DETOUR AHEAD

CRITICAL VULNERABILITIES IN AMERICA'S RAIL AND MASS TRANSIT SECURITY PROGRAMS

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U.S. HOUSE OF REPRESENTATIVES

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Table of Contents

I. Executive Summary

While commercial aviation remains a possible target, terrorists may turn their attention to other modes. Opportunities to do harm are as great, or greater, in maritime or surface transportation.

9-11 Commission Report[1]

Next month marks the first anniversary of the London mass transit bombings. On July 7th and, subsequently, July 21st, Americans watched in shock as terrorists struck at the heart of our ally's mass transit system, killing fifty-two people and injuring more than 700 others. [2] The July 7th attack started at the heart of rush hour, with three bombs exploding at 8:50 am on London's Underground subway system.[3] Less than an hour later at 9:47 am, as London's subway system was completely shut down, an explosion tore through the back of the number 30 Hackney to Marble Arch bus.[4]

Those struck down were ordinary people, not that different from many Americans, who were going about their usual routine; commuting to work, school, or tourist sites. For example, James Adams, a mortgage adviser and deacon, was on his way to work when he died in the subway explosion between King's Cross and Russell Square.[5] Neetu Jain, a property developer, died as a result of the bus attack.[6] Her boyfriend, Gous Ali, last heard from her around 9:30 am when she called to tell him that she had been evacuated from the Euston Street subway station and was taking a bus to work.[7]

After the bombings, Congress called on the Administration to move quickly to reinforce our nation's rail and mass transit systems to prevent such an attack from happening on American soil.[8] Yet, nearly a year later, the Department of Homeland Security and the Transportation Security Administration (TSA) have failed to produce a comprehensive strategy to secure America's rail and mass transit systems.[9] In addition, the Department and TSA continue to focus

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[1] THE 9/11 COMMISSION REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES 391 (2004), *available at* http://www.9-11commission.gov/report/911Report.pdf.
[2] Paula Hancocks, *UK to Unveil London Bomb Inquiries*, CNN.COM, May 11, 2006 *available at* http://www.cnn.com/2006/WORLD/europe/05/11/london.bombings0440/index.html.
[3] David Stringer et al., *London Bombings: How Tragedy Unfolded*, The Press Association Limited, Jul. 10, 2005, *available at* http://www.lexis.com/research/retrieve/frames?_m=779f004bf6df18c95473baa77658f9b5&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=fa7d89ce1665c9c766c53888ce79f8ab.
[4] *Id.*
[5] *List of the Bomb Blast Victims*, BBC NEWS, Jul. 20, 2005 *available at* http://news.bbc.co.uk/2/hi/uk_news/4668245.stm.
[6] *Id.*
[7] *Id.*
[8] Press Release, Committee on Homeland Security, Representative Bennie G. Thompson Responds To Terrorist Attack in London, Jul. 7, 2005, *available at* http://hsc-democrats.house.gov/NR/rdonlyres/BD23EE20-2464-42E5-B31D-55C737BFC46D/0/050707_London.pdf.
[9] For purposes of this report, mass transit includes subways, light rail, and intra-city buses. Rail includes freight and passenger rail, including commuter rail, in addition to the Alaskan Railroad.

almost exclusively on aviation security, spending, on average, $9 per air passenger, as compared to only one penny per rail/mass transit security passenger.

The Department has made excuses for this failure by stating that mass transit security is a shared responsibility between federal, state, and local partners, and that the federal government has provided significant support for the past three years.[10] This "partnership," however, has long left state and local governments paying the check without really knowing what they are paying for and why.

Information sharing has long been a challenge within the current Administration. The 9-11 Commission Report, released in 2004, highlighted this problem.[11] Subsequently, the 9/11 Discourse Project, a non-profit organization led by the members of the 9/11 Commission, recognized in 2005 the continuing flaws and gave the Department a "D" for its efforts. According to the group, "(t)here remain many complaints about the lack of information sharing between federal authorities and state and local level officials." [12]

The Department's partnership failures extend beyond its ability to get along with state and local governments to the private sector and frontline employees of the rail and mass transit systems. The Administration has not actively engaged these employees. These men and women are the eyes and ears of these systems yet the Administration has not consulted with them on its initiatives. Nor, has the Administration ensured that they are trained to respond to a terrorist event.

Finally, the federal government has not stepped up to the plate to move forward with critical plans to secure our nation's rail and mass transit systems. Instead, the Administration continues to approach the problem with piecemeal solutions instead of developing an overarching strategy that could be used to guide initiatives. Similarly, the Administration also has failed to devote significant resources and manpower to rail and mass transit research and development. Technology will play an important role in deterring and preventing future chemical, biological, or radiological attacks.

As the London bombings anniversary approach, it is clear that the Administration, the Department of Homeland Security, and TSA must do more to secure our nation's rail and mass transit systems. Specifically, the following items must be done immediately:

- Completion of a comprehensive National Rail and Mass Transit Security Strategy.

- Clarification of security roles and responsibilities of Federal, state, and local agencies.

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[10] Testimony of Michael Chertoff, Secretary of Homeland Security, Before the Senate Committee on Homeland Security and Government Affairs, 109th Cong., 1st Sess. (Jul. 14, 2005) *available at* http://www.lexis.com/research/retrieve/frames?_m=92862e6cf5de2935637119b96082e721&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVtb-zSkAW&_md5=d306a54bf2c7b8d7702361a0daf8d9ce.

[11] 9-11 COMMISSION REPORT *supra* note 1, at 418.

[12] 9/11 PUBLIC DISCOURSE PROJECT, FINAL REPORT ON 9/11 COMMISSION RECOMMENDATIONS 3 (Dec. 5, 2005) *available at* http://www.9-11pdp.org/press/2005-12-05_report.pdf.

- Requirement for rail and mass transit systems to submit security plans to TSA for review, approval, and enforcement.
- Requirement of vulnerability assessments for all rail and mass transit systems.
- Development of regulations to ensure compliance with security standards.
- Establishment of dedicated funding for rail and mass transit security.
- Mandate security training for all front line employees.
- Mandate rail and mass transit research and development.

II. Threats to Rail and Mass Transit Systems: Historical Perspective

Rail and mass transit systems have long been an attractive target for terrorists and criminal actors. According to a RAND Corporation database of worldwide terrorist incidents, between 1995 and June 2005, there were over 250 terrorist attacks worldwide against rail targets, resulting in almost 900 deaths and over 6,000 injuries.[13] These numbers do not include those killed and injured in the London attacks in 2005.

The Mineta Institute has also focused on terrorist attacks on public transportation systems. In 2001, the Institute published a report listing all attacks worldwide between 1920 and 2000.[14] According to the Institute, there were nearly 900 attacks during this 80 year period.[15]

A few of the more significant attacks around the globe are detailed below.

The United States

- ***Hyder, Arizona – October 9, 1995***

On October 9, 1995, terrorists calling themselves the "Sons of Gestapo," pulled 29 spikes from a stretch of railroad track in the Arizona desert, sending four cars of the Sunset Limited plunging off a 30-foot trestle.[16] The derailment, which occurred near Hyder, Arizona, killed sleeping car attendant Mitchell Bates, 41, a 20-year Amtrak employee and injured 78 others.[17] There were 248 passengers and 20 crew members on board at the time of the accident.[18] Four typed letters were found at the scene which mentioned the Bureau of Alcohol, Tobacco and Firearms, the FBI, "Ruby Ridge," and "Waco."[19] The letters were signed "Sons of the Gestapo." No arrests were ever made.[20]

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[13] GOVERNMENT ACCOUNTABILITY OFFICE, PASSENGER RAIL SECURITY: ENHANCED FEDERAL LEADERSHIP NEEDED TO PRIORITIZE AND GUIDE SECURITY EFFORTS, Sept. 2005 at 10 (GAO-05-851), *available at* http://www.gao.gov/new.items/d05851.pdf.

[14] MINETA TRANSPORTATION INSTITUTE, PROTECTING PUBLIC SURFACE TRANSPORTATION AGAINST TERRORISM AND SERIOUS CRIME: CONTINUING RESEARCH ON BEST SECURITY PRACTICES, Report 01-07, Sept. 2005, (Mineta Institute Report) *available at* http://transweb.sjsu.edu/publications/01-07.pdf.

[15] *Id* at 67.

[16] Judi Villa, *Cryptic Note Left Few Clues to '95 Derailment Saboteurs Cut Train Ride Short*, ARIZ. REPUBLIC, May 24, 2002, at 7B, *available at* http://www.lexis.com/research/retrieve/frames?_m=cc0b5f98eb677b6e2c03483f70e13f56&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzz-zSkAA&_md5=2556ba1a63835d73c5fe01fa815968a6.

[17] Jim Hill & Wire Reports, *Sabotage Suspected in 'Terrorist' Derailment*, CNN.COM, Oct. 10, 1995, *available at* http://www.cnn.com/US/9510/amtrak/10-10/.

[18] *Id.*

[19] FEDERAL BUREAU OF INVESTIGATIONS, TERRORISM IN THE UNITED STATES: 1996, 22 *available at* http://www.fbi.gov/publications/terror/terroris.pdf.

[20] Email from Amtrak official to staffer on the House Homeland Security Committee (May 15, 2006, 08:34 EST) (on file with Committee).

- ***New York City, New York – July 31, 1997***

On July 31, 1997, New York City police officers successfully averted a potential nail-filled pipe bomb attack on a Brooklyn subway station frequented by Orthodox Jews by two Palestinian immigrants - Gazi Ibrahim Abu Mezer and Lafi Khalil.[21] Police were tipped off to this attack by Mezar's roommate.[22] In November 1996, Khalil received a transit visa from the U.S. Consulate in Jerusalem for travel through the United States to Ecuador. He didn't go to Ecuador. Instead, he boarded a flight to Syracuse, New York, and remained in the United States until his arrest in July 1997.[23] After his arrest, Khalil was convicted of having a fake immigration card, spent three years in jail and was then deported.[24] Mezer was sentenced to life in prison.[25]

- ***New York City, New York – 2003***

Ron Suskind in his new book, *The One Percent Doctrine, Deep Inside America's Pursuit of Its Enemies Since 9/11*, reports that Al-Queda planned to release hydrogen cyanide in the New York subways in 2003.[26] According to Mr. Suskind, the terrorists had traveled to New York via North Africa in 2002 and thoroughly cased different locations for the attacks. The poison gas would be released through mubtakkars which would be placed in subway cars and activated remotely. Forty-five days before the attacks, Ayman al-Zawahir, Osama bin-Laden's number two man, called off the attacks.

- ***New York City, New York – August 27, 2004***

On August 27, 2004, on the eve of the Republican National Convention, Shahawar Matin Siraj and his co-conspirator James Elshafay were arrested for planning to attack the Herald Square subway station in New York City with bombs hidden in backpacks.[27] This station is located beneath Macy's flagship department store.[28] The men had also allegedly considered other targets including the Verrazano-Narrows Bridge.[29] Siraj was found guilty on May 24,

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[21] Larry Neumeister, *Appeals Court Upholds Sentence in Subway Bomb Plot*, ASSOCIATED PRESS, May 31, 2000, *available at* http://www.lexis.com/research/retrieve/frames?_m=066ea733f47cd0e0d4ace8a88a188200&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVtz-zSkAA&_md5=aefe59b8de135af3ef80eeef5982aee6.

[22] Megan Turner, *Bomb Threat Grows Here*, N.Y. POST, Apr. 8, 2002 at 5, *available at* http://www.lexis.com/research/retrieve/frames?_m=212a205f52a3f7c6f88ecd943c186bd5&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAb&_md5=91e8c7d4a19c694e7ee57f05fe8bc543.

[23] Steven A. Camarota, *How the Terrorists Get In*, PUBLIC INTEREST, Sept. 22, 2002, at 65, *available at* http://www.lexis.com/research/retrieve/frames?_m=85551c0f6232ce400ecfb6dfa8d171bb&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAb&_md5=2af5e158a0231c4890cf202659d01c80.

[24] Neumeister, *supra* note 21.

[25] *Id*.

