



**The Removal of the Inspector General for
The National Railroad Passenger Corporation (Amtrak)**

**Minority Staff Report
111th Congress**

**Senate Finance Committee
Sen. Charles E. Grassley, Ranking Member**

**House Oversight and Government Reform Committee
Rep. Darrell E. Issa, Ranking Member**

September 13, 2010

Background

This inquiry began on Thursday, June 18, 2009, after staff for the Senate Committee on Finance (Finance Committee) and House Committee on Oversight and Government Reform learned that the National Railroad Passenger Corporation (Amtrak/the Company) Inspector General (IG) Fred Weiderhold had unexpectedly retired.¹ In the course of its review, Joint Committee staff conducted more than 13 witness interviews and reviewed more than 6,400 pages of documents related to this matter. This report describes what Joint Committee staff learned regarding the removal of Weiderhold as the Amtrak IG.

Prior to his sudden retirement, Weiderhold contacted and met with Finance Committee staff on several occasions. During these conversations, Weiderhold described an environment where Amtrak management repeatedly interfered with the independent functioning of the Office of Inspector General (OIG). On June 4, 2009, the last time Finance Committee staff spoke with Weiderhold before he left the Company, Weiderhold described the interference as a violation of the Inspector General Act of 1978, as amended (IG Act).² Specifically, Section 8G(d) of the Act stipulates that the IG “shall not report to, or be subject to supervision by, any other officer or employee of such designated Federal entity.”³ Yet the IG was being subjected to the supervision of the Amtrak legal department.

Shortly thereafter, on June 18, 2009, Thomas C. Carper, the Chairman of the Amtrak Board of Directors (Board), reportedly gave Weiderhold an ultimatum: retire or be removed “for cause” within 24 hours. Joint Committee staff learned that the Chairman delivered this ultimatum without prior notice to, or consultation with, Congress. The IG Act, as amended by the Inspector General Reform Act of 2008, however, requires an agency to provide thirty days prior notice to Congress before removing an IG.⁴ Thus, by presenting Weiderhold with an ultimatum designed to force his “voluntary” resignation, Amtrak constructively removed him from office in circumvention of the law requiring notice to Congress.

Congress created Inspectors General in order to provide independent oversight to government agencies and programs to ensure that taxpayer funds are managed efficiently and with integrity. Thus, independence must be a guiding principle of all OIG operations. It is essential for an IG to be able to function as part of the system of checks and balances, as Congress intended.

In October 1988, Congress expanded the IG Act to establish OIGs at certain Designated Federal Entities (DFEs), in addition to government agencies, including Amtrak. Amtrak, though technically a corporation, is government-owned. All of its preferred stock is owned by the taxpayers, and its Board of Directors is appointed by the President, subject to confirmation by the Senate. Each year it receives billions of dollars in taxpayer-funded appropriations. In

¹ Letter from Sen. Charles Grassley, Ranking Member, Senate Committee on Finance (Committee), to E. Bret Coulson, Deputy Inspector General (IG) of Management & Policy, National Railroad Passenger Corporation (Amtrak) (June 18, 2009) (on file with Committee), (EXHIBIT 1).

² Inspector General Act of 1978, as amended by the Inspector General Reform Act of 2008, 5 U.S.C. §§ 1-13 (1978), (EXHIBIT 2).

³ 5 U.S.C. § 8(G)(d).

⁴ 5 U.S.C. § 8(G)(e).

October 2008, the “Rail Safety Improvement Act of 2008,” was enacted, which allocates \$2.6 billion a year in Amtrak funding through 2013.

In January 1989, Fred Weiderhold was appointed the first IG of Amtrak. While some IGs are appointed by the President, a DFE IG is appointed by the head of the entity. Thus, Weiderhold was appointed by the Chair of Amtrak’s Board of Directors. A DFE IG serves under “the general supervision” of the head of the entity.⁵ However, an OIG is intended to function independently of the managers who operate the entity that the IG oversees.⁶

I. Summary and Findings

- Weiderhold, as the IG, had conducted audits and investigations that exposed wrongdoing, gross mismanagement, and criminal activity at the highest levels of Amtrak, to include the Chief Financial Officer, the head of the Engineering Department, and executives of the Law Department.
- Weiderhold, with 35 years of experience at Amtrak, was uniquely equipped with thorough institutional knowledge, which afforded him the expertise to recognize and target Amtrak’s areas of weakness or vulnerability to fraud, waste, and abuse.
- Amtrak management apparently viewed Weiderhold as a threat who needed to be controlled. This sentiment was expressly asserted by Amtrak General Counsel (GC) Eleanor Acheson, who also served as the Board’s corporate secretary. At a board meeting, she reportedly said that the OIG was “out of control.”⁷
- In April 2007, the Law Department, headed by GC Acheson, began a systematic campaign to control the OIG by requesting that Weiderhold enter into an unusual “protocol” which set forth guidelines on OIG’s access to Amtrak documents and information. Weiderhold, who initially refused to enter into the protocol, was ordered to sign it by then Chairman David Laney in October 2007.
- In November 2007, Laney memorialized the protocol in a document referred to as “Exec-1.” Using Exec-1, the Amtrak Law Department began to routinely withhold, obstruct, and delay the OIG’s access to Amtrak documents. The Law Department even attempted to intercept documents that the OIG had subpoenaed from third parties by instructing them to provide the documents to the Law Department before providing them to the OIG. With his earlier fears regarding Exec-1 being affirmed, Weiderhold requested that it be revisited.⁸

⁵ 5 U.S.C. § 8(G)(d).

⁶ 5 U.S.C. § 8(G)(d).

⁷ Interview by Joint Committee staff with Fred Weiderhold, former IG, Amtrak, in Washington, D.C. (July 23, 2009).

⁸ *Id.*

- Acting on credible allegations, the OIG reviewed the Law Department role in Amtrak’s practice of entering into defeased lease agreements and found that it had been negligent. Amtrak spent nearly \$100 million to restructure its defeased lease agreements.
- Earlier, in 2005, the OIG reported that the Law Department engaged in excessive use of outside counsel and that inadequate controls on costs led to over \$102 million in expenditures over 3 years.⁹
- Joint Committee staff learned that since the OIG’s earlier review, the Law Department continued its excessive use of outside counsel, spending over \$74.4 million from 2007 to 2009.¹⁰
- When interviewed by Joint Committee staff, current Amtrak Chairman Tom Carper had no knowledge of how much money Amtrak was spending on outside counsel and was unaware of whether Amtrak had any procedures for limiting these legal costs.
- Contrary to provisions of the IG Act, Amtrak interfered with and impeded the OIG’s efforts “to select, appoint, and employ such officers and employees as may be necessary for carrying out its functions.”¹¹
- In March 2009, Amtrak impeded and interfered with the OIG by denying it the funding earmarked for OIG operations and activities in the American Recovery and Reinvestment Act (ARRA/stimulus).
- In April 2009, Amtrak’s Board began preparing to remove Weiderhold as its IG. Weiderhold was provided neither notice that the Board was contemplating removing him, nor an opportunity to respond to the Board’s concerns. Likewise, Congress received no notice of the intent to remove Weiderhold, and Amtrak failed to consult with Congress about its concerns with Weiderhold, as it could have, and should have done.
- The Board prepared a draft letter in order to satisfy the statutory requirement for 30-day notice to Congress, as well as a list of reasons for removal.¹² However, the letter was not sent to Congress and was never provided to Weiderhold. Instead, the Board merely told Weiderhold of its existence and threatened to send it to Congress if he did not “voluntarily” retire within 24 hours.

