

RAILROAD SECURITY

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RAILROADS
OF THE
COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES
ONE HUNDRED EIGHTH CONGRESS
SECOND SESSION

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(III)

CONTENTS

TESTIMONY

	Page
Dermody, James, President of the Long Island Railroad	44
Duff, Dan, Chief Counsel and Vice President of Government Affairs, the American Public Transportation Association	31
Frazier, Ernest R., Sr., Chief of Police and Security Department, Amtrak	31
Hamberger, Ed, President, Association of American Railroads	31
Lunner, Chet, Assistant Administrator, Office of Maritime and Land Security, Transportation Security Administration, Department of Homeland Security	10
Rutter, Allan, Administrator, Federal Railroad Administration	10
Tidwell, Rick, Deputy Executive Director, Northeast Illinois Regional Com- muter Railroad Corporation	44
Wytkind, Ed, President, Transportation Trades Department, AFL-CIO	31

PREPARED STATEMENTS SUBMITTED BY MEMBERS OF CONGRESS

Berkley, Hon. Shelley, of Nevada	52
Castle, Hon. Michael N., of Delaware	54
Costello, Hon. Jerry F., of Illinois	59
Cummings, Hon. Elijah E., of Maryland	61
Menendez, Hon. Robert, of New Jersey	104
Rahall, Hon. Nick J., II, of West Virginia	107

PREPARED STATEMENTS SUBMITTED BY WITNESSES

Dermody, James	64
Duff, Dan	67
Frazier, Ernest R., Sr.	74
Hamberger, Ed	80
Lunner, Chet	97
Rutter, Allan	108
Tidwell, Rick	142
Wytkind, Ed	144

SUBMISSIONS FOR THE RECORD

Rutter, Allan, Administrator, Federal Railroad Administration: Lindsey, S. Mark, Chief Counsel, Federal Railroad Administration, U.S. Department of Transportation, statement before the Senate Committee on the Judiciary	127
Frankel, Emil H., Assistant Secretary for Transportation Policy, letter to Sen. John McCain, Chairman, Committee on Commerce, Science, and Transportation, letter, April 7, 2004	135
Wytkind, Ed, President, Transportation Trades Department, AFL-CIO: Transportation Trades Department Affiliates, list	148
Remote Control Locomotives: A Dangerous Practice that Must be Stopped, policy statement	149
Brotherhood of Locomotive Engineers and Trainmen, Don M. Hahs, Presi- dent, and James P. Hoffa, General President, International Brotherhood of Teamsters, statement	152

ADDITION TO THE RECORD

Jenkins, Brian Michael, statement	154
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RAILROAD SECURITY

Wednesday, May 5, 2004

HOUSE OF REPRESENTATIVES, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, SUBCOMMITTEE ON RAILROADS, WASHINGTON, D.C.

The subcommittee met, pursuant to call, at 10:10 a.m. in room 2167, Rayburn House Office Building, Hon. Jack Quinn [chairman of the subcommittee] presiding.

Mr. QUINN. Good morning, everyone. Thank you for being with us today. Apologize for getting a little bit of a late start here this morning.

The hearing will come to order. We are pleased to be joined by some of our colleagues here this morning.

I think everyone knows the focus of the hearing this morning is a topic of tremendous national interest when we talk about the security of our rail transportation systems. Every day millions of Americans use inter-city and commuter trains to get back and forth to work, they do so with relative ease without the passenger and baggage screening procedures and protections required at our national airports.

By nature, passenger rail transportation is an open system that is difficult to completely protect from terrorist attacks. The recent tragedy in Madrid has magnified our attention on the vulnerabilities of our own commuter rail network as well as the complexity of securing our freight traffic. Ever since the terrorist attacks in our country of September 11, 2001, this subcommittee has been meeting with representatives from all sectors of rail transportation, freight, intercity passenger and commuter to examine some of those vulnerabilities and to identify areas that need increased protection. All of these previous meetings that we have held, Ms. Brown and I, and others on the subcommittee, were held behind closed doors to avoid public release of any sensitive information. It is my hope today that we can continue those discussions we have begun in an open forum to get a better understanding of what the current needs and resources are as well as how this subcommittee can be of help to improve our preparedness and security for the future without disclosing any information that remains sensitive. I also want to examine our plans to keep the rail transportation system operating in the event of some kind of terrorist attack that we are not prepared for.

Obviously we need to place a great deal of emphasis on detection and prevention of attack and how to adjust to such an incident to keep our people and our goods moving efficiently and that is an important aspect we can't forget.

Finally, I want to reaffirm our commitment and my personal commitment to providing our Homeland Security personnel the tools and the resources that are necessary to provide the most secure rail transportation network possible. I look forward to hearing the concerns and recommendations of our witnesses today and to working with them in the future to meet the challenges before us.

Before yielding to Ms. Brown for her opening statement, I would like to ask unanimous consent that Mr. Castle and Mr. Lynch, members of the House but not members of the full committee, be allowed to participate in today's hearing because of their interest both in their own districts but also their interest nationally about rail issues. Without objection, so ordered.

I would also ask unanimous consent that Ms. Holmes and Mr. Menendez join the subcommittee later this morning for the hearing as well. Without objection, so ordered.

One brief housekeeping item, I would like to request unanimous consent to allow 30 days for members to revise and extend the remarks and to permit submission of additional statements and information or material by witnesses. Without objection, so ordered.

Ms. Brown?

Ms. BROWN. Thank you, Mr. Chairman.

I do want to thank you for your leadership in this area. This is one of the most important issues this subcommittee will face and I am glad you will be with us a bit longer as we work through improving rail security.

I also want to welcome our distinguished panelists and thank them for joining us today. I think it is important for everyone to see what steps the freight and passenger rail community has taken to improve security and it is important for Congress to see what actions we must take to ensure the safety of our national rail passenger infrastructure. After September 11, we started spending money like crazy on security but I am not sure we are getting our money's worth from many of the programs we developed. That is why it is so important that we tailor a security program that truly meets the needs of our rail lines and passengers. The security measures we put in place for aviation will not work for rail. We need to learn from the mistakes we made in developing aviation security and apply what we have learned in developing a rail security program.

We can't keep treating our rail infrastructure as a second class citizen. I want to emphasize that. We cannot continue to treat our rail infrastructure as a second class citizen. We have dedicated billions of dollars to the airline industry and created a grants program for the national ports. I was very happy to be involved with that but we have done little to invest in our rail infrastructure to meet its security needs.

We know that TSA started a security pilot program yesterday at the New Carrollton station testing Amtrak and monitoring train passengers for explosives and I am looking forward to learning what other plans and programs the Department of Homeland Security and Transportation Security Administration have for protecting the national rail infrastructure. We have a lot of work ahead of us but I know everyone in this room is dedicated to protecting the railways from attack. No security is fail proof but working to-

gether, we can create a rail security program that protects passengers and keeps trains running on time.

I yield back the balance of my time.

Mr. QUINN. Thank you, Ms. Brown.

In typical fashion before we can even get to our first panel of witnesses, we are interrupted with a vote. Before we leave, I would like to yield to Mr. Porter for a brief statement. I know he has a scheduling conflict later. May I say before you begin, that we want to thank you for your hospitality during our recent subcommittee visit to your district. We had a very informative hearing as it relates to those issues that are important to you and the country. Your staff and the people involved from both your office and others were very, very helpful. Thank you.

Mr. PORTER. Thank you, Mr. Chairman.

We appreciate your leadership. As you know, what happens in Las Vegas, stays in Las Vegas.

[Laughter.]

Mr. PORTER. Thank you for holding this important hearing.

My district in Nevada is directly affected by the issues we will discuss today. I would also like to thank you and Administrator Rutter for your service to our country and wish you both well in your new careers.

Early this year, as you mentioned, with your leadership this subcommittee held a hearing on the decision to select rail transportation to the proposed Yucca Mountain facility. At that hearing, this committee was told that nuclear wastes would be shipped past the homes of millions of Americans, through scores of major cities and attached to trains carrying every sort of goods from children's food to coal to cars.

We learned that no EIS has been done on the transport of nuclear wastes through our cities, that no special procedures exist for securing nuclear waste railcars in the freight yards, every bridge, culvert, switch and siting represents a point of failure that through terrorism or decay could cause the death or evacuation of thousands and crippling of our country's major rail lines.

Shortly after the March 5 field hearing, the world was shocked by the March 11 bombing in Madrid. TSA has begun field hearings in New Carrollton, Maryland station on rail passenger screening and we understand that our enemies seek the soft target, the one that causes the most casualties and disruptions for the least effort. In Spain, it was the rail station and I believe in our country that target threatens shipment of nuclear wastes and thousands of miles of track it would have to travel.

Thank you again, Mr. Chairman. I look forward to hearing from our witnesses.

Mr. QUINN. Thank you, Mr. Porter.

I am told we are being called for one vote and there should be about a two-hour break in between. Hopefully we are going to recess for long enough for us to get over and vote once, return here in about ten or fifteen minutes and we will have a two hour block of time.

We will recess right now. Thank you.

[Recess.]

Mr. QUINN. The subcommittee hearing will come to order.

While Ms. Brown is making her way over, I thought we would begin because we have some members who want to make opening statements and then we will get to our first panel. We have about a two-hour break. I think we can fit all this in during that block of time.

I would like to yield to Mr. Castle, my colleague and friend, an ardent rail supporter, for an opening statement. Michael, thanks for joining us today.

Mr. CASTLE. Thank you. I appreciate the opportunity to be here and thank you, the Ranking Member and the other members for your unanimous consent to allow me to sit in today. That is probably the only unanimous consent I have had done for me since I have been in Congress the last 12 years. I will submit a statement for the record if I may.

Mr. QUINN. Without objection.

Mr. CASTLE. I want to talk about this issue.

I am from Wilmington, Delaware. I live in Wilmington, Delaware. I rail station I think is the 14th most heavily traveled Amtrak station. It is also a commuter station going to Newark, Delaware, the home of the University of Delaware Blue Hens, the 1AA football champions this year. So we have a lot of traffic in that way. We also have a lot of freight traffic. We have a port there so we have a lot of freight traffic going through as well.

Long before Madrid, I became concerned about this and quite candidly without denigrating anything that has been done, we have put a huge amount of money into protection of our airplanes and airports and much less into rail. I also realize you are talking about two vastly different subjects. I particularly worry about the inner city rail as much as anything else but people who are riding this are in a hurry, don't really want to have things inspected, they don't have time for it or whatever but on the other hand, I think Madrid showed us clearly what the problem is as far as rail is concerned.

I don't need to tell people how to do this or how to mix up ammonium nitrate or how to get on and off rail cars but let us face it, it is relatively simple. So I break it into several parts. One is the focus on it and I believe you all are doing that and I appreciate that.

Secondly is technology. It seems to me that the technology, be it ships and ports or railroad stations and rail or airports and airplanes, it is not that fundamentally different. If we can develop the technology that is fast, almost instantaneous with respect to packages and individuals that would be tremendously helpful. I just think we in this country, of all countries, should be moving ahead with as much full speed as we can simply because time is of the essence to people. If we can have a system which is complete but is in that time, then I think it would be extremely helpful.

I think we also need to look at what we are doing now. I have talked to the security people with the railroads, the guy in the Wilmington railroad station, and he says, and I agree, that we just probably need more people. It seems to me that if those of us in the public traveling on these rails know there is security there and we can go to them, it makes a difference. I think we actually need

more people and perhaps dogs to help with the threat of explosives and that kind of thing is important as well.

I also think we need to continue to assess those damages, need to pay attention to dollars. We created the transportation security and particularly the airport aspect of that rather rapidly. It is very expensive and we all know that. Is it really the right structure, can it assume what is happening rail. I think that is something we need to pay attention to. Also, we have to look at the vulnerability issues which are also significant to all of us.

Another thing I feel is important is to each the people who are riding in the various cars, be it Amtrak or a rail system in New York City, all the safety measures which are there. How to deal with fire extinguishers, how to deal with windows, how to deal with all those aspects of it is something else we need to do.

I feel strongly that having looked at all this that the rail situation is fundamentally different, particularly from the airline situation. I think it is less safe at this point. I am terribly sorry Madrid happened but I think it does underline this fact and I think all of us have to pull together. I don't think this is a Republican/Democratic Administration issue. I think it is an issue of safety of the people of the United States of America. Quite frankly, I think we all have a responsibility to try to determine how to do it efficiently, economically in the most modern, scientific ways possible, keep making changes, keep putting the implementation in place and go from there.

Those are just some general thoughts I have. I have more specifics in a statement which I am sure you can't wait to read as soon as you possibly can and you are welcome to do that. With that, Mr. Chairman, I yield back.

Mr. QUINN. Thank you, Governor.

Mr. QUINN. Ms. Holmes, opening statement, please?

Ms. NORTON. Thank you very much, Mr. Chairman.

I very much appreciate your courtesy in allowing me to sit with the subcommittee. I am a member of the full committee with a very special interest in this subcommittee. We are limited in the number of subcommittees we can serve on.

I want to thank you for calling this hearing. I believe it is urgently needed. Madrid notwithstanding, it has been urgently needed for some time.

I think it is time to switch our priorities altogether. We have to have priorities. I serve on the Homeland Security Committee, I serve on the Aviation Subcommittee. I am quite aware of why aviation had to be our priority. When you are attacked in the air, you have to sure that up. We are too long in getting to where the people are. The people ride rail, they ride mass transit. I have seen us on the Aviation Subcommittee authorize \$11 billion. I believe the figure for rail is something over \$100 million. I don't think it is quite \$150 million.

To his credit, the Amtrak Chief of Police and director of Amtrak's security system came to see me many, many months ago. I was quite astonished at what he had say. I had been following this issue with him and TSA ever since. Of course Amtrak here is virtually the same as the way in which trains operate throughout our country. It runs right through a residential area and if you really

want to get scared, it is close to the Senate of the United States, a little closer to the Senate than to the House, it is close to the Supreme Court of the United States and of course it is close to the people I represent.

I was at a congressional dinner about a month ago, members of Congress all getting up to speak and there was all of this noise underneath us and it was the train because what we had done is the most extraordinary, historic renovation, and we are so proud of it, of Union Station, the Union Station I knew as a child has been transformed into a mall that houses not only trains but our Metro. That made me think once again about rail security as the trains rumbled beneath us at that dinner. I mention my own Union Station only because it is emblematic of rail throughout the United States. Mr. Castle has just spoken about where the train goes to from here, to Delaware.

We have seen and followed Amtrak's security and investment plan. TSA has been working with Amtrak to implement it. Key aspects of the plan remain totally unimplemented and until this Congress decides that it is going to help the trains, it is going to remain unimplemented. This is not a question of just you all do it, if we had said that to the planes, they would have been in the same state they were after 9/11. We came to their assistance and there is no way we can get around rail security without doing the same thing. We just have to suck it up and find a way to do it.

I am very, very concerned. All of the vulnerabilities that we went through on the Aviation Subcommittee are wide open on rails, explosives, chemical, biological, radiological. They are just all there despite all Amtrak has been able to do. I mention Amtrak because we have a great fight in this Congress every year just to get the money to keep the trains running and that comes up again. Amtrak wants \$1.2 billion. So far I think the Administration asked for \$900 million. We are the only country in the world that believes that trains can run unsubsidized. If you go to Europe, you see these trains and you say, wow, wow. Europeans spend their money on trains and if we spent more of our money on trains, we would have the alternative transportation system that we must have after 9/11 and anyone who doubts that need only remember what happened when they closed down Ronald Reagan for a full two weeks and people rushed to Amtrak to find another way to get from here to there. We have too little appreciation for rail and what it means to our country.

Mr. Chairman, what I said about Amtrak goes of course for Philadelphia 30th Street, it goes for New York's Penn Station and it goes for all of those rail lines throughout the United States, they are not part of a system the way Amtrak is and I cannot imagine what they are doing and in their own way, they may be in worse shape except they may not be as dependent on the United States Congress and the Government of the United States.

Finally, let me say to show you just how pathetic we are, the D.C. City Council has had a hearing because it became alarmed that CSX carrying hazardous substances runs within inches of residential neighborhoods, within yards of the Congress of the United States and I do not believe that even the statute, and I looked at it, is strong enough to deal with what should happen and I don't

think it is easy to deal with. What is CSX to do? It needs guidance if it is going to run through the great cities of the United States. It needs some greater regulation on how to do that. They are not going to stop carrying these substances. We have to face that. So here is a local jurisdiction that literally has no jurisdiction but I am grateful to TSA and that CSX has agreed on a voluntary basis to work with the District of Columbia and its local legislature. Imagine what we need to do because this is a matter of interstate commerce to make sure that the Congress does that for every jurisdiction freight runs through.

We have not even, so far as I know, Mr. Chairman, unless you can correct me, or unless our witnesses can, I do not believe there is any authoritative study of the potential security risks for our rail system and certainly not if you define rail as I do to include public transit as well. Let me say, Mr. Chairman, I am going to be an original co-sponsor with many members and I certainly hope this will be a bi-partisan bill, of a bill to be introduced next week called "Safe Trains." It will include subways, buses, Amtrak, other rail and other public transit systems. It will give a better head start, it would be \$400 million for five years on an annual basis to go at things like cameras and surveillance equipment, emergency response training. I think before the session ends, we must at least show our good faith by raising the amount of money in some respect that we give to rail security.

I thank you for your courtesy, Mr. Chairman.

Mr. QUINN. Thank you, Ms. Holmes. It is always a pleasure to have you here with us on the subcommittee. We will try to get a waiver to get you down here full-time if we could.

Ms. Capito, opening statement?

Ms. CAPITO. I would just like to make some brief remarks.

Thank you, Mr. Chairman. I wanted to talk briefly about H.R. 4143 which is the bill I introduced to strengthen the criminal penalties in the rail statute in case something were to ever happen. I believe we really need to and very quickly need to ramp up the criminal penalties for something that would happen concerning the rail either freight or passenger. I am interested to hear your comments on it.

I want to thank you for having this committee meeting and with that, I yield back the time.

Mr. QUINN. Thanks very much.

Mr. Lynch, opening statement.

Mr. LYNCH. Thank you, Mr. Chairman and the Ranking Member.

Mr. Chairman, I know you have been a great advocate for rail in this country for a long, long time. I appreciate all the work that you do. I actually am not a member of this committee but I do serve on the Subcommittee on National Security and Emerging Threats. What I think we have here is an emerging threat in our rail system.

I represent most of the City of Boston and towns south of there. Our city is part of the Northeast Rail Corridor which handles quite a volume of the passenger rail traffic in the country. It is part of that Northeast Corridor that also includes the City of New York and also the City of Washington, D.C.

According to the Mineta Transportation Institute recently, we heard we have had about 200 attacks on transit systems over the past few years by terrorist organizations. It goes back to the Tokyo situation where they had terrorists using chemical agents on the subway there; Chechnian rebels attacking the Moscow subways for the past ten years; the situation with the Algerian terrorists in Paris on their subway in 1995; and as well, the transit systems in Israel that are attacked on a monthly and not weekly basis; and also the most recent dramatic example of the Madrid train bombings.

We need to realize that just as prior to September 11, Europe had a different approach and different experience with terrorism and the aviation sector, that we have a similar parallel here in the United States right now with respect to rail security. If you visited any of the major airports in Europe prior to 9/11, whether Leonardo da Vinci Airport in Rome or Paris or Heathrow in London, they had the security, they had passenger screening before September 11. They had heavily armed guards in those airports prior to September 11. We did not. We were under the assumption that we were not vulnerable, that we were invincible.

If you look at the Europe situation and the rail traffic and the experience they have had with terrorist attacks on their rail system, and look at what they are doing and what we are doing, we are falling into the same trap. I don't know what people think, and with all due respect, I appreciate Mr. Rutter from the FRA coming and Mr. Lunner from TSA, I just don't want people to expect that we are going to use the same response to September 11 in this case with rail security.

After September 11, we, rightly or wrongly, were able to say we never saw it coming. In this situation, we have seen it, we have seen what is coming. We can either choose to respond to it and develop a safe system of passenger rail and cargo rail in this country, or we can ignore it and suffer the consequences. Certainly we have seen it coming.

I actually had a summit on rail security in Boston last week and invited all of my rail people. I was disappointed that unlike the aviation side, which we have spent \$11 billion on, we have actually allocated about \$115 million on rail security and we have only used a small portion of that, about \$35 million. We can talk about that some more if you release some more money.

We have to realize that we carry five times as many rail passengers as we do airline passengers. So I think the balancing of resources does not reflect the realities that we face in this country.

We have a situation in Boston where we have the Democratic National Committee coming to convention. The Democratic convention has been established as a high risk, a high threat event by DHS, so we have an opportunity to look at that situation and say, where do we see the risks and it creates an urgency because it is a 10-day period in July and we have all of our people there, the FBI, the CIA, the Secret Service and we look at that event. We are looking at rail.

At that summit last week, I asked Transportation Security if they could send their Northeast Rail Corridor security director to our hearing. We have a Federal Director of Security in every single

airport in this country. Yet I could not get someone from TSA who had been assigned to rail security in the Northeast Corridor. They told me no one had been assigned in that area or in any other region in the United States where we have the FRA, we have eight regions and we have a director in that context, but we don't have a security director for rail security in the regions in this country. It shows a gap that we are completely overlooking.

I don't know if we need legislation to accomplish that, to have somebody who has a full-time job and Mr. Lunner, I am going to ask during your testimony how many people do we actually have assigned to work on rail security, their exclusive responsibility in this country and the eight regions covered by FRA.

Again, we won't have the luxury of saying we didn't see this coming. I am not intending to scare anyone. All I know is there are reasonable steps, and you suggested some, that we can take to make rail traffic safer in this country. It is going to take a lot of work and some money unfortunately. That is the plain reality of it. The time for action is now.

I want to thank the Chairman and the Ranking Member for their courtesy to me today. This is a real concern in the country right now. We need to hurry up. I appreciate the demonstration project, the pilot program at New Carrollton Station that was established recently for screening, but that is three years after the fact and it is a pilot program. The terrorists are on a much faster timeline than we are, quite frankly. We need to go about this business with all deliberate speed.

Thank you, Mr. Chairman.

Mr. QUINN. Thank you, Mr. Lynch. We appreciate your input here today and we will rely on your advice and comments in the future as we continue with this debate.

I might also point out that there is also a convention going on in New York City shortly after the one in Boston.

Mr. LYNCH. I am aware of that.

Mr. QUINN. Mr. DeFazio, opening statement, please?

Mr. DEFASIO. Thank you, Mr. Chairman.

What I hope to hear from the witnesses, from Administrator Rutter and Assistant Administrator Lunner, is what tools they need. I have to tell you, I think part of it is money. I know you are part of the Administration and the Administration doesn't want to spend money on a lot of homeland security things but we need to hear your honest opinions because we don't want to have you back here after there is an event saying why didn't we take these reasonable steps and hear there just wasn't the money to do it.

I would like to see what steps you would outline and implement. Amtrak being a Federal responsibility, a local/State combined responsibility dealing with commuter rail and certainly when we deal with freight, I would like to see a partnership from the Federal Government, and I would like to see some suggestions. We can't just say, they are required to have plans and private security and do these things. We are dealing with national security issues here. The Federal Government has to be more engaged working with freight, partnering with freight, providing some of the resources that are necessary. Whether we need to get innovative and tax credits or something else, I don't know, but I do know when you look

at a couple freight instances that were accidents like the Baltimore Tunnel or the rail cars in the west that wiped out an entire river system with the metham, whatever it was, that fell in, when you begin to think of deliberate actions targeted more to critical infrastructure or heavily populated areas, freight has to be a major concern of the Federal Government. We can't pass it off by saying they are private operators and we can't stick them with all the costs either.

I hope to hear some very forthcoming testimony about what you need, not just the enhanced criminal statutes. These people don't care about criminal statutes, they really don't. Suicide bombers are not really going to be petrified by the fact that they might go to jail for a while. The criminal statute stuff is window dressing. It is nice for people who are more casual sorts of terrorists but for professional terrorists, it does not have a deterrent effect. We need to take proactive preventive steps and I am afraid that means spending money. I hope to hear some real honesty here today on those issues.

Thank you, Mr. Chairman.

Mr. QUINN. Thank you, Mr. DeFazio.

Our first panel consists of Mr. Rutter, the Administrator of the FRA and Chet Lunner joins us, a longtime friend of mine. Glad to have both of you here today. Mr. Rutter, as mentioned earlier, this may be your last appearance here on the Hill. We wish you luck in your future endeavors wherever they take you. You have been a great friend of the subcommittee and the full committee. We appreciate your testimony here today.

Mr. Rutter, I think we will begin with you.

TESTIMONY OF HON. ALLAN RUTTER, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION; AND CHET LUNNER, ASSISTANT ADMINISTRATOR, OFFICE OF MARITIME AND LAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, DEPARTMENT OF HOMELAND SECURITY

Mr. RUTTER. Thank you. I appreciate the opportunity to appear here today to discuss prospects for rail security in the United States.

I have submitted testimony to the committee that goes into detail about what the Federal Railroad Administration has been doing on security in addition to our work in advancing rail safety. I would request that statement be included in the record of the proceeding and I would be happy to entertain questions at the conclusion of opening remarks.

The Federal Railroad Administration has advanced the cause of security by using many of the methods we use in improving rail safety. We have acted as a partner and a catalyst, an advisor, a facilitator, a technician and an inspector. In the past, rail safety and security were intertwined. September 11 made it clear, however, that more attention and resources for security issues were going to be required in all modes of transportation. Creation of the Department of Homeland Security catapulted security to the forefront with the Federal Government's priorities and the primary responsibility for rail security was designated to that Department. Yet since many of the basic functions will continue to be inter-

twined, FRA works closely under DHS' leadership on security issues while on a daily basis we use the skills and knowledge of our professionals to help make railroads more secure for passengers, for railroad employees and for the communities they serve.

Let me make four additional points to accompany my written statement. First, while I have read many comments about the challenges facing rail security since the Madrid bombings, I certainly expect that many on your second panel won't be shy about asking for more financial assistance, I don't want this committee or the American public to ignore the substantial accomplishments and activity of this industry before and after 9/11. Much of the excellent progress has been made as the result of hard work of rail system owners and operators and employees. While we remain vigil in sensing the need for additional statutory, regulatory or financial steps to further advance security, I remain impressed by the work that has been accomplished.

Second, I think we need to be conscious of the differences between rail operations and aviation as the security regimes for both need to be different. In commercial aviation we have extensive systems for detecting metal objects that can be used as weapons to hijack a plane. Since control of a moving train in most cases takes place by people not accessible by passengers, metal detection is really not as important as explosives detection. My friend Mr. Lunner will be able to explain how DHS is continuing to research portable explosion detection technology that can be used aboard trains and for random checks of person boarding trains. This coupled with increased canine patrols may be a more effective security strategy than screening all passengers and bags at every train station.

Third and related to the second point, we have to be aware of the effects of security measures on the operations of passenger train systems, particularly commuters. Imagine the extent of passenger security measures at Chicago's O'Hare Airport, the Nation's busiest with about 5.9 million passengers a month. Imagine the system you would need to handle the same volume of passenger activity at 228 separate stations on Chicago's commuter railroad, Metra, which handles about 1.56 million passengers a week systemwide. Even if someone could afford such a system, its daily effects on passengers would cripple Metra's effectiveness.

Fourth, I continue to believe that one of the major contributions our agency and I can make in security discussions is to remind people of the importance of the functionality of the Nation's railroad system. Another example, in order to guard against the possible effects of terrorist acts against rail shipments of hazardous materials, it might be tempting to simply reroute such shipments around major metropolitan areas. We have to consider the operational consequences of such a move for cities like Houston or New Orleans and Los Angeles where those chemicals are manufactured and used and facilities located there would be at competitive disadvantage affecting thousands of high wage jobs.

Further, consider the effects of increasing the transit times and shipping costs of a chemical like anhydrous ammonia, a major element of agricultural production in many States represented here this morning on this committee. Farmers would want to make sure

that fertilizer was available when it was needed, not when it could be shipped. Increasing input costs of domestic agricultural production for security reasons may also have unintended consequences for food exports.

My point is this, security is an important function of the Federal Government but it is not our only purpose. The promotion of domestic tranquility and provision for the common defense is balanced in our Constitution's Preamble with the purpose of securing the blessings of liberty for our citizens and for our prosperity. The Nation's rail transportation system is an important link in how people build, make and sell things and how they get to their jobs. We at the FRA will continue to advocate for a balance between security and economic liberty so that our citizens can be protected from those who wish to do us harm as we continue to offer the opportunities for personal and economic freedom that continues to be an attractive force in our world.

Let me ask your forbearance in extending my time for two additional points completely unrelated to this hearing subject. As Chairman Quinn noted, this is likely to be my final appearance before the committee. As a current holder of the title of Administrator, I appreciate the respect that all of you have afforded my position in this room on behalf of the 800 rail professionals I represent. I have learned a great deal from my experiences here and for your tutelage and patience, I thank you.

Finally, I wanted to take one last opportunity to go on the record and express my lasting admiration for Chairman Quinn's leadership of this subcommittee and for his service to the Nation. As a professionally trained bureaucrat with a Master's Degree in Public Administration, I studied the legislative process in theory and practice. The professionalism, the civility and the integrity with which Chairman Quinn has led you all are a credit to the design of our forefathers intended for this body.

I am indeed fortunate to have been appointed to this position at this time to have been gifted with the privilege and honor of being able to work with you and with this committee.

Thank you.

Mr. QUINN. Thank you so much, Allan. It has been a learning experience for me as well. The partner I have here in Ms. Brown and the rest of the members make this job, as you already know, a delight for me. Having witnesses and friends like you in the business, almost everybody in this room, makes it fun for me. Thanks for the kind words and thanks for your testimony. We will get to questions for you after we hear from Mr. Lunner.

Chet, opening statement, please?

Mr. LUNNER. It is my pleasure to be here to speak before you today and a special honor to appear before Chairman Quinn, a long-time friend, about the Department's efforts to enhance the security of passengers and freight transport by rail. I would ask that my prepared statement be made a part of the permanent record of the hearing.

Mr. QUINN. So ordered.

Mr. LUNNER. The tragic bombings that occurred in Madrid on March 7 and Moscow on February 6 were terrible reminders of the threat of terrorism to rail transportation worldwide. However, it is

very important to note that for many months preceding those incidents, the Department in close cooperation and coordination with our partners at the Department of Transportation, State and local governments and the transit and rail operators themselves had already taken a number of steps to respond to vulnerability in rail and transit systems across the United States.

Within DHS and under the guidance of Under Secretary Porter and Transportation Security's Asa Hutchinson, TSA has the responsibility for coordinating these efforts in the transportation sector with other DHS components and with DOT modal administrators like my friend Administrator Rutter. As we examine the most effective ways to protect the rail security system, we must also consider how the rail system is linked with other transportation modes such as highways, airports and seaports. Without consistent application of security standards of reasonable and prudent measures across those modes, we risk creating weak links that may drive terrorism from one mode to another.

Domain awareness is the essential starting point of our overall transportation security strategy. The Information, Analysis and Infrastructure Protectorate, IAIP, as a member of the intelligence community, routinely receives information from intelligence and law enforcement partners and has overall responsibility at DHS for receipt and analysis of information related to threats to the homeland including transportation.

The transportation sector itself, TSA, also receives intelligence information and law enforcement agencies contribute as well as does industry and State and local government partners.

In 2003, TSA activated the Transportation Security Operations Center to serve as a single point of contact and coordination for these transportation security related incidents or operations. TSA's 24-hour watch, 7 days a week routinely communicates with transportation industry reps about security events or the status of the system nationwide. TSA coordinates with IAIP to disseminate those specific warnings or advisory information or counter measures where appropriate to local law enforcement and the transportation industry itself.

The next step in our threat-based, risk managed approach is to assess the criticality of the Nation's transportation infrastructure assets. Leveraging the process as established by IAIP, TSA developed and is deploying a model to determine criticality scores for transportation related facilities and assets. Correspondingly, TSA and our partners within DHS in coordination with DOT are also conducting vulnerability assessments on transportation assets such as rail transit to determine their susceptibility to attack or compromise.

The Department coordinates the information and threat sharing for rail and transit through the Surface Transportation Information Sharing and Analysis Center which is run in cooperation with the Association of American Railroads and the American Public Transportation Association, two key partners of ours.

Prior to the Madrid and Moscow tragedies, security assessments of rail and transit networks operating in high density areas were performed by the Federal Transit Administration and as a result

of these assessments, systems have produced robust security and emergency preparedness plans.

Between fiscal year 2003 and this year, DHS has used information from these assessments to allocate \$115 million to high-risk transit systems through the Urban Area Security Initiative in the Office of Domestic Preparedness which now handles the grants. Sixty-five million dollars was allocated in fiscal year 2003 and \$50 million was allocated in fiscal year 2004.

TSA has partnered with the FTA on its "Transit Watch" Program and is coordinating with Mr. Rutter's Federal Railroad Administration to develop a rail car inspection guide for use by law enforcement and security personnel to inspect trains for explosives and other threats. The Federal Law Enforcement Training Center has provided security training to rail and transit operators; and TSA has distributed security awareness educational information to transit system employees on how to recognize and respond to potential terrorist attacks.

TSA has also hosted a number of security exercises to bring together the rail carriers, Federal and local first responders and security experts to address potential gaps in antiterrorism training among rail personnel.

The transit and rail industries have been very proactive in addressing homeland security issues. Most recently, transit and rail system operators enhanced their existing security plans by taking additional preventive measures in cooperation with the Department including deploying more detection canine teams to look for explosives and uniformed officer patrols, increased surveillance, and conducting awareness campaigns for their workers and passengers alike.

Freight rail companies are continuing at their Alert Level 2 which includes increased security at designated facilities and increased spot ID checks.

On March 22, Secretary Ridge announced additional measures to strengthen our rail and transit system security. We are engaging our partners to establish base-line security measures based on current industry best practices. These include existing security measures being implemented consistently in the transit and commuter rail environments that could be adjusted in consultation with transit and rail system owners and operators in response to higher threat levels or specific threats in the future.

Just yesterday, and many of you made reference to this, TSA implemented a pilot program in New Carrollton, Maryland, to test the feasibility of using emerging technologies for screening passengers and carry-on items for explosives at rail stations and aboard trains. This pilot, the Transit and Rail Inspection Pilot, is being conducted in partnership with AMTRAK, MARC, WMATA, and DOT for a 30 day period. It is important here that I highlight that the TRIP pilot program will not resemble an aviation-type solution to transit and rail security challenges, but rather provide a venue to test new technologies and screening concepts that may be possible in the passenger rail and trail transit environments.

In the freight rail area, DHS and DOT have been working on various initiatives that support the development of a national risk-based plan to address the shipment of hazardous materials by rail

and truck, including how toxic inhalation materials are transported, identification of practical alternatives to placards on rail tank cars, new rail car design standards, and the development of hazardous materials security plans to improve the adequacy and effectiveness of industry security plans.