[26] Ron Suskind, *The Untold Story of al-Qaeda's Plot to Attack the Subways*, TIME MAGAZINE, Jun. 19, 2006 *available at* http://www.time.com/time/magazine/article/0,9171,1205478,00.html.

[27] Tom Hays, *Pakistani Immigrant Goes on Trial in New York Subway Plot*, ASSOCIATED PRESS, Apr. 25, 2006, *available at* http://www.lexis.com/research/retrieve/frames?_m=d92ca947ba9bd456d028f6730e45febb&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAb&_md5=330418e3c38d667b7b46f5be05fe9258.

[28] *Id*.

[29] *Id*.

2006, of conspiring to blow up the subway station.[30] Elshafay accepted a plea deal from the government.[31]

Paul Browne, the New York Police Department's chief spokesman, told reporters in 2005, one of the department's ongoing concerns was the emergence of "lone wolves" like Siraj.[32]

The United Kingdom

Last year's attacks in London were not the first attacks on subway and rail systems in England. The London Underground system had been repeatedly targeted in the past by terrorists. These premeditated attacks killed and wounded many.

In September 1973, a series of bomb attacks injured 18 people at the Victoria, Euston, and King's Cross subway stations.[33] Two years later in 1975, one person was killed and 20 were injured when a bomb exploded in Piccadilly, near the entrance to the Green Park subway station.[34] In 1976, a bomb exploded on a train at the Wood Green station, injuring one person.[35] That same year, eight people were injured when a bomb exploded at the Cannon Street Station.[36] In 1991, a bomb attack on the Victoria subway station killed one person and injured 40 others.[37] This attack was claimed by the Irish Republican Army.[38]

The London Underground is a very large system. Over three million people use this system during the week and about the same number use it each weekend – totaling nearly one billion customer journeys each year.[39] The London Underground system, recognizing its vulnerability, had taken certain security measures before the 2005 attacks. After the July 7th attacks, additional measures were taken.[40] Today, each of the 275 stations has its own evacuation plan.[41] Every member of the staff has had training in evacuation and safety procedures.[42] In addition, the London Underground system holds regular emergency exercises.[43]

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[30] John Marzulli, *Win in Terror War, Herald Square Bomb Plotter Guilty, NYPD Vindicated,* DAILY NEWS, May 25, 2006, at 4 *available at* http://www.lexis.com/research/retrieve/frames?_m=d6a3a00334cd51204927e476ea982d15&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAl&_md5=785ab3aad1957379e6f7eba205359ff7.

[31] *Id.*

[32] Michael Weissenstein, *Potential 'Lone Wolf' Attackers a Law Enforcement Concern*, ASSOCIATED PRESS, Aug. 9, 2005 *available at* http://abcnews.go.com/US/wireStory?id=1024292.

[33] *Explosions and Accidents on the London Underground*, AGENCE FRANCE PRESS, Jul. 7, 2005, *available at* http://www.lexis.com/research/retrieve/frames?_m=e85f4479764f8392dbd18d36deece355&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=312c9e493ab0159c1b8f734b381c4553.

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] Transport for London, *available at* http://www.tfl.gov.uk/tube/using/useful-info/safety/.

[40] Transport for London, *available at* http://www.tfl.gov.uk/tube/using/useful-info/safety/safety-tips.asp.

[41] *Id.*

[42] *Id.*

[43] *Id.*

Spain – March 11, 2004

In the early morning hours of March 11, 2004, men clad in wool caps and scarves and carrying backpacks, boarded trains at the Alcala de Henares station. Four men boarded train 21431 which left the station at 7:01 am. Three minutes later at 7:04 am, train 17305 departed with four additional men on board. Four men were also on board train 21435 that departed at 7:10 am and the remaining men were aboard train 21713 that departed at 7:14 am. In each case, the men stayed near the door with their bags under their seats. Slowly, each man departed the trains at different stops.[44]

At 7:37 am, ten bombs exploded almost simultaneously, killing 191 people and wounding around 1,900. These bombs were detonated remotely using cell phones. Two hours later, a spokesman for the Spanish government, blamed the attack on the armed Basque separatist group Euskadi Ta Askatasuna (ETA).[45] Arnaldo Otegi, leader of ETA's political wing Batasuna, denied responsibility and blamed the attacks on "Arab resistance."[46] Later that afternoon, the London-based newspaper Al-Qods al-Arabi received an email signed "Abu Hafs al-Masri Brigades/Al-Qaeda" claiming responsibility for the attacks.[47] In the e-mail, the group claimed that the attacks were in retribution for Spain's role in the U.S.-led war in Iraq.[48] Three days later, Prime Minister Aznar's Popular Party, which had been expected to win the Spanish general elections before the attacks, lost to the Socialist Party.[49]

One year later, Juana Leal, a housewife who lost her husband, rose early, on March 11th, 2005, to catch a train at the same time that her husband had when he was alive. She told reporters that "He never came back. I am bringing him flowers."[50]

On April 11, 2006, a Spanish judge indicted 29 people for alleged roles in the deadly 2004 attack. The trial is likely to begin next year.[51]

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[44] DANIEL BENJAMIN & STEVEN SIMON, THE NEXT ATTACK: THE FAILURE OF THE WAR OF TERROR AND A STRATEGY FOR GETTING IT RIGHT 3-5 (2005). According to the authors, the details of the Madrid bombings are still being debated and no authoritative account exists. Therefore, the authors of the book developed the timeline, which is cited above, based on numerous sources used to reconstruct the events of that day.

[45] *From Madrid Bombings to Election: Days That Rocked the Spanish Nation*, AGENCE FRANCE PRESS, Apr. 11, 2006, *available at* http://www.lexis.com/research/retrieve/frames?_m=c155ef4594341af77d5d775861230e56&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=95024075742f059f57a8137c16d6fd06. On Christmas Eve 2003, the Basque separatist group, ETA, attempted to bomb a Madrid bound passenger train. The attack was unsuccessful. Police found a backpack, containing a bomb made of 61 pounds of explosives, and detonated the device several hours before it was supposed to explode. The police also caught another individual trying to place a similar bomb aboard the same train. Al Goodman, *Spain Police Thwart Train Bombing*, CNN.COM, Dec. 24, 2003, *available at* http://www.cnn.com/2003/WORLD/europe/12/24/Spain.arrests/index.html.

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Spain Remembers Victims of Madrid Blasts*, GUARDIAN UNLIMITED, Mar. 11, 2005, *available at* http://www.guardian.co.uk/alqaida/0,,1435677,00.html

Japan – March 20, 1995

On the morning of March 20, 1995, five Aum Shinrikyo doomsday cult members entered separate subway trains in Tokyo, Japan. The men carried sarin gas which they intended to release in subway cars carrying unsuspecting passengers to work. Almost simultaneously at 8:00 am the men released the toxic gas. Within ten minutes, the first emergency call arrived at the Tokyo Metropolitan Fire Department. More calls followed. At the Tsukiji station, several passengers collapsed onto the platform when the subway train arrived. A few minutes later, the Tokyo emergency switchboard was notified about a "foul odor" at the Kamiyacho Station. In less than 40 minutes, the Hibiya line stopped all service. Within an hour of the attack, emergency medical sites were established outside subway stations and the police started to block access to subways that were not already closed by subway staff.[52] These attacks killed 12 people, including two transit employees, and injured 5,000.[53] One of those killed was fifty-year-old Kazumasa Takahashi, an assistant stationmaster of the Kasumigaseki Station, who died after picking up the nerve gas-filled containers from a packed train.[54]

Israel – Spring 1996

In the early spring of 1996, terrorists began a wave of attacks on Israeli buses. This wave began during the morning rush hour on February 25 when an Islamic terrorist blew up a number 18 bus**,** killing himself and 25 other people and wounding 50.[55] A week later, at almost the exact same hour, another terrorist set off a bomb in a number 18 bus, killing 19 people including himself.[56] While visiting the city in March that year, New York Mayor Rudolph Giuliani took Jerusalem's number 18 bus in a show of solidarity.[57] According to the then mayor, the bus ride was "something in which I can show that the people of New York City are in solidarity with the people of Jerusalem and Israel in their fight against terrorism and their desire for ... a realistic and secure peace."[58]

Simcha Pearl, an American, was studying in Israel during that time.[59] She arrived in the fall of 1995. Within days of arrival, terrorists attacked a bus bound for the Hebrew University in

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[51] Pamela Rolfe, *29 Indicted for Roles in Madrid Bombings; Judge Say Al-Qaeda Inspired Local Cell*, WASH. POST, Apr. 12, 2006, at A14, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2006/04/11/AR2006041101567.html.

[52] DEPARTMENT OF DEFENSE, TERROR OPERATIONS: CASE STUDIES IN TERRORISM, DCSINT, Handbook No. 1.01, Aug. 15, 2005, 1-15 through 1-17, *available at* http://stinet.dtic.mil/cgi-bin/GetTRDoc?AD=ADA440186&Location=U2&doc=GetTRDoc.pdf.

[53] MINETA TRANSPORTATION INSTITUTE, DESIGNING AND OPERATING SAFE AND SECURE TRANSIT SYSTEMS: ASSESSING CURRENT PRACTICES IN THE UNITED STATES AND ABROAD, Report 04-05, Nov. 2005, 207, (Mineta Institute Report) *available at* http://transweb.sjsu.edu/publications/04-05/MTI_04-05.pdf.

[54] Kristin McQuillin, *Shoko Egawa & Shizue Takahashi, Friday's "Asahara Judgment,"* Mar. 8, 2004, *available at* http://www.fccj.or.jp/modules/archives/article.php?category=6&start=20&articleid=50.

[55] *New York Mayor Rides Jerusalem Bomb Bus*, AGENCE FRANCE PRESS, Mar. 11, 1996 *available at* http://www.lexis.com/research/retrieve/frames?_m=f75343bcec4d6f37e455228fd71dd4f0&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=40a05837bbc0d4d64a880475b8ab1cc6.

[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] Simcha Pearl, *Jerusalem Fights For Normalcy As Bombs Rip City*, TIMES UNION, Mar. 17, 1996, at E1 *available at*

Jerusalem. She wrote about this attack and those in the spring of 1996 in an article for the Times Union.

> After that bombing in August, I wondered how I would get on a bus and how people in this city would get on with their lives. I eventually did get on a bus and Jerusalemites did get on with their lives because, as they say here with a shrug of the shoulders, Nu, ein breira – "there is no choice."
>
> After a bus again was bombed on a recent Sunday morning, I was on another bus two hours later, traveling a similar route. So were others: children going to school, retirees heading to dental appointments and commuters riding to work, vigorously rubbing breakfast stains from their shirt sleeves.
>
> Why were we all on that bus doing those mundane things when 24 people who easily could have been us lay murdered a blocks away? Because our tasks were not mundane. We were engaged in the holiest of tasks -- we were living.

India – 1996 and 2006

India has also suffered terribly from terrorist attacks. On December 30, 1996, two bomb blasts went off on a passenger train.[60] The train was carrying approximately 1,500 passengers when the two bomb blasts occurred.[61] The Bodoland Liberation Tigers Force claimed responsibility for this attack.[62] According to a released statement, the group attacked the train because the government had refused to meet its demand for a separate tribal state.[63] More recently in May 2006, a bomb planted on a Kashmir tourist bus killed four Indians.[64] That same month, there were reports that 12 wedding guests were killed by suspected communist rebels who triggered a land mine as the bus was traveling down a road in western India.[65]

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http://www.lexis.com/research/retrieve/frames?_m=3a0ecb9a481f1d6e4a21ea47d3cd180c&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=daaf2d48c263ea1ae84ee05c2fb4ee23.

[60] *India's Assam State Appeals for Peace Talks After Train Blast*, AGENCE FRANCE PRESS, Dec. 31, 1996 *available at* http://www.lexis.com/research/retrieve/frames?_m=6bc8b5f8743d01eaaa22d61b387343fe&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=9ee87e6534263c83e1433d9c24cdbea5.