⁹ Office of the Inspector General (OIG), Amtrak, Review of Amtrak’s Management of Outside Legal Services 5 (2005) (on file with Committee), (EXHIBIT 9).

¹⁰ Letter from Mark B. Bierbower, Partner, Hunton & Williams, to Ellen Beares, Staff Member, Committee on Appropriations (July 27, 2009) (on file with the Committee), (EXHIBIT 18).

¹¹ 5 U.S.C. § 8(G)(d).

¹² Interview by Joint Committee staff with Thomas C. Carper, Chairman, Amtrak, in Washington, D.C. (July 22, 2009);.

- The Board required Weiderhold to sign a nondisclosure agreement that prevented him from making any statements to anyone, including Congress, about Amtrak or the circumstances of his removal without Amtrak’s approval. Amtrak amended the prohibition against Weiderhold speaking to Congress only after Joint Committee staff questioned this requirement of the separation agreement and requested that it be amended.
- The OIG hired an outside firm, Willkie Farr & Gallagher, LLP (Willkie Farr), to review the interaction between Amtrak and the OIG. On June 18, 2009, the same day that the Board issued its ultimatum to IG Weiderhold Willkie Farr released its report (Willkie Farr Report). The Willkie Farr Report concluded that Amtrak was interfering with the OIG in violation of the IG Act.
- The Board’s actions following its removal of Weiderhold exacerbated the appearance that it was inappropriately attempting to control the OIG. The Board appointed Lorraine Green as interim IG, who, as the Vice President for Human Resources (HR) was a member of Amtrak’s management team, and intended to return to the position. Her inherent conflicts of interest, lack of independence, and lack of IG experience rendered her an inappropriate choice for the position. Moreover, the Board instructed her to conduct a comprehensive review of OIG operations before a permanent replacement was appointed, which she agreed to do. She subsequently hired several consultants to conduct the review.
- The Board revised Exec-1 and began a more productive working relationship with the OIG only after Congress, as a condition for Amtrak receiving its 2010 appropriation funds, required an independent certification that Amtrak was in compliance with the IG Act and its amendments.

II. Amtrak OIG Had a History of Effectiveness

IG Weiderhold had been employed by Amtrak for more than 35 years and served as its IG for 21 years. Under Weiderhold’s leadership, the Amtrak OIG vigorously pursued evidence of fraud, waste, and abuse through effective audits and investigations. For example:

- According to a 2006 Semiannual Report to Congress, from October 2002 to September 2006, more than 200 conductors and 160 OnBoard Service employees either resigned or were terminated from the Company for misappropriation of revenues, in part as a result of OIG’s efforts in this area.¹³ These efforts included an investigation into the loss of revenue from passenger rail service, due to employee theft. As a result of this investigation, the OIG determined that at least \$1.4 million had been stolen from Amtrak.¹⁴

¹³ Amtrak OIG Semi-Ann. Rep. 34 (Apr. 1, 2006 – Sept. 30, 2006) at 16, (EXHIBIT 3).

¹⁴ “Amtrak Conductors Plead Guilty to Stealing”, *The Business Review*, August 14, 2003, <http://albany.bizjournals.com/albany/stories/2003/08/11/daily35.html>, last accessed June 15, 2010.

- In 2006, the OIG conducted an investigation which substantiated allegations that the Amtrak Engineering Department had systematically spent thousands of dollars on promotional materials, functions (including the purchase of alcohol), meetings, training sessions, and other events; and that senior managers had circumvented Amtrak's financial system of checks and balances by disguising the nature and extent of the spending, including falsifying supporting documents and structuring payment requests.¹⁵ As a result of the OIG's findings, one high-level manager was terminated and another demoted. The system by which this department's spending was overseen was also tightened significantly.
- In 2007, the OIG reviewed the internal controls over Amtrak employee training and found weaknesses in the system used by the Amtrak HR Department to ensure that Amtrak employees completed mandatory training in a timely manner.¹⁶ The OIG found that there was no consistent or centralized way to identify and monitor required training or internal controls to notify employees and supervisors of the need for training. In addition, the HR Department had initiated the development of training profiles, but never completed the task. The OIG recommended that then HR Vice President Green implement a formal written policy to better control required training. Later, after the Chairman of the Board removed Weiderhold as IG, he tapped Green to function as interim IG, creating an inherent conflict of interest with regard to the OIG's follow-up work on this report.
- In another 2007 investigation, the OIG found that certain management employees provided free travel on Amtrak trains to individuals having no legitimate claim to complimentary travel.¹⁷ The OIG determined that Amtrak travel tickets, including first class accommodations, valued in excess of \$180,000 were provided to persons on a complimentary basis under the guise of legitimate Amtrak programs. The OIG also learned that the same Washington-based management employees provided complimentary hotel rooms courtesy of Amtrak to individuals having no legitimate claim to those hotel rooms. Other management employees also used Amtrak-supplied hotel rooms for personal business. During the OIG investigation a Vice President and a Senior Director resigned their Amtrak positions.
- In 2008 and 2009, the OIG conducted an investigation into the circumstances surrounding the Moynihan Station Redevelopment Project, specifically the request to hire a project manager exclusively for the Moynihan Project at a salary of \$200,000. At the time, the individual was already employed as a contractor and was being paid a contracting fee equivalent to \$200,000 per year.¹⁸ During the investigation, the OIG determined that for the two months that the project manager was acting as a private contractor, Amtrak's expense policy regarding hotel rates was continuously violated.

¹⁵ Amtrak OIG Semi-Ann. Rep. 34 (Apr. 1, 2006 – Sept. 30, 2006) at 12, (EXHIBIT 3).

¹⁶ Amtrak OIG Semi-Ann. Rep. 35 (Oct. 1, 2006 – Mar. 31, 2007) at 6, (EXHIBIT 4).

¹⁷ Amtrak OIG Semi-Ann. Rep. 36 (Apr. 1, 2007 – Sept. 30, 2007) at 15, (EXHIBIT 5).

¹⁸ Amtrak OIG Semi-Ann. Rep. 39 (Oct. 1, 2008 – Mar. 31, 2009) at 18, (EXHIBIT 6).

As a result of the investigation, the project position was eliminated and the individual was terminated from employment.

- Beginning in November 2007, the OIG initiated an evaluation to determine how effectively and efficiently Amtrak managed its human capital.¹⁹ The OIG found that, although the traditional role of HR had evolved over the past 20 years from being mainly transactional and reactionary to one that is more proactive and strategic, Amtrak had been slow in following this trend. The OIG found that Amtrak needed a comprehensive, corporate-wide human capital strategy that was tied to the company's strategic plan and supported by Amtrak's senior leadership and its Board. The report made 24 specific recommendations, including the creation of a human capital officer position. The OIG also compared Amtrak's expenditures in this area with other large companies and estimated that Amtrak could potentially save between \$23 million and \$50 million if it performed as efficiently as the benchmarked companies.