TSA is also leading a multi-agency task force in the D.C. metropolitan area to conduct a comprehensive security review, which includes a vulnerability assessment of the rail infrastructure, which may be used for the conveyance of hazardous materials. This review will be used to create a plan to address the vulnerabilities Ms. Norton mentioned. The multiagency task force is comprised of DHS (IAIP and TSA), Federal Railroad Administration, Research and Special Programs Administration (RSPA) and all affected stakeholders, including the local first responder community, local government, and railroad owners and users to include CSX, VRE and Amtrak.

These are some of the key initiatives the Department of Homeland Security, the Transportation Security Administration and our partners are addressing in rail and transit security. Thank you again for the opportunity to discuss our activities in this important area.

I would be happy to respond to any questions.

Mr. QUINN. Thank you both and there will be some questions.

I want to say for the record, first of all, something Mr. DeFazio mentioned and that is I am coming from the same position here with whatever questions I have for either of you and the rest of our panelists here this afternoon, isn't to try to place blame anywhere or be critical of anyone, any agency or any company, but we think you need some help and the purpose of any hearing and this hearing today is to tell us what you need, tell us what you have begun to do which is fine and that is in both of your statements, but there may be some tough questions here and it is only because we need to get at what it is you need, as Ms. Holmes said, because we can fund the airports and the airline industry that way, we need to be the cheerleaders, this subcommittee, for the railroads.

I am just going to say once, if it sounds like somebody's questions are pointed and difficult, it is not for any other purpose than to get at that and tell us what you honestly need, what you know or don't know or need to know so we can help you. That is what we are here for.

Having said that, I want to follow up on Mr. Lynch's question. I will start with Mr. Rutter and give you a chance at it too, Mr. Lunner. How many people and how are those people organized right now across the country who are assigned to rail safety?

Mr. RUTTER. Rail safety?

Mr. QUINN. Rail security, excuse me.

Mr. RUTTER. I could answer the rail safety question pretty easily. Within our agency among the 800 folks at our agency, 500 of which are assigned to rail safety responsibilities, many of those are doing rail safety activities now in conjunction with their jobs but at FRA we only have maybe about 3 to 5, and I will get you exact names and where they are, positions and where they are, 3 to 5 people that are designated solely to rail security in some part because DHS has been designated both by the Congress and by the Presi-

dent as the primary agency responsible for security. That being said, many of our people throughout our regions were working with DHS to talk about how as we go about our business on rail properties we can keep our eyes and ears open for security related issues as our folks do their jobs.

Mr. QUINN. Three, four or five people who right now are dedicated to that issue to me tells me that we not only need help with people as Governor Castle pointed out, on the job at the sites to keep our passengers and our workers as safe as possible, we need some help within the administration of this work as well.

Mr. LUNNER, can you take a stab at that? How many people and where are they located, how are they organized when it relates to railroad security?

Mr. LUNNER. Mr. Chairman, in my particular shop, the Maritime and Land Section of TSA, we have about 24 people who are dedicated to transit and rail. However, the allocation of our resources is only a piece of the puzzle. As Administrator Rutter said, we work leveraging the FRA, the FTA resources that are available, the industry itself works in partnership with us, so in terms of boots on the ground, they are not going to show up on my org chart necessarily but as part of an intermodal, interagency cooperative effort. IAIP also lends its resources to this department.

Mr. QUINN. It is amazing to me that Mr. Lynch can't get a person to come to a hearing in a city that is able to talk about that. Maybe it wasn't the right person, maybe it was a scheduling problem, I don't know what it is and he is not here, so we will follow up with the question later.

New Carrollton, the demonstration project that began yesterday, how many passengers can go through one of these checkpoints? Is it by minute?

Mr. LUNNER. That is exactly the kind of question we are trying to answer. This has never been done before and we are rather proud of the initiative it got us to this stage and where we can answer those questions later on as a result.

Mr. QUINN. What would you guess? Can you put 100 through in a minute or 10?

Mr. LUNNER. We have sort of a theoretical throughput for the bag machine but we have never done it for passengers before, so that is one of the things we are trying to determine, how many people the one trace portal will do versus two, versus three and we will take those findings in a scalable way and adapt them later on.

Mr. QUINN. So you don't want to tell me?

Mr. LUNNER. I don't know the answer.

Mr. QUINN. I understand, but it opened yesterday, so maybe we could find out how many went through yesterday at some point? Give me a call tomorrow or the day after. What I am getting at is this, whatever number it is, and I understand why you need studies, to get information, but we are going to hear from the Long Island Railroad later on this morning, runs 730 trains a day, carries more than 250,000 passengers a day. I am trying to get a handle on how many of these things we are demonstrating we would need, how many acres we would need to put enough of them up there to get people like the Long Island Railroad through, just get a handle on it and the cost and the rest of those things. Please understand

where I am coming from. We are going to need that information. It is very important. The Department ought to be proud that you started the study but we really need some information.

Mr. LUNNER. One of the key elements of the pilot program is a metrics team that is keeping track of all these heretofore unmeasured elements, wait times, pass through times for bags, pass through times for passengers, the flow.

Mr. QUINN. Rush hour, non-rush hour.

Mr. LUNNER. The difference between Amtrak passengers and commuter rail passengers and how they approach the protocol, all of that will be measured and we will be keeping track of that so we can start to answer those questions.

Mr. QUINN. Thank you both.

Ms. Brown?

Ms. BROWN. Mr. Rutter, let me say I missed you at our last hearing. I think you could have added a lot of information. I think we are going to put those questions in writing.

Mr. RUTTER. I tried my best to get there and I don't know what kind of story Jimmy told you about how hard I was trying.

Ms. BROWN. You mentioned that three years before 9/11, the Federal Railroad Administration required railroads to have an emergency response plan to deal with unforeseen security emergencies and that DOD submitted antiterrorist bills in 1997 and 1999. Doesn't that suggest to you that the prior Administration took the terrorist threat seriously?

Mr. RUTTER. At least on passenger railroads in this respect, certainly.

Ms. BROWN. What percentage of the rail tank car fleet is over 20 years old? Have those cars been retrofitted so that they meet certain safety standards?

Mr. RUTTER. I will have to get back to you with exactly that kind of information. Typically, just like our folks at NHTSA do when they issue new regulations for new motor vehicles, those regulations apply to vehicles being constructed going forward, not necessarily retroactive toward everything. Having just worked with the NTSB about their recommendations and report on the Minot, North Dakota accident, we should have available some information on tank car fleet by age, by construction standard.

Ms. BROWN. Mr. Lunner, the Federal Government has spent several billion dollars on aviation safety but only about \$100 million on rail and transit safety. Given the fact that these systems are also targets, witness Marseilles and Madrid—and we have said this over and over—the rail is very vulnerable and we have not done the kinds of things that we need to do thus far. More people can be killed or injured in an attack on a train, there are far more people riding commuter rails and transit every day. Why aren't more resources being dedicated to protect these systems?

Mr. LUNNER. The amount of resources that have been dedicated both through TSA, DHS and its various components, the industry itself which shared some responsibility here, and the ODP in total and aggregate I think you will find have met the identified threat so far to the extent that we have been able to identify it.

Ms. BROWN. I don't think that is my question. My question deals with what kind of resources have we spent to not just identify

threats but correct? I am very pleased with this pilot program that just started but it is kind of late. My first question was the prior Administration seemed to take it very seriously. I don't think the kind of attention or finances, because you can tell a little bit about how you seriously you take something as to the kind of dollars, the money that you put in it, and we have definitely indicated we think aviation and rightly so and ports but I also think that rail can no longer be a stepchild to terrorist threats and doing what we need to do to correct it.

Mr. LUNNER. Well, again, first of all, the law was rather prescriptive that we were following in terms of ATSA, that was our organic Act, the Aviation and Transportation Security Act about which emphasis should be addressed first. Obviously in the wake of the 9/11 attacks, aviation took the front seat in terms of timing and resources.

It is our job to match the resources with the identified threats. As you accurately noted, the ports were the next phase of that identified threat and they have been given resources as well. I think what we find out going forward in cooperation with our industry partners identifying what the threats are and the proper and appropriate mitigation factors, the resources will match accordingly.

Ms. BROWN. I will yield back my time.

Mr. QUINN. Mr. Castle, questions for the panel?

Mr. CASTLE. Thank you, I do have a couple of questions.

I am looking for some sort of quick measures that might be less expensive. I am delighted with what you said is happening in New Carrollton with emerging technologies. I think that is really important.

One of the things that occurs to me, it is just more uniform security. It seems to me the whole business of rail, be it Amtrak or intercity rail, whatever, is so entirely open that it is very difficult to implement all of these things that we talk about. Yet, as I indicated in Wilmington there is one officer there and everyone asks that officer everything. He is in uniform, they talk to him and he does a good job. It seems to me that is, although not a perfect measure, it is at least a stop gap measure. That happens to be an Amtrak person. This could be local police, Amtrak, the Transportation Security Agency, whatever, but it seems to me that is a good public outlet and if you observe something, you go tell them. Does that make sense? Is that something we should be thinking about as a fairly quick measure or is that outmoded and outdated and you would disagree with it?

Mr. LUNNER. If I understand your question, the uniform presence is often a deterrent that would be implemented during higher threat periods. However, I want to discourage the assumption that what we are talking about doing is putting some sort of army of TSA people across every areas.

Mr. LYNCH. I wasn't talking about an army of TSA people, I have seen that at the airports. I am not real happy with that. I am talking about some added personnel so the people riding the systems would know who they could turn to if they observe something. I am not talking about armies or somebody every ten feet. I am talking about some added, distinguishable personnel.

Mr. LUNNER. Yes, and I think you will find that part of our routine guidance during periods of increased threat is to have those sorts of people available. If you went to Penn Station for example to use a New York reference, they still have National Guard troops on patrol there that they have found very effective in their particular venue. That is their local decision.

In our case, we will take what Secretary Hutchison was saying yesterday, the purpose of the pilot program in New Carrollton, one of the purposes, is to see what we can do in terms of developing a mobile force with technology that we could apply when the threat drives that. We are looking for intelligence driven threat mitigation with those sorts of things plus the technology.

Mr. LYNCH. Do dogs make sense?

Mr. LUNNER. Absolutely. Currently I think even the most avid science buff would tell you that today's technology being what it is, the best sensing technology is still attached to a German Shepherd when it comes to explosives.

Mr. LYNCH. You mentioned of existing non-security personnel in your testimony. I believe in that as well. It seems to me you have all this personnel, you have people on the trains, in the train stations, people working out on the tracks, so you are covering most of the fronts and on the freight trains, you have people working as well. Is that ongoing and is that pursuant to a plan because to me, other than a uniformed security person, that is the next best level of security because they are already there, not bringing in a whole new army of people. Is that training taking place and are we satisfied with what we are doing in that area?

Mr. LUNNER. Yes, sir it is taking place and the DHS component called the Federal Law Enforcement Training Center has been a big player in that regard. Beyond that, we are also trying to educate the passengers themselves. I think you will find our philosophy as a department is that this is not a TSA responsibility or an FRA responsibility or even a total Government responsibility but a national responsibility to include the passengers who use the system.

Mr. RUTTER. One of the things that has happened post-Madrid is most of those systems, particularly commuter rails, have been making announcements on board regularly reminding people about their duties as a passenger. I can say that because that is how I get to work every day, on VRE, and they are reminding people to watch for baggages that don't have somebody attached. That is already underway and we are pleased those systems have been responding that way.

Mr. LYNCH. Final question. On the emerging technology issue, New Carrollton or whatever, I am delighted about that because I think you have to experiment and New Carrollton is probably a good site because it is relatively small but I hope this is not just some stop gap thing at New Carrollton but pursuant to an ongoing plan that might help with emerging technologies for a variety of sources, not just rail but rail, airports or whatever, particularly faster technologies which are not intrusive or invasive. Is that the goal of what you are doing with that kind of experimentation?

Mr. LUNNER. Yes, that is absolutely one of the goals and just last week, I met with Dr. McCreary who is the head of the Science and

Technology Division of DHS and our discussion was along the lines of what we will find out in the pilot at New Carrollton will be very helpful to our research and development arm at the Department in terms of developing what we have found to be useful, what works in that venue. You have to remember this is not a lab atmosphere. Some of these things work well in a lab but will they work with a vibrating trains going by, with wind changes? Some of the venues are outside or partially exposed. Those are the sorts of questions we are trying to answer. We will take that data and feed it to the research and development people who can then come up with effective, faster, better, cheaper solutions.

Mr. LYNCH. Thank you both. Thank you, Mr. Chairman.

Mr. QUINN. Mr. DeFazio, questions?

Mr. DEFAZIO. Thank you.

Just to go back to the question addressed to Mr. Lunner before about the allocation of funds, I would like to get a more direct answer. I understand what you said and we had initial prioritization and assessment of threats, still interested in aviation, use those as weapons of mass destruction, putting a strong emphasis there. I understand that part, but I didn't get the second part. She was saying, is the money we have allocated approximately \$100 million to rail and transit since 9/11 adequate? What sort of plan do you have, what will it cost to accomplish that plan?

Here is my concern. I helped create the TSA which is now being in many ways disassembled. We had projected 56,000 screeners, we went down to about 48,000 and then suddenly someone on the Appropriations Committee with the collusion of the White House said, let us do with 45,000. So we are doing it with 45,000 and 45,000 isn't enough. There are going to be catastrophic lines this summer potentially risking not only passenger inconvenience but also threatening security because of the pressure these people will be under to move a much larger number of people through than they can.

I am trying to get at how we come up with these homeland security plans and budgets. Has your group sat down, you say there are about 24 dedicated to transit and rail, and said what do we need, what is the plan for the next 12 months, what is the plan for the next 5 years, laid it all out and then figured out what it costs or do you basically get your allocation from Congress and the White House and say here is what we can do, we have 24 people for the entire United States of America, a pretty big country, to focus on transit and rail. It doesn't sound like enough to me. I am trying to get at her question, which you answered very artfully, and I know you are under scrutiny here, probably your masters are watching to make sure you don't say we need more money but if we could talk about that.

Mr. LUNNER. The approach that I am trying to explain is that at this stage of our development, the people that have been identified in my previous answer are concentrating mostly on establishing the criticality and the vulnerability assessments of what is out there now and where the gaps are. It would be, we believe, inappropriate to throw money at a problem we haven't really defined in a particularly specific way.

Going back to the New Carrollton Project, it is sort of the same approach that we are doing there. We need to answer some of these questions about what works, what is missing, what is the next needed mitigation factor before we can come up with any list of specific millions and millions of dollars to attack something we don't understand exactly yet.

Mr. DEFAZIO. It has been almost three years, if you had a few more staff, could we do the assessment and planning a little more quickly? I am a little disturbed to hear we are still sort of assessing the vulnerabilities of the system and building a plan stage. I guess maybe next year you will come in and ask for money but that means that money doesn't get applied until October 1, 2005, unless there is a supplemental. Could we be doing the planning and assessment a little more quickly if you had some more resources?

Mr. LUNNER. At this point we are able to leverage the staffs of agencies who are our partners.

Mr. DEFAZIO. All four, right?

Mr. LUNNER. For example, the Federal Transit Administration studies that were done of risk assessments of the 36 top transit agencies but there is work there to be done in terms of making it speak one language so we can look at it consistently from system to system and from mode to mode. Some of the work that is already there has to be translated into a common language so we can make these decisions on a relative basis in terms of their relative criticality and their relative risk assessment that they all face together.

Mr. DEFAZIO. Have you been taking lessons from Donald Rumsfeld?

Mr. LUNNER. I have not met Mr. Rumsfeld.

Mr. DEFAZIO. My bottom line is this is not a place where I want to scrimp in the budget. I guess I am not going to hear what I need to hear today which is, yeah, you are right, we could move faster, we could be planning. There are some things we already know, we could begin to implement, here is what we need to do it.

I would hope if you can't do that publicly, you can do it privately or other people listening can provide us e-mails that come in over the transom and tell us about those things because as one member of Congress, I want to be an activist on these issues. I am just very concerned at this pace. If we are not going to begin to implement a comprehensive plan and risk assessment based on risk assessment for rail and freight until 2006-07, that to me is too far in the future given what I feel is a more immediate threat.

Mr. LUNNER. I understand the sense of your comments, sir. I would be remiss if I also didn't mention that beyond the 115 which people have identified, in 2002 Amtrak received \$100 million additional for its safety and security improvements in the tunnels in the Manhattan and Long Island area and then the DOT is providing nearly \$4 billion in transit formula grants to localities in its proposed fiscal year 2005 budget. Of that, \$37 million is statutorily required to be spent on security projects.

Again, it is an aggregate number, not just my staff or not just Administrator Rutter's staff or the money we are given individually but in aggregate, there has been quite a bit of money expended on this issue in conjunction with the industry's own investments.

Mr. DEFAZIO. Thank you.

Mr. QUINN. Let me say I share some of your impatience and I am an expert at nothing but I know and Mr. Castle pointed out before when we travel each week at the airport, I wouldn't say undo anything at the airports but I just have this feeling that some days I walk through and I would like to take some of those good workers at the airport and just move them to the railroads so there are more bodies, more money, more people, something to do quicker.

Mr. DEFAZIO. I have to give them this, at least they are experimenting with the sniffer portals which I have been trying to get TSA to do at airports, which they did once before when it was under the FAA but haven't done subsequently, to see what kind of throughput and accuracy we can get. I have met with some vendors who have what seems to me to be extraordinary technology that you can move through quite quickly. Again, you wouldn't necessarily have to screen every passenger. Part of it is creating the uncertainty for someone and you don't know whether you will be the person forced to go through that portal or not. It could be defensive in that manner.

Mr. QUINN. I agree. The New York Times reported today that the first day of the demonstration project took about 12 seconds to get a person through it. I am sure you will have to take that information and put it together but it is a start.

Ms. Capito.

Ms. CAPITO. My first question is we have learned a lot, that the intelligence community was not talking to one another as much as we would have hoped previous to 9/11. What kind of involvement with the Department of Homeland Security and the intelligence community does the rail system have at this point? If there is an intelligence clue that something would be happening at a rail facility somewhere, what is your reaction at this point? Do you feel you are equipped and that the intelligence community is including the rail community in the overall outlook in terms of what we might see in the future?

Mr. LUNNER. I think there are a couple of areas where I am confident I can assuage your concerns. At our Transportation Security Operations Center that I mentioned, we have actual daily contact with the rail people. The building is set up so the watchstanders, the people who are there 24/7 are right next to an intelligence pod that is built into the building which is right next to an air marshal and mission control center which is next to the National Capital Region Coordinating Center. So all these links come together in that spot. We have a very robust daily contact with both the industry and the intelligence community so those sorts of intelligence and information get cross pollinated very well. Of course our departmental partner in that is the IA piece of IAIP and General Hughes who runs that has been in regular touch with us to make sure it is operating professionally.

In addition, the national JTTF which is run by the FBI has taken a rail security expert from their field who was in the rail industry and deputized them to be the permanent member of that staff at the national level. So the connections in that regard are very robust.

Ms. CAPITO. When the threat level goes up a level, I assume you have a protocol in place that you follow from that point on, correct?

Mr. LUNNER. Yes, ma'am.

Ms. CAPITO. I live in West Virginia and the where I live is known as Chemical Valley. We have quite a few chemical plants and there is always a heightened sense of foreboding about carting our chemicals in and out of the valley on the rail. I would ask since you can't do everything all the time every time, do you have a highly prioritized system in terms of moving hazardous materials? Do you feel you have a good grid and know where these things are so if something were to happen, you would know exactly how to locate the hazardous material when it is moving?

Mr. LUNNER. That is another area where we have very robust connections already in place to include the American Chemistry Council which has its own project and the AAR Op Center, the American Association of Railroads from whom you will hear later. In those situations we are very capable of maintaining communications with exactly the people you have outlined.

Ms. CAPITO. Thank you.

Mr. QUINN. Ms. Holmes?

Ms. NORTON. Gentlemen, I would be a whole lot less than frank if I didn't say that I was astonished by your testimony. I am astonished that three years after 9/11 we are barely at the pilot point apparently. Let me first ask you, particularly since I may not be here for the testimony of some of our witnesses from the railroads as much as I would like to, I do have another meeting and I am already late, but are we going to hear from the witnesses from the Long Island Railroad, the Northeast Illinois Commuter Railroad and the Massachusetts Bay Transportation Authority that they are on their own individually inventing their own rail security systems by themselves without assistance from either of the agencies that you gentlemen represent?

Mr. RUTTER. I don't think that is what they are going to tell you. One of the things Chet mentioned is that one of the people not represented here is either Jenna Dorne or Bob Jamison with the Federal Transit Administration. FTA has funded and led, and we have been a small part of that since 9/11, extensive security analysis and vulnerability assessments of the top 30 biggest transit systems. That involves not only buses and subways but also commuter rail. So those systems have gone through that process already with guidance, with financial assistance.

Ms. NORTON. I want to get to the guidance because that is very important. The vulnerabilities, the Federal Government is in perhaps the best position to assess. I want to get to the guidance.

When I asked were they on their own, are they each inventing their plan, I really mean is there any shared process? Have you called them all together so that one knows what the other is doing and can learn from the others since you apparently aren't equipped to offer that? Is there any grouping, any regular meeting of these major railroads so that everybody knows what everybody else is doing, can share it and therefore get to this more quickly than you have been able on your own to do?

Mr. LUNNER. Yes, ma'am, the industry stakeholders with whom we deal, we deal at that level on virtually—I hesitate to say a daily basis but that may not be an exaggeration.

Ms. NORTON. I am not talking about that. I am talking about a systemic way in which all of these actors?

Mr. LUNNER. Yes. We continually have meetings where best practices are shared, we have exercises that bring the players together so they know who does what and what the best practices are in terms of crisis response. We bring in experts from the explosives teams from the Navy to talk to all the transit security people at once so that they all understand what the latest state of the art is and what the latest threat is, what the latest type of materials being discussed in the chatter is. All of that is happening on a continual basis.

Ms. NORTON. This is very important because you have begun to calm my anxiety about the absence of a plan. Let me tell you where my anxiety was raised. Mr. Rutter I think gave a very important testimony in which he talked about the difficulties. That is real important because there are folks in our country seeing that we have run to shore up our country who apparently think we live in some kind of zero risk society. I think it is important to emphasize the balance between living in an open society where there must be commerce if we are going to remain the Nation we are and where we have to be secure at the same time.

Mr. Rutter, you talked about the number of stations, the complexity, the open-ended nature of rail, the cost in jobs, that is all very important. Precisely because it is so important, it is also overwhelming to consider how one gets a system where basically one part is reasonably as safe and secure as another part.

When you tell me that in fact the rail lines themselves do come in and share information, then I think your answer to Mr. DeFazio should have been that you are in fact able to offer something close to at least interim guidance on a national basis. My problem with how we are proceeding is that there is no overall sense of from the Federal Government how to run a safe and secure railway. If in fact you have been talking to those who are closest to the problem, they know their own rail lines, they know the vulnerabilities better than you do. Based on that alone, leave aside money, that you can have the Chairman a plan before the end of this session easily. On one is asking for a perfect plan but after Madrid, the notion that we would close down the Congress, go home, try to get elected without being able to say, look, we don't have all the money but this is what we have. We have interim guidance that we have formulated from bringing the guys and women who are on the ground together with us, we got something in writing, we know these are the ABCs, this is not all the details, it is far more complex than this but these are the ABCs. We have it whether it is secret or whether you want it to be known but we know the ABCs of keeping rail lines safe so that when people get on planes, they don't have to think twice about I am getting on this thing and it is wide open, whereas if I went to Dulles or Ronald Reagan I would go through a whole bunch of stuff. You would be explaining to the American people some of what it takes to make them understand you can make it secure even though it is more complex but to have nothing and not even been able to tell your Chair and your Ranking Member given you all you now tell me you know from having consulted on a daily basis no less with people in the industry, all I ask you

to do is write it down, give the Chairman a plan and can you tell him today that you will try to do that before the end of this session? That is my sole question, sir.

Mr. LUNNER. I apologize if I misled the gentlelady to believing there was no such arrangement in place. I think you or the Chairman will hear in the industry representatives later confirmation that those conversations have gone on, that everyone understands different threat levels and different homeland security advisory colors, that different, more enhanced procedures are in place that we have agreed to with the operators, that we are literally in a continuing discussion with them about best practices so everybody knows what everybody else is doing.

Ms. NORTON. Mr. Lunner, don't repeat what you have said. Can you produce, based on what you are now reiterating to me, a written plan which either in secret session or in open session can be shared with this committee and transmitted to the Chairman and he will have to set the parameters. I am sure he would not disagree that he would welcome a plan. I am asking for a very specific plan. You and Mr. Rutter are joined at the hip anyway, so I am really asking this of both of you. If you are not joined at the hip, you ought to try your best to be.

I am asking if together you can just put in writing what you tell me apparently may already exist from your consultations with one another, with the industry and with the union? It is a very specific question, can you produce a written plan before the end of this session?

Mr. LUNNER. We certainly can put together a report for the committee as you said documenting what is in place, what is planned in the short term and what some of the things we are looking at in the long term. I think that is within our ability to provide.

Mr. QUINN. Thank you both.

Ms. Holmes, thank you for your participation as always. Let me just observe that some discussions that have happened with this subcommittee over the last two years in closed meetings or secret meetings, we don't have any secrets from the general public but some of that discussion has yielded part of the answer you are trying to get at and you are going to hear it later from some of our witnesses. The reason for scheduling this today is to get at exactly what you just asked for, something in writing before the end of the year to give us something to work with. That is all. We will keep the secret among ourselves if we have to. If it needs to be closed, it will be but thank you for the question as pointed as it was. That is the reason we decided to go public with the hearing this morning.

Mr. Coble has joined us. We are always happy to have him here and want to give him a chance to ask questions of the panel.

Mr. COBLE. Thank you. I apologize to you for my being late in arriving. I had a judiciary meeting the entire morning and I have another meeting that will start imminently but I want to thank you for having this hearing on railroad safety.

Thanks to these ruthless thugs who seem to relish the promoting of terrorism every day, we have become vulnerable not only in the air, not only at ports and harbors, but on the rails that provide

transportation for transporting of commerce and passengers from sea to sea and border to border.

I regret I missed the earlier and regret I will miss subsequently but my staff has been dutifully present all morning and will keep me up to speed. I thank you all for being with us.

Mr. QUINN. Thank you, Mr. Coble.

A second round if I may. Mr. Rutter, in your written statement, thank you very much because you address the whole issue of a response plan as well. That was helpful to me as I looked through there. Through this first round of questioning, we all have said hypothetically what if something happens or how do we stop it and have security plans, vulnerability and the rest of those things.

In the event that something did happen, we also need to be talking about some kind of response. We in airlines worry about the security on that plane but if a terrorist wanted to do some real damage, go to Penn Station on a Friday afternoon at rush hour where there are thousands and thousands of our residents there.

Based on your review of security plans at Amtrak and commuter railroads, do you think the plans we have now are adequate? For example, if a place like Penn Station has to shut down for a week, can we work around that, can we move around it? What is our back-up what is the situation with some kind of response? Again, thank you for your attention to that in your written response.

Mr. RUTTER. I think we have two separate issues there. One is response and one is recovery. Certainly on the response side, prior to 9/11 and post, all of those transit agencies and freight rail operators as well have a history of working with the communities in which they operate to drill for what if something happens. Whether it is a terrorist who causes it or not, things fall over, trains do wreck, much less frequently than they used to but it still happens. So those plans are in place to deal with and respond to those kinds of accidents.

The recovery of the loss of a system, I will have to get back to the committee after visiting with Jenna and Bob and the FTA folks about the level of recover planning that our transit systems are going through. Certainly on the response side, I think we have both plans in place and frankly a track record of doing that well. Having just come from North Dakota and talking to the folks up in Minot, five tank cars wrecked, a violent explosion, and the folks on-scene, the first responders, the fire department knowing what that material was and knew it quickly in the middle of the night when it was five degrees outside, he makes this judgment, we are going to shelter in place because that is the best thing to do with this chemical and saves the lives of tens of thousands of people. He did that because he had drilled with Canadian Pacific, he knew that chemical came through his town, so I feel pretty confident about our ability to do the response side. The recovery both from an economic and personal standpoint is one of the challenges we have.

Mr. QUINN. At least we are paying attention to it.

Along the lines of Ms. Holmes' question before, I think you are absolutely right, I think the first responders are prepared in the event of those rare tanker turnovers and those kinds of things that happened in my own community in my congressional district. Along the lines of Ms. Holmes' question, do you feel nationally somebody,

either of you or both, has nationally taken a look at that picture to know that all the municipalities have drilled, the first responders have the equipment they need out there to do what has to be done in the event something happens. Is somebody doing that nationally, Chet?

Mr. LUNNER. Yes, sir. Again, this is one of those shared responsibilities throughout the department. Some of that is done with the local responders, with the EP&R people, with the ODP grants, so that level is handled by other areas of the department. In transportation, however, I can confidently assure you that we have had a number of exercises. The one I participated in at the Naval War College in Rhode Island in January called Operation Heartland was particularly to this point where we brought together not the sort of usual suspects in the beltway situation but the Iowa and the Illinois homeland security experts and responders, the freight rail and Amtrak rail and people from the Coast Guard, the EPA, FBI, FEMA, everybody who conceivably would be involved in a room not unlike this and went through exercises so people would understand that we have this new threat, this new challenge in the aftermath of an incident in that area and in an area of the maritime where you recently saw one ship block the Mississippi River for an extended period of time underscores the vulnerability. We have a program there called Operation Restore, an R&D grant program that is part of our port grants that we mentioned earlier where we are looking at how to computerize those sorts of responses.

The short answer is, yes, at many levels, we are looking at that.

Mr. QUINN. I happen to know from some of the closed door sessions we have had already your partners in the business at AAR and other places are very supportive of those.

Before I yield to Ms. Brown, you talked about first responders. In your statement you mentioned that it might be wise to take these international codes we have now on tanker cars for what is in them off so they might not become a target. I can only imagine what a first responder would do in the exact example that Mr. Rutter just gave in the middle of the night in five degree weather if he or she got there and didn't have an indication of what was in there. What is the tradeoff?

Mr. LUNNER. I am proud that TSA was called on early a year or so go to help broker that conversation between the industry people and some security experts who were calling for the removal of the placards and the first responders represented by the International Fire Chiefs and so forth. We are about to have the money released for a specific study in our agency of possible technical alternatives to the placards. We are looking at how much of not just the placard but the stenciling information may be removed and still have an efficient shipment system. There are already I think 100 cars as I recall that one company is experimenting with on its own in terms of that tracking and transmittal information so you could not make them so obvious.

There are a lot of efforts underway. It is also a part of the national study that the Homeland Security Council is coordinating with DHS and DOT that we are a part of. I think we will have some alternative ideas to explore that next year.

Mr. QUINN. We would really be interested in hearing what they are.

Thank you both very much.

Ms. Brown?

Ms. BROWN. Let me try to bring all this together. First of all, I want to be on the record, I haven't heard anything in closed door, private, secret or public that gives me the assurance that rail safety is being taken care of. If I was going to give the Administration a grade, it would be D+ or D-, lucky not F. I feel we have a long way to go as far as rail security and safety. Just like we had a breakdown in the intelligence community before 9/11, I feel that we are all over the place as far as rail security. FRA has the responsibility for ensuring commuter rail safety but FTA is responsible for administering the grants program. There is a proposal to reorganize DOT by merging FRA with the Office of Pipeline Safety and creating a separate Transportation Research Administration. As part of any reorganization, would it make sense to consolidate all rail safety and security responsibility—Amtrak, rail, freight, commuter rail and rail transit—under the FRA?

In addition to that, you mentioned earlier that when we passed the Homeland Security bill, which was the initiative of the Congress and not the Administration, when we passed it we emphasized that aviation should be a priority. Do we need additional legislation saying that rail should be priority? Should we wait until we have a 9/11 as far as rail is concerned? That is for both of you.

Mr. RUTTER. No, ma'am, and we are not waiting. We are underway and are doing an awful lot of projects. I don't think I necessarily support any additional aggrandizement of authority under our agency. I think one of the ones we are trying to work most constructively with DHS is recognizing our different constituencies or our stakeholders. You mentioned the difference between what we do on rail safety and what FTA does on mass transit funding.

FTA is primarily a grant administration agency. They have a relationship and a longstanding working relationship with AMTA and their member communities which is collegial. We have a collegial relationship with many of them but we are enforcers, necessarily a kind of different thing. FTA provides primarily capital money for building things. They don't provide money for operating assistance. One of the things you will hear from APTA later this afternoon is about the need for some sort of Federal, ongoing support for operating costs associated with security. That is something FTA doesn't do now and they are worried and we are kind of concerned going forward, how do we make sure the people are doing the right thing without necessarily changing the characteristics and the character of relationships between FTA and transit systems. We are working with TSA to provide an understanding of what the system is and how we can go about making sure people who have said they will do something actually deliver that going forward. That is a little rambling but it is the best I have.

Ms. BROWN. Thank you but one other point. It seems to me before you respond that the horse is already out of the barn. We have already had September 11 and the members don't feel, and I certainly don't feel, we have put forth all we need to do to ensure security is in place. We talked about first responders. When I meet

with my first responders, when I meet with my mayors, they have not received the dollars. They have expended the money but we sent money down to the State but it is stuck in Tallahassee or some other place. Three years later, they still have not gotten the funds. That is a problem.

Mr. RUTTER. Yes, ma'am.

Mr. LUNNER. I think the frustration many of us would share is that none of this happens quickly enough or at a level that is dramatic enough sometimes but I would like to reassure you that these conversations we are having among the agencies and in this new department in a transition period are all headed the same way your question would indicate. We are aware there are threats to the system but I would also like to remind everyone that since our national infrastructure is 85 percent privately owned and operated, it is a shared responsibility and I think the people you will hear from in the next panel should be proud of what they have accomplished as industries and owners and operators in their own right before the onset of TSA or before the onset of the new interest in Madrid and before all these other intense interests came up, the industry working in conjunction with us has done quite a bit already.

We are in the process of finding out after that is done, where are the gaps that remain and we are trying to do that in an appropriate fashion so we target the resources in the right place.

Ms. BROWN. Last question. When the industry, and they will testify about their needs in public, private or closed doors, and I really think leadership should come from the Federal Government, when they come to us and say this is what we need for safety, will the Administration come forward to the Congress and say this is what we need? We have come together and these are the needs of the industry.

Mr. LUNNER. We would certainly forward our interpretation of the needs after we do our vulnerability and criticality assessments using the industry information that is forwarded as well as the other independent studies that we are doing.

Ms. BROWN. I read that as a no. Thank you.

Mr. QUINN. Mr. Lynch, welcome back. Questions for the panel?

Mr. LYNCH. I know during my absence Mr. Lunner explained he had 24 employees working under him. I wanted to ask could you tell me how many of those 24 employees are stationed outside of Washington, D.C.?

Mr. LUNNER. The TSA Maritime and Land does not have regional offices, the Department, as you may already know, is in discussions about regionalization of DHS assets and that conversation has not come to fruition yet, so we don't have regional offices.

Mr. LYNCH. Even if you don't have any regional offices, how many are stationed outside of Washington, D.C.?

Mr. LUNNER. In my division, none, sir.