[61] *Id.*

[62] REUTER, *India Militants Threaten More 'Gruesome Acts' Claim Responsibility for Train Attack That Killed Dozens*, TORONTO STAR, Jan. 4, 1997 at A20, *available at* http://www.lexis.com/research/retrieve/frames?_m=516d5bda3292c8e5a68f5be99ba3e8ce&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=21bcbd836765c93c8d5177e67e65c083.

[63] *Id.*

[64] *Violence Mars Kashmir Peace Efforts As Rebels Demand A Role*, AGENCE FRANCE PRESS, May 26, 2006 *available at* http://www.lexis.com/research/retrieve/frames?_m=70c92ee0b4012f83cd1734baa1ee5545&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=5dbeb954b157f07ee82263e1f741ed30.

[65] *All Around the World in 80 Seconds*, NORTHERN TERRITORY NEWS, May 17, 2006 at 17, *available at http://www.lexis.com/research/retrieve/frames?_m=8ff2b8f2058cacef6ef1f6ffbdcd587c&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=473001b094702076ed7c0f85b9ff43d1*.

South Africa –Spring 2006

In May 2006, South Africa's commuter rail system, Metrorail, began considering the possibility of asking the military for assistance after gangs of men hurled 18 passengers to their deaths from speeding trains.[66] That same month, Metrorail halted services on two key rail routes between Cape Town and Mitchell's Plain and Khayelitsha after a moving train was petrol-bombed and concrete blocks were placed on rail lines.[67] A month before, armed thugs robbed 200 schoolboys from Durban who were traveling on a train.[68] The boys were held at gunpoint while the men took their money and cell phones.[69]

[66] REUTERS, *World Briefing: South Africa: Military Sought For Train Violence*, NY TIMES, May 24, 2006 at 8, *available at* http://www.lexis.com/research/retrieve/frames?_m=e18c4003303ca990a6e03e5f3dc4e980&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=fb36152e14e268d8265e3d461ebc9c56.
[67] *South Africa; Petrol Bombers Halt Trains*, AFRICA NEWS, May 5, 2006 *available at* http://www.lexis.com/research/retrieve/frames?_m=725d1ddc7504a59d6d504ca14eb2aa0d&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=4d388798a1f21c65669fe020eff51bb2.
[68] Noor-Jehan Yoro Badat, *Criminals Target Children*, THE STAR, Apr. 29, 2006 *available at* http://www.thestar.co.za/index.php?fArticleId=3224230.
[69] *Id*.

III. Rail and Mass Transit Systems: Infrastructure

Wide Open and Vulnerable Systems

One reason that America's rail and mass transit systems are so vulnerable and inviting targets to terrorists is because they are vast, open, and easily accessible. There are over 300,000 miles of freight rail lines and over 10,000 miles of commuter and urban rail system lines in the country.[70] Each weekday, 11.3 million passengers in 35 metropolitan areas and 22 states use some form of rail and mass transit.[71] Americans also use public buses to get to work, to see friends, and to go shopping. In 2004, Americans rode public buses 5.7 billion times.[72]

On average, more than 306,000 customers use the San Francisco BART System on a daily basis.[73] The Chicago Transit Authority's (CTA) 1,190 rapid transit cars operate over seven routes and 222 miles of track. CTA trains provide about 500,000 customer trips each day and serve 144 stations.[74] On a typical weekday in Washington, DC, 1,538 trains operate over 206 miles of track.[75] During the month of April 2006, the average weekday ridership in Washington, DC was 739, 525.[76] As Karl Wycoff, the head of the Organization of Security and Co-operation in Europe's (OSCE) Antiterrorism Unit stated in a recent speech, "Public transport networks are the arteries of contemporary societies, without which modern urban life is impossible."[77] Terrorists must simply not be given the opportunity to attack these systems.

In a recent survey, the Rail Conference of the International Brotherhood of Teamsters (IBT) noted a disturbing lack of security along the railroad tracks and in railyards across the country.[78] Forty-two percent of the IBT employees surveyed stated that railroad companies have not increased the frequency of inspections at critical infrastructure points (i.e bridges, tunnels) designed to detect and prevent acts of terrorism.[79] Sixty-three percent reported that their train or

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[70] Bill Johnstone, *New Strategies to Protect America: Terrorism and Mass Transit after London and Madrid,* CENTER FOR AMERICAN PROGRESS, at 4, *available at* http://www.americanprogress.org/atf/cf/%7BE9245FE4-9A2B-43C7-A521-5D6FF2E06E03%7D/TRANSIT_SECURITY.PDF.

[71] GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 13, at 8.

[72] AMERICAN PUBLIC TRANSPORTATION ASSOCIATION, Bus and Trolleybus National Totals, Fiscal Year 2004, *available at* http://www.apta.com/research/stats/bus/bussum.cfm.

[73] SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT 2004 REPORT (2005) *available at* http://www.bart.gov/docs/AR2004.pdf.

[74] Chicago Transit Authority, *available at* http://www.transitchicago.com/welcome/overview.html#a.

[75] Lena H. Sun, *Metro to Shut Stations for Weekend Track Work*, WASH. POST, May 11, 2006, at A01, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2006/05/10/AR2006051002235.html.

[76] *Id.*

[77] Press Release, Organization of Security and Co-operation in Europe, Co-operation Crucial to Keep Public Transport Safe From Terrorists, OSCE and International Association of Public Transport Workshop Concludes, May 5, 2006, *available at* http://www.osce.org/item/18872.html.

[78] INTERNATIONAL BROTHERHOOD OF TEAMSTERS, TEAMSTERS RAIL CONFERENCE, HIGH ALERT: WORKERS WARN OF SECURITY GAPS ON NATION'S RAILROADS (Fall 2005), *available at* http://www.teamster.org/divisions/rail/pdfs/railsecuritybook.pdf.

[79] *Id.* at 11.

equipment was delayed or left unattended for an extended period of time prior to or during their tour of duty. Fifty-five percent of this time, hazardous materials were on board.[80] When asked whether there was visible rail police presence in the rail yard on the day that they were surveyed, ninety-six percent said "no".[81]

Unprotected rail cars have already been targeted by vandals in the United States. The Charlotte Observer, in an article on rail security, reported on an incident in May 2004 where a lock was broken open on a rail car carrying military munitions through Charlotte to Fort Bragg, North Carolina.[82] Nothing was stolen, but a city official reported the cars were apparently unguarded and had not moved in two days. According to the same article, vandals in the Carolinas have released hazardous material from idled rail cars at least twice in the past few years.[83]

In the summer of 2003, graffiti artists showed Greenpeace officials when and where to find trains in Washington, D.C. and how to get near them. According to Greenpeace officials, the graffiti demonstrated how easy it would be for terrorist to gain access to slow-moving trains.[84]

Rail and mass transit information systems are also at risk of a cyber atack. In 2003, a computer virus briefly infected the computer system at the CSX railroad's Jacksonville, Florida headquarters, shutting down signaling, dispatching and other systems covering 23 states east of the Mississippi River.[85]

GAO's Concerns About Vulnerability Assessments

Despite the known vulnerabilities, the Department of Homeland Security has had difficulties in ensuring that vulnerability assessments done on rail and mass transit systems are coordinated and consistent. The Government Accountability Office (GAO) recently reported that TSA and Grants and Training, two agencies within the Department with different missions, have been independently conducting risk assessments.[86] These assessments were in addition to the 37 assessments conducted by Federal Transit Administration (FTA), an agency within the Department of Transportation, after 9/11.[87]

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[80] *Id.* at 7.
[81] *Id* at 10.
[82] Bruce Henderson, *Dangerous Materials Sit For Days In Rail Cars; In Carolinas, Parked Cargo Sparks Concern About Leaks, Tampering*, CHARLOTTE OBSERVER, Apr. 10, 2005, at 1A, *available at* http://www.lexis.com/research/retrieve/frames?_m=9d90193c5751f8a29c1e48edcf6c02eb&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVtb-zSkAl&_md5=57f3463d5610558f055e321fadb25600.
[83] *Id*.
[84] *Terrorism: Washington to Consider Ban on Toxic Chemicals*, GREENWIRE, Jan. 26, 2004, *available at* http://www.lexis.com/research/retrieve/frames?_m=0d661687f0bc4e8e7cae262c3418bf01&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVtb-zSkAl&_md5=4a22bf6649767b0161d4fda2d4c5452e.
[85] *Computer Bug Downs Train Signals*, BELLEVILLE NEWS-DEMOCRAT, Aug. 21, 2003 at 8, *available at* http://www.lexis.com/research/retrieve/frames?_m=2f50163c3f90913ebbacd32c1f784cd2&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAB&_md5=2c5405e56b6fbfbc4ec06511ba7ef0e2.
[86] GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 13, at 4, 86.
[87] *Id*. at 85.

To correct these deficiencies, GAO recommended that the Department establish a timeline for completing the framework for analyzing rail and mass transit risks and ensure that the risk assessment methodologies used by all agencies are consistent with this framework.[88] Second, GAO recommended that TSA establish a plan for completing its methodology for conducting risk assessments and evaluate whether the risk assessments methodology used by Grants and Training should be leveraged to facilitate the completion of risk assessments for all rail and mass transit systems.[89] The prior system of duplication of effort was costing taxpayer dollars and wasting valuable resources while the nation's rail and mass transit systems remained at risk.

[88] *Id*. at 71.
[89] *Id*.

IV. Lack of Strategy & Unified Authority Hinders Rail and Mass Transit Security Efforts

Authority for TSA to Take More Action Exists, But Not Enough Has Been Done

In the immediate aftermath of 9/11, Congress recognized the threat to transportation security – including rail and mass transit – and passed the Aviation and Transportation Security Act (ATSA), which created TSA.[90] ATSA provided specific security mandates for aviation, such as the deployment of federal passenger screeners at airports across the nation by November 19, 2002[91] and the screening of every piece of checked baggage for explosives by December 31, 2002.[92] TSA met these mandates.[93]

In comparison, ATSA did not provide specific guidance for rail and mass transit security. Instead, ATSA stated that the Administrator of TSA is responsible for:

- Receiving, assessing, and distributing intelligence information related to transportation security;[94]
- Assessing threats to transportation;[95]
- Developing policies, strategies, and plans for dealing with threats to transportation security;[96]
- Making other plans related to transportation security, including coordinating countermeasures with appropriate departments, agencies, and instrumentalities of the United States Government;[97]
- Enforcing security-related regulations and requirements;[98]
- Identifying and undertaking research and development activities necessary to enhance transportation security;[99] and
- Ensuring the adequacy of security measures for the transportation of cargo.[100]

In the intervening years, despite its general authority over transportation security granted by ATSA, TSA did not develop the appropriate security guidelines and standards that are

[90] Aviation and Transportation Security Act, Pub. L. No. 101-71, 115 Stat. 597 (2001).
[91] *Id.* § 110(c).
[92] *Id.* § 110(b). 49 U.S.C. § 44901(d)(1)(A) (2005).
[93] Press Release, Transportation Security Administration, Federal Security Screeners Successfully Deployed at all U.S. Airports - One Year After ATSA, TSA On Track To Meet Congressional Mandate, (Nov. 28, 2002) *available at* http://www.tsa.gov/public/display?theme=44&content=090005198000389b. Press Release, Transportation Security Administration, TSA Meeting December 31 Deadline for Screening All Checked Baggage, (Dec. 30, 2002) *available at* http://www.tsa.gov/public/display?theme=44&content=09000519800038ca.
[94] 49 U.S.C. § 114(f)(1) (2005).
[95] 49 U.S.C. § 114(f)(2) (2005).
[96] 49 U.S.C. § 114(f)(3) (2005).
[97] 49 U.S.C. § 114(f)(4) (2005).
[98] 49 U.S.C. § 114(f)(7) (2005).
[99] 49 U.S.C. § 114(f)(8) (2005).
[100] 49 U.S.C. § 114(f)(10) (2005).

required for rail and mass transit systems. Nor, has TSA established goals and indicators to measure its success with regards to rail and mass transit security. As early as December 2002, GAO recommended that TSA establish goals and indicators to guide TSA's efforts.[101] According to GAO, "[t]hese components are needed to ensure accountability and results."[102] Three and a half years later, TSA has yet to successfully follow through with GAO's recommendations. Instead, according to a TSA presentation given to Committee staffers, the agency, along with FTA and G&T, is currently monitoring efforts by the American Public Transportation Association (APTA) and the mass transit industry to develop industry security standards, including those for system design.[103]

National Strategy for Transportation Security

Congress, recognizing TSA's lack of progress in developing a security strategy for all modes of transportation, mandated the development of a National Strategy for Transportation Security in the 9/11 Act.[104] This strategy was due April 1, 2005.[105] TSA did not finalize this document until September 2005, five months later.[106] The first document that TSA submitted was classified and as result, many of the entities that needed to have access to this document were unable to receive it. A subsequent version was declassified at the request of members of Congress,[107] but its circulation is still limited as it is considered Sensitive Security Information.[108]

The Strategy was designed to include:

- The development of risk-based priorities across all modes of transportation with realistic deadlines for addressing the security needs associated with those transportation assets.[109]

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[101] GOVERNMENT ACCOUNTABILITY OFFICE, MASS TRANSIT FEDERAL ACTION COULD HELP TRANSIT AGENCIES ADDRESS SECURITY CHALLENGES, Dec. 2002 at 33 (GAO-03-263) *available at* http://www.gao.gov/new.items/d03263.pdf

[102] *Id.*

[103] Transportation Security Administration, Presentation on Mass Transit Security, (Feb. 7, 2006) at 18. (copy on file with committee).