These examples illustrate that under Weiderhold's leadership, the OIG took its independence and legislative mandate seriously in rooting out fraud, waste, and abuse at all levels within Amtrak. As a result of these efforts, the OIG exposed millions of dollars of fraud, waste, and abuse at Amtrak and many of the investigations led to criminal prosecution by the Department of Justice (DOJ).

III. Relationship Begins to Sour: Examination of the Law Department

In 2005, at the request of Chairman Don Young of the House Committee on Transportation and Infrastructure, the Government Accountability Office (GAO) conducted an investigation and issued a report that examined Amtrak's management.²⁰ As part of this review, GAO examined Amtrak's Law Department and "found several weaknesses in the processes for the procurement ... payment of outside legal services that increase the risk that Amtrak is not receiving best value for these services and is making improper payments for these services."²¹ After receiving this report, Chairman Young asked the Department of Transportation (DOT) and the Amtrak OIG to conduct a detailed examination of the Amtrak Law Department.²² The joint review resulted in the following three significant findings:²³

1. Amtrak did not properly manage outside counsel in a manner that limited costs and protected Amtrak's interests;

¹⁹ Amtrak OIG Semi-Ann. Rep. 40 (Apr. 1, 2009 – Sept. 30, 2009) at 26, (EXHIBIT 7). This report was released while Lorraine Green, Amtrak Vice President for the Human Resources (HR) Department, was serving as the Amtrak interim IG. During her interview by Joint Committee investigators, she admitted that she initially withheld the report out of fear that it may be perceived as a conflict of interest but later decided to release it. As discussed later in this report, after serving as interim IG Green returned to her previous position with Amtrak.

²⁰ U.S. Government Accountability Office, Amtrak Management: Systemic Problems Require Actions to Improve Efficiency, Effectiveness, and Accountability 2 (Oct. 4, 2005), (EXHIBIT 8).

²¹ *Id.* at 119.

²² OIG, Amtrak, Review of Amtrak's Management of Outside Legal Services 5 (2005) (on file with the Committee).

²³ *Id.* at 7.

2. Amtrak did not enforce its own guidelines that would have been effective in protecting Amtrak's interests and preventing overcharges; and
3. Amtrak signed agreements with one law firm that significantly supplanted these guidelines and voided its protections.

In general, the joint review questioned over \$100 million that Amtrak paid in outside legal fees from 2002 through 2005.²⁴ In response, Amtrak stated that it had and continued to make certain changes intended to improve its management of outside legal fees. Such changes included a review of its current policies and certain billing and case management information technology improvements.²⁵

In addition, the OIG contracted with outside counsel, The Toothman Law Firm, to conduct an independent review of the Law Department. The Toothman report, submitted on May 31, 2006, generally agreed with the GAO and joint OIG-DOT reports, again emphasizing that Amtrak's Law Department failed to follow its own guidelines in managing outside counsel.²⁶

The Amtrak Law Department's reaction to these investigations appears to have triggered a deterioration of the working relationship between Amtrak management and the OIG. During his interview, IG Weiderhold stated that in September 2006 and shortly after these reviews were completed, then Chairman of the Amtrak Board David Laney, falsely and without any evidence, accused Weiderhold of leaking information regarding the joint OIG findings to the press, specifically information from the Toothman Report.²⁷

IV. Law Department Interference: Revision of Exec-1

OIG procedures are contained in a manual called Exec-1.²⁸ In April 2007, Amtrak GC Acheson requested that Weiderhold enter into a protocol that was used to restrict the OIG's access to Amtrak documents. The Law Department insisted that it must first review and mark OIG requested documents for attorney-client and other privileges prior to the documents being provided to the OIG. However, as an independent office within Amtrak, such privileges do not apply to the OIG. Nevertheless, the protocol was used to require the OIG to:²⁹

- Refrain from providing any documents to third parties;
- Contact GC Acheson for any document requests; and
- Obtain OGC approval before issuing any reports, including criminal investigative reports to DOJ.

²⁴ *Id.* at 6.

²⁵ *Id.* at 36.

²⁶ John W. Toothman, *The Devil's Advocate*, Confidential Report: Review of Amtrak Law Department Performance 13 (May 31, 2006) (on file with the Committee), (EXHIBIT 10).

²⁷ Interview by Joint Committee staff with Fred Weiderhold, former IG, Amtrak, in Washington, D.C. (July 23, 2009).

²⁸ Amtrak, *Procedures Manual*, Department of Internal Affairs (OIG), Exec-1, (June 1992), (EXHIBIT 11).

²⁹ Amtrak, *Agreed Protocol of the Amtrak Office of Inspector General and Law Department Regarding Disclosure of Privileged, Classified, Proprietary or Other Confidential Information* (Oct. 10, 2007), (EXHIBIT 13).

Weiderhold responded that he believed the existing Exec-1, which was established in 1992, was sufficient and that the proposed revisions undermined the OIG's statutory independence. In response, Amtrak GC Acheson took the unusual step of hiring an expensive outside counsel, Michael Bromwich, to represent the OGC in its disagreement with the OIG over the protocol. Bromwich, who was recently appointed Director of the Minerals Management Service, was then a partner at Fried Frank and had formerly served as DOJ IG. The disagreements and ensuing negotiations over the protocol culminated in a meeting between the OIG, Bromwich, and DOJ attorneys in May 2007. At that meeting, DOJ supported Weiderhold's position.³⁰ GC Acheson, however, did not attend.

On October 10, 2007, and after being ordered to do so by Chairman Laney, Weiderhold felt compelled to sign the protocol.³¹ According to Weiderhold, it was clear that if he refused to sign, he would be removed as IG and he relayed those concerns in an email to Director Donna McLean.³² McLean became Chairman of the Board the following month. It was Weiderhold's understanding that the protocol would be implemented in such a way that the OIG would continue to have access to any and all Amtrak documents, and that the OGC would only review and mark documents for privilege or confidentiality.

The new protocol was formalized on November 5, 2007, by then Chairman Laney just days before McLean became Chairman.³³ Over the ensuing months, it became evident to Weiderhold that Amtrak was using Exec-1 to delay and impede the production of documents and information requested by the OIG. An example of such interference was OIG's investigation of Amtrak's involvement in defeased lease agreements.

³⁰ Robert J. Meyer, Willkie Farr & Gallagher, LLP (Willkie Farr), Report on Matters Impairing the Effectiveness and Independence of the Office of Inspector General of the National Railroad Passenger Corporation (Amtrak) 35 (June 18, 2009), (EXHIBIT 12).

³¹ Interview by Joint Committee staff with Fred Weiderhold, former IG of Amtrak, in Washington, D.C. (July 23, 2009).

³² E-mail from Fred Weiderhold, former IG, Amtrak OIG, to Donna McLean, former Chairman of the Board of Directors (Chairman), Amtrak (Oct. 10, 2007, 15:21:40 EST) (on file with Committee), (EXHIBIT 14).

