to reporting and agency oversight.

6 The League believes that the settlement
7 agreement represents a reasonable compromise of
8 certain points of concern to the League and urges the
9 Board to implement that. I can say that the League
10 has been pleased with the implementation of the
11 settlement agreement thus far.

12 I would note that the matter of oversight
13 has become increasingly important to us in recent
14 months. The Board is I'm sure aware of very recent
15 press reports of increasing service problems in the
16 rail industry, even beyond those dealing with the
17 already familiar UP service crisis, including service
18 problems in the territories covered by these carriers
19 to this transaction.

20 League members have also been reporting to
21 the League increasing numbers of these service
22 problems over the past month. The League urges the

1 Board to be extremely vigilant in carrying out its
2 responsibilities to oversee the rail industry to
3 ensure that the problems that have afflicted the UP do
4 not spread to other areas.

5 Let me turn now to the need for the safety
6 net conditions requested by the League which were one
7 area which were not addressed in the settlement
8 agreement. In other words, this was an area where the
9 carriers and the League agreed to disagree.

10 These requested conditions are three-fold.
11 Number one, requesting a condition that it would
12 simplify the determination of market dominance for
13 shippers served by only NS and CSX for a five-year
14 period. Number two, a condition that would for a
15 five-year period shift the burden of proof in rate
16 reasonableness cases for shippers served by NS or CSX
17 that experience certain levels of rate increases.
18 Number C, a condition that would revise the treatment
19 of the acquisition premium for determining revenue
20 adequacy and the jurisdictional threshold.

21 The League would note that Dr. Alfred Kahn
22 and Dr. Frederick Dunbar have submitted testimony in

1 this case that supports the need to provide these
2 types of protections for captive shippers. That is
3 testimony with which the League agrees.

4 The need for these conditions flows from
5 the extraordinary acquisition premium in this
6 transaction. According to the carriers own witnesses,
7 the purchase price for Conrail could be over \$20
8 billion or far far above Conrail's net book value or
9 the pre-transaction market value of that railroad.

10 The carriers say not to worry about this
11 because the acquisition premium will be paid for
12 through traffic growth and efficiencies. Mr. Goode
13 this morning mentioned that that was the plan. He
14 said if we're right about this, the key to this growth
15 -- the key to this is growth in business and in
16 efficiencies.

17 But no one can be sure that the projected
18 merger efficiencies and traffic growth will actually
19 come to pass. There is significant risk that they
20 will not. Shippers are extremely concerned that if
21 the rosy projections of the applicants do not come to
22 pass, the cost of this transaction will be paid for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 through rate increases to captive shippers.

2 I would note that Mr. Snow this morning
3 mentioned the fact that there is "no large economic
4 surplus in this transaction any more, if there ever
5 was." So we are talking about a very thin margin of
6 error here.

7 There are two key points I think the Board
8 needs to focus on. First of all, it is important to
9 note that these potential adverse effects, if they
10 come to pass, will be effects that directly flow from
11 this transaction itself from the price that these
12 carriers have paid from Conrail.

13 In the past, the ICC and this Board have
14 acted to protect the interests of shippers from
15 potential adverse effects of a control transaction by
16 imposing conditions. The same need exists here. The
17 only difference between this case and prior case is
18 that the source of these adverse effects are the
19 acquisition premium, which was not really a major
20 issue in the past cases, or certainly not an issue to
21 the extent you have here.

22 Finally, the railroads argue that the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Board should ignore the acquisition premium issue in
2 this proceeding because it would be retroactive
3 regulation or would involve matters that should be
4 dealt with in a rulemaking. But in decision number
5 four in this very proceeding, the Board stated that it
6 would deal with the acquisition premium cost issue.
7 We think that the carriers can not claim that they
8 relied on past prices and anything else like that when
9 the Board said we will deal with it here. We ask the
10 Board to do so.

11 Thus, the League believes that the Board
12 should impose conditions on this transaction that are
13 set forth in the League's October 21 comments relating
14 to the acquisition premium.

15 What I would propose now is Mr. McBride
16 would deal with other aspects of this issue. I would
17 be pleased to answer any questions you may have now or
18 Mr. McBride and I can, either or both of us, answer
19 questions after he is done, whatever your pleasure
20 might be.

21 CHAIRMAN MORGAN: Thank you. Let me beg
22 your indulgence because Senator DeWine is here and

1 will give a statement. So if you, Mr. DiMichael, just
2 want to take your seat.

3 We will hear from you now, Senator DeWine.

4 SENATOR DEWINE: Madam Chairman, thank you
5 very much.

6 CHAIRMAN MORGAN: By the way, before you
7 begin, you sent us a kind letter regarding a recent
8 decision that we issued relative to Cincinnati. I
9 appreciate your thoughtfulness in sending us kind
10 words.

11 SENATOR DEWINE: Thank you. We appreciate
12 it. Thank you very much, Madam Chairman. Let me
13 first thank the members of the Service Transportation
14 Board for the opportunity today to present some issues
15 that I believe should be addressed as part of the
16 acquisition of Conrail by CSX and Norfolk Southern.

17 As we all know, railroads played an
18 integral part in the history of my home state, an
19 integral part of the economic development of Ohio
20 beginning in 1936 with the Erie and Kalamazoo
21 Railroad.

22 By 1850, there was only 300 miles of track

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in operation in Ohio. However, from 1850 to 1860,
2 railroad mileage increased by 700 percent. Indeed,
3 really the story of Ohio's economic development, the
4 rise and fall of great cities, the men, women who
5 built them, can be traced to the growth of railroads
6 throughout our state.

7 As railroads were built, sold, and
8 expanded, numerous community controversies arose that
9 impacted the lives and fortunes of many. Little
10 really has changed since then. Ohio's economic
11 present and future is still very much linked to the
12 railroads. Any change in our rail system affects many
13 parties for many many reasons.

14 In an acquisition of this size and
15 importance, it is always very difficult to determine
16 the best way to resolve all the differences and the
17 issues between the affected parties. I have always
18 believed that these problems can be addressed best
19 through negotiation of mutually acceptable agreements.
20 I have encouraged both CSX and NS to do this. I am
21 very appreciative of their willingness to work with
22 the state of Ohio, to work with local officials,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com