[104] Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, § 4001, 118 Stat. 3638, (2004).

[105] *Id.* at § 4001.

[106] Letter from Michael P. Jackson, Deputy Secretary, Department Homeland Security, to Congressman Bennie G. Thompson (Apr. 5, 2005). On April 5, 2005, Deputy Secretary Michael Jackson notified the Homeland Security Committee that the Strategy would not be delivered on time. According to the Deputy Secretary "substantial additional work" was needed to complete the strategy. He told the Committee that the Strategy would be finalized within 2-3 months. The Strategy was not delivered until September 2005, 5 months late.

[107] Press Release, Senate Committee on Homeland Security and Governmental Affairs, Senators Susan Collins and Joseph Lieberman Call On DHS To Issue Unclassified Version Of National Transportation Security Strategy, (Sept. 19, 2005) *available at* http://www.senate.gov/~gov_affairs/index.cfm?FuseAction=PressReleases.Detail&Affiliation=R&PressRelease_id=1094&Month=9&Year=2005.

[108] DEPARTMENT OF HOMELAND SECURITY, NATIONAL STRATEGY FOR TRANSPORTATION SECURITY, (2005) (A copy of the Sensitive Security Information document version is on file with the Committee).

[109] 49 U.S.C. § 114(t)(3)(B) (2005).

- A forward-looking strategic plan that sets forth the agreed upon roles and missions of Federal, state, regional, and local authorities and establishes mechanisms for encouraging private sector cooperation.[110]

- A comprehensive delineation of response and recovery responsibilities and issues regarding executed acts of terrorism within the United States.[111]

- A prioritization of research and development objectives that support transportation security needs, giving a higher priority to research and development directed toward protecting vital transportation assets.[112]

- National plans for the security of all modes of transportation.[113]

The document that the Department provided did not meet the requirements that Congress set out, especially with regards to rail and mass transit security. For example, TSA did not develop separate, distinct modal plans. Instead, TSA included a few pages on rail and mass transit security in a larger, more general document. In addition, the TSA plan lacked specificity with regards to each mode. Under the 9/11 Act, the Department was supposed to provide updates to the Strategy by April 1, 2006.[114] As in the past, TSA had not met this deadline and this update has yet to be finalized.

The 9/11 Discourse Project recognized the flaws in the National Strategy for Transportation Security and gave TSA a C- for its efforts. According to the group, "[w]hile the strategy reportedly outlines broad objectives, this first version lacks the necessary detail to make it an effective management tool."[115]

Homeland Security Presidential Directives

The lack of forward momentum on rail and mass transit security stands out in comparison to maritime security. On November 25, 2002, the President signed into law the Maritime Transportation Security Act (MTSA) of 2002 which mandated security plans for U.S. vessels, ports, and facilities.[116] The Coast Guard, working with its Federal partners, developed

[110] 49 U.S.C. § 114(t)(3)(D) (2005).
[111] 49 U.S.C. § 114(t)(3)(E) (2005).
[112] 49 U.S.C. § 114(t)(3)(F) (2005).
[113] 49 U.S.C. § 114(t)(1)(B) (2005).
[114] 49 U.S.C. § 114(t)(4)(B) (2005).
[115] 9/11 PUBLIC DISCOURSE PROJECT *supra* note 12.
[116] Maritime Transportation Security Act of 2002, Pub. L. No. 107-295, § 102, 116 Stat. 2064; 46 U.S.C. § 70103 (2005). In order for the United States to be compliant with the International Ship and Port Facility Security Code and related amendments to the International Convention for Safety of Life at Sea, 1974, these plans had to be finalized by July 1, 2004.

regulations implementing this new requirement.[117] These regulations were completed within the timeframe allotted by Congress.[118]

MTSA also required the Secretary of the Department of Transportation to develop maritime professional security training.[119] The Secretary delegated this responsibility to the Maritime Administration (MARAD). Subsequently, MARAD, working with its Federal partners, developed training standards and curriculum.[120] Similar training has yet to be required by TSA for all rail and mass transit front line employees.

The President in December 2004 also signed Homeland Security Presidential Directive 13 specifically for maritime security policy.[121] Committee staff have recently been informally told that the Administration is currently working on a similar directive for aviation security. The President has yet to develop one specifically for rail and mass transit systems, despite the recent number of attacks.

TSA's Authority Within the Department of Homeland Security Remains Unclear

One reason behind the Department's failure to act is the fact that the Department has been unable to define TSA's relationship with other offices within the Department, including the Office of Grants and Training. According to the Department of Homeland Security, TSA is responsible for protecting the nation's transportation systems by ensuring the freedom of movement and commerce.[122] Grants and Training is responsible for assisting states, local communities, regional authorities, and tribal jurisdictions to prevent, deter, and respond to terrorist and other threats to national security through funding, training, and exercises designed to increase preparedness and responsiveness.[123]

However, instead of working together, TSA and Grants and Training are working separately with limited coordination. As discussed earlier, GAO highlighted this problem in a recent report. GAO found that TSA and Grants and Training were independently and without coordination conducting risk assessments.[124] These assessments were in addition to those conducted by FTA after 9/11.[125]

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[117] The Maritime Transportation Security Act of 2002 was signed into law on November 25, 2002. On December 30, 2002, the Coast Guard issued a notice of meetings that were to be held to attain public comments on the new rulemaking. 67 Fed. Reg. 79742. On July 1, 2003, the Coast Guard issued the interim rule. 68 Fed. Reg. 39240. The final rule was issued on October 22, 2003. 68 Fed. Reg. 60448, 60472, and 60483.
[118] Maritime Transportation Security Act of 2002, *supra* note 116, at § 102.
[119] Maritime Transportation Security Act of 2002, *supra* note 116, at § 109.
[120] 70 Fed. Reg. 6748.
[121] Homeland Security Presidential Directive, Maritime Security Policy, HSPD-13, (Dec. 21, 2004).
[122] Transportation Security Administration *available at* http://www.tsa.gov/public/display?theme=7.
[123] Department of Homeland Security *available at* http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0794.xml.
[124] GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 13, at 4.
[125] *Id*. at 85.

Department of Transportation's Safety Agencies Make TSA's Authority Unclear

An additional bureaucratic problem for TSA is that the Department of Transportation (DOT) still has some jurisdiction over rail security, as defined in the Homeland Security Act. Under the Homeland Security Act, the Department of Transportation is responsible for rail safety, including security, as well as the secure transport of hazardous materials by all modes. [126]

It was not until September 28, 2004, almost three years after TSA was created, that the Departments of Homeland Security and Transportation finally entered into a Memorandum of Understanding (MOU) concerning their respective roles and responsibilities.[127] This document, however, did not specifically lay out the relationship between TSA and the various agencies within the Department of Transportation. Instead, the document focused on the overall relationships between the two Departments at the Departmental level, not at the agency level. According to the document, "specific delineations of roles, responsibilities, resources, and commitments concerning particular matters [would] be addressed in annexes to this MOU."[128] On September 8, 2005, TSA, FTA, and Grants and Training, signed an agreement concerning public transportation security.[129] TSA has not yet entered into an agreement with FRA.[130] According to TSA officials, one is under development.[131]

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[126] Homeland Security Act, Pub. L. No. 107-296, §§1710 -1711, 116 Stat. 2135 (2002).

[127] MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF HOMELAND SECURITY AND THE DEPARTMENT OF TRANSPORTATION (Sept. 28, 2004). (A copy of the MOU is on file with the Committee). As early as 2003, the GAO began encouraging the two Departments to enter into a MOU. GOVERNMENT ACCOUNTABILITY OFFICE, FEDERAL ACTION NEEDED TO HELP ADDRESS SECURITY CHALLENGES (GAO -03-843), at 52 (June 2003) *available at* http://www.gao.gov/new.items/d03843.pdf. However, both Departments strenuously disagreed with GAO's recommendation as they believed that an MOU was unnecessary. *Id*. at 59-60, 65. In contrast, industry representatives strongly supported the creation of a MOU. Dan Duff, Chief Counsel and Vice President for Government Affairs, American Public Transportation Association, told the Government Reform Committee on August 3, 2004 "that we also think it would be useful if the Department of Homeland Security and the Department of Transportation together worked out a memorandum of understanding to address the roles of those two agencies in working with public transportation security." He then told the Committee that "DHS clearly is the lead in that regard, but DOT has years of experience in working with local public transportation entities, and DHS should utilize that experience." Testimony of Dan Duff, Chief Counsel and Vice President for Government Affairs, APTA, Before the House Committee on Government Reform, 108th Cong. 2nd Sess. (Aug. 3, 2004) *available at* http://www.lexis.com/research/retrieve/frames?_m=37fc1fcc3bb75a4ba360ab054469a8a0&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAV&_md5=69566e4fce4b6786a87119fd06415bc1.

[128] *Id*.

[129] ANNEX TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF HOMELAND SECURITY AND THE DEPARTMENT OF TRANSPORTATION (2005). (A copy of the annex is on file with the Committee) This agreement was years in the making. FTA and TSA officials first told GAO about this MOU in 2002. At that time, TSA and FTA officials originally planned on signing this agreement in September 2002. However, according to FTA officials, the issuance was delayed so that the memorandum could incorporate and reflect the administration's fiscal year 2004 budget request. According to TSA officials, FTA and TSA wanted to issue the Memorandum of Agreement by January 2003. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 101, at 25 -26. Congress, unwillingly to wait any longer for the development of this crucial document, required in Section 3028 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users or "SAFETEA-LU", Pub. L. No. 109-59, §3028, 119 Stat. 1144 (2005), the development of an MOU between the two Departments to define and clarify their respective roles and responsibilities concerning mass transit security. Congress has also encouraged TSA to sign an MOU with other Department of Transportation modal administrations. The Conference Report to the Norman Y. Mineta Research and Special Programs Reorganization Act, Pub.Law 108-426 calls for the Departments of Transportation and Homeland Security to execute a MOU governing the roles, responsibilities, and resources of the Departments in addressing pipeline and hazardous materials transportation security matters, upon

Even when signed, these agreements between the two Departments have not led to a closer working relationship. Last year Congress had to step in and mandate that the Secretaries of Homeland Security and Transportation jointly issue a regulation concerning the mass transit grant program.[132] .

Security Plans for Mass Transit Systems

TSA and FTA have overlapping missions. TSA, an agency within the Department of Homeland Security is responsible for the security of all modes of transportation, including mass transit. FTA, an agency within the Department of Transportation, is responsible for assisting in the development, improvement and funding of mass transportation systems, equipment, facilities, techniques, and methods with the cooperation of public and private mass transportation entities.[133] A close working relationship between the two agencies is critical to ensure unity of effort, the maximization of resources, and the avoidance of duplication.