³³ Amtrak, P/I Number 2.1.1 (Nov. 5, 2007), (EXHIBIT 15). This document amended the existing Exec-1 in order to incorporate the Agreed Protocol. As noted earlier, although Weiderhold felt compelled to sign the Agreed Protocol, he refused to sign this document.

a. Example: The Defeased Lease Investigation

i. Background

In August 2008, the OIG opened an investigation into Amtrak's engagement in defeased leases.³⁴ These were a series of transactions in which Amtrak sold and then leased back its rail cars. The only economic effect of the transactions, and apparently their sole purpose, was to transfer the potential tax benefits of owning the rail cars from Amtrak (a tax-exempt entity) to a taxable, for-profit entity. In exchange, Amtrak received cash, and as a result of the transaction, the federal government collects less tax revenue. Congress essentially prohibited such sale-in, lease-out (SILO) tax shelters in 2006, after Amtrak had entered into its defeased lease arrangements.

The OIG examined allegations that a conflict of interest may have existed with respect to the financial advisor Amtrak hired to aid in certain aspects of the deals. In addition, the OIG examined whether Amtrak managers may have lied to the Board or DOT officials about the defeased leases or the potential conflict, whether procurement procedures may have been circumvented, and whether Amtrak's Law Department failed to perform its due diligence in protecting Amtrak's interests.³⁵

According to the OIG's report, in 1999 and 2000 Amtrak entered into 12 separate financed defeased leases involving 624 in-service passenger coach cars. The gross purchase price of the train cars was \$928,686,000, of which Amtrak received \$124,171,000 in cash with transaction costs of \$13,531,000. With the remainder of the funds Amtrak was required to purchase guaranteed investments from AAA-rated insurance companies to fund future lease payments. At the time of the negotiations, financial advisor Babcock & Brown (Babcock) represented two of the lessor banks.

In late 2007, Amtrak became aware that two of its guarantors were in financial trouble putting Amtrak in jeopardy of default under the terms of its lease agreements. In early 2008, Amtrak engaged Babcock to provide financial advice regarding replacement of the two troubled guarantors, along with providing strategic advice and participating in potential transaction restructuring negotiations with Amtrak's lessors. Amtrak management determined that

³⁴ Memorandum from the OIG, Amtrak, to Thomas C. Carper, Chairman, Amtrak 11 (July 22, 2009) (on file with Committee), (EXHIBIT 16). A defeased lease, also known as a sale-in-lease-out (or SILO) transaction, is, as in Amtrak's case, a combination of a sale of an asset by a tax-exempt entity and a lease back of that same asset to the same entity. (For a full explanation, see CRS Report for Congress: *Tax Implications of SILOs, QTEs, and Other Leasing Transactions with Tax-Exempt Entities*, November 30, 2004, <http://crs.gov/Pages/Reports.aspx?Source=search&ProdCode=RL32479>) The lessor, having acquired the property at market value, can claim depreciation, amortization, and interest deductions of such asset, and obtain the tax advantages of doing so, an option not available to the tax-exempt entity. The tax-exempt entity is required to put the majority of the funds of the sale aside to make the lease payments, while using a certain amount for insurance against the defeased lease agreement. The advantage for the tax-exempt entity is that there is normally a certain amount of funds it receives either as part of the loan or for participation in the deal that it can then use for any purpose. In effect, this payment is the only money that actually changes hands. The majority of the deal is essentially a paper transaction with the tax-exempt entity exercising control over the asset just as it did before the sale.

³⁵ *Id.* at 10.

Babcock's previous representation of two lessors would not adversely affect the advice Babcock provided to Amtrak.

Babcock advised that the two guarantors should be replaced, which Amtrak did. In fact, Amtrak restructured all 12 lease agreements at a cost of nearly \$100 million in legal fees and other charges.³⁶ This cost included over \$86,000 in legal fees that Babcock incurred while resisting the OIG's investigative efforts and billed to Amtrak under an indemnification agreement.³⁷

ii. The OIG Investigation

Early in the investigation, the OIG informed numerous Amtrak employees, including GC Acheson and Dale Stein, Amtrak's Treasurer, that they were not subjects of the investigation but that the OIG wished to interview them as fact witnesses. All employees informed the OIG that they planned to seek indemnification, in order to retain outside legal counsel at Amtrak's expense. This, in itself, caused a considerable delay of several months, with Stein finally being interviewed in January 2009.

The interviews resulted in numerous requests for documents. Throughout the document production process, Amtrak employees or their counsel told the OIG that before they could hand a document over to the OIG, the document had to be cleared for release by the Amtrak Law Department. According to the OIG's report, this occurred even when the individual being interviewed had the document with him and was specifically asked by the OIG to immediately produce the document. Again, this added significant delays to the OIG's investigation. In one example, documents requested on December 23, 2008 were not fully provided to OIG until March 3, 2009.³⁸ In another example, documents were requested on January 12, 2009, but were not fully produced until March 31, 2009.³⁹ These examples of significant delays are inconsistent with the unfettered access to documents contemplated in the Inspector General Act.

iii. Babcock Subpoena

Perhaps the most disturbing example of the Law Department's attempts to impede the OIG was the handling of the OIG subpoena to Babcock. On December 19, 2008, the OIG issued a subpoena to Babcock for certain records relative to the investigation. The subpoena listed a compliance date of January 19, 2009. When the OIG received neither the documents nor any communication from Babcock by that date, the OIG counsel sent Babcock a letter of inquiry. In response, Babcock's attorney stated that he would first send the documents to Amtrak GC Acheson for review. In fact, on February 13, 2009, Acheson sent a letter to Babcock's attorney

³⁶ *Id.* at 23-24. In contrast, the Wall Street Journal reported on June 26, 2009, that the Washington Metropolitan Area Transit Authority, which also had entered into a number of defeased leases on its rail passenger cars, had "netted around \$100 million from its deals." <http://online.wsj.com/article/SB124595679614655491.html>. Last accessed June 16, 2010.

³⁷ *Id.* at 24. The OIG investigation also determined that Amtrak had provided indemnification to Babcock in an agreement separate from its financial service agreement with Amtrak. Amtrak was paying for Babcock's legal expenses in dealing with OIG.

³⁸ *Id.* at 11.

³⁹ *Id.* at 12.

demanding that documents be sent to her office *before* being produced to the OIG. The OIG found many of Babcock’s assertions of privilege were inadequate and requested that Babcock produce additional documents. This request was made around March 10, 2009, and the OIG continued to negotiate with Babcock to produce the documents. Instead, Babcock informed the OIG that some documents already produced should not have been provided due to privilege. As of the date of the OIG report (seven months after the subpoena and four months after the follow-up request), Babcock had not produced the documents.⁴⁰

iv. Investigative Findings

The OIG found that having Babcock advise Amtrak in the defeased lease matter put Amtrak at a greater business risk than necessary.⁴¹ The OIG determined that Amtrak management treated the Babcock situation “cavalierly” instead of fully vetting it prior to continuing with the engagement of Babcock.⁴² Babcock’s financial advice regarding the defeased lease transactions heavily favored one course of action: replacement of the two troubled guarantors. While that might have been in the interests of Babcock’s former clients, the lessors, it raises the question of whether a more independent advisor might have urged Amtrak to assert its rights to leave the existing contracts in place. The OIG’s investigation concluded that Amtrak’s representation to DOT was less than candid, and was based on incomplete fact validation and insufficient expertise to determine whether a conflict or other risk to Amtrak existed. As a result, Amtrak spent nearly \$100 million to restructure the original defeased transactions and obtain legal and financial advice, which is troubling given that Amtrak is essentially a government entity funded by taxpayer dollars.⁴³

b. Fallout from Defeased Lease Investigation

Recognizing that the current implementation of Exec-1 was interfering with his statutory functions as IG, Weiderhold requested that Exec-1 be amended.⁴⁴ In response, Amtrak retained the services of Bromwich to assess Exec-1 and its compliance with the IG Act.⁴⁵ On October 15, 2008, Bromwich relayed his finding to Donna McLean, then Chairman of the Board, in a memorandum. On the first page of that memorandum Bromwich stated, “I know of no basis for a claim that Current Exec-1 is inconsistent with the IG Act or is illegal.”⁴⁶ As a result and as illustrated above, the Amtrak Law Department continued its practice of reviewing all documents before they were provided to OIG. Between 2007-09, Fried Frank billed Amtrak \$260,000 for engagements related to OIG.