Mr. LYNCH. Don't you think it would be helpful though to have, if you are providing rail security for the entire country, and a lot has to be coordinated with the local authorities, local agencies, local police and fire, local rail unions, wouldn't it be helpful to have those people out of Washington out where the work needs to be done?

Mr. LUNNER. It is very useful to have conversations with people on the ground in the regions or the localities. The way we currently accomplish that is through our partnerships with people like Mr. Rutter's agency that do have regional representatives or in the case of our port security committees, asking the FSDs to participate and represent us. Until the regionalization discussion is formalized, that is how our operating procedure will be.

Mr. LYNCH. We need to change that in my opinion. We need to get people out to different regions.

I want to say when I want to know what is happening with rail security in my district or along the North East Corridor, I go to South Station which is a major hub or I go to the Amtrak facility in South Boston and I talk to my machinist, I talk to my members of the Brotherhood of Locomotive Engineers, I talk to my signalmen and my track workers and porters and conductors. The word I get from them is that nothing measurable has been done to address the concerns of terrorism on the rails. As a matter of fact, talking to some of my people down in New York City, Amtrak people, they have not even been instructed on evacuating passengers from the New York tunnels which is troubling.

You are presenting an impression that we are on the right track, we are moving along, it is going to be OK. It has been a while and stuff is not happening. I am pretty concerned about this at this point. I think we need to step it up. I know you are part of the Administration and I know you are between a rock and a hard place but the people who travel by rail in this country are relying on you. The squeaky wheel gets the grease. If there is a problem in this country on rail security, you need to stop squeaking. We need your help. I know you are loyal to the President and the Administration, but there is a responsibility here as well. When I hear what they are saying on the ground, whether it is at Union Station here in Washington or in New York at Penn Station or in South Station in Boston, the people required to carry out those emergency measures tell me they don't have a plan.

I think the first role needs to be a Federal role and a Federal plan. We can't have this patchwork of plans which is developing in the absence of any leadership from Washington. We can't have that. We need to have a coordinated plan and an effective and efficient plan, one that is known by the rail employees who are going to implement it. It really requires your participation and your leadership. I hope we can help you.

Mr. Rutter, I know you support changes in our rail legislation and we need to look at everything again. I appreciate that. I just hope rail security with respect to terrorism is going to be a major piece of that initiative and the input of your agency on that legislation.

Thank you, Mr. Chairman.

Mr. QUINN. Thank you, Mr. Lynch.

I don't see any further questions for the panel. I would like to thank you both for being here this morning and this afternoon as we have gone into the after lunchtime hour. Thanks for being here. I think you have gotten a sense of where the subcommittee's coming from. You have a little bit of work and some answers to get to

us and you have the time to do that. Thank you both for being here.

Let us move to our second panel: Mr. Ed Hamberger, President, Association of American Railroads; Mr. Ernest Frazier, Sr., Chief of Police and Security Department, Amtrak; Mr. Dan Duff, Chief Counsel at the American Public Transportation Association; and Mr. Ed Wykind, President, Transportation Trades Department, AFL-CIO—thanks for your recent note, Ed.

Thank you all for being here. Let me begin by thanking you for your testimony. It has been received, the subcommittee has looked at it, the members have had a chance to take a look at it. You have been here before, almost everybody, but just to remind you, we would like you to keep your opening statement to about five minutes or so and once all four of you have had a chance to have that five minutes, we will begin, Mr. Lynch and I, with questions.

I am told we expect a vote in less than a half hour but in maybe 15 or 20 minutes. My hope would be if we could get all of your opening statements before we have to run over there, that would be helpful to all of us.

Mr. Wytkind, how about if we start with you. Welcome and thanks for being here.

TESTIMONY OF ED HAMBERGER, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS; ERNEST R. FRAZIER, SR., CHIEF OF POLICE AND SECURITY DEPARTMENT, AMTRAK; DAN DUFF, CHIEF COUNSEL AND VICE PRESIDENT OF GOVERNMENT AFFAIRS, THE AMERICAN PUBLIC TRANSPORTATION ASSOCIATION; AND ED WYTKIND, PRESIDENT, TRANSPORTATION TRADES DEPARTMENT, AFL-CIO

Mr. WYTKIND. Thank you. Glad to be here.

Before I begin, I want to take a moment to say something about your decision to retire, Mr. Chairman. I have known you since your first days in office and I have really appreciated the work you have done not only on behalf of all the issues you have fought for but more importantly, the work you have done to support jobs, the rights and needs of workers in this country, especially transportation workers. I think the workers in our industry are indebted to you for all the things you have done in your career in the House.

Mr. QUINN. Thank you very much.

Mr. Wytkind. Thank you again for having us before the committee. I will try to summarize my written testimony to the best of my ability.

There is little question that more must be done to deal with the rail security needs of this country. The attack in Madrid served as the most recent wakeup call but in reality we have always known rail transportation as well as public transit, are potential targets for terrorism.

We heard a lot from the FRA this morning. But, I heard a lot more about the economic interests of the railroad industry than I did about the topic of today's hearing which is security. It appeared that the TSA spends more time talking about the responsibilities of industry partners as opposed to the responsibilities of the Government to step up to the plate.

Up front, let me say we support the Federal Government providing the resources the industry needs for rail security, we support the resources that Amtrak needs, that public mass transit needs, that freight railroads need. But there also needs to be some accountability and there needs to be some consideration of employee issues and the concerns of frontline workers. I appreciate the comments of Mr. Lynch and I will get to the training issue in a minute, but while the Department of Homeland Security has stepped up warnings, little has been done to harden the vulnerable targets in the industry. Nothing has been done to make sure training gets down to the frontline workers in Amtrak, freight rail and public mass transit.

Whistleblower protection is something that must also be addressed. We have seen for far too long in the railroad industry a culture where workers are really discouraged from stepping up to the plate and speaking out very openly and forcefully about safety and security problems. In this new environment, obviously the Congress, the Government and hopefully employers want workers to be extremely vigilant in speaking out when they see threats on the property.

On the issue of accountability, we fully expect that some in the rail industry will combat any efforts to impose any mandates on them for what are otherwise important security objectives. I hope you will reject this approach and you will reject the notion that industry can do this on their own by simply giving them resources. We think the frontline employees truly have to be treated as the partners they are and as many have pointed out, as the eyes and ears of this industry. That notion has to be taken seriously. To be real partners, they must receive the training on security awareness and response that are so important.

I heard Mr. Lynch talk about Amtrak workers, we have heard the same stories. I keep hearing and reading about all this training that workers are getting somewhere. I would like to know who these workers are because the workers I have spoken to are not receiving the level of training they so badly need. They need to know what a security risk is, how to evacuate passengers and frankly, themselves. They need to know the appropriate communications protocols if something happens on board a freight or passenger train or in a rail facility. In other words, does ever cog in the wheel really know what his or her role is in the event of a terrorist threat? We would submit to you the answer today is no. Almost three years since 9/11 and these workers are still asking these questions and not getting answers.

In addition, there must be a way for train operators to alert dispatchers and management of security developments that may arise during operations. That is not happening. Training alone is not enough. When workers identify security risks, they have to know that they will not face retaliation and retribution. Simply put, a rail worker should not have to choose between doing the right thing on security and his or her job. Unfortunately, too often this is exactly what has been occurring when it comes to rail workers, especially in the freight sector, who are trying to report safety risks and concerns on the railroad properties.

Indeed, in a report by the Federal Railroad Administration in 2002, the FRA noted in its interviews not with unions only, but with workers that “perhaps of most significance, rail labor painted a generally adversarial picture of the safety climate in the railroad industry. They felt that harassment and intimidation were common place and were used to pressure employees to not report an injury, to cut corners and to work faster.” That is hardly an environment that is going to give us confidence that the government has a plan and an ability to deal with security risks. In our judgment, it is disingenuous for anybody to ask a worker to report problems, to be the eyes and ears, if at the same time they are not provided with whistleblower protections they badly need. I hope you will send a clear message that if workers are to be treated as partners in enhancing security, they are not to be treated as critics to be silenced but instead should be dealt with as true partners who can solve the problems we face.

On the issue of remote control locomotives, we are fearful that the use of RCLs may replace train employees who are trained in dealing with security and safety issues. I would note that the FRA has ignored every attempt by our organization, by the Brotherhood of Locomotive Engineers and by the Teamsters Union to get the kind of regulations that we need for RCL use.

I realize that our Nation’s largest carriers see RCL as cost savers but profits must never be placed ahead of safety and security. Yet, this is exactly what is happening and I would point out that RCLs are routinely used to transport hazardous materials. I hope this committee will support the Federal Government regulating this technology. By doing so you will begin to address a number of security concerns including what happens to these devices when they are used, are they being secured when they are not in use, are the workers being trained to ensure they do not get used by the wrong people, and so forth. We are happy to provide you with any details you want on that issue.

Last but not least, I just want to mention that the cockpit in the aircraft was treated as a very important and sacred place. We supported fortifying the cockpit. We would hope you would also look at the fortification of the locomotive cabs and to make sure the cabs are secure from any potential terrorist threats because for a locomotive engineer, the locomotive cab is the cockpit for that worker.

Again, thank you for inviting me to testify and I am happy to answer any questions.

Mr. QUINN. Thank you, Mr. Wytkind. We will get to questions when the entire panel is finished. As you know, I know someone very, very well who spent a lot of time in one of those cabs that you want fortified. It is not a bad idea.

Mr. Duff, welcome.

Mr. DUFF. Thank you for this opportunity to testify on the security and safety of passenger rail and public transportation systems. We commend you for holding this hearing today, particularly in light of the recent terrorist attacks in Madrid, Spain.

Let me at the outset echo Mr. Wytkind and Mr. Rutter and on behalf of APTA, thank you for your leadership on this subcommittee and your good work with respect to our commuter railroads.

We cannot overemphasize the critical importance of keeping America's 32 million daily users of public transportation systems secure in this time of heightened national security. While this subcommittee has jurisdiction over passenger and freight rail, we must look at the security of our surface transportation program in its entirety and that includes the full spectrum of public transportation services -- everything from commuter rail to rapid rail, bus, ferry boats and paratransit.

This intermodal relationship extends to the Nation's freight railroads and APTA is pleased to work closely with the Association of American Railroads in this regard. Many commuter rail services are operated on freight-owned lines and in addition, some commuter rail systems handle significant amounts of rail freight traffic.

America's public transportation services are by design and necessity an open environment. Over 9.5 billion transit trips are taken annually on all modes of transit service. People use public transportation vehicles over 32 million times each weekday. To put this into perspective, this is more than 16 times the number of daily travelers aboard the Nation's airlines and 450 times those who ride Amtrak.

In addition, transit employees are on the front line in our Nation's fight against terrorism. They are part of the first responder teams to assist the public in the event of a terrorist attack and public transportation is called upon to assist in massive evacuation in times of emergency. This was no more evident than on 9/11 when public transportation in New York City, New Jersey and Washington, D.C. helped safely evacuate citizens from our center cities.

Mr. Chairman, safety and security is a top priority of the public transportation industry. Transit systems have taken many steps to improve security before 9/11 and have significantly increased efforts since then. Since that date, public transit agencies in the United States have spent something like \$1.7 billion on security and emergency preparedness programs and technology from their own budgets.

APTA in this regard works closely with a number of Federal agencies to improve security, notably the Federal Transit Administration, the Federal Railroad Administration and the Department of Homeland Security. Security assessments for all rail transit and commuter rail systems have been conducted and detailed security plans have been developed and are being implemented. Some examples of activities that are taking place include pre-surveillance by closed circuit television, increased training for employees, increased police and canine units, additional testing of chemical detection systems, making infrastructure design changes to eliminate hiding places, routinely holding drills with first responders and encouraging riders to be vigilant for suspicious activities or items such as the FTA new Transit Watch Program.

APTA is pleased to have been designated a public transportation sector coordinator by the U.S. Department of Transportation and we have received a \$1.2 million grant from the FTA to establish a transit ISAC, an information sharing analysis center. The ISAC responds to threat and warnings on a 24 hour basis, 7 days a week

and I am pleased to note that more than 100 of our transit system members are voluntary members of the ISAC.

We just released a survey of our transit system members that identifies \$6 billion in additional security needs; \$5.2 billion in capital needs; and \$800 million in operating needs. I would be pleased to provide that report for the record. With State and local resources dwindling, transit agencies in the United States are hard pressed to find additional resources to make their systems even more secure. To increase security, additional funds must be made available from the Department of Homeland Security. In that regard, we have requested that the President's fiscal year 2005 budget for the Department of Homeland Security be amended to include a specific line item for transit systems of \$2 billion in funding and that these funds be provided directly to transit systems so that additional resources can be implemented in a timely manner.

All of us have the serious responsibility of making sure Americans are safe as they ride on public transportation. Given recent events, this is an issue that demands our immediate and full attention. Much is at stake, much needs to be done. Now is the time for the Department of Homeland Security and DOT to join with the transit industry to establish a partnership that will implement practical solutions.

I thank you for this opportunity to comment and I would be pleased to answer any questions you may have.

Mr. QUINN. Thank you, Mr. Duff.

Chief Frazier?

Chief FRAZIER. Thank you for asking Amtrak to testify at this hearing on rail security. I am Ron Frazier, Chief of Police and Security for Amtrak.

Amtrak is the Nation's only intercity passenger rail transportation company. It operates more than 300 trains per day over 22,000 miles of track and services more than 500 communities in 46 States. Like rail transportation systems worldwide and mass transit systems in the United States, Amtrak functions as mentioned in a very open transportation environment.

Because of advantages such as easy access, convenient locations and intermodal connections, rail and mass transit systems are completely different from the structure and organization of the airline transportation and airport industry. As a result, the security framework that works ideally in the airport setting is not transferable to rail station systems.

A bit about Amtrak's security. The Amtrak Police Department has 342 sworn officers with most of its security force located in the Northeast Corridor where Amtrak runs and operates the track and infrastructure. In 1992, the APD received its distinction as being the first national law enforcement agency accredited by the Commission for Accreditation of Law Enforcement Agencies. It has been reaccredited in 1997 and in 2002.

Though Amtrak has received just \$5 million for rail security from Congress since 9/11, the Amtrak Police Department has nonetheless worked to develop terrorism based vulnerability and threat assessments, emergency response and evacuation plans as well as security measures that address not only vandalism and other forms

of street crime but the potential for explosion and blast effects at critical infrastructure locations.

Amtrak has worked with the TSA on a number of security programs including the Transit Rail Project that is going on at New Carrollton. It has also developed its own security threat level response plan that mirrors the Homeland Security Advisory System and requires Amtrak and its employees to engage in specific security countermeasures according to the existing threat level. Further, Amtrak has increased its police canine patrols by adding 12 explosive detection canine teams to conduct random sweeps of baggage rooms, train platforms and stations. Our police department has purchased full face respirators for sworn personnel and deployed these devices for Amtrak's first responders to protect against a CBR attack. In major stations, gamma neutron radiological detectors have been deployed to address radiological threats.

The APD does budget for elevations in the homeland security threat level because manpower costs during an orange level alert is roughly \$11,000 a day. There have been so many days this year already at this alert level that Amtrak is coming close to surpassing its reserve budget it set aside in this regard.

Finally, Amtrak also recognizes that we must stand ready to manage an incident if and when there is some form of attack. There is an Office of Emergency Preparedness. We conduct training for more than 21,000 first responder agencies situated along the Amtrak service route. We have purchased a public safety database that lists each police, fire and emergency rescue agency in order to facilitate State and local emergency response and to establish a clear record of agency training.

Amtrak has detailed its immediate critical security needs and a confidential plan to the TSA. While not being able to identify funding at this time, TSA has generally approved the basic concept and approach of the plan. The plan calls for approximately \$110 million in funding with another \$10-\$12 million per year in recurring operating costs. The general concern cited in the plan regarding upgrades in security at Amtrak includes our four largest stations as a priority; securing tunnel access points; improving security for trains traveling through the Northeast Corridor and through our tunnels; duplicating and centralizing our dispatch, command and control centers; and providing upgrades in a manner in which international passenger information is provided.

It is imperative that Amtrak in conjunction with TSA and with all other related agencies be able to address the aforementioned rail security concerns as soon as possible. Amtrak has provided the security plan to its authorizing and appropriations committees of jurisdiction and stands ready to work with Congress and the Department of Homeland Security.

Again, thank you for this opportunity to participate in the hearing. I look forward to your questions.

Mr. QUINN. Thank you, Chief Frazier.

Mr. Hamberger, welcome back.

Mr. HAMBERGER. Thank you, Mr. Chairman. I am delighted to be here.

I would like to associate myself with the eloquent comments of Administrator Rutter regarding your service in Congress in general

and as chairman of this subcommittee in particular. I remember my first testimony before the subcommittee was in the fall of 1998 on the Quinn Widow Survivor Benefit Bill which acted as a spur and got the labor brotherhoods and rail management together and eventually after much wrestling, did result in rail retirement reform legislation being signed into law. Thank you for everything you have done for all the industry.

On behalf of the members of AAR, I thank you for the opportunity to meet with you and discuss railroad security. AAR members account for the vast majority of freight rail mileage, employees and revenue not only in the United States but also Canada and Mexico.

The railroad industry reacted swiftly to the terrorist attacks of September 11, recognizing the character of the cargo that we carry, having a history of our top priority being the safety of our employees and the communities in which we operate, railroads on their own initiative conducted a thorough risk analysis of the rail network to identify vulnerabilities and to develop specific countermeasures. This resulted in the implementation of an industrywide, risk-based security plan that used CIA and intelligence community best practices. I want to emphasize that point. We did not do this on our own. We went to outside experts with the background of intelligence because we did not know how terrorists think. We wanted to take a look at our system the way a terrorist would.

Using this perspective, the plan identified four security alert levels. This was before Secretary Ridge came out with his five levels and details specific actions to be taken at each alert level. It also raised our baseline security by implementing 53 permanent changes in rail operations. One of those is indeed security awareness training for our employees. Railroad employees are considered to be on the frontline of security guarding against terrorist attacks, we look at them as 200,000 sets of eyes and ears and with respect to the adverse safety climate referenced by one of the earlier witnesses, I suggest that comes as a result since we are talking about some collateral issues here this morning, from the feeler system that is in existence which is as you know a tort based, thought based, workman's compensation system. It is one of the only ones in the country. Everyone else is under a no-fault workman's comp system. We have formally reached out to labor asking them to sit down with us to address that issue, much as we did on rail retirement. Perhaps Mr. Chairman, your legacy could be that this hearing like the hearing on railroad retirement could be used to get management and labor together to address that real scar that does affect the relationship between management and labor.

The rail network is vast and open. Our risk assessment identified over 1,300 critical assets, prioritized them from 1 to 1,300 based on protection of commerce, population and military cargo. Consequently, the railroad industry needs to put into place a security infrastructure that would allow railroads to focus our resources where the threat is the greatest. This requires that railroads quickly receive the latest intelligence, including threat information from government sources.

Railroad representatives are in fact in constant communication with pertinent intelligence and security personnel at DHS, the De-

partment of Defense, DOT, the FBI's National Joint Terrorism Task Force and State and local law enforcement agencies. In fact, knowledgeable railroad analysts literally work side by side. We have our own desk over at the DHS/TSA Intelligence Center to help evaluate information at the top secret level. To my knowledge, we are the only industry sector to have made this commitment.

The heart of the communications system, once you have the intelligence, you have to communicate it, is our Railway Alert Network, the RAN, which was established after 9/11 to provide terrorism threat information to the industry. The hub of the RAN is the AAR's operations center located here on Capital Hill which operates at the secret level and is staffed with mobile communications around the clock. Mr. Chairman, you visited that facility and at one point had scheduled a meeting over there for the subcommittee. I would like to reinvoke you and urge you to reschedule that. We would love to host you if that could be worked out.

The RAN is linked to the Surface Transportation Information Sharing and Analysis Center created by the IAAR at the request of the Department of Transportation to collect, analyze and distribute security information to protect not only the physical assets but also information technology systems, i.e., cyber security threats.

Cleared at the top secret level, it also operates 24 hours a day. In addition to the freight railroads, Amtrak and 75 commuter and transit rail authorities are members of this STISAC.

One area that received special attention this morning and has received special attention from the railroads is the movement of hazardous materials. We have designated any train that carries certain hazardous materials, those at the higher level of poison by inhalation, for example, ammunition, liquefied natural gas, as ALERT trains. These are then highlighted at the dispatch center so that the dispatch office knows at any time in real time where those ALERT trains are.

The uninterrupted flow of hazardous materials is necessary for the health and safety of the U.S. as well as its economic growth. Chlorine, for example, is critical to the physical health because it is used to purify more than half of the Nation's water supplies and is used in the manufacturing of a huge array of pharmaceutical products. This vividly underscores the tension between the need for the free flow of commerce and the need for security which you referenced earlier in your comments, Chairman Quinn.

Recognizing this tension, the railroads worked closely with government agencies and I am pleased to say with our major customer groups to avoid logistical gaps in the supply chain. For example, the Chlorine Institute used the same expert security team to develop their chlorine security plan so that it would dovetail with the railroad transportation plan.

Finally, we are opposed to legislation that would grant State and local governments the ability to restrict rail movements of hazardous materials. Because rail transportation is interstate in nature, it requires a uniform set of standards that apply nationwide. This uniformity would be severely jeopardized if States and localities sought to force rerouting by prohibiting the transportation of hazardous materials within their own jurisdictions. Rerouting would lead to an increase in miles traveled, increased switching and han-

dling of cards thereby increasing public exposure and transfer that exposure to other communities. It could also lead to the diversion of hazardous material shipments to the highways. Most recent DOT data indicate that on a ton mile basis, hazardous material releases are 16 times more likely to occur on highways as on rails.

The freight railroads are proud of the efforts we have taken to keep our Nation's vital rail transportation link open and secure since the terrorist attacks of September 11, 2001. We will continue to work with this committee, others in Congress, Federal agencies and all of the relevant parties to further enhance the safety and security of the Nation's freight railroads.

Thank you.

Mr. QUINN. Thank you, Mr. Hamberger. Thank you to all four of our witnesses at the table.

I have a couple of specific questions and then will yield to Mr. Lynch but I said to Steve during the testimony how much we appreciate the work you have done on your own as an industry and as a representative of the workers in that industry. I am going to suggest, Mr. Hamberger, that Ms. Holmes give you a call.

Mr. Hamberger. We have already made contact.

Mr. QUINN. Thank you so much because a bit of that we have discussed in our previous meetings and it would be very helpful for her to know that a number of things are happening. She couldn't possibly stay for this part of the hearing.

I said to Steve, we are fortunate that a lot of this is going on but just imagine how much better we would be at it if the Federal Government took a larger, more active, proactive role with such willing participants as every one of the four of you who sit at this table this morning. It would be terrific. I suppose that is our role, to get that connection made. We are going to try to do that.

Mr. Wytkind, you mentioned the remote control switching situation. We can discuss the merits of that at a different hearing. I have been out to see it operate and I am well aware of the pros and cons of that issue. How do you see that as a security issue? Today's discussion is of security.

Mr. WYTKIND. We raise it because if you look at what is happening in this industry, it is already a very open environment. We have a lot of stories from the briefings we have had from our unions and their members about the fact that a lot of the access points in this industry are not being well policed and there is too much access to locomotives not being used, other equipment in the rail industry that is not in use. You add to it remote control operations which we think poses a very serious safety and security hazard for all the reasons we said, but add to it the fact that if you do not secure the equipment, if you do not train the workers to use the equipment at the level we think they should and lastly if when the equipment is not being used, it is not secured like a lot of the other equipment in the rail industry, we think that poses a security risk.

We are not asking for anything unique. We are really asking for a strategic set of regulations that the Federal Railroad Administration with its other Federal Government partners could develop in the use of remote control but they have rejected every attempt by the Brotherhood of Locomotive Engineering and Trainmen union,

the Teamsters, to do that. So we do think you can't separate security from safety when you analyze remote controls.

Mr. QUINN. Fair enough. That is a topic probably for another day but security is on our minds this morning.

Chief, you folks are doing a wonderful job with what you have to work with over there. I have been over many times to visit you and had a chance to talk a couple of times. Are your 342 sworn officers and now 12 new canine officers able to communicate with the other levels of first responders, police, fire, whatever?

Chief FRAZIER. There is a long history of our interacting with first responders as mentioned by Administrator Rutter. We took some time and effort to identify a database for the 21,000 agencies along our track throughout the Nation. That database is in the hands of the Emergency Preparedness Group that is under my area and also is in the hands of the police department. They have it available to them at the one radio desk center that actually dispatches for the entire Nation. That is out of Philadelphia.

Is it as good as it can be? No. We think we need to make improvements in terms of our communications, our emergency notification processes, our redundancy and our ability to actually operate the railroad and make sure everyone is aware of what is going on. So there is a need for changes.

Mr. QUINN. You are satisfied that it is happening. Everything can always be improved. I would ask a followup similar to Ms. Holmes', is there an ongoing review of this or are you satisfied with what is happening now?

Chief FRAZIER. As a security chief, I can never be satisfied. It starts there but yes, I think we are addressing these issues. I think it is important. We talked about tunnels and we are very close to the New York City Fire Department in terms of how we manage issues in our tunnels or with the Capitol Police here in Washington as to how we protect those tunnels. Yes, there is a close collaboration.

Mr. QUINN. Thank you.

We just heard the bells so we are called over to a vote. I believe just a single vote. We are going to recess for about 10 minutes and we will be right back.

[Recess.]

Mr. QUINN. We are back and thank you very much for your patience and members of the audience. I am told we are now safe for about a hour and I also understand some members of our third panel have some trains to catch, so we will do the best we can to move through here.

We were finished with all our panelists. I had asked a couple questions and was about ready to yield to Mr. Lynch for some questions. Let us get back to that point now. Steve, the floor is yours.

Mr. LYNCH. If I might, I would like to start with Mr. Hamberger. You have done some wonderful work and I appreciate it. I wanted to ask in my own attempt to be helpful, I have been asking some of my rail employees about what is happening on the ground. As I mentioned earlier, I talked to my Brotherhood of Locomotive Engineers and all of my rail employees, Amtrak, I have a commuter rail system and my MBTA, Mass Bay Transit Authority people. They have spoken with me somewhat reluctantly I think because

of their fear for being disciplined at work or having some negative consequences to offering their own perspective about the rail security system in the Northeast.

I was wondering if you would support greater protections for whistleblowers who are rail employees to freely speak of the inadequacies they see in the public interest?

Mr. HAMBERGER. As you know, there is already whistleblower protection in the FRA regulations. I think that provides the protection that is necessary. Should that not be adequate, I don't know why it wouldn't be, it is there for safety and employees have the authority and the right and are protected by that regulation as best I understand it. So any additional whistleblower protection, I know the Senate has a provision in the bill the committee reported and I would hope it has enough of an evidentiary level that it doesn't turn into a spurious kind of reporting. That is all.

Mr. LYNCH. Right. I understand that concern but this would be just because we have sort of a patchwork of Federal employees, private employees and State employees and there has been, as you mentioned, in that legislation some concerns raised by employee representatives because in some certain cases they needed some additional protections. You have answered the question fairly.

The other question I had foremost on my mind and it might be better for Mr. Duff to answer this or the panel for that matter, in the port security comparison, I represent the Port of Boston as well, for containerized cargo, if you will, we have a 96 hour advance notice to the Coast Guard of cargo coming in, it tells us the origin, the nature of the contents, the principals involved and the source and destination of the particular container. We can't do 96 hours and we can't do it to the detail they do it because of the volume of cargo moving by rail but is there some way we can map out a similar situation? I know the Minot, North Dakota situation was mentioned earlier by Mr. Lunner. That was a situation where Minot was the destination and the conduit was fairly closely monitored by the local authorities and by the railroad involved.

In my situation and many of us both in New York and in Boston and other ports, we have rail cargo that is just passing through and it is passing through many densely populated communities. We had testimony last week from the Sheriff of the Everett Police Department in Massachusetts who had some hazardous chemicals on a storage in transit facility and was there for about a week, had some individuals break into that facility. He didn't know the nature of the cargo, wasn't sure what precautions to take. Is there some type of regulation we could adopt that would give some notice to our local law enforcement and fire service directors that would address this specific problem of cargo moving through their communities?

Mr. DUFF. Maybe I should defer to Mr. Hamberger with regard to cargo moving through. With respect to public transportation I can say when you look at 9/11 and the events that happened there, the communication ability, the ability to have secure and redundant communication ability made a significant difference in terms of getting those transit vehicles out of the World Trade Center area. Maybe the folks on the next panel could talk more about that.

That communication ability is significant. I mentioned earlier the survey we conducted and in terms of ranking priority needs, the need for communication equipment, redundant equipment, communication activities was probably the highest priority.

Mr. LYNCH. I might as well let Mr. Hamberger have a crack at that.

Mr. HAMBERGER. You have raised actually several good questions linked together. One is the security at the border. With respect to freight rail coming into the United States from both Canada and Mexico, a bit more advanced on the northern border. I believe it is in the 80–90 percent of all cars go through a machine called a VACS machine, basically a beta ray machine that can show the inspector what is in the car and he or she then matches that with what the consist is, if it says it is supposed to be computer parts and it is not computer parts then they can stop the train, pull it off and visually inspect it. Customs has adopted a four hour advance notification, a bill of lading has to be submitted to Customs at the border and they are expanding the use of that coming out of Mexico as well. I think they are not quite at the 80–90 percent but the goal is to have over 90 percent of all rail cars inspected that way as they come across with our land trading partners north and south.

With respect to the ports themselves, we are part of the CTPAT Program where I understand Customs is trying to move the security check further up the supply chain. We do cooperate and adhere to all of the regulations that the Coast Guard has in place. I believe the Coast Guard Port Captain has regulations that will be going into effect July 1. I believe the plan had to be filed at the end of last year for any rail facility. For example our intermodal yard that is within the port confines has to meet certain requirements.

With advance notification which was the Minot situation, what generally occurs as Administrator Rutter indicated, there is a general discussion between the railroad and the communities through which we operate. These are the kinds of hazardous materials that are coming through. There is no an immediate, tomorrow at 10 o'clock there will be three carloads of this in at 12 o'clock, there will be four carloads of that. It generally ends up being so much paperwork and people don't pay attention to it, so there is training. In fact we have a subsidiary called the Transportation Technology Center and Mr. Chairman, are you going to be out there? Again, I would invite anyone on the committee. It is a 56 square mile facility in Pueblo, Colorado that we operate under contract with FRA. We do hazardous material training for local emergency response teams.

In addition, we do participate with Operation Respond and cooperate with the chemical industry through CHEMTREK which is there 24/7 emergency response operation. So there is advance notification of a sort but it is not as I say tied directly to what particular car is coming at what particular time.

Mr. LYNCH. That is helpful. Thank you.

Chief Frazier, I wanted to ask you specifically what type of training are we doing for Amtrak police specifically on the issue of terrorism and surveillance, prevention, reporting?

Chief FRAZIER. The police officers themselves have taken part at the highest level in the agency in antiterrorism training put on by the Federal Law Enforcement Training Center. In New York, for example, that next antiterrorism course will be handled for lieutenants and sergeants, so we haven't gotten the flexi training all the way down into the organization yet.

As well there is predictive profiling training that is taking place for police officers using the Israeli model as we attempt to figure out how to deal with issues inside our stations and observations and doing well at dealing with potential interdictions. That kind of training is taking place.

Emergency response training has been accomplished for our police personnel and also for our employees themselves. There is a security coordinator program that trains our employees in the divisions, basically in the transportation division on specific things that have to happen and various counter measures. So there are things happening with respect to training.

Frankly we don't have enough money to do it as quickly as we would like. I think that is something that would be important. In fact, in the plan we have submitted, there is a request for additional training dollars. So we need to do more, we need to do it faster. I will continue to say that, I think that is very true but we do have an understanding of where we need to get to.

Mr. LYNCH. Thank you. What percentage of your force, which is pretty small considering the responsibility you have, is trained so far?

Chief FRAZIER. In the matters I have talked about, probably about 15 percent. In things like respirator training for CBR response, 100 percent. One thing that happens is normative training for police is always constantly ongoing and there is in-service training that takes place as well. So there have been things written. They are also trained in the procedures and policies of the agency but this isn't stuff they go out for example to a particular course to attend. It is things we do in the normal course of business.

We have rewritten the Emergency Mobilization Guide, we have published procedures and general orders for them in terms of how to deal with suspicious packages, how to deal with white powder cases. All of these things have happened internally in the agency and that happens on a routine basis even through roll call training or through the publication of this information. When I refer to training that takes place, it is like in-service, in-class, those sorts of things. That is where we need to pick up speed.

Mr. LYNCH. Thank you.

Lastly, Ed, I know you have been closely working with some of the employee representatives, all of the unions involved. What do you see as the major weakness in terms of our approach to rail security from an employee standpoint?

Mr. WYTKIND. We have tried to not focus only on Federal resources. As I said at the outset, we endorse bringing resources to the table that are needed to deal with passenger and freight rail issues. We try to focus on practical issues that involve frontline employees. I am getting the same reports that you are from the people you have spoken to in your community about the fact they are not

receiving the training they badly need, about workers who are scared to death about their lack of preparedness.

On the issue of whistleblower protections, the provisions referred to by Mr. Hamberger have been around for a long time. There is a long history of intimidation and harassment in this industry. This is something we have brought to the committee that doesn't cost Federal taxpayer dollars. It simply says if we as a government, if Congress in its own way and if employers who come up here and say the workers are the eyes and ears truly believe workers need to be part of the solution, that they are going to help us avert terrorist attacks, then it seems rather logical to us that they should be afforded the strongest whistleblower protections possible. We saw it in other pieces of legislation this Congress on a bipartisan basis has approved in this Congress and in the previous Congress. There really is no reason not to embrace such a proposal. We think these issues, training the workers, making sure they truly get the training down at the worker level, not at management only, giving whistleblower protections and making sure we have responsible use of technology in this industry, I think the three combined would begin to produce real dividends in terms of dealing with security.

Mr. LYNCH. Thank you, gentlemen.

Mr. QUINN. Thank you, Steve.

Those are all the questions we have for this panel. Thank you all for your preparation for today's hearing and let us move to our third panel, Mr. James Dermody, President of the Long Island Railroad and Mr. Rick Tidwell, Deputy Executive Director, Northeast Illinois Regional Commuter Railroad Corporation.

Gentlemen, you have been here all morning and are familiar with our format. We are going to ask you to limit your oral response to about five minutes. We have your testimony and appreciate it. We have had a chance to go over it, actually talked about it a bit when we were at the last vote, so if you can do that in about five minutes, we will let both of you finish and then Mr. Lynch and I will ask our questions together toward the end.

You may begin, sir.

TESTIMONY OF JAMES DERMODY, PRESIDENT OF THE LONG ISLAND RAILROAD AND RICK TIDWELL, DEPUTY EXECUTIVE DIRECTOR, NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION

Mr. DERMODY. Thank you, Chairman Quinn, for the opportunity to speak before the subcommittee. I am Jim Dermody, President of the Long Island Railroad.