Unfortunately, duplication of mission is now occurring. On March 9, 2004, FTA assumed the mantle of transportation security when it published a Notice of Proposed Rulemaking proposing the development of security plans for mass transit systems.[134] The final rule was published on April 29, 2005.[135] Under the new rule, security plans must be developed by May 1, 2006.[136] There is no requirement for FTA to share these plans with TSA.

Congress, after 9/11, created TSA as the one agency responsible for transportation security. TSA, however, has yet to meet Congress' intent with regards to mass transit security. Congress intended for TSA to take proactive and concrete steps to secure ALL modes of transportation, not just aviation. In the absence of any action by TSA, FTA assumed the responsibility for mass transit security and required the development of security plans for mass transit systems. In doing so, FTA did acknowledge in the new rule that the Department of Homeland Security is the lead Federal agency on security matters and that the new rule "has not

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establishment of the new Pipeline and Hazardous Materials Safety Administration." Pub. L. No. 108-426, 118 Stat. 2423 (2004).

[130] Like its FTA counterpart, this agreement has been under development for years. TSA told GAO in 2002 that it was developing memorandum of agreement with all modal administrations within the Department of Transportation. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 101, at 25, n 25.

[131] Information about the TSA-FRA MOU was provided by TSA officials to Committee staff.

[132] The Departments were supposed to have developed a final rule by February 2006. This rule has not yet been finalized. Tracy Henke, Assistant Secretary, Grants and Training, at a hearing before the Highways, Transit, and Pipelines Subcommittee, Transportation and Infrastructure Committee on March 29, 2006 stated that the Departments intend to publish a Notice of Proposed Rulemaking by May 2006. This rule has yet to be released.

[133] DEPARTMENT OF TRANSPORTATION, DEPARTMENT OF TRANSPORTATION STRATEGIC PLAN 2003-2008 – SAFER, SIMPLER, SMARTER TRANSPORTATION SOLUTIONS (2003), *available at* http://www.dot.gov/stratplan2008/strategic_plan.htm.

[134] Rail Fixed Guideway Systems; State Safety Oversight, 69 Fed. Reg. 11218 (Mar. 9, 2004) (to be codified 49 C.F.R. pt. 659). In the past, FTA had required a document that combined both safety and security. According to the Notice of Proposed Rulemaking, the "proposed rule would address heightened concerns for rail transit security and emergency preparedness."

[135] Rail Fixed Guideway Systems; State Safety Oversight, 70 Fed. Reg. 22562 (Apr. 29, 2005) (to be codified 49 C.F.R. pt. 659)

[136] *Id.* This new rule does not apply to intra-city buses.

established any requirements for the system security plan that are in conflict with Department of Homeland Security Directives."[137]

The actions taken by FTA are a first step in securing our nation's mass transit system. At the same time however, this new rule highlights a significant gap in mass transit security – TSA has not focused enough attention on this mode of transportation. The agency has not required security plans similar to those required for airports and marine terminals. Instead, it has sat on the side while other Federal agencies have assumed its responsibilities.

Security Plans for Rail Systems

Similarly, there is a large gap with regards to rail security. TSA has not mandated security plans for rail systems. In the absence of clear government direction, the American Association of Railroads (AAR), in consultation with others in the industry, developed the Terrorism Risk Analysis and Security Management Plan, voluntary actions designed to enhance rail security.[138]

As with the FTA mandated mass transit security plans, there is no requirement for the rail systems to share their voluntarily developed plans with TSA. TSA may be responsible for transportation security, but it has yet to mandate that rail systems complete security plans and submit them for review, approval, and enforcement. Without this requirement, companies who do spend money on security plans are at an economic disadvantage to those who do not - creating incentives for some companies not to act.

Movement of Hazardous Materials

Similarly, TSA has not required that certain measures be taken to secure the movement of hazardous material throughout the country. Security plans for the transport of hazardous materials are required by the Pipeline and Hazardous Material Safety Administration (PHMSA), an agency within the Department of Transportation.[139]

TSA's has focused only on voluntary measures and pilots. TSA and the Office of Infrastructure Protection have developed the National Capital Region Rail Security Corridor Pilot Project. The $9.6 million pilot initiative established a seven-mile long Rail Protective Measures Study Zone to protect hazardous material traveling through Washington, DC.

TSA is also conducting High Threat Urban Areas (HTUAs) Corridor Assessments. A team of representatives from the Departments of Homeland Security and Transportation are conducting vulnerability assessments of HTUAs where toxic-by-inhalation hazardous material is transported by rail in significant quantities. TSA and its federal partners have completed five

[137] *Id.*
[138] ASSOCIATION OF AMERICAN RAILROADS, 109TH CONGRESS, 1ST SESSION, FEBRUARY 2005.
[139] Requirements for security plans for the transportation of hazardous materials are found in 49 C.F.R. § 172 (2005). The requirements for the transport of hazardous material by rail can be found in 49 C.F.R § 174 (2005).

corridor assessments – Washington, D.C., New Jersey, Cleveland, New Orleans, and Houston.[140] Five additional ones - Buffalo, Baltimore, Philadelphia, Los Angeles, and Chicago are in various stages of development.[141] There is no requirement that systems use the information gathered from these assessments.

Additionally, on March 30, 2006, TSA released draft Security Action Items to industry for the transportation of toxic by inhalation (TIH) materials for industry comment. Industry was asked to review these items and provide feedback to TSA by April 21, 2006.[142] TSA is currently reviewing comments that were submitted.[143]

In this document, TSA recognized that the movement of large quantities of TIH materials by rail in proximity to population centers warrants special consideration and attention and that these materials have the potential of causing significant numbers of fatalities and injuries if intentionally released in an urban environment.[144] Despite this fact, all of the recommended Security Action Items are voluntary. According to TSA, these action items "should be considered as security plans (those mentioned above) are developed, implemented, and revised."[145]

The movement of hazardous material by rail is of particular attention to many cities in the country. The City Council of Washington, D.C. recently passed a ban prohibiting the transportation of hazardous material through the city. Other cities have considered similar bans including Philadelphia, Cleveland, Chicago, Baltimore, and Boston.[146] The Washington, DC ban has yet to be implemented as CSX Transportation challenged the ban and the issue is still being litigated.[147]

Problems with the Security Directives

TSA did take one concrete step after the Madrid bombings when it issued two Security Directives (SDs) for rail and mass transit systems on May 20, 2004 – two months after the bombings.[148] According to TSA, the SDs are based upon industry best practices and require rail

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[140] Email from Homeland Security official to staffer on the House Homeland Security Committee (May 10, 2006, 14:23 EST) (on file with Committee).
[141] *Id.*
[142] Transportation Security Administration, Recommended Security Action Items for the Rail Transportation of Toxic Inhalation Hazard Materials (March 30, 2006).
[143] Email from Homeland Security official to staffer on the House Homeland Security Committee (Mar. 15, 2006, 10:12 EST) (on file with Committee).
[144] Transportation Security Administration *supra* note 142.
[145] *Id.*
[146] *See* DISTRICT OF COLUMBIA, CODE §§ 8-1401 to 1409 (2005); PHIL., PA., CODE § 9-2900 (2005); CLEVELAND, OHIO, ORD. NO, 928-05 § 394.071 (2005); CHI., ILL, CODE § 11-4-2090 (2005); BALT. MD., CODE § 9A (2005); BOSTON, MASS., CODE § 12-14 (2005).
[147] Mark Weiner, *Is Toxic Freight Being Rerouted Through CNY?; CS Railroad Says Northern Route is Sole Alternative to Washington, D.C., But won't Say Whether It's Used*, POST STANDARD, May 21, 2006, at A1, *available at* http://www.syracuse.com/news/poststandard/index.ssf?/base/news-4/114811557930910.xml&coll=1.
[148] TRANSPORTATION SECURITY ADMINISTRATION, TRANSPORTATION SECURITY DIRECTIVE (May 20, 2004). These SDs are classified as Sensitive Security Information. Individuals wishing to attain a copy of these SDs should contact TSA. In addition, these SDs are the only SDs that TSA has issued for rail and mass transit systems, despite

and mass transit systems to implement a number of security measures, such as conducting frequent inspections of stations, terminals, and other assets, or utilizing canine explosive detection teams, if available.[149]

However, concerns have been expressed about these directives. The SDs were developed without public comment and the GAO is currently examining the legal basis under which TSA issued the SDs.[150] Amtrak and Federal Railroad Administration (FRA) officials have also expressed concerns. FRA officials told GAO that the SDs conflicted with FRA safety regulations.[151] Similarly, Amtrak officials also expressed concerns.[152]

Despite this controversy, TSA officials recently told Committee staff that TSA is now in the process of developing a compliance program based on the SDs.[153] The manner in which TSA is developing this program is inconsistent with previous guidance. At a June 2004 APTA conference, the then TSA Deputy Assistant Administrator for Maritime and Land Security told mass transit system operators that if TSA determined there was a need for the SDs to become permanent, the SDs would they would undergo a notice and comment period.[154] This has not yet occurred. More troubling, at another meeting, a TSA official told AAR officials that the SDs were flexible and could be implemented as rail operators saw fit.[155]

Finally, the question remains about the relationship between the TSA SDs and compliance program and the FTA security plan requirement for mass transit systems. There is no clear Federal guidance. As a result, it is unclear whether both are binding or which one is preeminent.

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the fact that the agency has issued over 80 SDs for aviation security. Email from Homeland Security official to staffer on the Homeland Security Committee (Feb. 23, 2006, 08:23 EST)(on file with Committee).

[149] GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 13, at 5.

[150] *Id.* at 36, n. 35.

[151] *Id.* at 38.

[152] *Id*.

[153] Transportation Security Administration, Presentation on Surface Transportation Security Inspections Program, (Feb. 7, 2006) (copy on file with committee).

[154] GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 12, at 37.

[155] GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 12, at 40.

V. Partnerships: Lack of Funding and Information Sharing

State and Locals Are Responsible For Shouldering the Burden

As federal efforts to secure rail and mass transit systems have floundered, the state and local governments are shouldering the role of securing these systems. After the London attacks last summer, the nation's rail and mass transit systems went on high alert. For 36 days, Atlanta's MARTA system spent an additional $10,000 a day on security costs in addition to it normal operating budget.[156] The Massachusetts Bay Transportation Authority spent nearly $200,000 a week on enhanced security.[157] According to APTA, U.S. public transit systems spent $900,000 a day during this heightened state of alert. This number does not include costs associated with additional efforts by New York, New Jersey and other systems to conduct random searches.[158]

Many rail and mass transit systems, recognizing their vulnerability, are implementing additional major programs to upgrade their security. New York's Metropolitan Transportation Authority (NY-MTA) is taking broad and sweeping steps to help ensure the safety and security of its transportation systems. NY-MTA will be adding 1,000 surveillance cameras and 3,000 motion sensors to its network of subways and commuter rail facilities as part of a $212 million security upgrade announced late last year with the Lockheed Martin Corporation. Between now and 2009, NY-MTA plans to spend over $1.1 billion on transit security.[159] As London demonstrated, cameras can be extremely useful. British authorities were able to identify the attackers based on the closed circuit television (CCTV) technology in the London Underground.

In an interview with a reporter a week after the London attacks, Secretary of Homeland Security Michael Chertoff stated that local communities should be responsible for mass transit security because the bulk of these systems are owned and operated by state and local authorities. The Secretary stated that the federal government should focus on attacks that could produce the most casualties. "The truth of the matter is, a fully loaded airplane with jet fuel, a commercial airliner, has the capacity to kill 3,000 people." He added further that "a bomb in a subway car may kill 30 people. When you start to think about your priorities, you are going to think about making sure you do not have a catastrophic thing first."[160]

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[156] Julie Hairston, *MARTA under Pressure: U.S. Security Alert Strained System's Budget, Manpower*, ATLANTA JOURNAL & CONSTITUTION, Aug. 15 2005, *available at* http://www.lexis.com/research/retrieve/frames?_m=5162c84a7c992c4a6934d6a134e3b1b1&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVzz-zSkAV&_md5=bf6027825f6a8d619b6ddd5212710a90.