⁴⁰ *Id.* at 13-14.

⁴¹ *Id.* at 2.

⁴² *Id.*

⁴³ *Id.* at 23-24.

⁴⁴ Interview by Joint Committee staff with Thomas C. Carper, Chairman, Amtrak, in Washington, D.C. (July 22, 2009); Interview by Joint Committee staff of Colin Carriere, OIG General Counsel, Amtrak, in Washington, D.C. (July 15, 2009).

⁴⁵ Memorandum from Michael R. Bromwich, Partner, Fried Frank, to Donna McLean, then Chairman, Amtrak (Oct. 15, 2008) (on file with Committee), (EXHIBIT 17).

⁴⁶ *Id.* at 1.

Despite the numerous investigative reports on the subject by GAO, joint DOT-Amtrak OIG, and Toothman law firm, Amtrak continued its excessive use of outside counsel. This was done through numerous indemnification agreements by Amtrak employees – such as those described above for Amtrak managers and Babcock – as well as by Amtrak management, who had retained the law firm Wilmer Cutler Pickering Hale & Dorr, LLP (WilmerHale) to investigate the alleged Babcock conflicts, and the firm Ropes & Gray LLP to perform a review of WilmerHale’s investigation.⁴⁷ On July 17, 2009, Joint Committee staff asked Amtrak for the amount of money paid out to outside law firms in the previous three years. This review found that \$74.4 million had been paid,⁴⁸ on par with the costs prior to the 2006 review. As expected, a sizeable portion of those costs were attributed to legal fees paid in response to indemnification agreements Amtrak executed related to the OIG’s investigation or for outside counsel specifically hired to do battle with the OIG. During his interview, Carper acknowledged that he neither knew how much Amtrak was spending on outside counsel nor whether Amtrak had any procedures for limiting those costs.⁴⁹

V. Amtrak Interference in Other Areas

The Joint Committee’s review also found that Amtrak management interfered with the OIG’s operations in other areas.

a. Weiderhold’s Attempt to Hire a Chief Investigator

In November 2008, IG Weiderhold sent a memorandum to the Amtrak HR Department regarding the OIG’s plans to hire a United States Postal Inspector as a new Chief Investigator.⁵⁰ However, by late February 2009, the investigator had still not been hired because HR objected to his proposed salary. The OIG noted that the proposed salary was commensurate with comparable positions in other law enforcement agencies. On February 25, 2009, HR decided to allow the hire as originally requested. As a result, the offer was made to the candidate and a start date of March 9, 2009, was agreed upon.

However, on March 6, three days before the start date, the HR Department notified the candidate that the offer had been rescinded at the direction of the President of Amtrak. Chairman Carper later sent a memorandum to the OIG approving the position, but with further instructions to OIG and the HR Department to rescind the previous agreement with the proposed candidate and to post the position for applicants. Similar problems were encountered when the OIG attempted to hire an Assistant IG for oversight on Amtrak’s use of ARRA funds.⁵¹

⁴⁷ Memorandum from the OIG, Amtrak, to Thomas C. Carper, Chairman, Amtrak 11 (July 22, 2009) (on file with Committee), (EXHIBIT 16)

⁴⁸ Letter from Mark B. Bierbower, Partner, Hunton & Williams, to Ellen Beares, Staff Member, Committee on Appropriations (July 27, 2009) (on file with Committee), (EXHIBIT 18).

⁴⁹ Interview by Joint Committee staff with Thomas C. Carper, Chairman, Amtrak, in Washington, D.C. (July 22, 2009)

⁵⁰ Robert J. Meyer, Willkie Farr & Gallagher, LLP (Willkie Farr), Report on Matters Impairing the Effectiveness and Independence of the Office of Inspector General of the National Railroad Passenger Corporation (Amtrak) 48 (June 18, 2009), (EXHIBIT 12).

⁵¹ *Id.* at 49-50, (EXHIBIT 12).

Micromanaging an IG's hiring authority in this manner undermines the statutorily required independence Congress intended for Inspectors General.

b. Amtrak Withholds OIG ARRA Funds

In March 2009, the ARRA earmarked approximately \$5 million for the Amtrak OIG to combat fraud, waste, and abuse relating to the \$1.3 billion in federal stimulus money allocated to Amtrak.⁵² Despite that specific earmark, Amtrak required the OIG to follow a set of protocols that it had established for all of its departments to follow in requesting and obtaining ARRA funds for a specific project or purpose. As part of this process, the request for funds had to be approved by the Amtrak Procurement and Finance Department, the Chief Financial Officer (CFO), the Chief Operating Officer, and the Law Department.

Weiderhold advised the Joint Committee that he spoke to the Amtrak CFO regarding this process. Weiderhold objected to Amtrak's requirement that OIG follow Amtrak's protocol for receiving ARRA funds because those procedures were subject to OIG oversight. In addition, Weiderhold objected due to the obvious conflict that existed because the approving officials and departments were also subject to OIG oversight. Yet, the CFO insisted that he follow Amtrak's protocol. E. Bret Coulson, the Deputy IG for Management and Policy, also approached other members of Amtrak management and received the same response. Eventually, around December 2009, the Amtrak OIG was successful in having the grant procedures amended to allow ARRA funds to be paid directly to the OIG.⁵³ Once again, this nine month delay was significant, and the attempts by Amtrak management to control funds allocated to the OIG by Congress are inconsistent with the statutory intent of the IG Act and its amendment.

c. Law Department Oversight of OIG

In addition to its involvement with the ARRA funding request procedures and other examples cited above, the Amtrak Law Department asserted oversight of the OIG in other areas. For example, in an email from GC Acheson to Coulson on January 8, 2009, Acheson stated that she, as the Amtrak GC, has "the exclusive authority and duty to construe law... including the IG Act" and how it applies to Amtrak operations. Though this email was in response to the OIG taking exception to the Law Department's interference in the OIG's efforts to set compensation levels for its employees, the email appears to represent the general mindset of Amtrak management and its relationship with the OIG. In effect, Acheson took the position that she had the power and authority to determine what the OIG could and could not do, thereby placing herself in a position of oversight of the same entity that has statutory authority to oversee Amtrak.

⁵² American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, Title XII, 123 Stat. 115, 209 (2009), (EXHIBIT 19).