The MTA, Long Island Railroad is the busiest commuter railroad in North America, carrying an average of 274,000 customers each day on 730 trains. The Long Island Railroad is a subsidiary of the New York Metropolitan Transportation Authority. Our system is composed of over 700 miles of track on 11 different branches from Montauk on the eastern end of Long Island to Penn Station in midtown Manhattan, approximately 120 miles away. We serve 124 stations in Nassau, Suffolk, Queens, Brooklyn and Manhattan. Nearly 500 of our daily trains originate or terminate in Penn Station in Manhattan. Most of the remainder originate or terminate at Flatbush Avenue in Brooklyn with a number of other trains origi-

nating or terminating at Hunters Point Avenue in Long Island City and Queens.

All of these terminals provide connections to the MTA, New York City Transit and bus service. All but 11 branches pass through the railroads complex Jamaica hub where customers connect with trains for other branches and other terminals and lately through connection with JFK and the airport access.

Penn Station is shared by three railroads, the Long Island Railroad, Amtrak and New Jersey Transit, serving over 1,000 trains a day between these three railroads. It is one of the busiest facilities in the country. While Amtrak owns and operates the station, we share responsibility for dispatch and train movement at a joint facility known as Penn Station Central Control. Given the large volume of train and customer traffic through Penn Station, its operation requires the cooperation and careful coordination of all three railroads.

Leading to our two main terminals at Penn Station and Flatbush Avenue are a series of tunnels. Access to and from Penn Station is provided by four East River tunnels. Like Penn Station, these tunnels are owned by Amtrak but used by the Long Island Railroad, Amtrak and New Jersey Transit. The Long Island Railroad has exclusive use of Lines 3 and 4 and shared use of Lines 1 and 2 with Amtrak and New Jersey Transit.

Freight service on the Long Island Railroad was privatized in 1977 and is operated by the New York and Atlantic Railway which is a subsidiary of Anacostia & Pacific Company. The company carries about 15,000 carloads of freight a year and operates its freight lines over our tracks during nonpeak periods.

With so many critical facilities around our system, safety and security have always been Long Island Railroad priorities. This is true now more than ever. We have implemented a number of measures to carry out our strategy of detecting, deterring, delaying and ultimately preventing threats to our system. In fact, the MTA Chief of Security and the Long Island Railroad Vice President of System Safety have just returned from Madrid where they met with law enforcement and transportation officials to discuss the incident over there and lessons learned.

The Long Island Railroad and its sister railroad, Metro North, are policed by offices from the MTA Police Department. The MTA police work closely with the New York City police, the Nassau and Suffolk County police as well as the New York State police. In addition, the MTA police work closely with each agency and are specifically trained to specific law enforcement issues and concerns that relate to transportation. Officers are familiar with our operation, our territory and our customers.

In analyzing points of vulnerability, we have placed special emphasis on critically important locations, high value targets, where there is the most potential loss of life, serious economic impacts to the region, where there are high costs for recovery or replacement or large degree of environmental damage possible. Locations such as Penn Station, Jamaica, the East River and the Atlantic Avenue tunnels fall into this category.

A key aspect of our efforts is target hardening, making these locations less penetrable and less vulnerable. Some of the actions we

have taken are increasing training for our employees, awareness programs for both employees and customers which include on train advertising, highlighting if you see something, say something campaign, improved electronic access control and increased security guard services at our facilities, physical barriers at entries at Penn Station, Penn Station Central Control and Jamaica, fencing and barriers at tunnel entrances, additional use of and upgrading of surveillance cameras and intrusion alarms, participation in emergency preparedness drills and evaluation of our emergency plans, and perhaps most visible to our customers, an increased police presence through additional MTA police patrols throughout our system including tunnel entrances in Jamaica as well as New York State police patrolling our trains and the National Guard at Penn Station.

Our future plans include a further series of target hardening, defensive strategies intended to continue to decrease the level of vulnerability and prevent unauthorized access to Long Island Railroad facilities.

The East River Life Safety Program is a separate but related effort aimed at improving safety measures within those tunnels owned by Amtrak. Typically the Long Island Railroad pays the full course of life safety upgrades in Lines 3 and 4 and shares in the cost of upgrades in Lines 1 and 2. Bear in mind that Penn Station and the tunnel approaches were placed in service in 1910 and the upgrade system in order to make them more responsive to the emergency responders, we have implemented a wayside telephone communication system within the tunnel for emergency responders and Long Island Railroad crews. This has been installed at all four East River tunnels and along the platforms in Penn Station. These phones are clearly marked with a blue light and have been placed approximately every 400 feet. The Long Island Railroad cost for this was over \$11 million.

Ventilation plans on both the Manhattan and Queens side of the river will provide tunnel ventilation to clear and correct smoke condition and new staircases to allow evacuation and emergency response to occur simultaneously. The Long Island City Plant is underway and expected to be completed in 2006 with Long Island Railroad construction costs budgeted at \$80 million. The contract for the Manhattan Plant is currently out for bid and construction is expected to cost the Long Island Railroad \$60 million.

A new ventilation system to clear and correct smoke conditions at track level in Penn Station was completed in 2002 at a cost of \$17 million in Long Island Railroad construction costs. A tunnel standpipe system budgeted at \$20 million in Long Island costs is in the works for all four tunnels and large portions have been completed and in addition, wall mounted, dry chemical fire extinguishers are also in place every 100 feet throughout the tunnels and are inspected and replaced as necessary.

In addition, we have installed handrails, signage and ladders along the benchwall. Between 1982 and 2004, a total of \$220 million in MTA Long Island Railroad Capital Program funding has been earmarked for the Long Island Railroad's share of the East River Tunnel safety improvements.

Lastly, regarding difficulties we have encountered in current laws related to security funding, there is a liability concern, the technological indemnification addressed by the Department of Homeland Security and its regulations. This indemnification, however, does not extend to professional liability. Consultants who may have a practical and necessary knowledge of that expertise would be beneficial in security measures and not indemnified for any of their professional knowledge they impart which could impact the information they are willing to share.

I would like to thank you once again for the opportunity to speak before this committee and I ask at this time if there are any questions I might address.

Finally, Mr. Chairman, to answer one of your earlier questions, we are aware of what is going on in New York in August.

Mr. QUINN. Thank you very much, Jim. I know you are, and I also happen to know that you are working on it. I also knew for some reason after all those millions mentioned, you were going to come up with a total of \$224 million. Somehow, I knew that was coming.

Thanks and we will get to the questions in just a minute.

Rick?

Mr. TIDWELL. Thank you, Mr. Chairman and members of the subcommittee.

My name is Rick Tidwell and I am the Deputy Executive Director of Metra, the commuter rail agency serving Chicago and all of northeastern Illinois. It is an honor to be here with you today and to have this opportunity to share Metra's views on rail security.

In order to provide some context to our views on rail security, let me begin by briefly describing our system. Metra is the second largest commuter railroad in the country in terms of number of passengers and is the industry's largest in terms of numbers of lines, miles of track, amount of equipment, and number of employees. In addition, Metra is the most complex commuter rail system, in that we own directly and operate several of our rail lines, have purchase-of-service agreements with the Nation's two largest freight carriers (UP and BNSF), and have several trackage agreements with other freight carriers such as the Norfolk Southern and the Canadian National and Illinois Central.

We provide service to Chicago and northeastern Illinois on twelve lines that serve more than 120 communities with 240 stations, including a stop at O'Hare International Airport. We also serve five hub terminals in downtown Chicago. These lines carry more than 1.6 million riders each week which translates to over 82 million passenger trips per year. We are extremely proud of our on-time performance, which is the highest in the industry, averaging above 96% in every year of Metra's existence. Although we are already very large, both in terms of numbers of passengers served and the size of our service area, we continue to grow and expand, attracting new riders and bringing new services on line for our customers.

In the time allotted to me today, I would like to outline what we believe are the challenges we face in this new post 9/11 environment; what we have done to address those challenges; and to tell you what we believe you can do to assist us in improving our response in making our system more secure for our customers.

The Metra system comprises a vast service territory, totaling nearly 3,500 square miles. Each of the 240 stations represents an access point for our nearly 300,000 daily passengers. Our largest trains carry up to 1,600 passengers or an equivalency of three fully-loaded Boeing 747 aircraft. Our customers rely on our ease of use and our watch-setting reliability. We simply have no efficient way to individually screen those who use our service. Our ridership densities are too great and our time frames too compressed.

Even before 9/11, Metra has worked hard to address the safety and well-being of our passengers and employees. That is evidenced by our emergency preparedness response planning and training, our public education and awareness on rail safety, and our being the recipient of eight E.H. Harriman industry awards for employee safety.

After 9/11, we needed to do much more, and we have. We became members of the Chicago Joint Terrorism Task Force. We are, in fact, in direct communication with numerous state and Federal agencies, sharing information on potential threats. All of our front line employees have been trained in bomb recognition and reaction. We have brought in substantial numbers of off-duty certified police officers to patrol our downtown stations along with dogs specially trained to detect explosives. Our entire employee population, over 4,000 people, will begin detailed training on system security awareness for commuter rail employees later this month in a program presented from the National Transit Institute at Rutgers University. Our fire marshal continues to aggressively train first responders in our equipment and operations, and our police department is working with numerous law enforcement jurisdictions to provide security where we have outlying overnight storage yards. Our own officers aggressively patrol stations, bridges, interlocking plants and other critical facilities. Finally, we are in the process of initiating the measures for which we requested funding in our recent grant request to the Department of Homeland Security.

These efforts are a start but we need to do more. The continuation of the Department of Homeland Security grant program is critical to our installing additional security and surveillance infrastructure, and we wish to thank the Department of Homeland Security and Congress for making these critical funds available.

Our single greatest vulnerability, however, rests with too few eyes and ears to be vigilant in all of our multiple locations. We believe the Federal Government has a role to play in assisting us to enhance our capabilities. We must significantly improve both the industry's and Metra's readiness, harden ourselves as potential targets and expand our security infrastructure. Even more so, we must put additional human and canine assets in the field. We would welcome an opportunity to work with the committee and the Department of Homeland Security on ways to increase commuter rail security and possible funding sources that would help provide the manpower and capital resources necessary to protect our system. We believe that many lessons can be learned from the Transportation Security Administration's efforts that protect our nation's airports and aircraft. We believe people, "trained to be vigilant, protecting stations, and riding trains," will best serve as a deterrent to those who seek to do us harm.

Again, thank you for this opportunity to speak, and we look forward to working with the committee on this important issue. I will be happy to answer any questions you may have.

Mr. QUINN. Thank you, Rick.

I am going to ask a question of both of you that is a bit different than the line of questioning earlier today. Both of you represent, of course, major cities. Rick, I have been out to visit your facilities in Chicago before and you are to be congratulated for your cooperative effort with all of the other rail entities out there to organize a lot of efforts. Metra has done a wonderful job in my opinion from what I know of it.

Mr. TIDWELL. Thank you.

Mr. QUINN. We have talked about attacks against railroads as the target but I would be interested in both of your reactions to either New York or Chicago as the city itself or a different part of the city other than the train as a target. In other words, if something happened to a building in the city like what happened before in New York, in Chicago's case, is Metra prepared for an evacuation? Can you ramp up the system to get people out of town quicker, more quickly? Is communication in place that is necessary to coordinate? We have heard about communication from single panel today but in the event the train system itself was not a target but another area in either of the cities was, how prepared are you or are you prepared to help with evacuation and assist the rest of the first responders? I would ask you to respond first, Rick, and Jim, probably from firsthand experience I am sure you can respond.

Mr. TIDWELL. As I mentioned in my remarks, we have five downtown terminals. Depending on where this situation occurred, we should be able to activate all or most of those terminals, bring trains back in at any point during the day as long as we have crews available to begin the evacuation of the downtown area.

After 9/11, we were able, as the skyscrapers in Chicago began to empty, we were able to bring our crews back to the terminals, turn the trains around, eliminate their daily servicing, fuel which ones we needed and take everybody home so that Chicago was pretty much deserted by 11 o'clock that morning. We work very closely with the City of Chicago and their Department of Emergency Management, the Illinois Department of Emergency Management, I have an exhaustive list of agencies and entities we work with and communicate with.

Mr. QUINN. Do you have regular meetings and discussions?

Mr. TIDWELL. Yes, and our Chief of Police and our Deputy Chief of Police attend these meetings regularly and report to me. It goes out to all of or people who have a need to know. I think depending on where it happens, we would stand ready to help evacuate that city.

Mr. QUINN. We picked a good day to have you here. I am going to see the Mayor tonight and I have gotten to meet a lot of his transportation personnel over the years. Thank you, Rick.

Jim, do you care to take a stab at that?

Mr. DERMODY. The Metropolitan Transportation Authority, our parent organization, in the event of an emergency or a catastrophe like you mentioned, would coordinate the response as they did on

9/11 and as they did during the blackout in New York City last summer. No one organization even within the MTA could survive without operating in partnership with the others. We would work very closely through pre-established plans with the New York City Transit, both in the Rapid Transit Division and in the Bus Division in order to evacuate people out of New York. There would be coordination between the Long Island Railroad which is the commuter railroad to the east and Metro North Railroad to the north.

In addition in our own in-house coordination with regards to operations, we would also include Amtrak and the New Jersey Transit because if we were faced with an overcrowding of people trying to go east, Penn Station in New York would be mobbed and we have a pre-established plan as far as the loading of trains in such a situation that would require controlling of the customers to specific areas to specific entrances to Penn Station which would have to be implemented along with New Jersey Transit and Amtrak. We couldn't do it by ourselves and it would be in cooperation between the entire MTA agency. The MTA has plans for this and work very closely with the New York City Police Department, the New York City Fire Department and the Office of Emergency Management and we have done it at least twice with September 11 and with the blackout.

Mr. QUINN. Thank you.

I don't know if Mr. Lunner from the Department of Homeland Security asked staff to stay but if they are here, I can check with them after the hearing, but I would ask, Rick, you specifically mentioned an application with Homeland Security for some funding for Metra at some point. One of the things we tasked Homeland Security and it is a brand new agency and department so it is sort of getting its legs as we speak, each and every day. It is difficult to move employees around but has there been any outreach from them to assist you with this grant application process or are you pretty much on your own?

Rick, I will ask you first because you said you actually applied?

Mr. TIDWELL. We were able to very efficiently apply for the money that was earmarked for us. I know the people who work for me in our grants department worked with IEMA who was the recipient of the money from Homeland Security.

Mr. QUINN. So there were no road blocks? It didn't make life miserable for you?

Mr. TIDWELL. No, sir.

Mr. QUINN. Jim, any experience for Long Island?

Mr. DERMODY. We have received money from both the ODP and from FEMA to address security interests and concerns. In addition, we use Homeland Security as well as the Army as consultants to come in and evaluate the system and point out potential areas which was funded by them also.

Mr. QUINN. That cooperation worked well?

Mr. DERMODY. The cooperation worked well.

Mr. QUINN. Thank you.

Steve?

Mr. LYNCH. I have had an opportunity, I lived in New York for a while and I know you are dealing with Penn Station and also I worked as an iron worker in Chicago so I know how important that

system is to the people in that region. I appreciate your coming here and raising this as a priority and saying we need some money.

I would ask, Mr. Tidwell, I notice you put a lot of money and time and resources into training your employees. I want to hear your thoughts on that as far as it being on the list of priorities on how to best protect our rail riding public.

Mr. TIDWELL. Metra's philosophy on training goes to all aspects of our operation and certain no less in the area of security. The grant we have received from DHS is going to be used to do additional training of our employees as I mentioned in my remarks. We did training on bomb recognition, reaction for our frontline employees. We are now going to train all of our employees because not only are the frontline employees obviously very important but many of our employees in our Finance Department, our Grants Department, wherever, are customers of Metra, they ride our system or they ride the CTA or our PACE suburban bus. The training they get there they can use as a passenger, it doesn't have to be on a Metra train, it can be on a CTA subway. So we intend to train them all. We think having those eyes and ears are critical for us to see things that don't look right, to report them to somebody and quickly respond to whatever is reported.

Mr. LYNCH. Thank you.

I might say in closing that Mr. Dermody, you have a wonderful representative here in Washington for rail and your interests, so I would say you are in good hands. I am very sad that he is leaving.

Mr. QUINN. Thank you. I am still on the payroll for another eight months, so I am around here.

Thank you both.

I want to thank Mr. Lynch for being here too. Not only is he not on the committee and he sat in for us but he is intelligent and knows what is going on. I wish I could get you off wherever you are and on to this subcommittee, to tell you the truth.

Let me thank both of you for your prepared statements because they are very helpful and for spending time with us through a couple of votes here today to get us to this part of the testimony. We really appreciate it and we value what both of you had to say. Thank you.

If there is no further business, we stand adjourned.

[Whereupon, at 3:27 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

Statement of Congresswoman Shelley Berkley
Subcommittee on Railroads
“Hearing on Railroad Security”
Washington, D.C.
May 5, 2004

Thank you Mr. Chairman and Ranking Member.

Yucca Mountain and the proposed shipment and storage of nuclear waste in Nevada poses one of the West’s most serious security threats. I am concerned about the waste at every stage of its transport. Waste would be vulnerable to attack during packaging, shipment, temporary storage, repackaging, and finally placed in a single national repository. It is an alarming fact that the nuclear waste will be stored above-ground for several years before it is actually placed in the repository.

Yet, the Administration and the nuclear industry, in defiance of the well-founded fears of Nevada citizens, rush recklessly ahead to build a high level nuclear dump in Nevada. Since the horrific attacks of September 11th on our nation, we are living in a far more dangerous world, but the Department of Energy has neglected to conduct tests assessing the risks of potential terrorist attacks not only on the Yucca Mountain Project, but as well as the transportation routes.

I would like to draw your attention to the alarming terrorism and homeland security issues inherent in the Yucca Mountain Project—issues the Department of Energy has negligently refused to confront. Despite spending over \$9 billion so far on the problem-ridden Yucca Mountain Project, DOE has made no effort to seriously address the target-rich environment that over 100,000 shipments of deadly nuclear waste would create.

Just last March, we witnessed the tragic terrorist attacks on the rail lines in Madrid, Spain. And on March 24, 2004 the danger of moving high level waste from existing storage facilities was underscored by the news from France that explosives were found planted under a rail bed. Imagine what would have happened if these trains had been carrying high-level radioactive waste. The threat of attack is real.

I call your attention to the fact that the Yucca Mountain Final Environmental Impact Statement, without factoring in the possibility of a terrorist attack, projects we can expect up to 300 accidents.

To this day, DOE and the Department of Homeland Security have failed to conduct tests assessing the risks of potential terrorist attacks, such as the attacks of September 11. **The ever-present risks for a potential terrorist attack or serious accident involving this waste while on our roads and rails cannot be overstated.**

A single truck bomb – or private plane used as a weapon – could cause the release of radioactive waste that could endanger lives, pollute the environment and cost billions in economic damages. Just last October, *60 Minutes* aired a segment depicting a nuclear waste cask fully penetrated by a TOW anti-tank missile. If this cask had been full of high-level radioactive waste, we could

have potentially seen 3,000 to 18,000 latent fatalities and cleanup and recovery costs exceeding \$10 billion.

In response, I have introduced the “Nuclear Waste Terrorist Threat Assessment and Protection Act,” which requires a comprehensive analysis of the project’s safety and vulnerability to terrorist attacks and the development of a federal emergency plan, including one specifically for airborne attacks, to defend the site. Under my legislation, the analysis and defense plan would cover the site, transportation routes and shipping casks, waste storage containers, and personnel working for the project, among other items.

This project is unprecedented in its scope and nature and in the potential harmful consequences for Nevadans, and thousands of communities across our nation on the proposed path of high-level nuclear waste enroute to Yucca Mountain. **A wake-up call has been issued, and we now – more than ever – need to take a serious look at the dangers associated with nuclear waste transport and storage.**

Once again, thank you Mr. Chairman.

PREPARED STATEMENT
OF MICHAEL N. CASTLE
MEMBER, U.S. HOUSE OF REPRESENTATIVES
HOUSE TRANSPORTATION & INFRASTRUCTURE
SUBCOMMITTEE ON RAILROADS
Oversight Hearing on Railroad Security

May 5, 2004

INTRODUCTION

- First, I would like to thank Chairman Quinn, Ranking Member Brown, and the rest of the Subcommittee Members for allowing me to say a few words today.
- Rail security is a priority for many Americans, particularly to Delawareans, who depend on rail for both inter-city travel and commuter service. In fact, our station in Wilmington was 13th in ridership out of the top 20 stations served by Amtrak in 2003 and is the primary station for those who commute north to Philadelphia and south to Newark.
- Delaware does not have a large-scale commercial airport, which increases our dependence on Amtrak and SEPTA commuter rail.
- My state's economy is also heavily reliant on freight rail. Delaware's chemical and poultry industries as well as the Port of Wilmington are serviced by the Norfolk Southern Railroad Corp. and count on them for shipment of their raw materials and finished products.
- I know that many states rely on rail— for commuters, personal transportation, economic necessity, or a combination of services, just as Delaware.

- I myself have commuted back and forth from Wilmington to Washington on Amtrak ever since I have served in Congress.

THREAT

- Few of us doubt that there is a real threat to our transportation systems, including the U.S. rail system. On April 2, the FBI and Department of Homeland Security (DHS) sent out an uncorroborated bulletin stating that terrorists could attempt this summer to conceal explosives in luggage and carry-on bags, such as duffel bags and backpacks.
- The bulletin indicated that such bombs could be made of ammonium nitrate fertilizer and diesel fuel, similar to what was used to blow up the Oklahoma City federal building in 1995.
- Awareness among riders must continue, so that Americans are well educated on the threats to our nation's rail systems, and our rail systems are well equipped to respond to an attack.
- Clearly, Al Queda has shown that they DO target and WILL strike rail targets throughout the world using simplified methods of delivery. Areas of vulnerability within our rail systems and the various delivery methods for attacks SHOULD be outlined and incorporated into a strong plan for passenger screening and incident response.
- For these reasons, I am here to show my support for making real progress on rail security. I realize that the "answers" to rail security are not the same "answers" to air security. **(mention that our air security continues to have setbacks despite billions in funding?)**
- Standard security precautions may not be practical for rail, many of which have the potential to drastically reduce ridership and cargo use. The convenience of rail could easily be jeopardized if our security solutions are not well planned.
- Canine detection, armed guards, baggage screening, trained personnel, surveillance cameras, and identity confirmation, are only a few examples of common security measures.

- In addition, I encourage the Subcommittee and the witnesses to consider increasing passenger access to emergency equipment— such as fire extinguishers, emergency doors and windows, alarms, radio communication capabilities, etc.

ASSESSMENTS

- Therefore, I view the Transportation Security Administration's (TSA) ongoing threat and vulnerability assessments of the nation's rail systems-- and the creation of an overall security plan, to be paramount in this process.
- Determinations and efforts in this process at the federal level continue to be fragmented, so much so that the GAO recommended that the Department of Homeland Security (DHS) sign a Memorandum of Agreement (MOA) with the Department of Transportation (DOT) to clarify each department's role and responsibility in rail security.
- These assessments and divisions of responsibility are crucial for Congress to determine the immediate needs, areas of highest threat, and practical first steps. Without a clear accountability structure—I fear that rail security is falling through the cracks.
- As I understand it, following the attacks of September 11th, Amtrak submitted a security plan to TSA, and the Federal Railroad Administration, requesting substantial amounts of funding for system-wide security upgrades, as well as tunnel and other capital upgrades to improve safety.
- I am interested to learn from the witnesses today-- the status of Amtrak's vulnerability assessments, efforts to meet these needs, and how close we are to devising a security plan for the passenger railroad.
- The GAO has also agreed to a request by Chairman Quinn, Senator Olympia Snowe, and I to review the rail security efforts being undertaken in Europe and Asia, so that foreign security methods can be reviewed by Congress and DHS officials for potential use on our rail systems.

FUNDING

- Maybe it is unreasonable to think that we can maintain ridership levels with thorough baggage screening and armed officers. Additionally, I realize that attempting to secure all vulnerable rail is impossible, much less affordable.
- Survey estimates done by the GAO suggest that addressing the security needs for rail in the nation's 50 largest cities would cost approximately \$2 billion. The American Public Transportation Association has stated that their transit members need at least \$6 billion to meet their security needs.
- Having said that— there must be some basic precautions, and a reaction plan, in place for high-threat areas.
- To meet these immediate demands, I believe it's imperative to take some first steps. I know that Mr. Gunn and Amtrak have made sacrifices in their own budget to increase passenger safety. But I cannot understand why, in the Fiscal Year 2004 Homeland Security Appropriations Conference Report, NOTHING was specifically earmarked to Amtrak, commuter rail, freight rail and transit services to assist with their security efforts.
- Of the funding that was included for the TSA, more than half was earmarked for port, highway, and intercity bus security grants. Of course, all of this funding is minimal compared to the \$3.7 billion allotted to for airport security.
- The release last November of \$50 million through the DHS's Urban Area Security Initiative (UASI) to Metropolitan Rail Transit Authorities was a solid first step in helping our transit systems address security needs.
- However, nothing was allotted in the bill to help the nation's intercity, commuter and freight rail systems.

- As Congress develops the Fiscal Year 2005 budget for DHS, I hope that we review the current allocations and take a more balanced approach to transportation security funding.
- Today, Senator Snowe and I wrote to the House and Senate Homeland Security Appropriations Subcommittees requesting that they set a side grant funding through the FY 05 UASI to specifically support the security efforts of ALL rail systems including Amtrak, commuter, freight, and mass transit.

IMPLEMENTATION

- Following the Madrid attacks, Secretary Ridge outlined how DHS plans to implement new rail and transit security initiatives—which I commend him for doing.
- I was also pleased to hear yesterday's announcement by DHS that the 30-day Transit and Rail Inspection Pilot or (TRIP) program, at the New Carrollton Station in Maryland, is on schedule to begin this month.
- I believe the establishment of the TRIP pilot project, increased K-9 surveillance, rail education and awareness programs and detailed threat assessments are just the beginning steps of what will hopefully be a strong federal commitment to the assessment, funding and implementation of rail security this year.

CONCLUSION

- Again, thank you Mr. Chairman and Ranking Member Brown for allowing me to join the Subcommittee today to hear from these witnesses on such an important issue to Delaware and the nation.

Statement by Congressman Jerry F. Costello
Committee on Transportation and Infrastructure
Subcommittee on Railroads
Oversight Hearing on Railroad Security
May 5, 2004

Thank you, Mr. Chairman, for calling today's very timely and important hearing on railroad security. I'd like to welcome today's witnesses.

The attacks earlier this year in Madrid demonstrated the vulnerabilities in a rail system. While thankfully we have not had a similar type attack here in the United States, our system is likely to be susceptible to similar types of attacks.

Protecting our nation's rail system poses a different set of challenges than our aviation system, as most passenger travel can be non-reserved or walk-up travel. Traditionally, there has been limited security at the train stations, in part because a train is operates on fixed-track and

doesn't face the same risks associated with being hijacked as an airplane does. In addition, unlike most other modes of transport, the infrastructure used by trains is privately owned, and large rail carriers maintain their own company-funded police forces.

However, there have been efforts to increase railroad security. Just yesterday, the TSA and DHS unveiled new passenger screening technology that would screen each passenger for explosives for testing. It is not expected that the screening equipment will be placed in each train station nationwide, but may be appropriate for use in certain circumstances with elevated risk.

I look forward to learning from today's witnesses to learn more about current and future efforts to improve railroad security.

Subcommittee on Railroads Hearing
Railroad Security
Congressman Elijah Cummings
May 5, 2004

Mr. Chairman:

Thank you for holding today's hearing and giving me this opportunity to voice my concerns about the security of our rail systems and urge appropriate and immediate action.

One third of all terrorist acts world-wide have been directed at transportation systems.

Here in the United States, our rail system remains acutely vulnerable.

Our passenger and freight networks touch every major urban center and hundreds of smaller communities.

Tragically, we recently witnessed the devastation caused by terrorist attacks on the Madrid, Spain, passenger rail system.

I should also note that our rail freight carriers transport millions of tons of hazardous materials throughout our country each year – often through densely populated areas.

During the next 24 years, moreover, the U.S. Department of Energy plans to authorize 3,000 – 3,300 railroad shipments of spent nuclear fuel from 39 states to Yucca Mountain.

These are just some of the facts that highlight the need for significantly expanded rail security.

I am especially alarmed that the federal government has yet to complete a national, risk-based threat management plan for preventing attacks upon our nation's rail system. In 2001, our colleagues Jim Oberstar, Henry Waxman, Marty Meehan and I requested a GAO report on this paramount issue. That report was ultimately issued last year. Entitled "Rail Safety and Security: Some Actions Already Taken to Enhance Rail Security, but Risk-Based Plan Needed," the GAO report offered this assessment (and I quote):

"The adequacy of this industry plan to protect communities and the railroad infrastructure is still unclear since the Transportation Security Administration lacks the framework for systematically evaluating and prioritizing actions needed to ensure the safety and security of the transportation of hazardous materials by rail."

I should also note that, since the September 11 attacks, this government has spent \$12 billion on aviation security.

During the same time period, railroad and transit agencies were authorized to receive only \$65 million in security grants in 2003 and \$50 million in 2004.

Moreover, when compared to the passenger and bag matching, explosives and weapons screening, and other security measures that have been implemented at our airports, the security of our rail system is negligible.

Clearly, this is an unacceptable failing.

We cannot let inadequate funding leave a vital component of our transportation system vulnerable to attack.

On April 8, our counterparts on the Senate Committee on Commerce, Science, and Transportation favorably reported proposed legislation that would support important first steps toward remedying these vulnerabilities.

The legislation would require the Under Secretary of Homeland Security for Border and Transportation Security (in consultation with the Secretary of Transportation) to complete a vulnerability assessment of our rail systems and develop a security plan within a reasonable and defined period of time.

In addition, the proposed Senate bill would authorize additional federal resources to better secure our rail system against terrorist attacks.

Following today's hearing, I encourage this Committee to follow suit and address the vulnerabilities in our existing rail security measures.

Permit me to close these opening remarks with the following observation.

Several years ago, as you will recall, Baltimore was the site of a potentially devastating railway chemical fire involving hazardous cargo.

Fortunately, no one was injured.

However, the fire burned for four days before it could be extinguished, and the economic losses were substantial.

The memory of that fire is indelibly etched into my memory.

Protecting our nation against terrorist attacks is an intimidating and expensive endeavor. But failing to adequately protect our nation will be even more expensive.

Failure is not an option.

I am happy to welcome Ron Frazier, Chief of Security for Amtrak, and Ed Hamberger, President of the Association of American Railroads (AAR), to today's hearing.

Since September 11, I have met with Amtrak and AAR several times, and I applaud their efforts to secure our railroads.

I look forward to their testimony and that of our other distinguished witnesses today.

Thank you Mr. Chairman.

**Testimony of James Dermody
President
Long Island Rail Road**

Thank you, Chairman Quinn, for the opportunity to speak before the Subcommittee. The MTA Long Island Rail Road is the busiest commuter railroad in North America, carrying an average of 274,000 customers each weekday on 730 daily trains. The Long Island Rail Road is a subsidiary of New York's Metropolitan Transportation Authority and recently marked its 170th Anniversary. Throughout its history, the LIRR has been an essential component of the region's transportation infrastructure, leading to the development of the Long Island communities it serves and providing a gateway to the economic growth of the region.

The LIRR system is comprised of over 700 miles of track on 11 different branches, from Montauk on the eastern end of Long Island to Penn Station in midtown Manhattan, approximately 120 miles away. The LIRR serves 124 stations in Nassau, Suffolk, Queens, Brooklyn and Manhattan, providing service for some 81 million customers each year.

Third-rail electric service is offered on the lines to Port Washington, Ronkonkoma, Babylon, Hempstead, Huntington, West Hempstead, Long Beach and Far Rockaway. Diesel service is provided on the lines to Oyster Bay, Port Jefferson, Montauk and Greenport.

Nearly 500 of the railroad's daily trains originate or terminate at Penn Station in Manhattan. Most of the remainder originate or terminate at Flatbush Avenue in Brooklyn, with a number of others originating or terminating at Hunterspoint Avenue and Long Island City in Queens. All of these terminals provide connections to MTA New York City Transit subway and bus service. All but one of the 11 branches pass through the Railroad's complex Jamaica hub, where customers can connect with trains for other branches and terminals.

87% of our AM Peak customers use Penn Station, 11% use Flatbush Avenue, and 2% use our Queens terminals at Hunterspoint Avenue and Long Island City.

Penn Station is shared by three railroads – the LIRR, Amtrak and New Jersey Transit. Serving over 1,000 trains per day between the three railroads, it is one of the busiest transportation facilities in the country. While Amtrak owns and operates the station, we share responsibility for dispatching and train movement at a joint facility known as Penn Station Central Control. Given the large volume of train and customer traffic through Penn Station, its operation requires the cooperation and careful coordination of all three railroads.

Leading to our two main terminals at Penn Station and Flatbush Avenue are a series of tunnels. Access to and from Penn Station is provided by the four East River Tunnels. Like Penn Station, the tunnels are owned by Amtrak, and used by the LIRR, Amtrak and NJ Transit. The LIRR has the exclusive use of Lines 3 and 4, and has shared usage of Lines 1 and 2 with Amtrak and NJ Transit. Flatbush Avenue Terminal access is provided by the Atlantic Avenue Tunnels under Atlantic Avenue through Brooklyn and Queens.

Freight service in LIRR territory was privatized in 1997 and is operated by the New York & Atlantic Railway, a subsidiary of the Anacostia & Pacific Company. The company carries about 15,000 carloads a year, and operates its freight trains over our tracks outside of the Peak commuter hours. Its employees are trained on our operating rules and physical characteristics. Freight trains do not operate through the tunnels into Penn Station or Flatbush Avenue.

With so many critical facilities around our system, Security and Safety have always been LIRR priorities. And that is true now more than ever. We have implemented a number of measures in order to carry out our strategy of detecting, detering, delaying and, ultimately, preventing threats to our system.

In fact, the MTA Chief of Security and LIRR Vice President – System Safety just returned from Madrid where they met with law enforcement and transportation officials.

The LIRR and its sister Railroad, Metro-North, are policed by officers from the MTA Police Department. MTA Police works closely with NYPD, Nassau and Suffolk county police, and the New York State Police. In addition, the MTA Police work closely with each agency, and are specially trained in the specific law enforcement issues and concerns that relate to transportation. Officers are familiar with our operations, our territory and our customers.

In analyzing potential points of vulnerability, we have placed special emphasis on critically important locations ... “high value targets” where there is the most potential for loss of life, serious socio-economic impacts to the region, high costs for recovery or replacement, or a large degree of environmental damage possible.

Locations such as Penn Station, Jamaica, the East River and Atlantic Avenue tunnels fall into this category.

One key aspect of our efforts is “target hardening” ... making these locations less penetrable and less vulnerable.