[157] Brian Bender, *Terror Alert Status Drops to 'Elevated'*, BOSTON GLOBE, Aug. 13, 2005 at A02, *available at* http://www.lexis.com/research/retrieve/frames?_m=3bb4dde67653d5f27faf6afdf3c51594&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAV&_md5=f2ca51721435acb8bc4225a7b3ae72fe.

[158] Testimony of William W. Millar, President, American Public Transportation Association, Before the Subcomm. on Highways, Transit, and Pipelines of the House Comm. on Transportation and Infrastructure, 109th Cong. 2nd Sess., Mar. 29, 2006 *available at* http://www.house.gov/transportation/.

[159] *Id.*

[160] Lara Jakes Jordon, *States and Local Government Must Pay for Much of Mass Transit Security, Homeland Security Chief Says*, ASSOCIATED PRESS, July 14, 2005, *available at*

Almost a year after the London attacks, the Department still fails to recognize the need for a greater Federal role in mass transit security. At a Congressional hearing on March 29, 2006, Tracey Henke, Assistant Secretary, Office of Grants and Training, told Members of Congress that "aviation security by law is a federal responsibility. That is not the case for transit security."[161]

In reality, a rail or mass transit incident could cause as much damage as an airline attack. The attacks on the Tokyo and Madrid systems demonstrated that thousands could be injured. Additionally, an attack on a rail system could negatively impact the economy. Railroads move everything -- including coal, chemicals, and farm products.[162] These items are essential to our everyday lives. In the aftermath of Hurricane Katrina, freight railroad companies who normally transport items through New Orleans had to detour rail traffic as far north as Memphis, East St. Louis, and Birmingham due to damaged rail lines.[163] This impact on rail was further complicated by the diversion of cargo that normally was shipped via barge down the Mississippi, to rail and truck. Hurricane Katrina exposed a crucial vulnerability – our nation's transportation system is set up in such a way that a local disruption can ripple back across the country.

An attack on a mass transit system could also impact the economy. It was estimated that the July 7th attack in London would reduce foreign tourist spending in London by 150 million pounds in 2005. [164] Tourists were scared to visit the city.

A more recent example was seen during the power outage on May 25, 2006, that paralyzed trains in the northeastern part of the United States. This power outage impacted not only Amtrak, but also commuter lines in New Jersey, Maryland, and Pennsylvania – thousands of people were impacted.[165] Tricia Douglas of Newark was stuck in a tunnel for three and half

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http://www.lexis.com/research/retrieve/frames?_m=995b71bb4ece7c195bc59efee0455b06&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAV&_md5=7e7143659d3ef24d2cb41c58f498cedd.

[161] Hearing on Transit and Over-the-Road Bus Security, *supra* note 129.

[162] American Association of Railroads, *available at* http://www.aar.org/PubCommon/Documents/AboutTheIndustry/Statistics.pdf.

[163] *Gulf Coast Railroads Operate with Close to Normal Service*, U.S. RAIL NEWS, Sep. 21, 2005 *available at* http://www.lexis.com/research/retrieve/frames?_m=a43c651eb146efcee3f31af5f3aaf9ef&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAV&_md5=bd5347b4d13d1ea7b85e765403fd5920. This was not the first time trains had to be diverted because of a natural disaster. In 1993, the mighty Missouri and Kansas rivers, swollen with water, rose precipitously near Kansas City. The rivers came within two feet of cresting the flood walls. People were evacuated and rail systems were forced to reroute trains. Kansas City is an important rail hub for both east-west and north-south routes. Railroads were forced to detour Chicago-California traffic as far north as Montana and as far south as Texas. World News Tonight With Peter Jennings, July 27, 1993 *available at* http://www.lexis.com/research/retrieve/frames?_m=bb6e42149baf5610215c5a2bf68d49a5&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAV&_md5=01e6084b47817dc73300ecd652ca7474.

[164] Chris Flood, et al., *Businesses Urge Tougher Security – Threat to the Economy*, FINANCIAL TIMES, Jul. 23, 2005, at 4, *available at* http://www.lexis.com/research/retrieve/frames?_m=34328d5bab2c22c1a0c2ae17b700db58&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAV&_md5=7731cdaa634feaa925d60addb54898c7.

[165] Wayne Parry, *Outage Paralyzes Northeast Trains*, COURIERPOSTONLINE.COM, May 26, 2006, *available at* http://www.courierpostonline.com/apps/pbcs.dll/article?AID=/20060526/NEWS01/605260351/1006.

hours with no air conditioning or lights.[166] Krista Barry of Pennsauken celebrated her birthday by sitting on the floor of a N.J. transit car for more than 90 minutes.[167] Others used their cell phones to conduct business since they were unable to get to work. Verizon Wireless' network had ten times the normal call volume that day between 9 and 10am that day.[168] Luckily, there were no network outages, abnormal call blocking, or other difficulties.[169] On both 9/11 and July 7th, cellular phone networks were jammed which prohibited people from finding out if their loved ones were safe.[170]

Finally, the 9/11 attacks destroyed the public transportation system located underneath the World Trade Center when the buildings collapsed.[171] The subway stations that were severely damaged or were temporarily closed included the Cortland St., Rector St., and South Ferry Stations on the 1 and 9 lines; the World Trade Center station on the C and E lines; and the City Hall, Cortland St., Rector St., and Whitehall St. stations on the N and R lines.[172] Nearly 1,800 feet of subway tunnel in downtown Manhattan was destroyed when the Twin Towers collapsed.[173] The devastation was so complete that Congress appropriated $1.8 billion dollars to replace, rebuild, and enhance the public transportation systems serving the Borough of Manhattan.[174]

Current Information Sharing Initiatives Are Not Adequate

TSA, working with FTA and Grants and Training, has initiated some outreach to its stakeholders to strengthen information sharing for mass transit systems. Through the Connecting Communities[175] and the Safety and Security Roundtable initiatives, TSA is slowly beginning to strengthen its relationships. The Connecting Communities program is a joint initiative by TSA, FTA, and Grants and Training designed to connect the "community" of transit systems with their local, county, state and federal response agencies and resources.[176] The Roundtables consist of two-day workshops designed to enhance security and safety by sharing transit policies, procedures, resources, and best practices with local first responders that are responsible for responding to transit emergencies.[177]

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[166] Wayne Parry, *Rails Back to Normal Today*, 6ABC.COM, May 26, 2006, *available at* http://abclocal.go.com/wpvi/story?section=local&id=4208676.
[167] Parry, *supra* note 165.
[168] Erik Linask, *Thanks to Verizon, Business Continues During Amtrak Outage*, TMCNET, May 25, 2006, *available at* http://news.tmcnet.com/news/2006/05/25/1659954.htm.
[169] *Id.*
[170] Stringer *supra* note 3.
[171] *New York Assesses Damage, Looks to Rebuild*, RAILWAY AGE, November 1, 2001, at 24, *available at* http://www.lexis.com/research/retrieve/frames?_m=869ecb1f19893d382865f546dee5f989&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVlz-zSkAV&_md5=f68b55faab6f693d5a3e349cba9f9b7e.
[172] *Id.*
[173] *Id.*
[174] Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the U.S., Pub. L. No. 107-206, 116 Stat. 820, (2002)
[175] Federal Transit Administration, *available at* http://transit-safety.volpe.dot.gov/training/Archived/EPSSeminarReg/default.asp.
[176] *Id.*
[177] Federal Transit Administration Presentation to House Minority Homeland Security Staff on FTA Security Initiatives, (Mar. 2, 2006) (copy on file with Committee).

These initiatives, however, did not prevent the breakdown in communication and coordination on October 5, 2005, when New York City Mayor Michael Bloomberg announced that the city, in response to threat deemed credible by the Federal Bureau of Investigations, would be taking additional security measures to protect its subway system[178]. He told press that "We have never before had such a specific threat to our subway system."[179] Department of Homeland Security officials told the press that the threat was not credible.[180]

The inability to fully share information was most recently highlighted in testimony given by Lee Hamilton, Vice Chairman of the 9-11 Commission on June 6, 2006 before the House Government Reform Committee.[181] He told Member of Congress that he thought that "there's still plenty of room for improvement in the executive branch with regard to the sharing of information. There are also very huge gaps in information-sharing."[182]

GAO has also expressed concerns about the Administration's ability to share information. In a 2006 report, GAO states that:

> No government-wide policies or processes have been established by the executive branch to date to define how to integrate and manage the sharing of terrorism-related information across all levels of government and the private sector despite legislation and executive orders dating back to September 11.[183]

Failure to Share Information with Employees

Finally, TSA has failed to adequately share information and establish relationships with labor organizations. TSA Administrator Kip Hawley told Members of Congress on February 16, 2006 that TSA was working with industry on training for mass transit and rail employees.[184] The Amalgamated Transit Union (ATU) and other representatives of transit employees were

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[178] Josh Getlin, *New York Steps Up Subway Security; City Officials Cite a Credible Terrorist Threat, but Homeland Security Downplays the Danger. Police Encourage Riders not to Carry Backpacks*, L.A. TIMES, Oct. 7, 2005, at A13, *available at* *http://www.lexis.com/research/retrieve/frames?_m=e7650cdfb641bb513804d7a7cc972f51&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVtz-zSkAW&_md5=3f6c1ecec2eeca3cff9bd480cb9e7f63*.

[179] *Id.*

[180] *Id*.

[181] Testimony of Lee Hamilton, Vice Chairman of the 9-11 Commission, Before the House National Security, Emerging Threats and International Relations Subcommittee, 109th Cong., 2nd Session. (June 6, 2005) *available at* http://www.lexis.com/research/retrieve/frames?_m=95c75c7dab0824b5b5dfe5037c11f2e1&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=e5244d5e5cbfd3ecb53849c1ea7c5160.

[182] *Id*.

[183] GOVERNMENT ACCOUNTABILITY OFFICE, INFORMATION SHARING THE FEDERAL GOVERNMENT NEEDS TO ESTABLISH POLICIES AND PROCESSES FOR SHARING TERRORISM-RELATED AND SENSITIVE BUT UNCLASSIFIED INFORMATION, Mar. 2006 at 14 (GAO-06-385), *available at* http://www.gao.gov/new.items/d06385.pdf.

[184] Testimony of Kip Hawley, Assistant Under Secretary of Homeland Security for Transportation Security, Before the House Committee on Homeland Security, Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity, 109th Cong. 2nd Sess.(Feb. 16, 2006) *available at* http://www.lexis.com/research/retrieve/frames?_m=6486b4ca397e83c32763aee0b28a5d65&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVlb-zSkAW&_md5=f519c1849e2e7bbc529c4d3b2fbba7db.

surprised by this announcement.[185] According to ATU, none of these organizations had been consulted by TSA regarding the needs of transit employees.[186] Four months later, TSA officials gave Committee staffers a briefing on recent initiatives. The written presentation provided to staffers included a list of TSA stakeholders.[187] There were no unions or other employee organizations listed.[188]

[185] Amalgamated Transit Union, *ATU Action Weekly Update- 2/21/06* (Feb. 21, 2006), *available at* http://www.unionvoice.org/atuaction/notice-description.tcl?newsletter_id=1551241.
[186] *Id.*
[187] Transportation Security Administration, Presentation on the Transportation Security Network Management Office: Mission, Organization, Roles, and Responsibilities (June 16, 2006)(copy on file with committee).
[188] *Id.*

VI. Limited Resources

Limited Funds

For the past several years, the Administration has requested little funding for rail and mass transit security. The President's budget request for fiscal year 2007 only allocated $37.2 million in the TSA budget for non-aviation transportation security – less than 1% of the TSA budget. The Administration's budget also eliminates the dedicated grants used by mass transit systems to enhance security**.**

In addition, instead of providing more direct funding, the Administration has again proposed to consolidate all critical infrastructure protection under the Targeted Infrastructure Protection Program (TIPP). The TIPP will force surface transportation entities to compete against each other and with other critical security infrastructure, such as ports for scarce funding. Moreover, the $600 million the President request for TIPP will not meet the needs of our nation's rail and mass transit systems. APTA estimates that $6 billion is needed just for mass transit security.[189]