⁵³ Interview by Joint Committee staff with E. Bret Coulson, Deputy IG of Management & Policy, Amtrak, in Washington, D.C. (June 17, 2010).

d. Weiderhold Retains Willkie Farr & Gallagher

In February 2009, Weiderhold retained the firm Willkie Farr to analyze the interaction between Amtrak and its OIG.⁵⁴ Specifically, Weiderhold requested an outside opinion on whether or not Amtrak's interference was impairing the OIG's statutory authority under the IG Act.

On June 18, 2009, Willkie Farr released its report to Weiderhold. In summary, Willkie Farr determined that Amtrak was, in fact, impairing the OIG and made a number of recommendations to address the issue, including revising Exec-1.⁵⁵

e. CIGIE Investigation

On April 17, 2009, Weiderhold received a letter from the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE)⁵⁶ that he was under investigation because he allegedly "failed to report vacation time usage in 2007 and 2008 and, during that same time frame...failed to submit approved travel expense requests." The anonymous complainant alleged that Weiderhold was absent without leave and received travel compensation without providing receipts.⁵⁷

On June 12, 2009, the CIGIE notified Weiderhold that it had determined that "the facts, as set forth in the complaint, lacked the substantial likelihood of a violation of a law, rule or regulation, or gross mismanagement, gross waste of funds or abuse of authority by the Inspector General...."⁵⁸ Though unfounded, this anonymous allegation served as a distraction to Weiderhold's duties as the Amtrak IG. Moreover, the timing of the allegation is suspect because it coincided with the Board's decision to remove Weiderhold. According to witness interviews, the Board began preparing to remove Weiderhold around April 2009, although no notice was provided to Weiderhold until two months later, when the Board gave him the 24-hour ultimatum.

⁵⁴ Robert J. Meyer, Willkie Farr & Gallagher, LLP (Willkie Farr), Report on Matters Impairing the Effectiveness and Independence of the Office of Inspector General of the National Railroad Passenger Corporation (Amtrak) 1 (June 18, 2009), (EXHIBIT 12).

⁵⁵ *Id.* at 62-64, (EXHIBIT 12).

⁵⁶ The Council of Inspectors General on Integrity and Efficiency (CIGIE) was statutorily established as an independent entity within the executive branch by the Inspector General Act of 1978 as amended by the IG Reform Act of 2008, to: address integrity, economy, and effectiveness issues that transcend individual Government agencies; and increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the offices of the Inspectors General. The CIGIE is comprised of all Inspectors General whose offices are established under section 2 or section 8G of the Inspector General Act of 1978 as amended (5 U.S.C. App.), those that are Presidentially-appointed/Senate Confirmed and those that are appointed by agency heads (designated federal entities). The Deputy Director for Management of the Office of Management and Budget is the Executive Chair.

⁵⁷ Letter from Kenneth W. Kaiser, Chair, CIGIE, to Fred Weiderhold, former IG, Amtrak, (Apr. 17, 2009) (on file with Committee), (EXHIBIT 20).

⁵⁸ Letter from Kenneth W. Kaiser, Chair, CIGIE, to Fred Weiderhold, former IG, Amtrak, (June 12, 2009) (on file with Committee), (EXHIBIT 21).

Weiderhold is Removed by Amtrak Board

On June 18, 2009 at 4:00 pm, Weiderhold was scheduled to give a briefing to the Board on a report the OIG completed on Amtrak's human capital management.⁵⁹ During his interview, Weiderhold stated that he knew that something unusual was happening when he entered the room and noticed Steve Patterson was present.⁶⁰ Patterson is the Board's legal counsel retained, upon the OIG's recommendation, to provide advice to the Board independent of Amtrak management. Weiderhold told the Joint Committee he passed folders out to the Board members but the Directors did not look at them. Instead, Chairman Carper told Weiderhold that they had another matter to discuss with him.

Carper then presented Weiderhold with a severance package and told him that he had a choice: retire by signing the severance agreement or the Board would remove him "for cause." In an interview, Weiderhold stated that he was not provided a definitive answer when he asked the Board what it meant by "for cause." Weiderhold stated that Joseph Boardman, Amtrak President and Chief Executive Officer (CEO), was angry and told Weiderhold that he had 24 hours to make a decision. Boardman's statement is an example of the active participation Amtrak management apparently took in the removal process. However, under the IG Act, Weiderhold can only be removed by the head of the entity (at the time, Chairman Carper), not by the President and CEO.

After reviewing the separation agreement, Weiderhold signed it that day.

f. The Separation Agreement

Finance Committee staff learned of Weiderhold's removal that day. An attempt was made to contact Weiderhold, but he said that due to the restrictions in the separation agreement, Weiderhold could not talk to Congressional staff.

Joint Committee investigators later obtained a copy of the separation agreement.⁶¹ According to the agreement, Weiderhold was paid a severance of \$244,573 and an additional lump-sum payment of \$38,090 in consideration, in part, for his agreement not to publicly or privately disparage Amtrak or make any statements regarding his resignation without first clearing those statements with Amtrak management. As originally executed, the agreement did not allow for Weiderhold to speak to Congress about the Board's actions to remove him as IG, the reasons for those actions, or anything else related to the circumstances of his departure.

Therefore, Joint Committee staff requested that the separation agreement be amended to allow Weiderhold to speak with Congress. In July 2009, the agreement was amended to permit Weiderhold to provide information to Congress.⁶² The time it took to amend the agreement

⁵⁹ Interview by Committee staff with Fred Weiderhold, former IG of Amtrak, in Washington, D.C. (July 23, 2009).

⁶⁰ *Id.* Steve Patterson, a lawyer with Hunton & Williams LLP, had been retained by the Board to provide outside legal advice on its dealings with the OIG. During the Committee review, it was determined that Patterson drafted IG Weiderhold's separation agreement for the Board.

⁶¹ Amtrak, Separation Agreement and General Waiver and Release of Claims (June 18, 2009), (EXHIBIT 22).

⁶² Amtrak, Amendment to Separation Agreement and General Waiver and Release of Claims (July 13, 2009), (EXHIBIT 23).

caused a period of confusion and delay before the true facts and reasons for Weiderhold's departure could be known to Congress. The law requires disclosure of the reasons for removal, so the non-disclosure agreement was completely at odds with the provisions in the IG Act that require 30-day's prior written notice of the reasons for removing an IG. Because of the non-disclosure agreement, it was well after his removal before Congress was able to obtain a clear understanding of the circumstances of Weiderhold's removal as Amtrak's IG.

On July 30, 2009, Senator Grassley and Representative Issa wrote to CIGIE inquiring about the appropriateness of Weiderhold's nondisclosure agreement.⁶³ Specifically, they asked CIGIE: (1) whether a DFE, or the President, should be allowed to require IGs to sign gag agreements without exceptions for communication with Congress; (2) whether there were other examples of IGs being required to sign gag agreements or receiving large severance payments; and (3) for its view on the appropriateness of such arrangements.