Some of the actions we have taken include:

- Increasing training for employees
- Awareness programs for both employees and customers, which includes on-train advertising highlighting the MTA’s “If You See Something, Say Something” campaign
- Improved electronic access control and increased security guard services at our facilities
- Physical barriers to entry at Penn Station, Penn Station Central Control and Jamaica
- Fencing and barriers at tunnel entrances
- Additional use and upgrade of surveillance cameras and intrusion alarms
- Participation in emergency preparedness drills and evaluation of our emergency plans
- And, perhaps most visibly to our customers, an increased police presence through additional MTA Police patrols throughout our system including tunnel entrances and Jamaica, New York State Police patrolling our trains, and the National Guard at Penn Station

Our future plans include a series of further target-hardening, defensive strategies intended to continue to decrease the level of vulnerability and further prevent unauthorized access to LIRR facilities.

The East River Tunnel Life Safety Program is a separate, though related, effort, aimed at improving safety measures within these tunnels owned by Amtrak. Typically, the LIRR pays the full cost of Life Safety Upgrades in Lines 3 & 4, and shares in the cost of upgrades for Lines 1 & 2. Bear in mind, Penn Station, the tunnels and the tunnel approaches were placed into service in 1910.

A wayside telephone communications system for emergency responders and LIRR crews has been installed in the four East River Tunnels and along the platforms at Penn Station. These phones are clearly marked with a blue light and placed approximately every 400 feet. LIRR construction costs were \$11 million.

Ventilation Plants on both the Manhattan and Queens side of the River will provide tunnel ventilation to clear and direct smoke conditions and new staircases to allow both evacuation and emergency response to occur simultaneously. The Long Island City plant is underway, and expected to be completed in 2006, with LIRR construction costs budgeted at \$80 million. The contract for the Manhattan plant is currently out to bid, and its construction is expected to cost the LIRR \$60 million.

A new ventilation system to clear and direct smoke conditions at track level in Penn Station itself was completed in 2002, and cost \$17 in LIRR construction costs. A tunnel standpipe system, budgeted at \$20 million in LIRR construction costs, is in the works in all four tunnels, and large portions have been completed. Wall-mounted dry-chemical fire extinguishers are also in place every 100 feet throughout the tunnels and are inspected and replaced as necessary.

In addition, the installation of handrails, signage and ladders along the benchwalls has already been completed. Between 1982 and 2004, a total of \$220 million in MTA Long Island Rail Road Capital Program funding has been earmarked for the LIRR's share of East River Tunnel Life Safety improvements.

Lastly, regarding difficulties that we've encountered in current laws related to security funding, there is a liability concern. While technological indemnification is addressed by the Department of Homeland Security and its regulations, this indemnification does not, however, extend to professional liability. Consultants who may have practical and necessary knowledge that would be beneficial in security measures are not indemnified for any professional knowledge they impart, which could impact the information they are willing to share.

I would like to thank you, once again, for the opportunity to speak before the Subcommittee; and I ask, at this time, if there are any questions that I might address?

**TESTIMONY OF
DANIEL DUFF, VICE PRESIDENT—GOVERNMENT AFFAIRS
AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON RAILROADS
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

May 5, 2004

SUBMITTED BY

**American Public Transportation Association
1666 K Street, N.W.
Washington, DC 20006
Tel: (202) 496-4800
Fax: (202) 496-4324**



APTA is a nonprofit international association of over 1,500 public and private member organizations including transit systems and commuter rail operators; planning, design, construction and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient and economical transit services and products. Over ninety percent of persons using public transportation in the United States and Canada are served by APTA members.

Mr. Chairman, thank you for this opportunity to testify on the security and safety of passenger rail and public transportation systems. We commend the House Subcommittee on Railroads for holding this hearing today particularly in light of the recent terrorist attacks in Madrid, Spain.

ABOUT APTA

The American Public Transportation Association (APTA) is a nonprofit international association of over 1,500 public and private member organizations including transit systems and commuter rail operators; planning, design, construction, and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient, and economical transit services and products. Over ninety percent of persons using public transportation in the United States and Canada are served by APTA member systems.

PASSENGER RAIL AND PUBLIC TRANSPORTATION SECURITY

Mr. Chairman, we do not need to emphasize the critical importance of keeping America's public transportation secure in this time of heightened national security. While this Subcommittee has jurisdiction over passenger and freight rail, we must look at the security of our surface transportation program in its entirety and that includes the full spectrum of public transportation services. At intermodal hubs such as Washington's Union Station there are blends of services including -intercity passenger rail, commuter rail, subway, and bus transportation. Congress should examine the unique security needs for all of America's public transportation.

This intermodal relationship extends to the nation's freight railroads, and APTA is pleased to work closely with the Association of American Railroads in this regard. Many commuter rail services are operated on freight-owned lines. Moreover, many commuter rail systems handle significant amounts of rail freight traffic. For example, the Southern California Regional Rail Authority (SCRRA) provides the right-of-way for the movement of 50 to 75 freight trains a day on property it owns, including all the rail freight traffic out of the Port of San Diego and 10-15% of the rail freight traffic out of the Ports of Los Angeles and Long Beach.

America's public transportation services are by design and necessity an open environment. Over 9 billion transit trips are taken annually on all modes of transit service. People use public transportation vehicles over 32 million times each weekday. This is more than sixteen times the number of daily travelers aboard the nation's domestic airlines and over 450 times the number used by Amtrak intercity services. The numbers of customers using public transportation each and every day create ongoing challenges for enhancing security within our transit environments.

In addition, transit employees are on the front line in our nation's effort against terrorism. They are the first responder evacuation teams who will assist in getting the public out of critical incident areas and our cities in the event of a terrorist attack. This was evident on September 11, 2001, when public transportation in New York City, New Jersey and Washington, D.C. helped safely evacuate citizens from center cities. Indeed, this same story was true around the country as transit systems quickly and efficiently evacuated people from closed airports and downtown areas. We remember that the interstate highway program was begun by President Eisenhower as a national defense interstate highway program. It is clear now that public transportation, too, has a significant

national defense component and is a fundamental element in responding to community disasters and emergencies.

In that connection, APTA is honored to play a critical role in transportation security and works closely with a number of federal agencies in this regard, notably the Federal Transit Administration (FTA) and the Federal Railroad Administration of the U.S. Department of Transportation, and the Transportation Security Administration (TSA), the Office of Domestic Preparedness (ODP), and the Directorate of Information Analysis & Infrastructure Protection of the U.S. Department of Homeland Security. At the program level, APTA works closely with these agencies to administer an industry audit program that oversees a system safety and security management plan for transit systems around the country. Our safety audit program for commuter rail, bus, and rail transit operations has been in place for many years and includes elements specific to security planning and emergency preparedness. Separately, in connection with Presidential Decision Directive Number 63, we are pleased to have been designated a Public Transportation Sector Coordinator by the Department of Transportation, and as my testimony notes below, we have established a Transit Information Sharing Analysis Center that provides a secure two-way reporting and analysis structure for the transmission of critical alerts and advisories to transit agencies around the country.

Since the events of 9/11, state and local public transit agencies, like all state and local entities, have spent significant sums on police overtime, enhanced planning and training exercises, and capital improvements related to security. In response to a 2004 APTA survey, transit agencies around the country have identified in excess of \$6 billion in transit security needs. These include both immediate capital investments and recurring operating expenses related to security. It is important to note that these costs are above and beyond the capital infrastructure needs we have identified under the TEA 21 reauthorization effort. Our comprehensive transit security survey has just now become available, and I would be pleased to submit the complete survey for the record.

BACKGROUND

Mr. Chairman, prior to and following September 11, 2001—the date of the most devastating terrorist attack in U.S. history—APTA has played a key role in addressing the safety and security issues of our country. American public transportation agencies have also taken significant measures to enhance their security and emergency preparedness efforts to adjust to society's new state of concern. Although agencies had a wide range of security initiatives in place at the time of the World Trade Center and Pentagon attacks and already had developed emergency response plans, the September 11 incidents focused, strengthened and prioritized security efforts throughout the industry.

Transit agencies have had a good safety record and have been working for many years to enhance their system security and employee security training, partly responding to government standards, APTA guidelines, and by learning through the attacks on transit agencies abroad. For example, the 1995 sarin gas attack in the Tokyo subway system caused U.S. transit properties managing tunnels and underground transit stations to go on high alert. The San Francisco Bay Area Rapid Transit District, for instance, responded to the possible threat of chemical weapons attacks by sending a police team to Fort McClellan, Alabama, to learn response tactics from U.S. Army chemical weapons experts.

In the months following the September 11 terrorist attacks, transit agencies of all sizes worked to identify where they might be vulnerable to attacks and increased their security expenses for both operations and capital costs. The agencies subsequently upgraded and strengthened their emergency response and security plans and procedures, taking steps to protect transit infrastructure and patrons and increase transit security presence while giving riders a sense of security.

Some initiatives around the country include:

- Increased surveillance via closed circuit TV.
- Increased training for employees.
- Hired more police, K-9 units added.
- Chemical detection systems being tested.
- Infrastructure design to eliminate hiding places.
- Drills are routinely held with first responders.
- Encouraging riders to be vigilant for suspicious activities or items.

After September 11, many transit organizations worked to prevent unauthorized entry into transit facilities. The need for employees and passengers to stay alert and report suspicious occurrences became a key goal of many agencies. These efforts are paying off. While many transit agencies are more secure than prior to September 11, more needs to be done.

Since the attacks, APTA and the Federal Transit Administration have emphasized the need for effective transit security and emergency preparedness. FTA has sent security resource toolkits to transit agencies; completed security-vulnerability assessments of the nation's largest transit systems; and provided technical support and grants of up to \$50,000 to fund agency emergency drills.

FTA continues to provide emergency preparedness and security forums nationwide. In emphasizing the importance of enhancing transit security, FTA Administrator Jennifer L. Dorn noted that thousands of lives were spared on September 11 in New York City and Washington "because of the quick action of first responders and transit workers."

APTA has launched many additional efforts to further transit industry security and preparedness, collaborating with FTA in developing emergency preparedness forums, and sponsoring and organizing security-related conferences and workshops. Moreover, APTA developed a list of critical safety and security needs faced by the transit industry, which it has provided to the Department of Transportation and the U.S. Congress. Mr. Chairman, I would be pleased to submit this and other data discussed in my testimony for the record.

PUBLIC TRANSPORTATION INFORMATION SHARING ANALYSIS CENTER (ISAC)

Presidential Decision Directive Number 63 authorizes and encourages national critical infrastructures to develop and maintain ISACs as a means of strengthening security and protection against cyber and operations attacks. APTA is pleased to have been designated a Public Transportation Sector Coordinator by the U.S. Department of Transportation, and in that capacity has received a \$1.2 million grant from the Federal Transit Administration to establish a transit ISAC. APTA recently formalized an agreement with a private company to implement the ISAC and make it available to public transit systems around the country.

This ISAC for public transit provides a secure two-way reporting and analysis structure for the transmission of critical alerts and advisories as well as the collection, analysis and dissemination of security information from transit agencies. The public transit ISAC also provides a critical linkage between the transit industry, the U.S. Department of Transportation, the Transportation Security Administration, and the Office of Homeland Security. A request for funding to continue this ISAC has been submitted to the Department of Homeland Security's Directorate of Information Analysis & Infrastructure Protection.

ONGOING TRANSIT SECURITY PROGRAMS

Mr. Chairman, while transit agencies have moved to a heightened level of security alertness, the leadership of APTA has been actively working with its strategic partners to develop a practical plan to address our industry's security and emergency preparedness needs. Shortly after the September 11 events, the APTA Executive Committee established a Security Task Force under the leadership of Washington Metro's CEO, Richard A. White. The APTA Security Task Force has established a security strategic plan that prioritizes direction for our initiatives. Among those initiatives, the Task Force serves as the steering group for determining security projects that are being implemented through over \$2 million in Transit Cooperative Research Project funding through the Transportation Research Board.

Through this funding, APTA held four transit security workshop forums for the larger transit systems with potentially greater risk exposure. These workshops provided confidential settings to enable sharing of security practices and applying methodologies to various scenarios. The outcomes from these workshops were made available in a controlled and confidential format to other transit agencies unable to attend the workshops. The workshops were held in New York, San Francisco, Atlanta, and Chicago.

In partnerships with the Transportation Research Board, the APTA Security Task Force has also established two TCRP Panels that identified and initiated specific projects developed to address *Preparedness/Detection/Response to Incidents* and *Prevention and Mitigation*. The Security Task Force emphasized the importance for the research projects to be operationally practical.

In addition to the TCRP funded efforts, a generic *Checklist For Transit Agency Review Of Emergency Response Planning And System Review* has been developed by APTA as a resource tool and is available on the APTA website. Also through the direction of the Security Task Force, APTA has reached out to other organizations and international transportation associations to formally engage in sharing information on our respective security programs and directions and to continually work towards raising the bar of safety and security effectiveness.

Within this concept of partnership and outreach, APTA also continues in its ongoing collaboration with the Federal Transit Administration to help in guiding and developing FTA programs. Among these are regional Emergency Preparedness and Security Planning Workshops that are currently being delivered through the Volpe Center and have been provided in numerous regions throughout the U.S. The primary focus of such workshops has been to assist particularly smaller transit systems in building effective emergency response plans with first responders and their regional offices of emergency management. Also within this partnership, APTA has assisted the FTA and the National Transit Institute in the design of a new program "Security Awareness Training for Frontline Employees and Supervisors." This program is now being provided by NTI to transit agencies throughout the nation.

Collaborative efforts between APTA, FTA, Volpe Center, and the National Transit Institute are also underway to establish a joint website that will specifically gather and disseminate effective transit practices with initial emphasis on safety and security.

As you may be aware, APTA has long-established Safety Audit Programs for Commuter Rail, Bus, and Rail Transit Operations. Within the scope of these programs are specific elements pertaining to *Emergency Response Planning and Training* as well as *Security Planning*. In keeping with our industry's increased emphasis on these areas, the APTA Safety Audit Programs have similarly been modified to place added attention to these critical elements.

APTA's Committee on Public Safety, continues to provide a most critical forum for transit security professionals to meet and share information, experiences and programs and to also provide valuable input to programs being developed by the FTA.

SECURITY INVESTMENT NEEDS

Mr. Chairman, after the awful events of 9/11, the transit industry invested some \$1.7 billion in enhanced security measures building on the industry's considerable efforts already in place. At the same time, our industry undertook a comprehensive review to determine how we could build upon our existing industry security practices. This included a range of activities, some of which I discussed earlier in my testimony, including research, best practices, education, information sharing in the industry, surveys and the like. As a result of those efforts we are now at a phase where we know what we can most effectively do in terms of creating a more secure environment for our riders and have accordingly identified critical security investment needs.

Our latest survey of public transportation security identified needs of at least \$5.2 billion in additional capital funding to maintain, modernize, and expand transit system security functions to meet increased security demands. Over \$800 million in increased operating costs for security personnel, training, technical support, and research and development have been identified, bringing total additional transit security funding needs to more than \$6 billion.

Responding transit agencies were asked to prioritize the uses for which they required additional federal investment for security needs. Priority examples of operational needs include:

- Funding current and additional transit agency and local law enforcement personnel.
- Funding for over-time costs and extra security personnel during heightened alert levels.
- Training for security personnel.
- Joint transit/law enforcement training.
- Security planning activities.
- Security training for other transit personnel.

Priority examples of security capital investment needs include:

- Radio communications systems.
- Security cameras on-board transit vehicles and in transit stations.
- Controlling access to transit facilities and secure areas.
- Automated vehicle locator systems.
- Security fencing around facilities.

Transit agencies with large rail operations also reported a priority need for federal capital funding for intrusion detection devices.

To date the DHS has allocated some \$115 million for public transportation security through its Office of Domestic Preparedness, and we appreciate this support from the Department. We trust that we can now begin to build on those initial investments and address the \$6 billion in critical needs the transit industry has identified. The Administration's FY 2005 budget, however, does not specifically call for investment in public transportation security. We think it should. Currently ODP grants for transit systems are made available through the states, which means that our transit systems do not have a direct relationship with DHS, and which also means that the process of getting the funds to the local transit systems can be lengthy. Mr. Chairman, our nation's transit systems have a direct and cooperative working relationship with DOT's Federal Transit Administration which allocates federal capital investment quickly to the local level, and we believe this is an excellent model that we would like to see developed over time with the DHS. We stand ready to help in any way we can in that regard.

CONCLUSION

Mr. Chairman, in light of our nation's heightened security concerns post 9/11, we believe that increased federal investment in public transportation security by DHS is critical. The public transportation industry has made great strides in transit security improvements since 9/11 but much more needs to be done. We look forward to building on our cooperative working relationship with the Department of Homeland Security and Congress to begin to address these needs. We again thank you and the Subcommittee for allowing us to testify today and your commitment in the nation's transportation infrastructure, and look forward to working with you on safety and security issues.

74

**PREPARED STATEMENT
OF ERNEST R. FRAZIER, SR., ESQ.
AMTRAK, CHIEF OF POLICE AND SECURITY DEPARTMENT**

**HOUSE TRANSPORTATION & INFRASTRUCTURE
SUBCOMMITTEE ON RAILROADS**

Oversight Hearing on Railroad Security

May 5, 2004

Mr. Chairman and Members of the House Transportation and Infrastructure Subcommittee on Railroads, thank you for the opportunity to provide comment and information on matters involving rail security in the United States.

CURRENT STATE OF SECURITY

First, before I address security issues, I believe that it may be helpful for this subcommittee to know a little about Amtrak and its Police and Security Department. Amtrak is the nation's only intercity passenger rail transportation company and operates over 300 trains per day over some 22,000+ miles of rail with approximately 540 Stations in 46 states. Amtrak carried over 24 million passengers in the last fiscal year. Like rail transportation systems worldwide and mass transit systems in the United States, Amtrak functions in a very "open" transportation environment. Because of advantages such as easy access, convenient locations and intermodal connections, rail and mass transit systems are completely different from the structure and organization of the airline transportation and airport industry. As a result, the security framework that works ideally in the airport setting is not transferable to the rail station system.

A prime example of this dichotomy can be observed by looking at the Amtrak service route. In Penn Station, New York there are literally hundreds of thousands of people using the facility on a daily basis with passengers boarding and unboarding trains that are operated by Amtrak, LIRR and New Jersey Transit commuter trains. Penn Station is a vast, bustling intermodal transportation facility with detailed passenger planning coordinated with the dispatch, arrival and departure of trains on a minute-by-minute precision basis. In addition, Amtrak also has numerous stations that are

unmanned or are merely platforms that are located throughout its national service route. Because of this diverse and complex organization, any delays built into this framework with security regulations would drastically affect the operation of rail transportation and the valued openness of its environment. While this certainly presents formidable security challenges here in the United States as well as in other countries throughout the world, these elements are also the key reasons why rail and mass transit systems remain as popular and useful transportation modes.

The Amtrak Police Department has 342 sworn officers with most of its security force located in the Northeast Corridor where Amtrak runs and operates the tracks and infrastructure. In 1992, it received the distinction of being the first national law enforcement agency accredited by the prestigious Commission on Accreditation of Law Enforcement Agencies (CALEA) and has been recredited in 1997 and 2002. The Department has oversight responsibility for the planning, assessment and evaluation of Amtrak's passenger, critical infrastructure, and station security, emergency response plans and operations.

Though the Amtrak Police Department is a traditional police force that does not focus on counter terrorism, since September 11, 2001, our department has worked to develop terrorism-based vulnerability and threat assessments, emergency response and evacuation plans, as well as security measures that address not only vandalism and other forms of street crime but the potential for explosion and blast effects at critical infrastructure locations. Amtrak has also developed a Security Threat Level Response Plan (ASTLRP) that mirrors the HSAS and requires Amtrak to engage in specific security countermeasures according to the existing threat level. To effectively engage in

these responsive measures, Amtrak also created a Security Coordinator Program. Within each Amtrak division, a Security Coordinator works closely with Amtrak Police and Security personnel to review the security components and steps of the ASTLRP and to ensure that employees within their division are undertaking the required steps. Amtrak reinforces security messages and guidelines through this program and has also established a Security Information Center to increase employee awareness about security issues and to directly provide security tips, bulletins and specific information on security policies and procedures.

Amtrak has also increased its police canine patrols by adding twelve explosive detection canine teams to conduct random sweeps of baggage rooms, train platforms and stations. The Police Department has also purchased full-face respirators for all sworn personnel and deployed these devices for Amtrak's first responders to protect against a CBR attack. In major stations, gamma/neutron radiological detectors have also been deployed to address radiological threats. Finally, Amtrak has instituted a practice of conducting random photo identification for passengers purchasing tickets and instituted a plan for placing weight restrictions on baggage at certain levels of heightened security.

As part of its ongoing security efforts, the Amtrak Police Department does budget for elevations in the HSAS because manpower costs during an "Orange" level alert are roughly \$11,000 per day. However, there have been so many days this fiscal year already at this alert level that Amtrak is coming close to surpassing its reserve budget. Also, such a focus on counter terrorism makes Amtrak less effective in providing its general police service to its travelers and stations users.

Though Amtrak continues to prepare to prevent an attack on our rail system, we also recognize that we must stand ready to manage an incident if and when there is some form of attack. Through our Office of Emergency Preparedness we conduct training for first responder agencies (over 21,000) situated along the Amtrak service route. We have purchased a public safety database that lists each police, fire and emergency rescue agency in order to facilitate state and local emergency response and to establish a clear record of agency training. The Amtrak Police and Security Department has also developed close working relationships with our federal partners: DHS, TSA, DOT, and FRA to ensure effective communications exist and that our security efforts are coordinated.

Amtrak is working with FRA to arrange for and conduct blast vulnerability studies of train equipment and is working with DHS, FRA and TSA to develop a basic security awareness training course for all Amtrak employees. There have also been numerous collaborations with the above agencies that address rail security matters. Some of these initiatives include Land Transportation Anti-terrorism training that was provided by FLETC to Amtrak Police personnel and its Security Coordinators as well as two emergency response drills in which scores of federal, state and local agencies conducted exercises related to a terrorist incident. All of these initiatives were sponsored by TSA.

LEGAL ENHANCEMENTS

With regard to deficiencies within our current law that should be corrected to strengthen rail security, Amtrak supports amending the Railroad Section of the United States Crimes Code to include passenger rail to ensure that an act of terrorism committed

against a passenger and/or mass transit rail system be treated in the same manner it would at any other transportation facility. Additionally, I would ask this subcommittee to address some basic legal matters that confronts Rail Police across the Nation and Amtrak. Specifically, Rail Police are not on the same equitable level as state, local and mass transit police in other key areas, such as, ability to participate in the bulletproof vest partnership program, entitlement to Public Safety Officer benefits and in some states, like California, the ability to directly access law enforcement records systems while performing pedestrian and vehicle investigations.

Further, while Amtrak has submitted security plans to the government for review and currently has been included in S. 2273, the Rail Security Act of 2004, which was recently reported out of the Senate Commerce Committee, the lack of a consistent and ongoing source for security related funding issues will remain in the future, even if its immediate and critical needs are addressed through the current legislation. I would also request consideration of specific legislation in this area.

Thank you for this opportunity to provide testimony to the subcommittee.

80

STATEMENT OF

EDWARD R. HAMBERGER

PRESIDENT & CHIEF EXECUTIVE OFFICER

ASSOCIATION OF AMERICAN RAILROADS



BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEE ON RAILROADS

MAY 5, 2004

On behalf of the members of the Association of American Railroads (AAR), thank you for the opportunity to meet with you today to discuss railroad security. AAR members account for the vast majority of rail mileage, employees, and revenue in Canada, Mexico, and the United States.

The AAR and its members join the rest of our nation in extending our sympathy and condolences to the victims of the recent terrorist attacks in Madrid. Those senseless attacks underscore the unfortunate reality that the global war on terror remains unfinished. The attacks also remind us of the importance of security as it relates in particular to railroads.

Freight railroads are keenly aware of the tension between the need for transportation efficiency and the assurance that our transportation systems are adequately protected from terrorist threats. We urge Congress to strike a proper balance between protecting our country's transportation assets and its citizens, and providing for the free flow of goods and promoting our international competitiveness. As Secretary Mineta has remarked, "What we don't want is for our checkpoints to become chokepoints."

Below I will discuss the many ways that U.S. freight railroads have addressed security in the post 9-11 era.

The Immediate Aftermath of September 11

The rail industry reacted swiftly to the events of September 11, in full cooperation with government authorities. In the immediate aftermath of the attacks, railroads tightened security and intensified inspections across their systems. Major railroads — which maintain their own police forces to help assure the security of employees, property, and freight — put into place more than 50 countermeasures to help ensure the

security of the industry. For example, access to important rail facilities and information was restricted. The industry significantly increased cyber-security procedures and techniques. Employee records were compared with FBI terrorist lists. Security briefings, like safety briefings, became a daily part of many employees' jobs.

In late September 2001, the AAR Board of Directors established a Railroad Security Task Force. The task force had the full participation of AAR members, including our Canadian and Mexican members and the American Short Line and Regional Railroad Association (ASLRRA). The overarching focus of this task force was 1) to ensure the safety of rail employees and the communities in which railroads operate; 2) to protect the viability of national and regional economic activity; and 3) to ensure that railroads can continue to play their vital role in the military mission of our nation.

Over the next several months, the task force conducted a comprehensive risk analysis of the freight rail industry. Using CIA and national intelligence community "best practices," five critical action teams (consisting of more than 150 experienced railroad, customer, and intelligence personnel) examined and prioritized railroad assets, vulnerabilities, and threats. The critical action teams were:

1. Information Technology and Communications: This team examined the security of railroad communications, control systems, and information systems, including the evaluation of procedures regarding system redundancy, data confidentiality, emergency incident handling, and reconstitution of service. Based on the efforts of this team, many security measures were implemented immediately across the industry.

2. Physical Infrastructure: This team assessed the physical security of essential bridges, buildings, dispatch centers, tunnels, storage facilities, and other structures. A

database of critical assets was created and recorded in a Geographic Information System. Amtrak's critical assets are included in this database. The team also addressed cross-border and port "gateway" physical security issues.

3. *Operational Security*: This team documented the "life cycle of a train" and determined ways to minimize exposure to unplanned occurrences while trains are in operation. It also addressed the issue of fuel supply.

4. *Hazardous Materials*: This team examined the transport of hazardous materials by rail, with emphasis on materials (such as potentially poisonous gases) that pose the greatest potential safety risk. The team identified current shipping patterns for these materials and worked closely with the chemical industry and tank car manufacturers to evaluate alternatives, including routing restrictions, product remanufacturing, and packaging.

5. *Military Liaison*: This team worked with the Department of Defense and its Military Traffic Management Command (MTMC) to determine immediate and ongoing military traffic requirements and to identify capacity, security, and equipment needs of the industry to meet military demand. The Department of Defense relies on freight railroads to move ordnance and equipment. For example, railroads transported some 98 percent of the ammunition used by the United States in the Iraq war. The MTMC, recently renamed "Surface Deployment and Distribution Command," has designated 30,000 miles of rail corridors — known as the Strategic Rail Corridor Network (STRACNET) — as essential to the national defense. The AAR is in full agreement with this assessment. Our nation's railroad route structure is vital to both homeland security and to the support of DOD initiatives.

In addition to the above activities, freight railroads cooperated fully with a separate team, involving the Federal Railroad Administration (FRA), commuter railroads, and Amtrak, dealing with rail passenger security.

The Terrorism Risk Analysis and Security Management Plan

The end result of the work of the freight railroad critical action teams was the development of a Terrorism Risk Analysis and Security Management Plan (“Plan”), a comprehensive, 24/7 priority-based blueprint of actions designed to enhance the security of the nation’s freight rail network and its ability to support our economy, national defense, and public health.

The AAR Board of Directors adopted the Plan on December 6, 2001, and it remains in effect today. The security processes and analyses detailed in the Plan, including actions and countermeasures, are periodically evaluated — and modified, as appropriate — for effectiveness and to ensure maximum efficiencies from advances in security technology and procedures.

The Plan defines four security alert levels and details the actions to be taken at each level as the terrorist threat increases. Alert level actions are applied in the areas of operations (including transportation, engineering, and mechanical), information technology/telecommunications, and railroad police.

Alert Level 1 is “New Normal Day to Day Operations” and exists when a general threat of possible terrorist activity exists but warrants only a routine security posture. Thirty-two actions are in effect at this level, including conducting security training and awareness activities; restricting certain information to a need-to-know basis; restricting

the ability of unauthenticated persons to trace certain sensitive materials; and periodically testing that security systems are operating as intended.

Alert Level 2 is “Heightened Security Awareness” and applies when there is a general non-specific threat of possible terrorist activity involving railroad personnel and facilities. Twenty-one additional actions are in effect at this level, such as including security and awareness briefings as part of daily job briefings; conducting content inspections of cars and containers for cause; conducting spot content inspections of motor vehicles on railroad property; and increasing security at designated facilities.

As of today, the freight rail industry is at Alert Level 2, with a number of added security actions focused on transportation of certain hazardous materials in several metropolitan areas. These extra precautions are in place to address special circumstances as described to the railroad industry by the Department of Homeland Security.

Alert Level 3 is put into place when there is “a credible threat of an attack on the United States or railroad industry.” It applies when an increased, credible, and more specific threat of terrorist activity exists than at Level 2. A decision to declare Level 3 will be evaluated in light of the specificity of threat against railroad personnel and facilities. The 40 additional actions in Level 3 must be capable of being maintained for weeks without causing undue hardship on railroads or their customers. Examples of Level 3 actions include further restricting physical access and increasing security vigilance at control centers, communications hubs, and other designated facilities and requesting National Guard security for critical assets.

Alert Level 4 applies when a confirmed threat against the railroad industry exists, an actual attack against a railroad or an attack in the United States causing mass

casualties has occurred, or other imminent actions create grave concerns about the safety of operations. There are 19 additional actions to be implemented at this level that will be instituted for up to 72 hours and periodically evaluated for continuation. These include stopping non-mission-essential contract services with access to critical facilities and systems; increasing vigilance and scrutiny of railcars and equipment during mechanical inspections to look for unusual items; and ensuring continuous presence of guards at designated facilities and structures.

Alert Levels 3 and 4 can be declared industry-wide for a short period of time or can be declared in a particular geographic or operational area (e.g., the Midwest or hazardous materials) where or when intelligence has identified that terrorist action against a specific location or operation is imminent.

The Railway Alert Network and ST-ISAC

To help ensure that the parties involved have access to pertinent intelligence and other information, the rail industry is in constant communication with intelligence and security personnel at the Department of Homeland Security (DHS), the Department of Defense (DOD), the Department of Transportation (DOT), the FBI's National Joint Terrorism Task Force (NJTTF), state and local law enforcement, and others. A railroad police officer and knowledgeable railroad analysts work literally side-by-side with government intelligence analysts at NJTTF and in two intelligence offices within DHS (the Information Analysis and Infrastructure Protection Directorate and the Transportation Security Administration) to help evaluate intelligence at the Top Secret level.

The heart of this communication system is the Railway Alert Network (RAN). The major purpose of the RAN, which was established by the AAR shortly after

September 11, is to monitor the level of threat to the rail industry and to alert the industry if it changes. The hub of the RAN is AAR's Operations Center, which operates at the Secret level and is staffed with mobile communications around the clock at Alert Level 2 and is physically staffed at Levels 3 and 4.

The RAN is linked to the Surface Transportation Information Sharing and Analysis Center (ST-ISAC). The ST-ISAC, which was created by the AAR at the request of the U.S. Department of Transportation, provides a robust capability for collecting, analyzing, and distributing security information from worldwide resources to protect vital physical assets and information technology systems. Cleared at the Top Secret level, the ST-ISAC also operates 24-hours-a-day, 7-days-a-week. Along with the freight railroads, Amtrak and approximately 75 transit and commuter rail authorities (through the American Public Transit Association) are members of the ST-ISAC.

Obviously, rail security efforts depend a great deal on the efforts of railroads' dedicated and highly professional employees — including engineers and conductors aboard trains, maintenance of way crews and inspectors working along the tracks, railroad police officers, and others. They are the “eyes and ears” in the industry's security effort, and we should all be grateful for their vigilance and care.¹

In recognition of the thoroughness of the railroad security plan and the dedication with which it has been put into effect, in June 2003 the Association of American Railroads was named a recipient of the U.S. Department of Defense's James S. Cogswell

¹ Under existing federal law, railroad police officers have law enforcement authority only while on the property of their own railroad. However, Section 212 of S. 1402 (the “Federal Railroad Safety Improvement Act”), which passed the Senate in November 2003 and has been referred to the House Committee on Transportation and Infrastructure, would grant railroad police enforcement authority on *any* railroad. Railroads strongly support this provision.

Award for Industrial Security. The Cogswell Award is the most prestigious award in the industrial security field. Of nearly 11,000 cleared contractors, only 15 were selected to receive the award in 2003. The railroad industry is also one of the few private sector industries to receive an "A" for its security efforts in a recent independent analysis by *The Washington Post*.

Notwithstanding all of these rail industry efforts, we recognize that there can be no 100 percent guarantee against terrorist assaults. If such an assault involving freight railroads occurs, railroads have established programs and procedures that can and will be invoked that are designed to respond to, mitigate, and minimize the impact of dangerous and unusual incidents. The programs and procedures include the establishment of emergency response plans for hazardous materials incidents, operational administration redundancy, and the training of rail employees and public emergency response personnel.

Railroad Hazardous Materials Movements

Railroads work to ensure the continued safety of hazardous materials transport in numerous ways.

For example, railroads provide rigorous tank car quality assurance programs, field testing, and inspections of chemical loading facilities; assist communities in developing and evaluating emergency response plans; provide hazmat training for emergency responders; and support Operation Respond, a nonprofit institute devoted to improving the communication of emergency response information to police and fire departments.

Tank cars must meet stringent U.S. DOT specifications if used to transport hazardous materials. For example, they must be equipped with pressure relief devices (to protect the tank in the event of fire) and double shelf couplers (to prevent tank punctures

by a coupler). Some cars also have steel “head shields” at each end of the car (to further protect against puncture), thermal shields, jacketed insulation systems, and protected top and bottom fittings.

The AAR and the railway supply industry jointly fund the Tank Car Safety Research and Test Project. This project monitors tank car accidents and is continually updating a comprehensive database on the precise nature of damage to tank cars. Analysis of these data improves safety by improving researchers’ ability to identify the causes of tank car releases and how to help prevent future occurrences. The project database is often cited by the U.S. DOT as a role model for other modes of transportation. In addition to its ongoing safety data collection and analysis activities, the project also has a number of ongoing research efforts, including efforts aimed at developing better steels for tank cars and developing a method for testing the effectiveness of surge suppression devices for tank cars.

Going forward, the railroad industry is committed to using resources at its disposal and continuing to work closely with federal security agencies and with local and state authorities to help ensure that our nation’s security and safety are not compromised. At the same time, it must be recognized that the flow of many types of essential products — including some products that are characterized as “hazardous materials” — cannot be unreasonably disrupted without causing significant damage to our nation’s health and economic well being.

Chlorine, for example, is potentially extremely dangerous if misused or mistreated. At the same time, the chemical is absolutely critical to our physical health because of its widespread use as a purifier at water treatment facilities, in a huge array of

pharmaceutical products, and in hundreds of other uses. Even a brief shutdown of the transportation of chlorine would have potentially devastating effects.