Over four years, from fiscal years 2003 through 2006, the Department of Homeland Security has only distributed about $387 million for rail and mass transit security grants.[190] In the U.S., there are 9.5 billion passenger trips on transit annually.[191] This means that on average for the past four years, only one penny of federal funding was spent for security per transit passenger trip. This number is miniscule compared with the average federal security investment of $9 per airline passenger.[192]

Slow Distribution of Funds

The money that the Department has received for rail and mass transit security has been poorly managed. Washington Metro Chief Polly Hanson told the Senate Homeland Security and Government Affairs Committee in September 2005 that her agency had been waiting for its grant money for 10 months.[193] The problem of timely grant disbursement has yet to be resolved. William Millar, the President of APTA, testified on March 29, 2006, that grantees were still waiting to receive money that was appropriated and signed into law five months earlier.[194] He

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[189] American Public Transportation Association, *Statement on President Bush's Proposed FY 2007 DHS Budget* (Feb. 6, 2006), *available at* http://www.apta.com/media/releases/060206dhs_response.cfm.
[190] Chairman Petri's Opening Statement, Before the Highways, Transit, and Pipelines Subcomm. of the House Transportation and Infrastructure Comm., 109th Cong. 2nd Sess., (Mar. 29, 2006) *available at* http://www.house.gov/transportation/.
[191] *Id*.
[192] *Id*.
[193] Testimony by Chief Polly Hanson, Metro Transit Police Department, Washington Metropolitan Area Transit Authority, Before the Senate Committee on Homeland Security and Governmental Affairs, 109th Cong. 1st Sess., (Sept. 21, 2005) *available at* http://www.lexis.com/research/retrieve/frames?_m=c07fc617ad5ec4df36cc3466a386017c&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVlz-zSkAV&_md5=f1bdaee32d57b7d03c29a36983ada77a.
[194] Testimony by William Millar, *supra* note 158.

also stated that while APTA continues "to work with G&T on streamlining and improving the grant program [we] are frustrated with the results thus far."[195] The 2006 rail and mass transit grants have yet to be awarded.

Every day the Administration waits to award the grants is another day that people who ride our nation's rail and mass transit systems are at risk. This money can't be spent immediately. It takes time for the rail and mass transit systems to award contracts. Once the contracts are awarded, it takes time the work to be done.

Limited Personnel

TSA does not currently have the personnel to adequately ensure the security of our nation's rail and mass transit systems. In contrast to the 43,000 aviation screeners, [196] there are only 100 surface inspectors.[197] It will be physically impossible for these 100 men and women to provide more than superficial support to cover the 300,000 miles of freight rail lines and over 10,000 miles of commuter and urban rail system lines in the country.[198]

High Turnover Equals No Forward Movement

TSA's high turnover has also hampered the agency's rail and mass transit security efforts. Instead of making plans for the future, TSA's leaders are mired in the time-consuming tasks of learning their new jobs. TSA is now on its fourth Administrator in four years.[199] In addition, eight different individuals have been responsible for the maritime and land components of the agency.[200] The maritime and land section's title has also changed three times.[201]

Similarly, there has been upheaval within the various modal sections of TSA. For example, Peter Loverso, the former Deputy Director of the Intermodal Programs Office, became the acting General Manager for Mass Transit in November 2005 after Don Thompson, the former General Manager became the deputy to the General Manager for Maritime Security. Mr. Loverso held this job for only 7 months. He is now the acting Federal Security Director in

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[195] *Id*. At the hearing, Mr. Millar proposed that DHS overall its current distribution system as distribute funds directly to designated mass transit systems. This proposed system would be similar to FTA's current system.
[196] Press Release, Department of Homeland Security, TSA Unveils Enhanced Security Screening Procedures and Changes to the Prohibited Items List, (Dec. 2, 2005), *available at* http://www.tsa.gov/public/display?theme=44&content=090005198018c27e. These screeners have recently been reclassified as Transportation Security Officers.
[197] Congress first appropriated funds for these inspectors in the FY 2005 Homeland Security Appropriations Act, Pub. L. No. 108-334, 118 Stat. 1298 (Oct. 2004). The Conference Report accompanying the public law contains specific information about the inspectors. H.R. Conf. Rep. No. 108-774 (Oct. 2004).
[198] Johnstone *supra* note 70.
[199] TSA Administrators have included - John Magaw, Admiral James Loy, Admiral David Stone, and Edmund "Kip" Hawley.
[200] The following individuals have been responsible for the land and maritime component of TSA - Admiral Dick Bennis, Mark Johnson, Chet Lunner, Paul Hankins, Theresa Bertucci, James Clarkson, Mike Restovich,and Charlotte Bryan.
[201] The maritime and land component of TSA has had the following names - Maritime and Land Security; Intermodal Programs Office (non-aviation only), and the Transportation Sector Network Management (TSNM). After the most reorganization, TSNM includes aviation.

Charleston, South Carolina. Bob Rzemieniewski is the new acting General Manager for Mass Transit.

The current TSA General Managers for all the modes, including rail and mass transit, have been in acting roles since November 2005 and there is no clear indication of when TSA is going to permanently assign these positions. It is hard for the private sector to develop relationships with TSA officials as these officials only hold their jobs for a short period of time.

Canines

In an effort to increase security, TSA is providing the nation's top mass transit systems with TSA-trained canines, and this program will be increasing over the next few years.[202] On May 5, 2006, TSA, the Maryland Transit Administration (MTA), and the Maryland Transportation Authority, announced that three explosive teams are now providing security for MARC train, MTA buses, and light rail.[203] The new teams include Sergeant Louis Jones, and his dog, Brix; Officer Donald Page and his dog, Rolf; and Officer Nicholas Frazier, and his dog, Balu.[204] These dogs will provide an extra layer of security for the Baltimore mass transit system, but their utility will be limited again due to the size of the system. Three men and their dogs will not be able to be everywhere at once.

VIPER Program

TSA has developed a Multi-Model Security Enhancement Team (MMSET, previously known as Visible Intermodal Protection and Response Teams) initiative designed to provide surge capacity to enhance security in the non-aviation modes of transportation.[205] Unfortunately, this capacity to surge is limited because TSA only devotes a minimal number of individuals to the program. During the recent deployment in Chicago in April 2006, the team was comprised of only a few Federal Air Marshals (FAMs), a Surface Transportation Security Inspector (STSI), as well as a TSA canine team.[206] A similar team will be sent to the Portland International Airport (PDX) and to the TriMet MAX Light Rail System in June 2006.[207]

These teams are supposed to be working closely with local law enforcement officials. However, as was demonstrated by the first deployment in December 2005, TSA must continue to work on its relationship building with state and local officials. According to Representative Allyson Schwartz, who was briefed by Philadelphia and Southeastern Pennsylvania Transportation Authority law enforcement officials, TSA told Philadelphia police about the

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[202] Transportation Security Administration, *supra* note 103.
[203] Press Release, Department of Homeland Security, TSA Certified Canine Teams Begin Patrolling Baltimore Mass Transit, (May 5, 2006) (copy on file with committee).
[204] *Id.*
[205] Press Release, Transportation Security Administration, TSA Teams with MARTA to Test Security Preparedness, (Dec. 13, 2005) (on file with Committee staff). The surge capacity was piloted in December 2005 in Los Angeles, Houston, Atlanta, Washington, DC, Philadelphia, and Baltimore.
[206] Email from TSA official to a staffer on the House Homeland Security Committee (Apr. 18, 2006, 11:16 EST)(copy on file with Committee).
[207] Email from TSA official to a staffer on the House Homeland Security Committee (Jun. 8, 2006, 17:37 EST)(copy on file with Committee).

initiative only hours before they arrived.[208] TSA claimed that they briefed the police weeks before their arrival.[209]

[208] Leslie Miller, *Undercover Air Marshals to Expand Work Beyond Airplanes to Trains, Buses*, ASSOCIATED PRESS, Dec. 15, 2005, *available at* http://www.lexis.com/research/retrieve/frames?_m=3fc1828e8eb7790cd3e5135a2efa477b&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAV&_md5=0e04b6307b178a13634140b33b7a520e.

[209] *Id.*

VII. On the Frontlines Without the Necessary Training

Lack of Security Training for Rail and Mass Transit Employees

Emergency preparedness, response, and evacuation procedures training for front-line employees is another important issue that TSA has not yet fully addressed.[210] During the 1995 sarin gas incident in Tokyo, two transit employees unnecessarily lost their lives when they tried to dispose of the agent dispersal device themselves, instead of simply evacuating the scene.[211] According to Michael Siano, International Vice President of the Amalgamated Transit Union, proper training may have prevented these losses and possibly decreased the number of passengers who were exposed to the deadly gas.[212]

Labor organizations have repeatedly called for additional training for rail and mass transit employees. Shortly after 9/11, the Amalgamated Transit Union (ATU) conducted a survey of its members and found that 80% reported that their employers had not provided them with any security training. In a subsequent survey in the fall of 2005, approximately 60% of ATU members remained untrained in emergency preparedness and response.[213] APTA, an organization representing the transit industry, has also joined the call for additional training for front line employees.[214]

Similarly, rail employees are also not receiving the necessary training. The International Brotherhood of Teamsters, in a fall 2005 report, called for mandatory training for all rail employees.[215] The training that rail employees are currently receiving is not sufficient. Eighty-four percent of those surveyed said that they had not received any, or additional, training related to terrorism prevention and response in the last twelve months.[216] Ed Wykind, President, Transportation Trades Department, AFL-CIO told the Senate Committee on Science, Transportation, and Commerce last year that training for employees at a certain railroad consisted of a 14 minute video.[217]

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[210] For purposes of this paper, front-line employees means security personnel, dispatchers, vehicle and vessel operators, other onboard employees, maintenance and support personnel, and other appropriate employees of owners, operators, and providers of rail and mass transit systems.

[211] Testimony of Michael Siano, International Executive Vice President, Amalgamated Transit Union, Before the Highways, Transit, and Pipelines Subcomm. of the House Transportation and Infrastructure Committee, 109th Cong. 2nd Sess., (Mar. 29, 2006) *available at* http://www.house.gov/transportation/.

[212] *Id*.

[213] *Id.*

[214] Testimony of William Millar, *supra* note 158.

[215] International Brotherhood of Teamsters, *supra* note 78.

[216] *Id* at 12.

[217] Testimony of Ed Wytkind, President, Transportation Trades Department, AFL-CIO, Before the Senate Commerce, Science, and Transportation Committee, 109th Cong. 1st Sess.(October 20, 2005) available at http://commerce.senate.gov/pdf/wytkind-10-20-05.pdf.

TSA has currently trained only 400 law enforcement, rail industry, and TSA personnel.[218] It has not yet mandated that employers mandate security training. Instead, TSA has contributed $200,000 to a joint project to develop a computer-based, system security training program for all railroad employees in the country.[219] Front-line employees will not be required by TSA to take this training.