In its response, which the Joint Committee received on August 14, 2009, CIGIE stated that it had no notice or knowledge of the separation agreement or its provisions prior to the receipt of the Joint Committee letter.⁶⁴ It further stated that, to its knowledge, Amtrak did not provide any advance notice to, or otherwise involve, anyone at CIGIE regarding Amtrak's decision to seek the separation of IG Weiderhold and that it agreed with Senator Grassley's "policy concerns about the nature of the separation agreement and the restrictions on communication with Congress."⁶⁵ CIGIE also noted that it was unaware of any other examples or gag agreements or large severance payments and affirmed its support for IGs to be able to communicate freely with Congress.

g. Amtrak's Actions Prior to June 18, 2009

The evidence indicates that Amtrak constructively removed Weiderhold. It was not a truly voluntary resignation as Amtrak management had suggested in its public statements. Set forth below are a number of facts supporting the notion that Weiderhold did not resign voluntarily:

1. GC Acheson complained to the Board that Weiderhold was "out of control" and that it was time for a change of leadership in the OIG.⁶⁶
2. A 30-day letter to Congress was drafted and reviewed by members of the Board, the HR Department, and the Law Department.⁶⁷ A copy of the draft was later obtained by Joint Committee staff and it was found to contain no persuasive reason for the removal of Weiderhold.

⁶³ Letter from Sen. Charles Grassley, Ranking Member, S. Comm. on Finance, and Rep. Darrell Issa, Ranking Member, H. Comm. on Oversight and Gov't Reform, to Jeffrey Zients, Executive Chair, CIGIE (July 30, 2009) (on file with Committee), (EXHIBIT 28).

⁶⁴ Letter from Jeffrey Zients, Executive Chair, CIGIE, to Sen. Charles Grassley, Ranking Member, S. Comm. on Finance, and Rep. Darrell Issa, Ranking Member, H. Comm. on Oversight and Gov't Reform (Aug. 14, 2009) (on file with Committee), (EXHIBIT 29).

⁶⁵ *Id.*

⁶⁶ Interview by Joint Committee staff with Fred Weiderhold, former IG of Amtrak, in Washington, D.C. (July 23, 2009).

⁶⁷ Interview by Committee staff with Thomas C. Carper, Chairman, Amtrak, in Washington, D.C. (July 22, 2009).

3. There were no discussions with Congress or the White House prior to the removal.⁶⁸ The Board held discussions on the removal of Weiderhold and how it should be accomplished. It was decided at a meeting in April 2009 that he should be replaced.⁶⁹
4. On June 17, 2009, the day before Weiderhold's resignation, it was decided that Green would be the interim IG. She had been told by Carper in late May or early June that Weiderhold would be leaving.⁷⁰

h. Appointment of Lorraine Green as Interim IG

Chairman Carper immediately replaced Weiderhold with Green, who was then the Amtrak Vice President for HR.⁷¹ During his interview, Carper admitted that he did not consider any of the Deputy IGs for the position. He also stated that he did not ask whether or not the OIG had any open investigations or audits on the HR Department. The fact that the OIG was set to release a report detailing problems within the HR Department relative to its human capital management posed an obvious conflict for Green.

While interim IG, Green delayed the release of the OIG report on the HR Department's human capital management. She also reportedly impeded a routine salary increase for the OIG employee responsible for the human capital management report, stating that the raise had not been through the proper approval process.⁷² Instead, she ordered a comprehensive review of the IG's HR procedures.⁷³

VI. Post-Weiderhold Activities

a. Consultants

The Board requested that Green conduct an evaluation of the OIG prior to the appointment of a permanent IG.⁷⁴ As a result, three consultants were hired to perform these functions. According to their contracts, they were to be paid up to \$75,000 each over a three-month period. The consultants interviewed many individuals within the OIG office. The OIG employees indicated to Congressional staff that these interviews made them feel threatened, as if they were re-interviewing for their own jobs. In addition, during Carper's interview, he stated that the consultants were brought in to "right the ship."⁷⁵ The Board's request for a comprehensive review of the OIG prior to the appointment of a new IG contributed to the impression that the Board was attempting to exert control over the professional staff within the

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Interview by Committee staff with Loraine Green, Vice President of the Human Resources Department, Amtrak, in Washington, D.C. (July 29, 2009).

⁷¹ *Id.*

⁷² Letter from Sen. Charles Grassley, Ranking Member, Committee, to Lorraine Green, Vice President of the HR Department, Amtrak (Nov. 6, 2009) (on file with Committee), (EXHIBIT 24).

⁷³ Interview by Joint Committee staff with Loraine Green, Vice President of the HR Department, Amtrak, in Washington, D.C. (July 29, 2009).

⁷⁴ *Id.*

⁷⁵ Interview by Joint Committee staff with Thomas C. Carper, Chairman, Amtrak, in Washington, D.C. (July 22, 2009).

OIG in addition to removing their leader. That the review was directed by an interim IG chosen from Amtrak management rather than from within the OIG only exacerbates the appearance that the Board was attempting to undermine the independence of the OIG.

b. Consolidated Appropriation Act of 2010

Recognizing the ongoing problems with Amtrak and its OIG, Congress adopted a provision in the Consolidated Appropriations Act of 2010 (Appropriations Act) that contained the following language in reference to Amtrak's funding:

[T]he Secretary shall not make the grants for the third and fourth quarter of the fiscal year available to the Corporation until an Inspector General who is a member of the Council of the Inspectors General on Integrity and Efficiency determines that the Corporation and the Corporation's Inspector General have agreed upon a set of policies and procedures for interacting with each other that are consistent with the letter and the spirit of the Inspector General Act of 1978, as amended⁷⁶

Furthermore, the Appropriations Act called for another member IG to evaluate the operational independence of the Amtrak IG one year after this initial determination.

c. Appointment of Theodore Alves as Amtrak IG

In November 2009, the Board appointed Theodore Alves to be the second IG of Amtrak. Alves, a certified IG and a certified Government Financial Manager, had been the Deputy IG at DOT when he retired in January 2009 after 35 years of federal service. While at the DOT OIG, he also served as the Principal Assistant IG for Audits and Evaluations, Assistant IG for Financial and Information Technology Audits, and Assistant IG for Surface Infrastructure Audits. Alves also held similar positions at the Federal Emergency Management Agency and the U.S. Agency for International Development. He also spent 22 years at GAO.⁷⁷

d. New Exec-1 (Exec-2)

Soon after Alves's appointment, and in adherence to the Appropriations Act, Alves and Carper collaborated on a new protocol detailing the relationship between Amtrak and its OIG. This new protocol was known as Exec-2. It was approved by Chairman Carper on March 4, 2010.⁷⁸ As called for in the Appropriations Act, Carl A. Clinefelter, the IG for the Farm Credit Administration and a member of CIGIE, reviewed Exec-2.⁷⁹ According to Clinefelter's evaluation, he determined that, "the Corporation and the IG have agreed to a set of policies and

⁷⁶ Consolidated Appropriations Act of 2010, Pub. L. No. 111-117, Title I, H.R. 3288 1, 24 (2010), (EXHIBIT 25).

⁷⁷ Amtrak's Inspector General, Theodore (Ted) Alves [http://www.amtrakoig.gov/\(S\(rsxauv45dyxrxq55if1m2f45\)\)/About.aspx?option=2](http://www.amtrakoig.gov/(S(rsxauv45dyxrxq55if1m2f45))/About.aspx?option=2), last accessed June 17, 2010.

⁷⁸ Amtrak, P/I Number 2.1.2 (Mar. 4, 2010), (EXHIBIT 26).