The rail industry cautions against actions that might appear appealing at first glance, but in reality could be contrary to the public interest. For example, railroads oppose Section 443(g) of S. 1978, the "Surface Transportation Safety Reauthorization Act of 2003," which passed the Senate as part of the TEA-21 reauthorization bill. This provision authorizes the U.S. DOT to grant to state or local authorities the power to preempt federal law regarding hazmat transportation during certain "emergency" situations. Railroads also oppose efforts to grant to local governments the authority to restrict rail movements.

Railroads operate as part of an integrated national network and regulatory constraints on operations can have a ripple effect throughout the rail system. The effect is not circumscribed by state or local boundaries. Because rail transportation is inherently interstate in nature, the safe rail transport of any commodity, including hazardous materials, requires a uniform set of standards that apply nationwide.

This uniformity would be severely jeopardized if states or localities sought to force rerouting by prohibiting the transportation of hazardous materials within their jurisdictions. If this happened, optimal transportation routes, from the perspective of national safety and security, might be foreclosed. For example, rerouting can involve an increase in miles traveled, and those additional miles could be on rail infrastructure less suitable (for a variety of reasons) to handling hazardous materials. Emergency response capability along alternate routes may lack requisite expertise in handling the most dangerous commodities. Additional switching and handling of cars along with added

“dwell time” in yards — all potential consequences of using less efficient routes — also have the effect of increasing exposure.

Indeed, given the limited routing options for rail transportation, rerouting mandates of this sort could effectively result in the near cessation of hazardous materials transportation by rail, leading to the diversion of such traffic to the nation’s highways where the likelihood of accidents involving hazardous materials is far higher.²

Recently, the D.C. City Council has raised concern about the transportation of hazardous materials through the city. The railroad industry is cooperating fully with the DHS, the DOT, and the city government to assess the security of the rail corridor that runs through Washington, DC. Recently, vulnerability assessment teams conducted an intense review of the railroad property within the Beltway. Since the terrorist attacks on September 11, 2001, CSX Transportation, which owns the railroad, has “hardened” that corridor by adding surveillance, restricting access, enhancing Communications, and coordinating with local law enforcement, U.S. Capitol Police and the Department of Defense. This ongoing assessment will identify any additional countermeasures that may be required.

The rail industry agrees that vigilance in the transportation of hazardous materials must be maintained, and efforts must be made to increase hazmat safety where possible and practical. But decisions to reroute potentially hazardous products must be based upon sound analysis of the consequences. To address problems associated with the transportation of important chemicals, the rail industry is working closely with the

² According to U.S. DOT data, railroads and trucks carry roughly equal ton-mileage of hazardous materials, but trucks have nearly 16 times more hazmat releases than railroads.

chemical industry, DOT, DHS, the Homeland Security Council at the White House, and others to address potential vulnerabilities — and recommend appropriate safeguards — in an analytical and comprehensive fashion.

One of the issues of concern identified by the rail industry in the course of its risk assessment is a federal requirement to place placards on rail cars carrying hazardous materials. Local first responders use the information posted on placards to determine car contents. The industry is working with the FRA and the Transportation Security Administration to study alternative means of providing car content information to the emergency response community. If successful, this could serve as a substitute for the reliance on placards.

In developing the industry's security plan, the railroads closely coordinated with major customer groups to avoid logistical gaps in the supply chain. For example, the Chlorine Institute subsequently developed a chlorine transportation security plan that dovetails with the railroads' plan. The American Chemistry Council and the AAR are working toward agreement on how to coordinate security measures for shipments of other hazardous materials.

Passenger Railroads

More than 90 percent of the route mileage over which Amtrak operates, as well as a significant portion of the trackage over which many commuter railroads operate, is actually owned and maintained by freight railroads. Therefore, actions taken by freight railroads to enhance security also benefit passenger rail. Freight railroad police coordinate with and support Amtrak police to, among other things, increase uniformed police presence in rail passenger stations. Amtrak, commuter rail and transit authorities,

and the freight railroads receive and share threat and incident information through the RAN and the ST-ISAC. That said, freight railroad security-related plans and procedures are not specifically designed to protect passengers or to be a substitute for actions that Amtrak or other passenger railroad operators might choose to take.

Port and Border Security

The issue of port security is separate and distinct from the issue of rail security, although railroads, by virtue of the fact that they carry millions of containers unloaded from or loaded on to steamships each year, are certainly impacted. Ports have spent hundreds of millions of dollars enhancing their security, much of it funded by federal grants. Railroads work closely with the Captains of Ports to ensure compliance with Coast Guard regulations regarding port facility security.

Freight railroads operating in the United States, Canada, and Mexico form a seamless, coordinated, and heavily-traveled network, with hundreds of thousands of railcars and intermodal units crossing each border each year. Railroads work diligently with the U.S. Bureau of Customs and Border Protection (CBP) and others to enhance border security.

For example, one year ago, United States and Canadian customs agencies and Canada's two major railways signed a declaration of principles to enhance security at the Canada-U.S. border and to ensure secure rail access to the United States. The declaration — signed by CBP, Canada Customs and Revenue Agency (CCRA), Canadian National Railway (CN), and Canadian Pacific Railway (CP) — outlines principles for targeting, screening, and examining rail shipments transported by the Canadian carriers into the United States. The declaration includes guidelines for the electronic transmission of

cargo information by the railroads to customs officials in advance of each train's arrival at the border and installation of Vehicle and Cargo Inspection System (VACIS) and radiation detection equipment at CN and CP border crossings.

Rail VACIS systems, which are also in use at rail border crossings with Mexico, use gamma ray technology to scan entire trains one railcar at a time. The gamma ray source and detectors are stationary as the train moves through the system. Inspectors examine scanned images of rail cars for contraband, potential terrorists, or terrorist weapons without opening them and potentially endangering lives. Suspicious rail cars are segregated for inspection, with minimal disruption to the flow of legitimate commerce. Today, where CBP has installed this equipment on the borders with both Canada and Mexico, 100 percent of rail cars are screened.

U.S. freight railroads are also active participants in the Customs-Trade Partnership Against Terrorism (C-TPAT). C-TPAT is a joint government-business initiative within the CBP to build cooperative relationships that strengthen overall supply chain and border security. Through this initiative, CBP is asking businesses — including railroads — to ensure the integrity of their security practices and communicate their security guidelines to their business partners within the supply chain. I am happy to report that all U.S. Class I railroads are currently C-TPAT certified. The certification process involves a comprehensive review of a railroad's procedural security, physical security, personnel security, education and training, access controls, manifest procedures, and conveyance security.

Railroads have also been active participants in the significant expansion of Integrated Border Enforcement Teams (IBET) across the U.S./Canada border. The

mandate of these teams is to enhance border integrity and security by “identifying, investigating and interdicting persons and organizations that pose a threat to national security or engage in other organized crime activity.”

Finally, on January 5th, 2004, final regulations issued by the CBP went into effect requiring all transportation modes to submit cargo information electronically before arriving at the U.S. border; the rail industry was an active participant in the regulatory process. The required minimum advanced notification for rail cargo is two hours. Railroads are complying with this requirement. The two-hour requirement is a substantial improvement over the 24-hour notification period first proposed by CBP, which would have been devastating to the efficient flow of commerce within our nation.

Funding

Railroads have been underwriting the cost of security measures for the benefit of the general public and for national defense, in addition to normal expenditures made to ensure the safety of rail operations. Additional protective measures required at the highest alert levels cannot be sustained by the industry alone. This is reflected in the railroads’ Plan, which, at these higher levels of alert, calls for the use of National Guard and local law enforcement support to augment industry protection of critical infrastructure. In order to effectively achieve such protection, advanced planning will be required to coordinate the process among all the relevant parties.

The rail industry is also seeking to continue technical research into protective measures and emergency response protocols and has identified a need for \$15 million in federal assistance to help achieve these objectives.

Finally, the rail industry may wish to request assistance for the costs brought about by extraordinary security measures required by any future government mandates.

Conclusion

U.S. freight railroads are proud of the success they achieved in keeping our nation's vital rail transport link open following the September 11, 2001 terrorist attacks. Since then, railroads have taken a number of steps to increase the security of our nation's rail network, including the development of a comprehensive security management plan that incorporates four progressively severe alert levels. We will continue to work with this committee, others in Congress, federal agencies, and all other relevant parties to further enhance the safety and security of our nation's railroads.

TESTIMONY OF CHET LUNNER
ASSISTANT ADMINISTRATOR
FOR THE OFFICE OF MARITIME AND LAND SECURITY
TRANSPORTATION SECURITY ADMINISTRATION
DEPARTMENT OF HOMELAND SECURITY
BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON RAILROADS
U.S. HOUSE OF REPRESENTATIVE
MAY 5, 2004

Good morning Mr. Chairman, Representative Brown, and Members of the Subcommittee. It is my pleasure to be here today to speak with you about the Department's ongoing and planned efforts to enhance the security of passengers and freight transport by rail. I would like to acknowledge that it is the Department of Homeland Security's (DHS) first time appearing before you and it is our pleasure to be here to address your concerns about rail security.

The tragic bombings that occurred in Madrid on March 11 and in Moscow on February 6 were terrible reminders of the threat of terrorism to rail transportation worldwide. However, it is very important to note that in the months preceding these incidents, the Department, in close cooperation and coordination with our partners at the Department of Transportation (DOT), state and local governments, and transit and rail operators, had taken a number of steps to respond to vulnerabilities in the rail and transit systems and improve our security posture against similar attacks.

DHS, in conjunction with the DOT, continually assesses the threats, risks, vulnerabilities, and consequences of potential attacks on rail and other transportation systems using a threat-based risk-management approach. Effective, strategic, threat-based planning results from evaluations of available intelligence and assessments of criticality and vulnerability information. These allow us to form a picture of the overall risk environment and devise effective strategies to mitigate identified vulnerabilities. Within DHS and under the guidance of the Under Secretary for Border and Transportation Security (BTS), TSA has the responsibility for coordinating these efforts in the transportation sector with other DHS components and DOT modal administrations.

As we examine the most effective ways to protect the rail security system, we must also consider how the rail system is linked with other transportation modes, such as highways, airports, and the seaports. Without consistent application of reasonable and prudent security measures across modes, we risk creating weak links that may drive terrorism from one mode to another. Accordingly, our activities are categorized around prevention, protection, response and recovery.

Domain awareness is the essential starting point of our overall transportation security strategy. The Information Analysis and Infrastructure Protection Directorate (IAIP), as a

member of the intelligence community (IC), routinely receives information from intelligence and law enforcement partners, and has overall responsibility at DHS for receipt and analysis of information related to threats to the homeland. For the transportation sector, TSA also receives intelligence information from sources including the IC, law enforcement agencies, industry, and state and local governments.

In 2003, TSA activated the Transportation Security Operations Center (TSOC) to serve as a single point of contact for security-related operations, incidents, or crises in aviation and all land modes of transportation. The National Capital Region Command Center is co-located with the TSOC and provides seamless integration in protecting the National Capital Region. TSA's 24-hour watch routinely communicates with industry representatives about security events or information of potential security interest. TSA also connects electronically to intelligence community databases, and participates in daily intelligence teleconferences with other Federal agencies to discuss threat and incident reports.

To ensure that all information pertinent to transportation security is identified and provided to TSA on a timely basis, TSA has assigned liaison officers to major intelligence and law enforcement agencies. TSA coordinates with IAIP to disseminate specific warnings, advisory information, or countermeasures, where appropriate, to local law enforcement and the transportation industry. All threat information received by the TSA, is carefully reviewed for its potential impact on any U.S. transportation asset at home or overseas. TSA consults with other security and technical experts within DHS and in other agencies to achieve a comprehensive threat and vulnerability assessment. If we conclude that warnings to industry and field operators or operational adjustments are warranted, our response can take a variety of forms. Top government decision makers are alerted immediately, as well as industry stakeholders.

The next step in our threat-based, risk-managed approach is to assess the criticality of the Nation's transportation infrastructure assets. Leveraging processes developed by IAIP, TSA developed and is deploying a model to determine criticality scores for transportation related facilities and assets.

Correspondingly, TSA and our partners within DHS, in coordination with DOT, are also conducting vulnerability assessments on transportation assets, such as rail and transit, to determine their susceptibility to attack or compromise. Input information for the assessments is collected from agencies through formal, facilitated meetings as well as staff contacts. Information from industry is either requested directly from industry associations or corporate representatives and voluntarily provided, or is collected from industry web-sites. The information obtained from the vulnerability assessment is used to determine the mitigation strategies that are necessary to reduce the risk to a particular transportation asset.

With respect to the rail and transit systems, DHS, in close coordination with our partners in DOT, State and local governments, and transit and rail operators, has taken a number of steps to address vulnerabilities and improve our security posture against such attacks.

These efforts span the spectrum of security, from information sharing and awareness through prevention, response and recovery to a potential terrorist attack in the United States.

The Department, working with DOT's Federal Transit Administration (FTA), coordinates information and threat sharing for rail and transit through the FTA-funded Surface Transportation Information Sharing and Analysis Center (ST-ISAC) in partnership with the Association of American Railroads (AAR) and the American Public Transportation Association. As part of the significant partnership that has developed, TSA hosts ST-ISAC representatives at the TSOC. When appropriate, DHS disseminates Information Bulletins and advisories describing specific threats and providing suggested protective measures. In addition, DHS hosts conference calls with our Federal, State, local, and industry partners to communicate current information, obtain an assessment of the level of related preparedness, and determine additional short-term measures to be taken. For example, in the immediate aftermath of the Madrid attacks, the Department released Information Bulletins and hosted National Conference Calls with Federal, State and local public safety communities, all State and Territorial Homeland Security Advisors, officials from 50 major urban areas, and industry stakeholders.

Prior to the Madrid and Moscow tragedies, security assessments of rail and transit networks operating in high-density urban areas were performed by FTA and TSA, and as a result of these assessments, these systems have produced robust security and emergency preparedness plans. Between FY 2003 and this year, DHS has used information from these assessments to allocate \$115 million to high-risk transit systems through the Urban Area Security Initiative (UASI) in the Office for Domestic Preparedness. Sixty-five million dollars (\$65 million) was allocated in fiscal year 2003 and \$50 million was allocated in fiscal year 2004. Grantees may use these funds for such expenses as the installation of physical barricades, video surveillance systems, motion detectors, thermal/IR imagery and chemical/radiological material detection systems, integrated communications systems, and for prevention planning, training and exercises, among other things.

TSA has partnered with the FTA on its "Transit Watch" Program, and is coordinating with the Federal Railroad Administration (FRA) to develop a rail system inspection guide for use by rail law enforcement and security personnel to inspect trains for explosives and other threats. The Department's Federal Law Enforcement Training Center has provided security training to rail and transit operators; and TSA has distributed security awareness educational information to transit system employees on how to recognize and respond to potential terrorist attacks.

TSA has also hosted security exercises to bring together rail carriers, federal and local first responders, and security experts, to address potential gaps in antiterrorism training among rail personnel. One such security exercise occurred at Union Station in Washington, DC, in July 2003, and involved stakeholders, emergency responders and enforcement agencies all working to implement the station's Emergency Response Plan. In another security exercise, DHS, partnered with the Naval War College Gaming

Department to conduct an operation designed to evaluate security awareness, prevention, response and recovery of the national transportation system to a security incident. The lessons learned from these exercises are being used to enhance rail security for the entire Northeast corridor.

The transit and rail industries, and State and local governments, have been very proactive in addressing homeland security issues. Most recently, transit and rail system operators enhanced their existing security plans by taking additional preventive measures in cooperation with the Department, including deploying more explosive detection canine team and uniformed officer patrols, increasing surveillance, and conducting reporting and awareness campaigns in the passenger environment. Rail cargo companies are continuing their Alert Level 2, which includes increased security at designated facilities, security plan review, and increased spot identification checks.

On March 22, Secretary Ridge announced additional measures to strengthen our rail and transit system security. Building on many of the security measures recommended for transit and passenger rail authorities, the Department is engaging our Federal partners at DOT, the industry, and State and local authorities to establish base-line security measures based on current industry best practices. These include existing security measures being implemented consistently in the transit and commuter rail environments that could be adjusted in consultation with transit and rail system owners and operators in response to higher threat levels or specific threats in the future. DHS will ensure compliance with these security measures for commuter and rail lines.

TSA implemented a pilot program in New Carrollton, Maryland, to test the feasibility of using emerging technologies for screening passengers and carry-on items for explosives at rail stations and aboard trains. This pilot, the Transit and Rail Inspection Pilot (TRIP), is being conducted in partnership with AMTRAK, MARC, WMATA, and DOT for a 30 day period. Additionally phases of the pilot are under consideration. It is important here that I highlight that the TRIP pilot program will not resemble an aviation-type solution to transit and rail security challenges, but rather provide a venue to test new technologies and screening concepts. As you are aware, rail stations are not self-contained, and passengers have the freedom to board and disembark trains throughout their routes. It is our intent that the TRIP program provided necessary data to determine if rail and transit operators might be able to deploy targeted screening resources and protocols in high threat areas or where specific intelligence indicates there is a need. TSA is looking forward to working with Mr. Thomas Lockwood, the newly appointed DHS Director of the Office of National Capital Region Coordination on this important pilot program and in coordinating efforts in the Washington, DC metropolitan area.

Using existing Homeland Security explosive detection canine team resources, the Department is developing a rapid deployment Mass Transit canine program. These mobile response teams will be prepared to assist local law enforcement teams. The Federal Protective Service will lead an effort to ensure explosive detection canine teams from various DHS agencies are cross-trained for the rail and transit environment and available for augmentation of local capabilities when needed. DHS will partner with

local authorities to provide additional training and assistance for local canine teams. The mobile program would be used predominantly in special threat environments and provide additional Federal resources to augment State and local transit and rail authorities' security measures.

The Department also plans to leverage existing efforts to generate additional public awareness by integrating existing passenger and rail security education materials and awareness programs developed by industry, TSA, and FTA. The Department's Federal Law Enforcement Training Center will also accelerate current security training programs for transit law enforcement personnel.

Freight Rail Initiatives

DC Rail Corridor Risk Assessment

Enhancing hazardous materials security has been a critical component of DHS' efforts to protect our homeland. Since the terrorist attacks of September 11, 2001, the security of hazardous materials shipments has received enhanced scrutiny, specifically, the transport of chemicals classified as toxic by inhalation (TIH). Rising concern has centered on the effect of intentional release of TIH chemicals on public safety as they are transported through highly populated urban areas.

DHS and DOT have been working on various initiatives that support the development of a national risk-based plan to address the shipment of hazardous materials by rail and truck. For rail, DHS and DOT are focusing on the assessments of vulnerabilities of high threat urban areas where TIH are transported, identification of practical alternatives to placards on rail tank cars, new rail car design standards, and the development of hazardous materials security plans to improve the adequacy and effectiveness of industry security plans.

In July 2003, TSA hosted a workshop at the request of the Association of American Railroads. At this workshop, TSA brought together experts from the emergency response community, railroads, and government agencies to discuss placarding and security and safety issues related to hazardous materials shipments by rail. As a result of the workshop, TSA will initiate a study on alternatives to rail placarding in summer of 2004. The discussion of alternatives will reflect the need for emergency responders to have visible, full and immediate knowledge of the contents of these vehicles in the event of an incident or accident.

TSA is also leading a multi-agency task force in the D.C. metropolitan area to conduct a comprehensive security review, which includes a vulnerability assessment of the rail infrastructure, which may be used for the conveyance of hazardous materials. This review will be used to create a plan to address any vulnerabilities uncovered. The multi-agency task force is comprised of DHS (IAIP and TSA), Federal Railroad Administration, Research and Special Programs Administration (RSPA) and all affected stakeholders, including the local first responder community, local government, and

railroad owners and users (VRE, Amtrak). An interagency working group will conduct similar reviews in two to three other high-threat urban areas before making a vulnerability assessment tool available to the nation.

Enhancement/Standardization of Transportation Worker Identification Credentialing Program

DHS has a substantial effort under way to strengthen security credential programs across the Department. For our part, TSA is testing alternatives for a Transportation Worker Identification Credential (TWIC) to mitigate potential threats posed by workers and those with fraudulent identification. During the prototype stage, beginning this summer, this credential will test the feasibility of bringing uniformity and consistency to the process of granting access to transportation workers entrusted to work in the most sensitive and secure areas of our national transportation system. Some rail locations may be a part of these pilots.

Securing the Cargo Supply Chain

Before consumer products reach their point of destination, most, if not all, have traveled by several modes of transportation from their point of origin – some combination of ship, rail, truck and air, which is the reason why sensible security measures should be adopted for each mode of transportation.

With the Federal Government's lead responsibility and most of its capabilities related to homeland security now under one roof, in one department, the level of communication and cooperation in enhancing intermodal cargo supply chain security among the U.S. Coast Guard (USCG) and Border and Transportation Directorate agencies, including Customs and Immigration Enforcement (ICE), U.S. Customs and Border Protection, (CBP), and TSA, is stronger than ever. BTS is leading the effort, with TSA, CBP, and the USCG, to develop a more comprehensive framework for improving the security of the intermodal cargo supply chain. This initiative will also assist in meeting Maritime Transportation Security Act requirements for Secure Systems of Transportation by incorporating a point of origin to point of destination approach to cargo transportation. Agencies are reviewing cargo program, analytic tools, and other relevant resources within the Department to identify remaining supply chain vulnerabilities.

TSA has also participated in the Operation Safe Commerce (OSC) pilot program that brings together private business, ports, local, State, and Federal representatives to analyze current security procedures for cargo entering the country. The program has functioned like a venture capital fund to promote research and development for emerging technology to monitor the movement and integrity of containers through the supply chain. The OSC program provided resources to find innovative new ways to track and protect cargo entering the United States from all over the world. OSC will complete its work next year. Secretary Ridge has awarded \$58 million in OSC grants last year. We expect to fund an additional \$17 million in OSC technology deployments this year.

Through the OSC program, the Department in coordination with DOT is analyzing the current security practices of 18 existing supply chains, four of which contain a rail component, providing a test-bed for improvements in container security. Highlighting the international nature of global commerce, OSC follows the supply chains from the point of origin through foreign ports, to the U.S. Load Centers and on to the final U.S. destinations.

Future Projects

TSA is committed to working with the industry and the modal administrations to develop baseline security standards based on industry best practices to protect our national transportation system. It is in our mutual interest for security measures to be both effective and efficient. Such measures can only be identified and articulated through close industry coordination. Industry has been and will continue to be consulted prior to the issuance of any baseline standards, and will be an integral part of the implementation phase of such standards. The determination on how such baseline standards would be issued or adopted would, of course, include active public dialogue.

With preventive measures in place, the risk of terrorism is reduced, albeit not eliminated. TSA will continue to identify and re-evaluate threats and vulnerabilities and make decisions that both facilitate transportation and improve its security.

Thank you again for the opportunity to appear before you on this important topic. I look forward to answering any questions you may have.

**Statement of Robert Menendez
Before the Subcommittee on Rail
Committee of Transportation and Infrastructure
May 5, 2004**

Mr. Chairman, Ranking Member Brown, and Members of the Committee, I appreciate the opportunity to appear in front of you — as not only one of your fellow committee members, but as a witness who wishes to express my concerns.

I am pleased that we are holding this hearing today. I think the security, or lack thereof, of our nation's rail lines, presents a very serious and very real threat to our nation's freight, shortlines, and intercity rail systems.

The 197,000 miles of rail that carry freight and passengers across this nation are vulnerable — no question. The fact that many of these trains are carrying chemicals and HAZMAT makes for a tempting target for terrorists. Railroads are responsible for about 50% of the transportation of HAZMAT in the U.S., based on ton miles.

The national rail system is also relied on by the United States military, with approximately 30,000 miles of rail designated by the Military Traffic Management Command as essential to the national defense. Because rail systems offer advantages such as easy access, convenient locations and intermodal connections, they have a structure completely different from the airline industry. Consequently, the security paradigm that ideally works in an airport setting is not transferable to the rail station system.

So I'm glad we're holding this hearing today — it's critically important, and frankly, long overdue.

But the real issue here — the issue I'm concerned about — is passengers.

In the aftermath of September 11th, we as a nation rightly focused on aviation security. I say rightly because al Qaeda's multiple attacks on the World Trade Center demonstrates that it will attack the same target over and over. Therefore, given these patterns and intelligence we continue to receive, the airlines and their passengers continue to be a target.

The recent attacks in Spain and intelligence that terrorists may strike the rail and systems here in America dictate that we now broaden our attention to also include rail and transit security. Each year, approximately 24 million intercity rail passengers ride Amtrak, and 9.6 billion people travel by transit. Each day 32 million Americans are riding buses and commuter rail. One of the ripple effects of 9/11 was that the aviation industry was shut down for several days. Can you imagine what it would do to our nation's economy if those 32 million Americans couldn't get home or to work? The economic impact would be even greater than 9/11.¹

¹ In comparison, the government will spend \$4.5 billion this year to protect the 2 million airline passengers.

Despite the threat to a huge swath of the traveling public and potential economic devastation, the Federal government is spending only \$50 million this year on transit security. \$50 million. And that's 23% less than what we spent last year – which was a whopping \$65 million.

Mr. Chairman, colleagues, I find this appalling. Nationally, transit systems are carrying 16 times more passengers every day than the airlines. Yet we have spent more than \$18 on security for every passenger who flies, and only about one cent for every passenger who rides trains, transit or buses to safeguard their security.

The working people in this country who commute everyday, those who travel by rail to and from work and school and to see their families, they deserve to travel in the safest system possible.

In my home state, New Jersey, which has the 3rd largest transit system in the country, 215 million people ride the trains and buses every year: 60 million on the rails, 151 million on the bus, and 4 million on light rail. Another 4 million ride Amtrak. Those people are my responsibility – our responsibility – to protect.

Including the funds released last week, New Jersey has received only \$5.1 million from the Federal government for transit security. But on our own, using State funds, we have done the right thing. Without Federal assistance we have increased our police force by 40% (212 officers) since 9-11.

But we need to do more – a lot more. Which is why I have come before this Committee today — to report that I will be introducing legislation to help our nation's public transit systems.

And I am looking for your support. I want this to be bipartisan legislation, supported by my colleagues on the other side of the aisle, and also by the Administration.

To date, the Department of Homeland Security has not made a serious or concerted effort to systematically strengthen rail security. Just look at the dollars that have been allocated.

We in the Congress must take some responsibility for that – we have not provided clear directives or legislation. The bill I am introducing will remedy that.

And today I would like hear our distinguished witness from the Department of Homeland Security, Assistant Administrator Chet Lunner, answer some specific questions – questions that to date we have not been able to get answers to. For example, how many employees at the Office of Domestic Preparedness are specifically dedicated to transit security – to protecting those 32 million daily riders. Besides the paltry \$40 million that went out to the 30 largest transit agencies this year, what other resources — specifically, in dollar amounts and programs — are being directed to protecting the 3.4 billion annual passengers on our nation's transit system?

All I know is that the answer is “not enough.” I am afraid that our nation's public transit systems are only slightly less vulnerable to terrorist attacks than they were on September 11th. We've had our wake up call, we saw in Madrid what can happen, and now we need to address the means of transportation that the preponderance of Americans use to get to work and school each day. And quickly.

I must tell you that this legislation is already long overdue. I urge each of you to imagine what we would have done – what action we would have taken, if the Madrid train bombings had occurred in our homeland, on our soil. What immediate investments would we have been ready to make? What urgent action would we have been willing to take?

Well, let's do it now. Let's make those investments, and take those actions, now. Let's take what steps we can to reduce the risk to our nation's transit.

We don't need commissions and studies after a tragedy in order to act, so let's not get mired in that now. Nearly three years of needs assessment and analysis have taken place, and we have the data to put a program in place. All it takes is Congress having the gumption to act before a tragedy on the rails take place in this country.

I thank you for allowing me to testify, Mr. Chairman, and I hope my colleagues on both sides of the aisle will support this critical legislation.

Statement for the Record
U.S. Rep. Nick J. Rahall, II
Railroad Subcommittee Hearing
Oversight Hearing on Railroad Security
May 5, 2004



I would like to thank my good friend, Chairman Jack Quinn, and the esteemed Ranking Member, my friend Corrine Brown, for their outstanding leadership and for holding this important hearing.

I would also like to thank all of our panelists for their presentations on this very important issue. The recent Madrid bombings highlighted the need to ensure that our rail infrastructure is protected from those who seek to strike fear into the hearts of Americans and to disrupt our way of life.

We must be pro-active, and we must take the necessary steps to protect our rail network at the outset, rather than waiting to encounter a tragic event such as that which occurred in Spain. As September 11th taught us, our real enemy, Al Qaeda, would be glad to use our infrastructure against us. One of the ways to be pro-active is to initiate the discussion by holding hearings such as this one.

In Southern West Virginia, we are also taking steps to be pro-active. The Rahall Appalachian Transportation Institute, a consortium of colleges and universities, which is housed at Marshall University, is currently working on these kinds of transportation security matters. This group is working with Operation Respond, a group with which I know Chairman Quinn is quite familiar.

Operation Respond focuses on safety and security software development and deployment to assist first responders in dealing with hazardous materials incidents. It also operates a network of first responders to deal with threat assessment messages or incident alerts. Its software, which draws upon existing hazardous materials information for the railroad industry, is currently deployed at a great number of West Virginia police and fire departments as well as in more than 3,000 areas nationwide.

Southern West Virginia is an area with a considerable amount of rail traffic related to the nearby manufacturing of hazardous materials. For that matter, it would be an understatement to say that a great deal of coal traffic also moves along Southern West Virginia rail lines. A terrorist attack on the region's rail network would not only have tragic immediate consequences, but it would also impact our national security as well as our national transportation network, our national energy policy, sectors of manufacturing and retail that rely on utilizing chemicals, and, ultimately, the American way of life.

For that reason, the Rahall Appalachian Transportation Institute is working with Operation Respond to address these potential problems before they occur, and to institute planning that will reduce the impact of these problems should they happen to occur.

I would suggest that TSA, as well as FRA and all other affected organizations, should look to capitalize on efforts that are already underway to reduce vulnerabilities and protect our rail infrastructure. As I noted, even an isolated regional event would clearly have national consequences. Therefore, I would like to take this opportunity to volunteer the services of the Rahall Appalachian Transportation Institute and Operation Respond with the goal of improving and enhancing our readiness and our response capabilities.

**Testimony of Allan Rutter,
Administrator,
Federal Railroad Administration,
U.S. Department of Transportation
before the
Subcommittee on Railroads,
Committee on Transportation and Infrastructure,
United States House of Representatives**

May 5, 2004

Chairman Quinn and members of the Subcommittee, I am very pleased to be here today to testify about the efforts of the Federal Railroad Administration (FRA) to protect and promote the security of our Nation's passenger and freight railroad network. On behalf of the Secretary of Transportation, FRA's mission is to oversee the safety of the U.S. railroad industry. Security has always been, and will continue to be, an integral part of our safety mission.

Like most Americans, I can vividly recall where I was and what I was doing on that tragic morning of September 11, 2001. I was in Chicago in the headquarters of Metra, the commuter rail authority that serves tens of thousands of Chicago area commuters every day. Standing in front of a television monitor, I watched in horror as four commercial jets were turned into weapons of destruction, the World Trade Center Towers collapsed, and the Pentagon burned. I also had the unique opportunity to witness firsthand the response of our rail industry to the terrorist attacks. Soon after the attacks began, Metra shifted its operations from an inbound rush-hour schedule to an outbound rush-hour schedule that enabled thousands of commuters to evacuate the city's many skyscrapers and return home to their loved ones.

It was no small feat for a major commuter railroad to reverse rush-hour operations on the spur of the moment. The reason that it happened as smoothly as it did is that the railroad was prepared and had an emergency response plan in place. It is worth noting that FRA issued a

regulation three years earlier that required the passenger railroads to have emergency response plans to deal with unforeseen safety and security emergencies.

The March 11th bombings of four commuter trains in Madrid, the subsequent discoveries of bombs under railroad tracks in both Spain and France, and the intelligence reports that terrorists might try to bomb rail lines and buses in major U.S. cities this summer all underscore the importance of planning, preparation, and coordination between government and the rail industry in dealing with terrorism. Providing for the security of our vast and varied rail transportation network requires detailed knowledge of security and intelligence matters, as well as a broad understanding of railroad infrastructure, motive power and equipment, personnel, information technology, and operations. To successfully mitigate the terrorist threat to our Nation's railroads, many Federal agencies must work together, sharing knowledge, expertise, ideas, and resources. FRA and our colleagues within the U.S. Department of Transportation (DOT) work with the Federal Government's lead department for transportation security, the Department of Homeland Security (DHS) and its various components, including the Transportation Security Administration (TSA), as well as with other security and intelligence agencies and other Federal agencies to enhance and assure railroad security. These agencies play a primary role in addressing transportation security, and FRA offers and provides extensive rail expertise to aid analyses of the impact that potential security threats may pose for the rail industry and to assess the effects of proposed security measures on railroad operations. Finally, we help to balance needs of security and safety, making certain that the two goals remain complementary, not contradictory.

STRATEGIES FOR SAFETY AND SECURITY

Railroad system safety and security are inextricably linked. This is logical insofar as basic transportation risk-reduction strategies that protect and promote safety are also effective in protecting and promoting security. In essence, FRA's safety strategies can be divided into three categories: (I) incident prevention through detection of hazards and deterrence of conduct that contributes to hazards; (II) casualty mitigation through design; and (III) casualty mitigation through emergency preparedness.

I. Incident Prevention through Threat Detection and Deterrence: Threat-Communication Networks. For FRA, incident prevention is predicated on detecting unsafe conditions and deterring safety violations before they can cause railroad accidents. While Federal regulations mandating the regular periodic inspection of railroad track, signals, and rolling stock have proven effective in reducing train accidents, even before 9/11 we recognized that inspection requirements and enforcement alone were not sufficient to detect the activities of terrorists who can strike without warning. Terrorist activities are best prevented by the sharing and dissemination of information among and between the intelligence and transportation communities.

The Railway Alert Network: Prior to 9/11, and under the direction of the DOT Office of Intelligence and Security, FRA worked with the Association of American Railroads (AAR) to establish a railroad security communications network, known as the Railway Alert Network (RAN), to alert the railroad industry to potential security threats and to notify DOT immediately about security-related developments that occur on our Nation's railroads. Using this communications network, FRA received information from the DOT Office of Intelligence and

Security regarding potential security threats and disseminated that information to the AAR, railroad police agencies, and other relevant railroad security offices. The railroads, in turn, notified FRA about security measures taken to deal with those threats. Railroads also utilized the network to inform FRA about security-related incidents that could impact railroad operations or infrastructure. A network of designated FRA personnel has been available 24 hours a day, seven days a week to receive this information and disseminate it to senior DOT/FRA leadership, railroad police, and national security agencies.

Other Threat-Communication Networks: The RAN has been strengthened significantly since 9/11 and has benefitted from increased investment by the AAR and DOT. The RAN is now linked to the AAR's Operations Center and to the Surface Transportation Information Sharing and Analysis Center (ST-ISAC), operated by DHS in partnership with the AAR and the American Public Transportation Association (APTA), which provides a robust capability to collect, analyze, and disseminate information about threats to critical physical and cyber infrastructure. In addition, DOT has established a Crisis Management Center, which is also staffed 24/7 and is linked to the RAN, to better disseminate security threat information throughout government and the transportation industry.

II. Casualty Mitigation through Design: Passenger Car and Tank Car Safety Standards. The ability to withstand an incident is an important component of any strategy designed to enhance safety and security. Historically, FRA has pursued this strategy by promulgating crashworthiness standards for both passenger and freight railroad equipment. For example, in 1998 FRA issued the first-ever passenger equipment safety standards establishing comprehensive design, structural strength, and fire safety standards for railroad passenger cars.

These standards are intended to protect the passengers in these vehicles from some of the tremendous forces that can be generated in train accidents. The regulations also establish requirements for emergency egress and emergency lighting to facilitate rapid evacuation in the event of an accident or emergency. There are additional elaborate and stringent Federal safety standards for railroad tank cars that carry hazardous materials. Tank car standards are promulgated by DOT's Research and Special Programs Administration (RSPA). FRA works closely with RSPA and with tank car manufacturers, shippers, and railroads, to provide expertise and input into the development of the tank car standards, and we are responsible for the administration and enforcement of these regulations.

Safety statistics bear out the effectiveness of these crashworthiness standards. In the year 2003, for example, nearly 500 million passengers traveled on our Nation's railroads, yet, despite the 161 passenger train accidents that occurred that year, none resulted in a single rail passenger fatality. Also, 2003 saw the lowest number of hazardous materials releases on record: with nearly two million tank car shipments of hazardous materials that year, only 24 train accidents resulted in a release of product, and in many cases the release was minimal, consisting of only a few gallons. While these crashworthiness standards were intended to protect railroad passengers and to prevent the release of hazardous materials from the tremendous, destructive forces of a train accident, they also equally applicable to terrorist-induced incidents. We are constantly reassessing the adequacy of these measures and, under the leadership of our partners at DHS, are exploring additional options to enhance the security of rail vehicles and infrastructure.

III. Casualty Mitigation through Emergency Preparedness: Emergency Response

Regulations. FRA does not rely on prevention and crashworthy design alone as strategies for dealing with the terrorist threat to the rail network. Well before 9/11 we understood that it was imperative for railroads to develop and implement effective emergency response plans to respond to unanticipated security emergencies. On May 4, 1998, FRA published Passenger Train Emergency Preparedness regulations that require passenger and commuter railroads to have emergency response plans in place to deal with potential emergencies, including security-related emergencies. The regulations, which remain in effect today, also require these railroads to train their employees about their roles and responsibilities in carrying out emergency response procedures under the plan; to inform, and provide training materials to, the local emergency responders (police and firefighters) who respond to railroad emergencies on behalf of local communities; and to conduct periodic large-scale emergency response drills in conjunction with these emergency responders. We believe that the emergency response plans that commuter and passenger railroads had in place pursuant to this regulation played a significant role in helping these entities respond quickly and effectively to the events of 9/11.

Earlier, I described the actions of Chicago's Metra on 9/11, but an even more striking example of the use of effective emergency response procedures occurred at the Port Authority Trans-Hudson (PATH) commuter rail station located in the basement of World Trade Center. Within minutes after the planes struck the towers, alert PATH officials sprang into action, implementing emergency procedures that sent arriving trains through the station without stopping, removing the passengers from harm's way. Further distant approaching trains were rerouted away from the station entirely, and passengers who were already in the station itself

were quickly evacuated. Because of the quick action and flawless execution of a well-thought-out emergency response plan, 5,000 railroad passengers were evacuated from the basement of the World Trade Center in a matter of minutes, possibly preventing many more tragic deaths. The railroad had staged an emergency response drill with local emergency responders just weeks before 9/11.

PASSENGER RAIL SECURITY INITIATIVES

We recognize that while FRA's pre-9/11 security measures for incident prevention and casualty mitigation appeared adequate at the time, our understanding of the terrorist threat has changed dramatically since 9/11, and we, along with all other government agencies, are reexamining our basic assumptions about railroad security and working to enhance rail security measures. As I noted earlier, FRA works with many other Federal agencies to improve rail security. One of our closest partners is the Federal Transit Administration (FTA). During the past nearly three years, FTA has aggressively helped to assess the security risks on commuter railroads and other major transit agencies. FTA funded security risk assessments for the 50 largest transit agencies in the Nation, which included the ten largest commuter railroads under FRA's safety jurisdiction. FRA participated in all of the security risk assessments on those ten commuter railroads and contributed the funding for three of those risk assessments.

FTA also developed a tool kit of best practices that could be incorporated into commuter railroad security plans to prevent and respond to terrorist incidents. FRA also participated in this FTA initiative, contributing our knowledge of commuter rail operations, infrastructure, and organization to ensure that the security enhancement measures contained in the plans were sound and feasible in a railroad environment.

Further, FTA provided funding for commuter railroads railroads to conduct security simulations or drills, based on terrorist scenarios. For example, the New York City Metropolitan Transportation Authority received an FTA grant to conduct such drills- for the Long Island Rail Road, the Metro-North Commuter Railroad, and Long Island-Bus. FRA staff worked closely with many of the railroads that received this funding, to plan and assist in the drills.

Finally, FTA sponsored a series of 17 workshops across the country (called "Connecting Communities") to bring together transit agencies, emergency responders, and State and local government leaders so that they might better coordinate their security plans and emergency response efforts. FRA devoted staff with both railroad knowledge and facilitation skills to help with these workshops.

FRA has also utilized our enforcement resources to periodically monitor the implementation of the security plans on the commuter railroads. Shortly after the recent terrorist bombings of trains in Madrid, in cooperation with DHS, I ordered our regional offices to conduct multi-day team inspections of each of the 18 commuter railroads and of Amtrak to determine what additional security measures had been put into place to prevent a similar occurrence in the United States. Nearly 200 of FRA's 415 inspectors participated in this effort.

What they found was that the most heavily traveled commuter systems, terminals, and stations had the most extensive security measures and had done the most to enhance security measures since the Madrid bombings. Among the measures that have been put into place to deal with the elevated threat are the following: increased and better focused police surveillance; enhanced coordination between railroad police and other law enforcement agencies; better and more frequent security exercises; more frequent use of bomb-sniffing dogs to detect explosives;

more frequent security sweeps of trains and terminals; measures to keep car bombs away from station buildings; and efforts to prevent unauthorized access to train platforms, rail yards, and passenger car maintenance and cleaning facilities. The commuter railroads are also providing more frequent notices and job briefings to their employees, instructing them about how to be more vigilant in identifying suspicious persons and packages. Many commuter railroads are also making frequent public service announcements or handing out printed material to warn passengers to be on the lookout for suspicious packages and people.

To be sure, our inspectors also found many locations where not all of the railroad security measures prescribed in the railroads' plans had been put into practice. Some of the most frequent concerns involved failure to notify railroad personnel about their roles and responsibilities in executing the railroad security plans. There were locations where passengers were not informed about how to be more vigilant. Another concern was the failure to control unauthorized access to rail cars and railroad car repair facilities. When our inspectors found security gaps, we brought those items to the attention of the senior railroad managers for resolution.

Our experience on the commuter railroads was mirrored on Amtrak, where we found that the most extensive security measures had been implemented in the busiest stations and terminals and on the most heavily used rail lines. We also brought to the attention of Amtrak management those locations where the company's security measures had not been fully implemented.

In cooperation with DHS, we are also working with Amtrak to help it enhance its security plan and improve its strategic security planning capacity. Over the past few years we have reviewed and commented on many of the individual security initiatives that Amtrak had proposed. Recently, we contracted with the Rand Corporation to conduct a systematic review

and assessment of Amtrak's security posture and current programs, focusing on the adequacy of preparedness for combating terrorist threats. The objectives of the review include an assessment of the corporate security strategic planning processes and of products relating to security. Rand is evaluating Amtrak's risk management, response planning, and information dissemination actions that relate to system security and counterterrorism actions. The results and recommendations of the Rand review are intended to help Amtrak implement a nationwide, comprehensive, integrated system security plan and program.

We wish to point out to the Subcommittee that the enhanced security measures instituted by the passenger railroads are threat-based. That is, FRA and the railroads have diverted resources from normal activities to deal with the perceived increase in security threats brought about by the Madrid bombings. DHS is considering specific actions it might take to enhance passenger rail security, and FRA will work with DHS on reaching a specific agreement concerning how FRA may be able to assist DHS's initiatives.

FREIGHT RAIL SECURITY INITIATIVES

Security Initiatives regarding Rail Freight Generally

On September 20, 2001, I conducted an industry-wide teleconference with representatives from all major freight, passenger, and commuter railroads, all rail labor organizations, and the FTA to discuss how the industry should proceed to reexamine railroad security options in the aftermath of the 9/11 attacks. Shortly after the teleconference, the AAR announced that it had contracted with EWA Information and Infrastructure Technologies, Inc., a firm with 1,000 employees specializing in security and intelligence, to conduct a comprehensive security risk

assessment of the railroad industry. Furthermore, the rail industry announced the formation of six Critical Action Teams (CATs) to examine railroad security in the following areas:

- physical assets (bridges, tunnels, major yards, etc.);
- information technology systems (including dispatching systems);
- chemical and hazardous materials;
- Department of Defense shipments;
- train operations; and
- rail passenger systems and human factors.

The first five CATs concentrated on freight railroad security vulnerability issues. Each of these was led by a top railroad operating officer and was staffed by representatives from railroads, the AAR, and The American Short Line and Regional Railroad Association (ASLRRA). The sixth CAT focused on passenger rail security issues and was led by the American Public Transportation Association (APTA) and was later included in the FTA efforts mentioned earlier.

Based on the rail industry's security risk assessment and the work of the CATs, the freight railroad industry developed a security plan that DHS will review and oversee. Much as we have done in the passenger security arena, FRA has periodically utilized its safety inspectors to monitor implementation of security measures in response to heightened threats. As early as November 1, 2001, I directed our safety inspectors to spend several days monitoring the state of security at major freight railroad facilities, including bridges, tunnels, dispatching centers, major yards, and hazardous materials storage areas. Again, these security monitoring inspections are not our regular business; rather, they are narrowly targeted and threat-based.

Security Initiatives Regarding Railroad Shipments of Hazardous Materials

One area of freight railroad security where FRA has been very active is the security of rail shipments of hazardous materials. We have worked extensively with TSA before and after its transfer to DHS, with other components of DHS, with RSPA, and other entities to ensure that the nearly two million tank car shipments of hazardous substances that occur each year are transported with the optimum level of security.

Hazardous Materials Security Plans: One of our primary roles in protecting the security of hazardous materials shipments is our administration and enforcement of the RSPA regulation that requires hazardous materials shippers and carriers to develop, implement, and update written security plans. Companies that ship or transport specified amounts of certain placarded commodities must conduct a security risk assessment of their hazardous materials operations and develop appropriate measures to mitigate the security risks identified. For example, the security plans must describe the measures that are in place to guard against unauthorized access and to protect the security of these shipments while in transit and also while in storage. The regulation also directs hazardous materials shippers and transporters to provide training to their employees who are responsible for implementing the security plan. Such employees must be trained to understand their specific roles and responsibilities in carrying out the security plans. The regulation required that these security plans be in place by September 25, 2003. FRA is in the process of training its hazardous materials safety inspectors to review, and monitor compliance with, the security plans. We are working with RSPA and DHS to develop a program for evaluating how effectively these plans are being carried out on the railroads.

Options to Enhance Hazardous Materials Security: RSPA is also exploring additional options to enhance hazardous materials security. RSPA recently completed a study of the most hazardous commodities that move in transportation, commodities that are classified as toxic by inhalation (TIH). FRA provided input into this study from a rail perspective. Based on the issues identified in the TIH study, DOT is working with DHS and the Homeland Security Council to identify prudent steps to enhance the security of TIH shipments. Over the past three months, I have participated in frequent meetings at DHS headquarters with representatives from DHS, RSPA, and DOT's Office of Intelligence and Security to provide input into these options and to help assess their impact on the security, safety, and efficiency of the freight railroad transportation system.

Our agency is also participating in joint efforts to conduct a review and security risk assessment of hazardous materials shipments through major metropolitan areas for the purpose of preventing potential terrorist attacks involving these commodities. Earlier this year, I joined DHS representatives in meeting with leaders from the City Council of Washington, DC, and representatives from the Mayor's office, the police department, and the fire department to discuss plans to carry out a risk assessment of hazardous materials rail shipments in Washington, DC. That assessment is currently underway, and three FRA rail safety and security experts are participating on the risk assessment team. We hope that this effort will serve as a precursor and model for similar risk assessments in other metropolitan areas that have significant amounts of hazardous materials shipments.

Positive Train Control's Potential for Enhancing Hazardous Materials Security: Another technology that holds tremendous promise for enhancing rail security in general and hazardous materials security in particular is Positive Train Control, or PTC. PTC uses state-of-the-art microprocessors, global positioning satellite technology, data radio networks, and sophisticated train control and train dispatching computer software that allows for centralized monitoring and control of the movement and speed of trains across an entire railroad line or network. With PTC, a centralized dispatching center would know the exact location of every train on the system and could, with a few key strokes, identify each and every hazardous materials shipment on any train. While PTC was designed to improve the safety and efficiency of rail operations, it can easily be adapted to provide security benefits. For example, if a terrorist were to attempt to commandeer a train and initiate an unauthorized movement, the PTC system would detect it and automatically stop the train. FRA and the railroad industry are in the process of deploying a revenue service demonstration project of PTC technology between St. Louis and Chicago to demonstrate the many potential benefits that PTC can offer. FRA has several research and development projects underway to develop security-related technologies that can be made to work in conjunction with PTC.

FRA RESEARCH AND DEVELOPMENT PROJECTS ON RAIL SECURITY

Security programs supported by FRA's Office of Research and Development (OR&D) have the following five goals: (1) to ensure that people and goods move safely and securely on the Nation's railroad infrastructure; (2) to evaluate and improve the integrity and behavior of tank cars and passenger cars for safety and security purposes; (3) to develop and demonstrate efficient and reliable communication systems to warn of security breaches; (4) to assist the TSA and

commuter railroads with security issues and initiatives; and (5) to evaluate security technology for protecting railroad passengers, equipment, and infrastructure. Several such security projects are underway or completed. Five of them are described below:

- 1) *Tank Car Security Evaluation*. This joint project between FRA OR&D and DHS was designed for two general purposes: (a) to evaluate the ability of hydrophones inside tank cars to detect tank car breaches and to distinguish them from other background noise such as found in the normal tank car operating environment and (b) to develop emergency response techniques, tools, and procedures to plug punctures in pressure tank cars caused by small arms fire or other means. This project was conducted in October 2003 at the Transportation Technology Center, Inc., in Pueblo, Colorado. A confidential report will be complete by the end of 2004.
- 2) *Transportation Security Situation Display (TSSD)*. This developmental activity began in 2003. Currently sponsored by FRA, the project involves a public-private partnership among the John A. Volpe National Transportation Systems Center (Volpe Center), the City of New York Office of Emergency Management, and Silicon Graphics Federal, Inc. The TSSD is intended to aid first responders in allocating their resources by providing on a computer monitor a visually displayed map of a localized area where there is a security situation, a natural disaster, or a weather-related disruption.
- 3) *Railcar Inspection Guide (RIG)*. The RIG is a booklet, developed jointly by FRA, TSA, and the Technical Support Working Group of the U.S. Department of

Defense. It will be distributed on a need-to-know basis and used to assist military personnel, railroad police, local law enforcement, and first responders in inspecting locomotives, passenger cars, and freight cars for indicators of security problems. The booklet shows, for example, places on rail equipment where weapons of mass destruction could be hidden. FRA provided technical expertise, guidance, and project management in the development of the RIG. The RIG is currently in the final stages of publication.

4) *Real-Time Passenger Car Manifest*. This project, which addresses a National Transportation Safety Board recommendation, is aimed at providing first responders with accurate passenger counts. The Volpe Center is currently performing a study to define the options and feasibility of developing and implementing a real-time passenger manifest, including options involving the use of computers.

5) *Explosive Detection Technologies*. In 2001, FRA OR&D worked with Amtrak, the Federal Aviation Administration, and the Office of the Secretary of Transportation in evaluating the use of trace explosive detection devices on a variety of passenger equipment. These devices are able to detect residue from explosives.

The FRA Office of Research and Development will continue to partner with DHS on current and planned security initiatives. Both before and after the Madrid bombings, FRA has been discussing research efforts to focus on the vulnerability of passenger cars to the use of explosives by terrorists; this research would model and measure the effects of the detonation of various

quantities of energetic material on railroad passenger cars and evaluate the means needed to ensure that commerce resumes at the earliest possible moment after an attack.

NEED FOR RAIL SECURITY LEGISLATION

The Subcommittee has asked me to address “[a]ny deficiencies or obsolete features of current law that should be corrected to improve preparedness, enforcement and deterrence in the field of rail security.” While FRA and other Federal agencies will continue our efforts to safeguard our railroads and mass transportation systems, the enactment of clearer and stronger Federal laws is also necessary.

First, DOT seeks to clarify that the Secretary of Transportation’s broad authority over every area of railroad safety includes the authority to address threats to rail security. FRA believes that its current authority inherently includes security, and that such a clarifying amendment could help FRA preempt and quickly rebuff any judicial challenges to FRA safety rules and orders that are issued to enhance rail security. FRA proposed such an amendment in the Administration’s rail safety reauthorization bills transmitted to the Congress in July 2002 and July 2003. A comparable provision was passed by the Senate in November 2003 (section 205(b) of the Rail Safety Improvement Act (S. 1402)), and a similar provision was approved by the Senate Commerce Committee in July 2004 (section 8(b) of the Rail Security Act of 2004 (S. 2273)). (The latter bill also contains other rail security provisions, some of which DOT supports at least to some degree, as stated in DOT’s views letter, which is attached.)

Second, it is necessary to strengthen and clarify Federal criminal laws to deter terrorist attacks and other violence against railroads and mass transportation systems and to ensure that any attacks that do occur are properly punished. Currently, the wrecking trains and mass

transportation anti-terrorism statutes (18 U.S.C. 1992-1993, respectively) contain eight gaps or ambiguities that the Railroad Carriers and Mass Transportation Protection Act of 2004 (H.R. 4143 and S. 2289) would remedy. These bills would combine the existing statutes into a new and more comprehensive section 1992. For example, the legislation would extend to railroads the comprehensive protections that apply to mass transportation systems under the mass transportation statute. While the mass transportation statutory prohibitions clearly apply to attacks against commuter railroads, and arguably apply to Amtrak and tourist railroad operations as well, the massive freight railroad operations of this country are not covered. The vulnerabilities of freight shipments—whether spent nuclear fuel or other hazardous materials—need to be addressed to better protect the general public. FRA and the Federal Transit Administration have worked very closely with the U.S. Department of Justice since 1997 in trying to secure the passage of similar legislation. DOT submitted anti-terrorism bills in 1997, 1999, and 2002, each of which contained many of the central provisions of H.R. 4143 and S. 2289. DOT's legislative proposals formed the basis for the mass transportation statute, which was first enacted as part of the USA PATRIOT Act in 2001. Details on these important improvements in existing Federal criminal law that would be achieved under H.R. 4143 and S. 2289 are found in FRA's April 8 testimony before the Senate Judiciary Committee, a copy of which is attached.

CONCLUSION

With the rest of the senior leadership team at DOT, I am driven in this effort to improve transportation security by the relentless pursuit of this goal by Secretary Norman Mineta. His actions on September 11 to protect the flying public, his stewardship of the creation of the TSA,

his leadership in transitioning TSA and Coast Guard to the DHS, all are accomplishments which provide all of us at DOT a high standard by which to gauge our own efforts.

We welcome the attention of this subcommittee and your interest in making further progress. We are ready to work with you in bringing about an even safer and more secure rail transportation system. Thank you for the opportunity to appear before your subcommittee.

Attachments:

- DOT views letter on S. 2273
- Testimony by S. Mark Lindsey, Chief Counsel, FRA, before the Senate Judiciary Committee on April 8, 2004

Testimony of S. Mark Lindsey
Chief Counsel, Federal Railroad Administration
U.S. Department of Transportation
before the Committee on the Judiciary
United States Senate
April 8, 2004

Mr. Chairman, members of the Committee, I am very pleased to be here today to testify on behalf of the Secretary of Transportation concerning the need for stronger Federal criminal laws, to deter terrorist attacks and other violence against railroad carriers and mass transportation systems. This hearing is especially timely in light of the March 11 attacks on four commuter trains in Madrid, the subsequent discoveries of bombs under railroad tracks in both Spain and France, and the intelligence reports that terrorists might try to bomb rail lines and buses in major U.S. cities this summer.

Passenger railroads and mass transportation systems pose attractive targets for terrorist attacks because of the large concentration of people, the difficulty of securing such open and extensive systems, and the fact that such attacks can be highly disruptive to the economy. While freight railroads carry only a small number of people as crew, they are likewise attractive targets for terrorists because they also operate over open and extensive systems and because they carry hazardous materials. The U.S. Department of Transportation (DOT), the U.S. Department of Homeland Security (DHS), and other Federal agencies have been working with the railroad and transit industries, sharing knowledge, expertise, ideas, and resources to mitigate the terrorist threat to our Nation's railroads and mass transportation systems. The security efforts of the

various Federal and private parties were detailed in testimony given to the Senate Committee on Commerce, Science, and Transportation on March 23, 2004.

While FRA and other Federal agencies will continue our efforts to safeguard our railroads and mass transportation systems, the enactment of stronger Federal criminal laws is also necessary. The enactment of legislation along the lines of S. 2289 (introduced by Senator Sessions) should help deter attacks against these systems and ensure that any acts that do occur are appropriately punished. DOT strongly supports S. 2289 and appreciates the Committee's commitment to help deter acts of violence against transportation systems.

S. 2289 would consolidate the existing "wrecking trains" statute at 18 U.S.C. 1992 and the mass transportation anti-terrorism statute at 18 U.S.C. 1993 into a new and more comprehensive section 1992. FRA and the Federal Transit Administration have worked very closely with the Department of Justice (DOJ) since 1997 in trying to secure the passage of similar legislation. DOT submitted anti-terrorism bills in 1997, 1999, and 2002, each of which contained many of the central provisions of S. 2289. DOT's legislative proposals formed the basis for the mass transportation statute, which was first enacted as part of the USA PATRIOT Act in 2001.

There are eight gaps or ambiguities in the wrecking trains and mass transportation statutes that S. 2289 would address.

First, the bill would update and slightly expand the wrecking trains statute's language regarding acts of violence against railroad carriers. The wrecking trains statute was enacted in 1940 and contains terminology that is not as expansive as that used in modern Federal criminal statutes. The bill would update the language used in referring to acts targeted at railroads (e.g.,

replacing the term “explosive substance” with “biological agent or toxin, destructive substance, or destructive device”). And more types of railroad property and equipment would be explicitly protected (guideways, locomotive tenders, and on-track equipment). The definitions of the mass transportation statute would be slightly modified to reflect the addition of railroads, and terrorist acts involving hazardous materials including radioactive materials and spent nuclear fuel.

Second, the bill would extend to railroads the protections that apply to mass transportation systems under the mass transportation statute. The mass transportation statute contains a much more comprehensive listing of prohibited conduct than does the wrecking trains statute. The mass transportation prohibitions cover mass transportation by air, marine, and surface transportation. While these statutory prohibitions clearly apply to attacks against commuter railroads, and arguably apply to Amtrak and tourist railroad operations as well, the massive freight railroad operations of this country are not covered. The vulnerabilities of freight shipments--whether spent nuclear fuel or other hazardous materials--need to be addressed to better protect the general public.

In particular, the following six additional acts of terrorism from the mass transportation statute would be made applicable to railroads explicitly:

- (1) placing a biological agent or toxin on or near railroad equipment;
- (2) placing a biological agent or toxin on railroad infrastructure with intent to, or knowing or having reason to know such activity would likely derail, disable, or wreck railroad on-track equipment [The bill would also cover placement of these substances

“near” railroad and mass transportation property, a provision which is not currently in the mass transportation statute.];

(3) damaging a centralized dispatching facility;

(4) interfering with, disabling, or incapacitating any person engaged in dispatching, operating, or maintaining railroad on-track equipment;

(5) using a dangerous weapon, with the intent to cause death or serious bodily injury to an employee or passenger of a railroad carrier any other person while any of the foregoing is on the property of a railroad carrier “that is used for railroad purposes” [The highlighted qualifying language would also be made applicable to similar acts committed on the property of mass transportation systems; this qualifier is not currently in the mass transportation statute.]; and

(6) conveying or causing to be conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to engage in any of the prohibited acts.

Third, the bill would lower the evidentiary threshold for Federal prosecution of acts against railroads to the same threshold as in the mass transportation statute. The wrecking trains statute prohibits specified acts against railroad equipment and property that is engaged in interstate or foreign commerce. The mass transportation statute is much broader in scope and applies not only to

acts committed on, against, or affecting a mass transportation provider engaged in or affecting interstate or foreign commerce, but also to a person who travels, communicates, or transports materials across a State line in aid of the commission of the offense. With this expanded scope, attacks against railroad carriers will be easier to prosecute.

The bill also substitutes the word “knowingly” for the term “willfully,” which is the *mens rea* the defendant must have in committing the prohibited conduct under the wrecking trains statute and the anti-terrorism mass transportation statute. We believe that the use of “knowingly” merely clarifies existing law since the courts have equated the term “willfully” in the wrecking trains statute with the term “knowingly.” Courts construing the wrecking trains statute have held that it is not necessary to show that the defendant had a specific intent to wreck a train but merely that the defendant was aware of his acts and did not act because of ignorance, mistake, or accident, and that the defendant’s conduct could substantially interfere with the interstate railroad system.

Fourth, the bill would extend to mass transportation systems a provision in the existing wrecking trains statute that makes it a crime to undermine or make the use of the mass transportation infrastructure hazardous or unworkable. In addition, the bill would add “track” and “electromagnetic guideways” to the list of types of mass transportation infrastructure protected.

Fifth, the bill would make it a crime to cause the release of a hazardous material or a biological agent or toxin on or near the property of a railroad or mass transportation provider with the intent to endanger the safety of any person or with a reckless

disregard for the safety of human life. This is a new prohibition that does not exist in current law. Freight trains haul a tremendous amount of hazardous materials—nearly a million rail tank cars and 238,000 intermodal loads of hazardous materials annually, and lesser amounts are hauled by mass transportation providers. In calendar year 2002, trains provided over a billion ton-miles of hazardous materials transportation. Rail is the predominant method of transportation for certain classes of hazardous materials that pose an especially high risk, including explosives, radioactive materials, and flammable solids. It is essential that the Federal criminal statutes deter terrorists from using these hazardous materials and biological agents and toxins to harm the public.

Sixth, the bill would clarify that it is not a violation of the statute to transport on railroad or mass transportation equipment or property hazardous materials in commerce that are in accordance with Federal hazardous materials transportation law and DOT's implementing regulations, or, if in violation of these provisions, the violation is merely a civil violation and not a criminal violation.

Seventh, the bill would close a gap in the "mass transportation" statute noted in the "Shoe Bomber" case, where the district court observed that the literal language of the statute prohibited an attempted act of terrorism but did not explicitly

penalize such an attempt. The district court correctly rejected as meritless Mr. Reid's argument that Congress had not made attempt crimes under the mass transportation statute punishable. The bill would also update the definition of "dangerous weapon" in the mass transportation statute to cover box cutters and other previously unrecognized weapons.

Eighth, the bill would toughen or clarify the penalties for certain violations. For violations not falling in the "aggravated offense" category, the penalty would be a fine or imprisonment of not more than 20 years, or both. The bill would make it an "aggravated offense" to commit prohibited acts against a train or a mass transportation vehicle that carries a passenger or employee, radioactive waste, spent nuclear fuel, or designated hazardous materials. The general penalty for aggravated offenses would be a fine, or imprisonment for any term of years or life, or both. A term of not less than 30 years would apply to an offense involving high-level radioactive waste or spent nuclear fuel. A sentence of either life imprisonment or capital punishment would apply where the offense has resulted in the death of another person. Currently, the maximum penalty under the mass transportation statute is life imprisonment. The death penalty is already available for a violation of the "wrecking trains" statute that results in a death. The bill would correct this anomaly by making available the death penalty for attacks against mass transportation systems that result in a death of a person. Recently, a Federal district court ruled that the wrecking trains statute does not impose a mandatory minimum sentence of life imprisonment or death against an individual who willfully derailed a freight train killing the conductor and seriously injuring the locomotive engineer. The bill would make clear that if a violation of the statute results in a death, that the court's choice would be to impose a sentence either of life imprisonment or the death penalty.

Conclusion

Federal agencies, working in cooperation with the railroads and mass transportation systems, have been working hard to prevent terrorist attacks against our Nation's railroads and mass transportation systems. With the rest of the senior leadership team at DOT, FRA is committed to this effort to improve transportation security by the relentless pursuit of this goal by Transportation Secretary Norman Mineta. His actions on September 11 to protect the flying public, his stewardship of the creation of the Transportation Security Administration (TSA), his leadership in making the transition of the TSA and Coast Guard to the DHS, all are accomplishments which provide us all at DOT a high standard by which to gauge our own efforts.

The Department appreciates the Committee's continued efforts to deter terrorist activity and protect the Nation's railroads and mass transportation systems. We are ready to work with you on improving the Federal criminal statutes in order to bring about an even safer and more secure rail transportation system. Thank you for the opportunity to appear before your Committee, and I welcome the chance to respond to your questions.



**U.S. Department
of Transportation**
Office of the Secretary
of Transportation

Assistant Secretary

400 Seventh St., S.W.
Washington, D.C. 20590

April 7, 2004

The Honorable John McCain
Chairman, Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The U.S. Department of Transportation (DOT) would like to provide you with its views on S. 2273, the Rail Security Act of 2004 (Act). DOT's views are limited to the sections, noted in this letter, in which the Secretary of Transportation would have significant responsibilities. We have also enclosed a separate list that recommends specific technical revisions.

Section 2 of the bill would require the Under Secretary of Homeland Security for Border and Transportation Security (Under Secretary), in consultation with the Secretary of Transportation, to assess security risks for both freight and passenger rail transportation. Section 2 would also require the Under Secretary to transmit to Congress a report containing an updated assessment and prioritized recommendations every two years. DOT has no objection to this proposal and is prepared to work closely with the Under Secretary to assess the security needs in this area.

Section 3 of the bill would clarify the enforcement authority of rail police officers, employed by a particular rail carrier, to include authority within any jurisdiction in which any rail carrier owns property. DOT has no objection to this provision. Section 3 would also require the Secretary of Transportation, in consultation with the Under Secretary, to review existing DOT rail regulations for the purpose of identifying areas that need to be revised for safety and security purposes within one year of the date of enactment of this Act. DOT is continually reviewing and revising its regulations for purposes of making the Nation's rail system safer and more secure; therefore, DOT has no objection to this provision in principle. However, the one-year deadline for the Secretary of Transportation's review of rail regulations coincides with the deadline for the Comptroller General's study of foreign rail security systems specified in section 4 of the bill. We suggest, therefore, that the Secretary of Transportation be given 18 months in lieu of one year in order for the Secretary to have time to take into account the results of the Comptroller General's study.

Section 5 of the bill would require the Under Secretary, in cooperation with the Secretary of Transportation, to study the cost and feasibility of requiring security screening for passengers, baggage, and mail carried on passenger trains and to report the results of the study and the Under

Secretary's recommendations, if any, to Congress. Section 5 would also call for a pilot program of random security screening of passengers and baggage at a total of five passenger rail stations served by Amtrak that would be selected by the Under Secretary. The section would authorize appropriations of \$5 million for fiscal year 2005 to the Under Secretary to carry out the section. DOT has no objection to the cooperative role envisioned by this section, but otherwise defers to the Department of Homeland Security (DHS). Additionally, section 5 requires matching of a "government issued" identification to passenger tickets "prior to boarding trains." This could negatively affect Amtrak's efficiency and overhead costs.

Section 7 of the bill would authorize a total of \$670 million for Fiscal Years 2005 through 2009 to be appropriated to the Secretary of Transportation to make grants to Amtrak for design and construction of fire and life-safety improvements to tunnels in New York, New York, Baltimore, Maryland, and Washington, DC. Funds appropriated pursuant to this section would remain available until expended. Amtrak would be required to submit for the Secretary's approval an engineering and financial plan for projects and a project management plan for each project. The Secretary would not be authorized to disburse funds to Amtrak unless the Secretary had approved such plans. DOT recognizes the benefits of fire and life-safety improvements to these critical elements of the Nation's rail infrastructure. In recognition of the importance of these tunnels, not just for intercity but also for commuter rail service, we believe that any funds made available for this purpose should flow through a Federal-State partnership such as that proposed in the Administration's legislative proposal to restructure intercity rail passenger service—the Passenger Rail Investment Reform Act. It should also be noted that the President's 2005 Budget proposes \$1.4 billion for Amtrak beginning in 2006, assuming fundamental reforms are instituted. This amount could help fund life-safety and security projects identified in an Amtrak security plan.

Section 8 of the bill would require the Under Secretary and the Secretary of Transportation to enter into a memorandum of agreement regarding their respective roles and responsibilities in dealing with railroad security matters within 60 days of the enactment of the Act. While DOT fully supports the need for an MOA with DHS on this and other subjects, such internal agreements are a matter of Executive Branch organization that are inappropriate for legislation. Section 8 would also clarify that, in the context of the Secretary of Transportation's regulatory authority at 49 U.S.C. 20103, the statutory term "safety" includes security. DOT supports this provision and notes that a comparable provision appears in section 102 of DOT's current rail safety reauthorization proposal and in section 205(b) of S. 1402, as passed by the Senate.

Section 9 of the bill would require Amtrak to submit to the Chairman of the National Transportation Safety Board (NTSB) a plan for addressing the needs of families of passengers involved in a fatal Amtrak accident. In particular, the section would require that the plan include a procedure by which Amtrak would use reasonable efforts to determine the number and names of passengers aboard an unreserved train and those not holding reservations on other trains. It is worth noting that Amtrak does not currently keep passenger logs for its unreserved cars. The

section also prohibits NTSB and Amtrak from sharing passenger lists with "any person" but allows information about a passenger to be shared with the family of a passenger. DOT suggests including clarifying language to preserve the Secretary of Transportation's existing authority to obtain this information directly from Amtrak. FRA needs passenger identity information in order to conduct thorough investigations including, for example, matching injuries with rail car interior features. Nevertheless, FRA has no reason to include personal identifying information in accident reports, and does not do so. Finally, the section would authorize to the Secretary of Transportation, for Amtrak's administration of this section, \$500,000 for fiscal year 2005. Other than the concerns noted, DOT does not object to this section.