⁷⁹ Letter from Carl A. Clinefelter, IG, Farm Credit Administration, to Ray LaHood, Secretary of Transportation, (Mar. 17, 2010), (EXHIBIT 27).

procedures for interacting with each other that are consistent with the letter and the spirit of the Inspector General Act of 1978.”⁸⁰

In addition, Alves was interviewed by Finance Committee staff on March 26, 2010. Alves stated that he believed the OIG and Amtrak were establishing a positive working relationship. Alves also stated that he was making the following changes to bring Amtrak OIG in line with the best practices of the IG community:

1. Renamed the Deputy IGs to Assistant IGs;
2. Removed Investigations from the Law Department and created a separate entity;
3. Began the process to seek law enforcement authority for its agents;
4. Obtained information technology staff separate from Amtrak for OIG; and
5. Placed the OIG email on its own server, with a separate computer host from Amtrak.

According to Alves, he and Amtrak have ended the practice of allowing Amtrak and third parties to provide documents to the Amtrak Law Department for prior review rather than providing the documents directly to the OIG.

VII. Conclusion

Fred Weiderhold was constructively removed from his post as Amtrak IG by the Board. This was done without prior notice to Congress and contrary to the IG Act, which specifically states that Amtrak is required by law to give 30-days notice to Congress before removing its IG and the reasons for doing so. Yet, the Joint Committee found no evidence that the Amtrak Board made any effort to engage in any meaningful prior consultation with Congress.

The prior notice requirement is meant to protect the independence of IGs, whose relationship with agency management is necessarily adversarial at times. However, Weiderhold’s removal was accomplished through an ultimatum, giving him 24 hours to retire or be publicly subjected to unspecified allegations of “cause.” He had no time to obtain counsel and no opportunity to hear the reasons that the Board would publicly cite in a letter giving notice to Congress if he refused.

The requirement for 30-days prior notice to Congress should not be so easily evaded. The circumstances were neither completely voluntary, nor initiated by IG Weiderhold. The Board sought to remove him, and he acquiesced, choosing to accept a generous severance and sign a non-disclosure agreement rather than expend the time and energy necessary to oppose his removal. His decision occurred around the same time that unfounded accusations were being aired in the course of President Obama’s removal of Gerald Walpin, an IG at the Corporation for National and Community Service. Given these circumstances, Congress was not afforded any prior notice or an opportunity to understand the circumstances.

The Board took this action even though Weiderhold had been effective at exposing waste, fraud, and abuse at the highest levels within Amtrak. The removal and the subsequent handling of the transition to a new IG undermined the independence of the OIG intended by the IG Act. According to other IGs, the consequences of Weiderhold’s removal had a chilling effect on the

⁸⁰ *Id.* at 2.

IG community, particularly because it came on the heels of other similarly improper IG removals.

VIII. Recommendations

- Amtrak, and any other agency contemplating removing or forcing the resignation of an IG, should fully inform and consult with Congress before taking action.
- Amtrak should discontinue its policy of providing indemnification for employees, contractors, and all other entities in conjunction with an administrative investigation by the Amtrak OIG. Amtrak's current policy of funding counsel for both sides of an internal, non-criminal inquiry is unheard of in the rest of the IG community and is a waste of Amtrak resources.
- Amtrak should establish a policy that sets limits on its use and expenditures on outside counsel. Furthermore, as stated in the GAO, joint DOT-OIG, and Toothman reports, Amtrak should follow its established policies on managing outside counsel.
- The Amtrak IG and Chairman should schedule periodic one-on-one meetings in order to discuss matters of mutual interest, and to mitigate any potential conflicts or misunderstandings. The IG should also have regular and unfettered access to brief the entire Board on matters of critical importance. While the Chairman should engage in frank and open discussions with the IG about any serious concerns, he should not attempt to direct the work of the OIG or micromanage its budgetary and personnel functions.
- Amtrak should remind its employees annually of the obligation to cooperate with the OIG. This is common practice within the federal community.
- Amtrak should have a succession plan for designating an acting IG. Generally, the Deputy chosen and designated by the IG should serve in the position temporarily during any future vacancy. This would ensure that the public can have confidence that the office is operating independently and free of conflicts. An interim IG should not come from within Amtrak management.

IX. Exhibits

1. Grassley Letter to Amtrak
2. IG Act
3. Amtrak IG Semiannual Report to Congress, April 1, 2006 – Sept. 30, 2006
4. Amtrak IG Semiannual Report to Congress, October 1, 2006 – March 31, 2007
5. Amtrak IG Semiannual Report to Congress, April 1, 2007 – September 30, 2007
6. Amtrak OIG Semi-Annual Report to Congress, Report Number 40, April 1, 2009 – September 30, 2009
7. Amtrak IG Semiannual Report to Congress, October 1, 2008 – March 31, 2009
8. GAO Report GAO-06-145, Amtrak management – Systemic Problems require Actions to Improve Efficiency, Effectiveness, and Accountability, dated October 4, 2005
9. DOT and Amtrak Offices of Inspector General Joint Review Team, Review of Amtrak’s Management of Outside Legal Services, PowerPoint, Page 4
10. John W. Toothman, Confidential Report: Review of Amtrak Law Department Performance, May 31, 2006
11. Exec-1, June 1992
12. Robert J. Meyer of Willkie Farr & Gallagher, LLP (Willkie Farr), *Report on Matters Impairing the Effectiveness and Independence of the Office of Inspector General of the National Railroad Passenger Corporation (Amtrak)*, June 18, 2009, Page 35,
13. Agreed Protocol of the Amtrak Office of Inspector General and Law Department Regarding Disclosure of Privileged, Classified, Proprietary or Other Confidential Information, October 10, 2007
14. Email from Fred Weiderhold to David Laney, October 10, 2007
15. P/I Number 2.1.1, Dated November 5, 2007
16. Memorandum dated July 22, 2009 from Amtrak OIG to Thomas Carper, Chairman, Amtrak Board of Directors, Defeased Leases: Amtrak OIG Case No. 08-102, Page 11,
17. Fried Frank Memorandum, Michael R. Bromwich to Donna McLean, *Amtrak Inspector General Policy*, October 15, 2008
18. Response from Mark B. Bierbower of Hunton & Williams to Ellen Beares, Committee on Appropriations, July 27, 2009
19. Public Law 111-5, American Recovery and Reinvestment Act of 2009, Title XII, Page 95
20. Letter from Kenneth W. Kaiser, Chair of the CIGIE Integrity Committee to Fred Weiderhold, April 17, 2009
21. Letter from Kenneth W. Kaiser, Chair of the CIGIE Integrity Committee to Fred Weiderhold, June 12, 2009
22. Separation Agreement and General Waiver and release of Claims, between Amtrak and Weiderhold, June 18, 2009
23. Amendment to Separation Agreement and General Waiver and Release of Claims, between Amtrak and Weiderhold, July 13, 2009
24. Letter from Sen. Grassley to Lorraine Green
25. Pub. L. No. 111-117(2009)
26. P/I Number 2.1.2, Approved March 4, 2010
27. Letter from Clinefelter
28. Letter from Sen. Grassley and Rep. Issa to CIGIE
29. Letter from CIGIE to Sen. Grassley and Rep. Issa