Section 10 of the bill would authorize the Under Secretary to make grants through the Secretary of Transportation to Amtrak for system-wide Amtrak security upgrades. To receive funds from the Secretary for a particular security upgrade project, Amtrak would have to have a system-wide security plan approved by the Under Secretary, in consultation with the Secretary of Transportation. In addition, as in section 7(e) of the bill, Amtrak would be required to submit for the Secretary's approval an engineering and financial plan for projects and a project management plan for each project. The Secretary would not be authorized to disburse funds to Amtrak unless the Secretary had approved such plans. This section would authorize \$62.5 million for fiscal year 2005 to the Under Secretary to carry out the section, with funds appropriated remaining available until expended.

Section 11 of the bill would authorize the Under Secretary to make security improvement grants to freight railroads, the Alaska Railroad, hazardous materials shippers, and owners of tank cars used to ship hazardous materials, and, through the Secretary of Transportation, to Amtrak. Amtrak's eligibility for funds would be subject to the same conditions as described in section 10. The section would authorize to be appropriated to the Under Secretary \$250 million for fiscal year 2005, with amounts appropriated under this section remaining available until expended. DOT notes that the Government currently does not provide grants to the rail industry other than Amtrak and the Alaska Railroad. Further, the Administration is concerned that providing direct assistance to the rail industry generally could open the Government to the demands of other industries seeking similar funding.

Section 12 of the bill would authorize the Secretary of Transportation to use up to 0.5 percent of amounts available to Amtrak for capital projects under the Act to enter into contracts for the review of proposed capital projects and related program management plans and to oversee construction of such projects. DOT supports this provision.

Section 13 of the bill would require the Under Secretary, in conjunction with the Secretary of Transportation, to execute a research and development program to improve freight and intercity passenger rail security and, to carry out the program, would authorize appropriations to the Under Secretary of \$50 million per year for fiscal years 2005 and 2006. Funds appropriated pursuant to the section would remain available until expended. DOT believes that such a research and development program should be tailored to respond to the findings of risk

assessments and should be developed in such a way as to avoid overlap with existing research and development conducted by FRA for safety purposes.

Section 14 of the bill would mandate that FRA undertake certain actions to improve the safety of railroad track and railroad tank cars. DOT notes that the provision is unnecessary and duplicative because the Secretary of Transportation and the Secretary's delegate for rail safety matters, the Administrator of FRA, may perform the required actions already under existing statutory authority. In any event, any such a mandate should be directed to the Secretary of Transportation and not to FRA or the Administrator of FRA. DOT also notes that the Administrator of the Research and Special Programs Administration is, in most matters, the Secretary's delegate with respect to railroad tank car safety.

The track-related provisions in section 14 of the bill would obligate FRA to take certain actions regarding continuous welded rail (CWR) track within 90 days of enactment. One such provision would obligate FRA to require each railroad with CWR track to have procedures that better identify cracks in the joint bars that connect strings of CWR. FRA is allowed to impose such a requirement only by issuing an order or regulation. Although DOT believes that a direct final rule would be allowable pursuant to the provision, FRA rules are normally issued pursuant to notice and comment under 49 U.S.C. 20103(e), and the 90 day mandate would not permit such a proceeding. Allowing time for a normal proceeding, perhaps through FRA's Railroad Safety Advisory Committee, would enable rail labor, rail management, and other interests to provide their insights on how a rule should be crafted. DOT suggests, therefore, changing the beginning of section 14(a)(1) to read: "(1) initiate a rulemaking to require . . .".

Section 14 would also require FRA to coordinate with the NTSB in conducting an analysis to determine the impact resistance of the steels in the shells of pressure tank cars built before 1989 and to report to Congress on recommendations for measures to eliminate or mitigate the risk of catastrophic failure. FRA has been working with the Association of American Railroads Tank Car Committee, of which the NTSB is a member, and the joint government-industry Stub Sill Working Group to determine the impact loads to which a tank car is subjected both in normal transport and under accident conditions. Over-the-road tests will be conducted this year. FRA has also been researching the fatigue life of tank car steels and developing probability-of-detection curves for the materials. This work is also in conjunction with the Stub Sill Working Group. We would prefer to continue working through these existing groups rather than start a new effort with the NTSB. Otherwise, DOT has no objection to section 14.

DOT appreciates the Committee's commitment to rail security and looks forward to continue working with the Committee and other agencies with rail security oversight responsibilities to help provide the safest and most secure rail system possible.

The Office of Management and Budget has advised that there is no objection, from the standpoint of the Administration's program, to the submission of this letter to Congress. We appreciate the opportunity to comment on this legislation.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Emil H. Frankel". The signature is stylized with a large initial "E" and a long vertical stroke extending downwards from the end.

Emil H. Frankel
Assistant Secretary for Transportation Policy

Enclosure

Enclosure: DOT's Technical Comments on S. 2273

Section 2.

Section 2 of the bill refers to "freight and passenger rail transportation (encompassing rail carriers, as that term is defined in section 20102(1) of title 49, United States Code)." We note that the cited section, 49 U.S.C. 20102(1), does not define the term "rail carrier" but rather the term "railroad." "Rail carrier" is not defined in 49 U.S.C. 20102 at all; that section defines the term "railroad carrier," and in subsection (2), not subsection (1). Therefore, we suggest that "railroad carrier" be substituted for "rail carrier" and that "section 20102(2)" be substituted for "section 20102(1)".

Section 7.

DOT suggests the following edits:

- (1) for clarity and consistency, replace "LIFE SAFETY" with "LIFE-SAFETY" in the section heading and in the catchline for subsection (a);
- (2) in subsection (a) if the "tunnels on the Northeast Corridor" are Amtrak tunnels, then "Amtrak" should be inserted before "tunnels";
- (3) replace the semi-colon at the end of subsection (e) with a period; and
- (4) replace "life safety" with "life-safety" in subsection (f).

(DOT questions whether the description of two tunnels in subsection (b)(2) is adequate. The current description reads: "the Baltimore & Potomac tunnel and the Union tunnel".)

Section 13.

Subsection (c), "Accountability," states that the Under Secretary would be required to ensure that the program would be coordinated with other research and development initiatives at the Department of Homeland Security and at DOT. DOT suggests (1) moving the entire text of subsection (c) (which addresses coordination issues) to the end of section 13(b), which deals with those issues, and (2) correcting a typographical error in the text by replacing "the would be useful" with "that would be useful". In addition, DOT suggests that, after the heading of section 13(c), "ACCOUNTABILITY.--", the text of section 11(b), "Accountability," should be copied and inserted. (The text of section 11(b) is as follows: "The Under Secretary shall adopt necessary procedures, including audits, to ensure that grants made under this section are expended in accordance with the purposes of this Act and the priorities and other criteria developed by the Under Secretary.")

Section 14.

Subsection (b) would require FRA to “validate the predictive model it is developing to quantify the maximum dynamic forces acting on railroad tank cars under accident conditions” and to commence a rulemaking to establish proper design standards for pressurized tank cars. DOT suggests striking “maximum” and inserting “relevant” because “maximum” is undefined for these purposes and “relevant” describes the type of dynamic forces that should be studied.

**Testimony of Richard Tidwell
Deputy Executive Director
Metra
547 W. Jackson Boulevard
Chicago, IL 60661-5717
(312) 322-8990
before the Subcommittee on Railroads
of the Committee on Transportation and Infrastructure
U.S. House of Representatives
May 5, 2004**

Mr. Chairman and members of the subcommittee, my name is Rick Tidwell, and I am the Deputy Executive Director of Metra, the commuter rail agency serving Chicago and all of northeastern Illinois. It is an honor to be here with you today and to have this opportunity to share Metra's views on rail security.

In order to provide some context to our views on rail security, let me begin by briefly describing our system. Metra is the second largest commuter railroad in the country in terms of number of passengers and is the industry's largest in terms of numbers of lines, miles of track, amount of equipment, and number of employees. In addition, Metra is the most complex commuter rail system, in that we own directly and operate several of our rail lines, have purchase-of-service agreements with the nation's two largest freight carriers (UP and BNSF), and have several trackage agreements with other freight carriers.

We provide service to Chicago and northeastern Illinois on twelve lines that serve more than 120 communities with 240 stations, including a stop at O'Hare International Airport. We also serve five hub terminals in downtown Chicago. These lines carry more than 1.6 million riders each week which translates to over 82 million passenger trips per year. We are extremely proud of our on-time performance, which is the highest in the industry, averaging above 96% in every year of Metra's existence. Although we are already very large, both in terms of numbers of passengers served and the size of our service area, we continue to grow and expand, attracting new riders and bringing new services on line for our customers.

In the time allotted to me today, I would like to outline what we believe are the challenges we face in this new post 9/11-environment; what we have done to address those challenges; and to tell you what we believe you can do to assist us in improving our response in making our system more secure for our customers.

The Metra system comprises a vast service territory, totaling nearly 3,500 square miles. Each of the 240 stations represents an access point for our nearly 300,000 daily passengers. Our largest trains carry up to 1,600 passengers or an equivalency of three fully-loaded Boeing 747 aircraft. Our customers rely on our ease of use and our watch-setting reliability. We simply have no efficient way to individually screen those who use

our service. Our ridership densities are too great and our time frames too compressed.

Even before 9/11, Metra has worked hard to address the safety and well-being of our passengers and employees. That is evidenced by our emergency preparedness response planning and training, our public education and awareness on rail safety, and our being the recipient of eight E.H. Harriman industry awards for employee safety.

After 9/11, we needed to do much more, and we have. We became members of the Chicago Joint Terrorism Task Force. We are, in fact, in direct communication with numerous state and federal agencies, sharing information on potential threats. All of our front line employees have been trained in bomb recognition and reaction.

We have brought in substantial numbers of off-duty certified police officers to patrol our downtown stations along with dogs specially trained to detect explosives. Our entire employee population, over 4,000 people, will begin detailed training on system security awareness for commuter rail employees later this month in a program presented from the National Transit Institute at Rutgers University. Our fire marshal continues to aggressively train first responders in our equipment and operations, and our police department is working with numerous law enforcement jurisdictions to provide security where we have outlying overnight storage yards. Our own officers aggressively patrol stations, bridges, interlocking plants and other critical facilities. Finally, we are in the process of initiating the measures for which we requested funding in our recent grant request to the Department of Homeland Security.

These efforts are a start but we need to do more. The continuation of the Department of Homeland Security grant program is critical to our installing additional security and surveillance infrastructure, and we wish to thank the Department of Homeland Security and Congress for making these critical funds available.

Our single greatest vulnerability, however, rests with too few eyes and ears to be vigilant in all of our multiple locations. We believe the federal government has a role to play in assisting us to enhance our capabilities. We must significantly improve both the industry's and Metra's readiness, harden ourselves as potential targets and expand our security infrastructure. Even more so, we must put additional human and canine assets in the field. We would welcome an opportunity to work with the committee and the Department of Homeland Security on ways to increase commuter rail security and possible funding sources that would help provide the manpower and capital resources necessary to protect our system. We believe that many lessons can be learned from the Transportation Security Administration's (TSA) efforts that protect our nation's airports and aircraft. We believe people, "trained to be vigilant, protecting stations, and riding trains," will best serve as a deterrent to those who seek to do us harm.

Again, thank you for this opportunity to speak, and we look forward to working with the committee on this important issue. I will be happy to answer any questions.



**STATEMENT OF
EDWARD WYTKIND, PRESIDENT
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO**

**BEFORE THE
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON RAILROADS
ON
RAILROAD SECURITY**

May 5, 2004

Chairman Quinn, Ranking Member Brown, and members of the Subcommittee, on behalf of the 35 affiliated unions of the Transportation Trades Department, AFL-CIO (TTD), I want to thank you for giving transportation labor an opportunity to testify today on our priorities and strategies for enhancing rail security.¹ As the transportation umbrella organization for the AFL-CIO, TTD has been heavily involved in the security debate across all modes of transportation. What we have learned from those debates is that security solutions are best achieved when workers are brought into the process and are treated as valued partners. We hope that Congress and this Committee will recognize this reality and draft a rail security bill that benefits from the insight of front-line workers and gives them the tools they need to help make our rail system as secure as possible.

There is little question that more must be done to improve rail security – both in the transport of passengers and freight, which I should note includes a significant amount of hazardous material. The events in Madrid served as the most recent wake-up call, but in reality we know that rail transportation, as well as public transit, have long been targets of terrorists. In fact, the first large-scale use by terrorists of a chemical weapon occurred back in 1995 in a Tokyo subway system. In addition, the Mineta Transportation Institute identified 195 terrorist attacks against surface transportation systems from 1997 through 2000. Indeed, the Department of Homeland Security has stepped up its warning for the rail industry to be on the look out for terrorist

¹Attached at 1 is a complete list of TTD's affiliated unions. Specifically, the Rail Labor Division of the TTD consists of the following unions: American Train Dispatchers Association; Brotherhood of Locomotive Engineers and Trainmen, IBT; Brotherhood of Maintenance of Way Employees; Brotherhood of Railroad Signalmen; Hotel Employees and Restaurant Employees Union; International Association of Machinists and Aerospace Workers; International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; National Conference of Firemen & Oilers, SEIU; Sheet Metal Workers International Association; Transportation • Communications International Union; and Transport Workers Union of America.

Transportation Trades Department, AFL-CIO

888 16th Street, NW • Suite 650 • Washington, DC 20006 • tel: 202.628.9262 • fax: 202.628.0391 • www.ttd.org
Sonny Hall, President • Patricia Friend, Secretary-Treasurer • Edward Wytkind, Executive Director

* * *

activities in this country. Unfortunately, beyond these vague warnings, the Administration has done little to harden vulnerable rail targets, ensure the training of employees or provide the level of funding that is so desperately needed for training, new technology deployment and infrastructure improvements.

The Transportation Security Administration (TSA) is spending \$4.4 billion this year on aviation security – an investment in aviation security we of course support – but passenger rail and transit are being left with just \$10 million. When you remember the size and scope of our rail system and infrastructure, this lack of attention and focus is hard to understand. There are over 100,000 miles of rail in the U.S. – 22,000 of miles of it used by Amtrak in 46 states and the District of Columbia. In FY 2002, Amtrak served 23.4 million passengers, or 64,000 a day. Commuter rail operations add 1.2 million passenger trips each weekday. The freight rail carriers carry 42 percent of our nation's domestic intercity freight and in 2001 alone, over 83 million tons of hazardous material.

So our rail security challenge, based just on the size of the system, is indeed daunting. In addition, we must recognize that given the open nature of our rail transportation network, we are never going to be able to secure it entirely, as it is, unlike aviation, simply not housed in a closed or controlled infrastructure. Indeed, inter-city and commuter rail is designed to be accessible and at least part of its appeal is this relative ease of use. Having said that, there are steps that must be taken to address certain security risks in the system.

As a general matter, we fully recognize that many in the industry will fight any mandates or requirements that might be imposed on them – even to enhance security. Their position will be that they know what is best and that they know how to run a railroad. Just provide them with millions in grant money and they will take care of everything else. I hope that you will reject this approach. We need to ensure that security is not left to the whims of individual carriers or cut when profit margins get tight. We must ensure a basic level of security and asking railroads to follow certain basic requirements, such as employee training, is not unreasonable.

Indeed, we need to start treating front-line employees as true partners in the effort to protect our rail system – these workers, our members, are the “eyes and ears” so to speak of the industry. They greet passengers, sell tickets, operate trains, maintain track, dispatch trains and fix cars. In short, they are in an excellent position to spot security risks and terrorist threats. And in the event that an attack does occur, our members will be on the scene and the first to respond along with firefighters and police.

But to be real partners in rail security and to play this important role, workers need more support from their employers and certain tools. First, security training for workers must be mandated. While some rail carriers might claim progress in this area, we have talked to too many workers who are not receiving any training or might be allowed to watch a one size fits all video. This is hardly going to cut it. Workers need to know how to identify a security risk and what to do in that situation. When should passengers be evacuated? Who is the contact person to report a potential risk? What actions, if any, should a worker take in a given situation? How should trains, stations or tunnels be evacuated and handled in different situations? What are the appropriate and necessary communications protocols crewmembers should follow in the event of

a security breach or incident? These are just a few of the many questions we know that workers are asking and not getting adequate answers to. In addition to formal training, technology must be provided to allow train operators to alert dispatchers and management of security developments that may arise during operations.

In addition to training, we must also ensure that workers who report or identify a security risk will not face retribution or retaliation from their employers. Simply put, a rail worker should not have to choose between doing the right thing on security and his or her job. Unfortunately, too often this is exactly what occurs in the industry when it comes to workers reporting rail safety risks and concerns.

Rail workers and their unions have long argued that despite the whistle-blower protections included in current law (49 U.S.C. § 20109), employees still experience employer harassment and intimidation when reporting accidents, injuries and other safety concerns. Indeed, in a Federal Railroad Administration (FRA) report issued in July 2002 entitled *An Examination of Railroad Yard Workers Safety* (RR02-01), the FRA conducted focus group interviews with certain groups of rail workers. The FRA stated, "Perhaps of most significance, rail labor painted a generally adversarial picture of the safety climate in the rail industry. They felt that harassment and intimidation were commonplace, and were used to pressure employees to not report an injury, to cut corners and to work faster."

As Congress considers rail security legislation, it must address this problem by strengthening the current whistle-blower protections and ensuring that workers who report security concerns are covered by the strongest possible protections. Everyday, rail carriers and the government ask front-line workers to be more vigilant about security risks and to report possible breaches. With the right training, rail workers are more than happy to play this role. But it is disingenuous to ask workers to report problems and at the same time refuse to give them the basic protections needed to ensure that such reporting will not result in retribution from their employer. Again, I urge the Committee to send a clear message on this point – workers are to be treated as partners in enhancing security, not critics to be silenced. In fact, I would that as part of the Sarbanes-Oxley Act, Congress, on a bi-partisan basis, included whistle-blower protections for those who report shareholder fraud violations or of violations Securities and Exchange Commission rules. (See, 17 U.S.C. 1514A). Surely, if we can protect whistle-blowers who report financial security problems, we can also protect those who report rail security concerns.

We are also concerned that the use of remote control locomotives (RCLs) is replacing trained employees with unregulated technology that is a direct threat to safety and security. Attached is a resolution, unanimously adopted by TTD's 35 affiliated unions earlier this year, that calls for the FRA to put an end to the unregulated use of RCLs² – something the agency has refused to do despite formal requests from the Brotherhood of Locomotive Engineers and Trainmen (BLET), the International Brotherhood of Teamsters (IBT), and all of transportation labor through the TTD. Also attached is a letter from IBT General President James Hoffa and BLET President Don Hahs outlining their security concerns regarding the use of RCLs.³

²Attached at 2 is the TTD resolution of RCLs.

³Attached at 3 is the IBT and BLET letter on RCLs.

While I realize that our nation's largest rail carriers see RCLs as a cost saver, we must never put profits ahead of safety and security which is exactly what we doing right now. It must be remembered that RCLs are used to move cars that contain hazardous material – a serious security risk if they fall in the wrong hands. While much of RCL operations occur within the rail yard, it is not uncommon for the technology to move cars over grade crossings and several miles from the point of origin to the final destination within a terminal. Federal regulations are needed for RCL use and we need to make sure that operators are trained in this technology. Finally, requirements are need to ensure that RCL devices are in a secure location when not being used.

Our members are also increasingly concerned that rail yards and facilities are largely open areas where people can come and go virtually unchallenged. In general, we need to ensure some type of security perimeter around yards and other sensitive facilities and better access control. Indeed, I would note that shortly after the Madrid attacks Amtrak issued a security notice reminding employees to wear their identification badges despite the fact that, according to reports we have received, many employees have not actually received their credentials. This of course raises the question of how access control is being achieved in those situations. On a related issue, we need procedures in place to ensure that unattended locomotives are secured and can only be moved by authorized individuals. In addition, we note that many locomotive cabs are accessible in transport to passengers. We need to find a way to fortify this workplace which of course is also the control center for operational trains. I should note that Congress has already required the fortification of cockpit doors of commercial aircraft as part of an overall effort to secure air transport.

Achieving rail security is of course not a simple task. But we cannot allow this challenge to go unmet any longer. Two and a half years after 9/11 and in the wake of Madrid, our government and rail employers are still not doing enough to make rail transportation as secure as possible. Rail security needs and deserves attention and focus from policy makers. Carriers must be required to follow security procedures, employees must be trained and afforded whistle-blower protections, unregulated RCL use must stop, and rail yards, facilities and locomotives must be secured. All of transportation labor has a vested interest in improving rail security and Mr. Chairman and Ranking Member Brown, TTD stands ready to work with you to achieve this common agenda.

Thank you again for giving TTD an opportunity to share our views today.



TTD AFFILIATES

The following labor organizations are members of and represented by the TTD:

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Locomotive Engineers and Trainmen (BLET)
Brotherhood of Maintenance of Way Employes (BMWEE)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
Hotel Employees and Restaurant Employees Union (HERE)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Brotherhood of Teamsters (IBT)
International Federation of Professional and Technical Engineers (IFPTE)
International Longshoremen's Association (ILA)
International Longshore and Warehouse Union (ILWU)
International Organization of Masters, Mates & Pilots, ILM (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Airways Systems Specialists (PASS)
Retail, Wholesale and Department Store Union (RWDSU)
Service Employees International Union (SEIU)
Sheet Metal Workers International Association (SMWIA)
Transportation • Communications International Union (TCU)
Transport Workers Union of America (TWU)
United Mine Workers of America (UMWA)
United Steelworkers of America (USWA)

January 2004

Transportation Trades Department, AFL-CIO

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**REMOTE CONTROL LOCOMOTIVES:
A DANGEROUS PRACTICE THAT MUST BE STOPPED**

Despite mounting accidents and even deaths caused by the use of remote control locomotives (RCLs) by the nation's rail carriers, the Federal Railroad Administration (FRA), the government agency charged with ensuring rail safety, refuses to issue rules that will properly limit and regulate this dangerous practice. In fact, the formal request submitted by the Brotherhood of Locomotive Engineers and Trainmen (BLET), endorsed by transportation labor in a separate filing, for the FRA to address this problem has been ignored, with the agency insisting that not enough data has been generated to warrant regulatory action. The FRA's refusal to act ignores the reality that RCLs pose an immediate and serious safety hazard risk both to rail workers and communities and the time has come to address this growing risk to safety.

Since the major railroads began implementing this technology, the BLET has documented over 250 accidents involving remote control operations. Earlier this month, eight cars derailed at a CSX yard in Cheektowaga, New York. A local television station reported that at the time of the accident the train was being operated by remote control and quoted one anonymous worker who stated that the remote control technology has "been shoved down our throat." In the latest fatality involving this technology, a 37-year old Union Pacific switchman was struck and killed in December by a locomotive engine that he was operating alone by remote control. Unfortunately, these stories are all too common and numerous to recount.

It is not clear why the FRA has refused to act. What is clear is that the continued use of this technology without the implementation of appropriate safety measures places all rail workers at risk of injury and death. The workload associated with operating a locomotive while performing other critical safety tasks demands too much of a single individual. To date, the FRA's response has been to issue "recommended minimum guidelines." The problem is that these guidelines, as the name suggests, do not actually require carriers to adopt all the necessary safety procedures and in general do not go far enough to ensure that this technology is implemented and utilized safely. For example, a train engineer usually undergoes at least six months of training while the guidelines suggest that an individual can operate a locomotive remotely after only a week or two of training. This assumption of safety was based on a belief that skilled and experienced ground employees could operate RCLs. But the fact is that new employees entering the industry have very limited training and experience.

In issuing these guidelines in 2001, the FRA noted that its "first priority ... is to ensure that these operations [RCLs] pose no threat to railroad workers and or to the general public." The FRA further stated that "because information currently available ... does not lead to the conclusion that RCL operations should be

Transportation Trades Department, AFL-CIO



prohibited on safety grounds, the FRA has elected to proceed cautiously." The time for caution and for collecting statistics is over – it should now be clear, if there was any doubt, that RCLs are dangerous and must be regulated or eliminated.

We are not the only ones who have reached this conclusion. As of January 2004, 34 different cities and 14 counties have passed remote control safety resolutions. These resolutions call upon the FRA to adopt enforceable regulations for the use of RCLs and to ensure the workers who utilize this technology have the skills and qualifications necessary to operate RCLs safely. In addition to these 48 communities, 13 different AFL-CIO State Federations have adopted similar positions on RCLs.

The problems associated with RCL use have also prompted some in Congress to ask the FRA some tough questions. In particular, Senate Commerce Committee Chairman John McCain and Ranking Democrat Ernest Hollings have asked the FRA to conduct a thorough safety audit of RCLs and to specifically compare the rate of accidents, injuries, and fatalities involving RCLs with similar operations involving manned locomotives. In addition, the Senators asked the FRA to assess the effects of remote control operations on the safety of highway grade crossings, hazardous materials transportation and the use of RCLs in urban areas. Finally, the FRA has been requested to include recommendations for legislative or regulatory changes that may be necessary.

Unfortunately, there is good reason to believe the FRA's safety assessment, derived from the collected data, will yield questionable results. It is well known that self reporting of accident/incident data by railroads has been problematic. Specifically, (1) the \$6,700 damage threshold for reporting of a rail equipment accident is determined solely by the railroad; (2) triggering events for reportable injuries are determined solely by the railroad; (3) the FRA's "Accident Reporting Guide" was revised in May of 2003, for among other reasons, to accommodate remote control accident/incident reporting and has created ambiguous reporting especially with respect to employee injuries; (4) specific accident and incident reports can be modified by the railroads even after the audit is conducted by FRA and the initial report is given to Congress; (5) the railroads use of codes such as "undetermined" or "under investigation" allows further ambiguity and will not permit conclusive findings; (6) the initial report will cover selected months and circumstances that may lower the risk for remote control operations; and (7) the exposure levels for determining the rate of accidents/incidents in remote control operations versus conventional operations are very problematic because of railroad record keeping and modification of assignments throughout the course of operations.

Given these barriers to a sound report and the FRA's history of foot dragging and delay in addressing this problems, we are concerned that once again the agency will find some excuse for why it cannot act. Nonetheless, the direct interest and involvement of the Senate Commerce Committee has already forced the FRA to take another look at RCLs and we hope that this time the agency will address the problems that transportation labor – led by the BLET and the Teamsters – has long identified.

It should be clear that safety (not profits or the illusion of productivity gains) must be the number one priority in rail operations. Yet unregulated RCLs, a proven safety risk and condemned by rail workers, local communities, elected leaders and labor organizations throughout the country, remain in use. It is time for regulators and legislators to put an end to this practice and make sure that new technologies are used to enhance, not erode, rail safety standards.

Policy Statement No. W04-05
Adopted March 7, 2004



Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference-International Brotherhood of Teamsters

NATIONAL DIVISION
1370 Ontario Street, Mazzonina • Cleveland, Ohio 44113-1702
Phone: (216) 241-2630 • Fax: (216) 241-6516 • www.ble-t.org

NATIONAL LEGISLATIVE OFFICE
25 Louisiana Avenue NW, Suite 409 • Washington, D.C. 20001
Phone: (202) 624-8776 • Fax: (202) 624-3086 • Tolman@ble.org

April 7, 2004

Dear Member of Congress:

The recent terrorist attacks on passenger trains in Madrid sent a shudder down the backs of all railroad workers and the public in this country. The attacks on trains brought to mind the horrific consequences of this nation's long neglect of both passenger and freight rail security.

Each day, thousands of people travel on this nation's passenger and commuter railroads. Each day, millions of tons of freight, including hazardous materials, are carried in and around cities and towns across this country. The miles of rail tracks crisscrossing this nation have been largely ignored as a target for terror, but the attacks in Madrid have served as a tragic wake-up call for all Americans.

For many years, the crews aboard trains have served as a vital safeguard against terror on our nation's railroads. The nature of the open railroad environment requires vigilance by our members in order to guard the safety of trains and rail infrastructure. However, the first line of defense, the trained eye, at some of our rail terminals where remote control is used, is not aboard. These men and women who serve as the eyes and ears of rail safety are being taken away from their posts in the rail terminals by railroad executives who are putting profits above safety and security. Remote control locomotive technology is being implemented by railroads across this nation in the name of profits but in doing so, it is endangering our national security. As we saw in Madrid, railroads are an easy target. Unlike airplanes, trains travel on the ground where they are left vulnerable. There is no screening of passengers or baggage. With no human aboard, a chemical spill may go unnoticed, a bomb may not be spotted, or hijacker may not be stopped.

Remote control is not a collective bargaining issue, as some would lead you to believe. The Brotherhood of Locomotive Engineers and Trainmen (BLET) has always believed that remote control technology is, as it is currently being implemented and overseen, an unsafe way to operate trains. The Federal Railroad Administration, thus far, only issued guidelines for the implementation of remote control technology. These

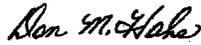
Member of Congress
April 7, 2004
Page 2

guidelines are often loosely interpreted, and in other cases, completely ignored by the railroads, resulting in deaths, amputations and injuries, and several hundred accident/incidents since its implementation.

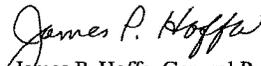
More than fifty communities across the U.S. support our belief that remote control technology in its current form is unsafe. These communities have passed resolutions opposing remote control operations in their areas and in many cases, have cited fears of terrorism as a reason for passage.

The tragedy in Spain has brought to light the fact that trains are opportune targets for terror. We must fortify our nation's railroads by actively assessing the risk to security of their operations. The use of remote control locomotives reduces the level of security and leaves trains more open to attack. In the coming weeks, the Teamsters Union and the BLET will be contacting you about the unsafe and unsecured operations of remote control locomotives. We urge you to listen carefully, as this practice puts safety and security on the side rail and railroad profits on the main track.

Sincerely,



Don M. Hahs, President
Brotherhood of Locomotive Engineers
and Trainmen



James P. Hoffa, General President
International Brotherhood of Teamsters

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154

COMMENTS SUBMITTED BY

Brian Michael Jenkins¹

**TO THE HOUSE TRANSPORTATION AND
INFRASTRUCTURE COMMITTEE**

June 22, 2004

¹ The opinions and conclusions expressed in these comments are the author's alone and should not be interpreted as representing those of the Mineta Transportation Institute and RAND or any of the sponsors of their research.

The Rail Security and Public and Transportation Terrorism Prevention Acts of 2004 (S.2273 and S.2453) will provide needed impetus and badly needed funds to significantly improve public surface transportation security. While attention since 9/11 has understandably focused on aviation security, surface transportation faces a growing terrorist threat worldwide, underscored by the March 11 attack in Madrid.

Since the beginning of this year, three terrorist attacks have killed 230 persons on trains (nearly 400 if the North Korean train explosion in April is shown to have been deliberate sabotage as some suspect); more than 3,000 people were injured. Four terrorist attacks on buses have resulted in 50 dead and 90 injured.

For those determined to kill in quantity and willing to kill indiscriminately, trains, subways and buses are ideal targets. They offer terrorists easy access and escape. Congregations of strangers guarantee anonymity.

Crowds in contained environments are especially vulnerable to both conventional explosives and unconventional weapons. Terrorist attacks on public transportation systems also cause great disruption and alarm—the traditional goals of terrorism.

The terrorists who target transportation systems are often seeking slaughter. Two-thirds of the surface transportation attacks clearly were intended to kill; 37 percent result in fatalities, and 74 percent of the fatal attacks involved multiple fatalities.¹ Every attack this year was intended to kill; all resulted in casualties.

Such an attack could occur here. In 1997, Islamic extremists planned to carry out suicide bombings on New York City's subways. A lucky tip enabled police to foil the plot.

Surface transportation cannot be protected in the same way commercial aviation is protected. Trains, subways, and buses must remain readily accessible, convenient, and inexpensive. The deployment of metal detectors, X-ray machines, explosive sniffers, and armed guards, which have become features of the landscape at airports, cannot be transferred easily to subway stations or bus stops. The delays would be enormous and the costs prohibitive—public transportation would effectively be shut down.

Moreover, any new set of security measures should provide a net security benefit; it should not merely displace the risk toward other equally vulnerable targets. Transportation facilities are public places. Other public places that offer terrorists similar body counts—shopping malls, crowded streets, or the lines of people waiting to get through security measures—are just as vulnerable. Erecting a protected perimeter around every public place, from department stores to bus depots, from subways to supermarkets, is not only impractical, it destroys an open society.

This does not mean that nothing can be done to increase surface transportation security. Security officials in countries that have been subjected to terrorist attacks have developed some effective countermeasures. Good security can make terrorist attacks more difficult, can increase their likelihood of being detected, can minimize casualties and disruption, can reduce panic, and can reassure passengers.

Analyses of previous terrorist attacks and campaigns against mass transit systems have provided a growing catalog of lessons learned and best security practices.²

Visible security patrols and staff have a deterrent effect. Closed-circuit television coverage has been used extensively in Europe with good results. And enlisting employees and the public in surveillance can also be very effective.

Detection and diagnosis are essential to both keeping passengers out of harm's way and minimizing needless disruption. New technology is giving us the ability to detect and diagnose more effectively. Chemical, biological, and radiological detection equipment has been deployed on an experimental basis on some subway systems.

Much can be done through the design of vehicles and facilities to eliminate hiding places, facilitate surveillance, and reduce casualties by removing materials that explosions may turn into shrapnel or that burn with toxic fumes. Tunnels, especially those used by both passenger and freight trains, and that pass under heavily populated areas can be better protected. Adequate ventilation to remove deadly smoke, a leading killer in tunnels, must be ensured.

Safe areas can be created to protect passengers during bomb threats when evacuation is not feasible. Facilities should be designed to make emergency response as rapid and effective as possible. Exercises and drills involving transportation staff, police, and other emergency responders are crucial. This was demonstrated dramatically on September 11, when the 60,000 passengers and 300 employees below the World Trade Center were all safely evacuated.³

While there are many good ideas, there is no single best way to implement them. Surface transportation is not a single national system. It is a complex quilt of networks that vary in size, mode, and means of providing security. A "best practices" approach may be the most effective model for surface transportation security, because it allows local authorities and operators to learn from one another's best practices and to decide what works best for them.

In a "best practices" approach, the federal government supports research and development, subsidizes the deployment of experimental technology, provides intelligence, augments security with additional resources and specialized

equipment when the threat warrants, and assists with emergency response and investigation in the event of a terrorist attack.

In recognition of the continuing serious terrorist threat to the United States, these two bills would also provide the resources to rapidly make capital improvements in security and would subsidize, on a declining basis, operational costs. In addition, they would provide the necessary support for the research, by both government and external institutions, that is necessary to keep up with a dynamic threat and support the creation of an effective *and* efficient surface transportation security strategy.

¹ Brian Michael Jenkins and Larry N. Gersten, "Protecting Public Surface Transportation Against Terrorism and Serious Crime: Continuing Research on Best Security Practices," Mineta Transportation Institute, September 2001.

² Brian Michael Jenkins, "Protecting Public Surface Transportation Against Terrorism and Serious Crime: An Executive Overview," Mineta Transportation Institute, October 2001.

³ Brian Michael Jenkins and Frances Edwards-Winslow, "Saving City Lifelines: Lessons Learned in the 9/11 Terrorist Attacks," Mineta Transportation Institute, September 2003.