While TSA has been slow to act, FTA, working with the National Transit Institute (NTI) has taken the lead in developing voluntary training that has be given to thousands of employees. In June 2002, FTA and the NTI released the "System Security Awareness for Transit Employees"[220] and "Security Incident Management for Transit Supervisors" training courses.[221] In April 2003, FTA and NTI released a series of system security awareness employee pocket guides.[222] Later that year, FTA and NTI released a System Security Awareness training video entitled "Warning Sign."[223] The following year, FTA and NTI began development of the "Terrorist Activity Recognition and Reaction" course, which has been used to train approximately 5,000 employees.[224]

In the absence of TSA action, the National Labor College, George Meany Campus, has also developed courses, including the Rail Workers Hazardous Materials Training Program. Since 1990, hazardous materials training has been provided to nearly 20,000 rail workers from seven rail unions cooperating in the training program.[225]

FTA, NTI, and others have made been a valiant effort to fill a critical gap by TSA's inaction. However, as Chris Kozub, Associate Director at the National Transit Institute for the Workplace Safety and Security Program told Congress last summer, "the unfortunate reality is it [the NTI training described above] only represents 20 percent of the total workforce of front-line employees within the transit industry. We have a lot more training to do, the agencies have a lot more training to do to effectively reach the majority if not all of the workforce out there putting service on the street."[226]

The absence of mandated security training stands in stark contrast to the maritime sector of the United States. The Maritime Transportation Security Act requires that every vessel and facility plan "describe the training, periodic unannounced drills, and security actions of persons on the vessel or at the facility, to be carried out under the plan to deter to the maximum extent practicable a transportation security incident, or a substantial threat of such a security

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[218] Transportation Security Administration, *supra* note 103.
[219] Federal Transit Administration *supra* note 177.
[220] *Id.*
[221] *Id.*
[222] *Id.*
[223] *Id.*
[224] *Id.*
[225] National Labor College, *available at* http://www.georgemeany.org/html/rail_workers_hazmat.html.
[226] Testimony of Chris Kozub, Associate Director at the National Transit Institute for the Workplace Safety and Security Program, Before the Emergency Preparedness, Science, and Technology Subcomm. of the House Homeland Security Comm., 109th Cong., 1st Sess. (July 26, 2005) *available at* http://www.lexis.com/research/retrieve/frames?_m=db90fccfc28193784c3eae1e4d6f13d5&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVzb-zSkAb&_md5=b1ad209a088d59be6788d62c91afe04f.

incident."[227] The London Underground has recognized the importance of training and exercises.[228] Every staff member has had training in evacuation and safety procedures.[229] In addition, the London Underground system holds regular emergency exercises.[230]

[227] Maritime Transportation Security Act, *supra* note 116, § 102.
[228] Transport for London *supra* note 40.
[229] *Id.*
[230] *Id.*

VIII. Research and Development: Little Funding and Coordination

Few Initiatives

Secretary Chertoff, on July 28, 2005, stated that "technology is an area where the federal government can add real value to our mass transit security efforts."[231] Yet, rail and mass transit research and development projects at TSA, S&T, or another directorate within the Department of Homeland Security have not progressed beyond the pilot stage. More troubling, there does not appear to be a cohesive strategy with the Federal government for rail and mass transit research and development.

Research and development (R&D) will play a key role in detecting and deterring terrorist attacks on U.S. rail and mass transit systems. The attacks in London, Madrid, and Tokyo demonstrated the ease in which these systems could be attacked. In London and Madrid, the terrorists used backpacks to transport the explosives. In Tokyo, the sarin gas was brought into the stations without detection. Technology, that is inexpensive and reliable in detecting explosives and chemical and biological threats, will play a key role in deterring future attacks.

TSA developed a mass transit R&D pilot program in 2004 called the Transit and Rail Inspection Pilot (TRIP).[232] This pilot was conducted in three phases. TRIP Phase I occurred at the New Carrollton, Maryland, rail station and evaluated the use of technologies for screening rail passengers and their baggage prior to boarding a train.[233] TRIP Phase II occurred at Union Station in Washington, D.C., and tested the use of screening equipment for checked baggage and cargo prior to their loading onto an Amtrak passenger train, as well as screening of unclaimed baggage and temporarily stored items inside Union Station.[234] TRIP Phase III occurred onboard a Shoreline East commuter rail car. The goal of Phase III was to evaluate the use of existing technologies installed on a rail car to screen passengers and their baggage for explosives, while the rail car is in transit.[235] According to TSA, the data collected and insights gained from the pilot would assist TSA on how to better protect the nation's passenger rail and mass transit systems.[236] No additional steps were taken after the completion of the pilot. Even after Madrid and London, TSA did not mandate that rail or mass transit systems install technology that could deter or detect potential terrorists.

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[231] Michael Chertoff, Secretary, Department of Homeland Security, Address at California Commonwealth Club, (July 28, 2005) *available at* http://www.dhs.gov/dhspublic/display?content=4700.
[232] DHS, TSA, Transit and Rail Inspection Pilot Programs (Feb. 2006), *available at* http://www.tsa.gov/public/display?content=09000519800cacab&print=yes.
[233] *Id.*
[234] *Id.*
[235] *Id.*
[236] *Id.*

Two years later in March 2006, TSA, announced yet another pilot program that was very similar to the original TRIP pilot.[237] The Mobile Security Checkpoint project was designed to evaluate the use of emerging and existing technologies in a rail environment to screen passengers and their property for explosives and or large quantities of metal.[238] The technology was tested at the Dorsey Road and Hunt Valley stations in Maryland.[239] The Technical Support Working Group (TSWG), an interagency working group, funded the technology that was tested. TSA only funded the staffing and data analysis.[240]

In January 2006, the Science and Technology Directorate announced that it was starting its own program to evaluate technologies, operations, and training for detecting explosive devices in a rail rapid transit system.[241] The first phase of this pilot was conducted at the Exchange Place Station in Jersey City, New Jersey in February 2006.[242] According to the S&T Directorate, the data produced will indicate which technologies and operational procedures should be further developed or refined in order to make the rail rapid transit system as safe as possible.[243] TSA personnel did not participate in this pilot – yet another example of the lack of coordination that currently exists within the Department.

An additional problem is the fact that the Department still does not have a cohesive plan to coordinate research and development initiatives concerning rail and mass transit security that are occurring outside of the Department. TSWG is working with the University of Minnesota in developing and deploying a Mass Transit Surveillance System, which is an integrated monitoring, detection, and alerting system for small and large transportation stations, such as railroad and subway stations.[244] The system is supposed to be able to distinguish, track, and display anomalous human behavior via a widely distributed set of video cameras for the identification of possible terrorist attacks.[245] TSA is only a member of TSWG. It can not control how TSWG allocates its funds. The Department of State has oversight over the group.

Similarly, the Department of Transportation is also independently developing technology that has a security component. On May 10, 2006, the Department unveiled a new rescue simulator that can rotate a full-sized commuter rail car up to 180 degrees to teach emergency responders how to save passengers from rollover train accidents.[246] This new technology has

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[237] Press Release, Transportation Security Administration, TSA Unveils Mobile Security Checkpoint Pilot Program with Maryland Transit Authority (April 3, 2006) *available at* http://www.tsa.gov/public/display?theme=44&content=09000519801c3b6a.
[238] *Id.*
[239] *Id.*
[240] *Id.*
[241] E-mail from Science and Technology Directorate, to Democratic Staff, House Committee on Homeland Security (Jan. 25, 2006 2:57pm) (on file with Committee staff).
[242] *Id.*
[243] *Id.*
[244] TECHNICAL SUPPORT WORKING GROUP 2005 REVIEW, at 52, *available at* http://www.tswg.gov/tswg/news/2005_TSWG_ReviewBook-ForWeb.pdf.
[245] *Id.*
[246] Press Release, Department of Transportation, New U.S. Department of Transportation 'Rollover Rig' Research and Rescue Training Simulator to Enhance Passenger Rail Safety (May 10, 2006) *available at* http://www.dot.gov/affairs/fra0306.htm.

applications for both safety and security training. The Federal Railroad Administration developed and paid for this new technology.

On the other side of the Atlantic Ocean, the British government is also testing new technology. In January 2006, the British government began a four week pilot using millimeter wave technology to screen passengers on London's Heathrow Express, which runs from Paddington Station in west London to Heathrow airport.[247] A few months later in May 2006, the British began a second pilot using handheld body scanners at the Canary Wharf subway station.[248]

[247] *London Railway Tests Safeview Scout Personnel Screener*, PR NEWSWIRE, January 20, 2006 *available at* http://www.lexis.com/research/retrieve/frames?_m=ef0a88d3a2cc1975ea568025e2ec40a5&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVlz-zSkAB&_md5=828e0b52ac5ce945183f89fadf784151.

[248] Dick Murray, *Tube Travelers to Be Scanned For Bombs; Detectors Go On Trial In Response to 7/7 Attacks*, EVENING STANDARD, May 15, 2006 at 22, *available at* http://www.lexis.com/research/retrieve/frames?_m=67a87cd53ff9dcbeb39b0998ac661b80&csvc=bl&cform=bool&_fmtstr=XCITE&docnum=1&_startdoc=1&wchp=dGLbVlz-zSkAB&_md5=abcc52bea29c9326894a2e0ceffb5da4.

IX. Recommendations

Terrorists will continue to target the United States and the U.S. government must be prepared to prevent attacks like those that occurred in London, Madrid, Tokyo, and Hyder. There are several steps that can be taken to improve mass transit and rail security to ensure that our nation is better prepared to prevent and, if necessary, respond to an attack on our rail and mass transit systems.

Make TSA the Clear Leader for Rail and Mass Transit Security

TSA should be the lead agency within the Department of Homeland Security for rail and mass transit security. Making TSA the lead agency will eliminate redundancy and the potential for error. It will also provide state and local officials, who are critical partners for securing rail and mass transit, one authority for whom to work with on security issues. It will also allow Congress to hold one entity accountable for the failings and successes of our nation in this area.

The private sector, including owners and labor organizations should also be involved. Labor organizations represent the frontline employees who will be called upon to act if another terrorist attacks occurs in the United States. The private sector owns 85% of the nation's critical infrastructure and they will bear the costs associated with upgrading their systems. In the past, TSA has developed standards without public comment and notice. In the future, TSA must give everyone the opportunity to be involved in the process.

Require TSA to Complete a National Rail and Mass Transit Security Strategy

As the lead agency, TSA must develop a National Rail and Mass Transit Security Strategy that:

- clearly establishes roles and responsibilities for the various Federal Departments and agencies involved in rail and mass transit security.
- clearly lays out the relationship between the Federal government and its stakeholders, including state, local, and tribal officials and representatives from the private sector and labor organizations.
- establishes measurable goals and milestones for TSA and the other Agencies and Departments that have a role in rail and mass transit security.
- mandates security plans which are reviewed, approved, and enforced by TSA.
- mandates vulnerability assessments, and training and exercises for rail and mass transit system.
- mandates public outreach
- establishes a dedicated funding stream for grants and research and development.
- encourages TSA to review the lessons learned from the previous attacks and uses this information as the starting point for developing its future strategies and plans.

Require Rail and Mass Transit Owners and Operators to Submit Security Plans

TSA, in consultation with FTA and FRA, should develop regulations requiring security plans for rail and mass transit systems. These plans should be completed in a certain amount of time and include the following: a vulnerability assessment; description of the area and infrastructure covered by the plan (infrastructure should be broadly defined to include not only the facilities, but also the tracks, repair stations, and other infrastructure related to the rail and mass transit systems); personnel training; drills and exercises; records and documentation; communications; security systems and equipment maintenance; security measures for access control; security measures for restricted areas; security measures for monitoring; security incident procedures; and audits and security plan amendments. These requirements are similar to those required for maritime vessel and facility owners and operators.

These plans should be reviewed, approved, and enforced by TSA. Voluntary plans are not enough. We owe it to the American public to ensure that the plans have been implemented and updated, as appropriate. Furthermore, rail and mass transit systems will benefit because it will level the playing field, preventing companies that take security seriously from suffering from a competitive disadvantage.

Conduct Vulnerability Assessments on All Rail and Mass Transit Security Systems

Vulnerability assessments, based on the same methodology, should be completed for all rail and mass transit systems within a certain amount of time. These assessments should cover all related infrastructure – facilities, tracks, bridges, tunnels, information systems, etc. In addition, these assessments should be the basis upon which the security plans are developed. If vulnerability assessments have already been completed for certain systems, the prior work should be incorporated into the plan and an additional assessment should not be completed unless necessary. TSA should be required to work with Grants and Training, FTA, FRA, and other appropriate agencies, to ensure that these assessments are coordinated.

Develop and Enforce a Baseline of Security

TSA should follow GAO's recommendation and develop security regulations that can be legally enforced.[249] The new regulation should mandate civil penalties, similar to those imposed on the maritime side, for systems that do not comply with the regulations.[250] Finally, TSA should work with the Department of Transportation when developing these regulations to ensure that the regulations do not conflict with DOT safety regulations.

Dedicate Funding for Rail and Mass Transit Security

A multi-year, dedicated stream of funding for rail and mass transit systems should be established for grants and R&D initiatives. This funding should be divided between the different agencies (including TSA, S&T and Grants and Training) as appropriate, with the assurances that all the agencies work together in furtherance of the National Rail and Mass Transit Security

[249] GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 13, at 72.
[250] 46 U.S.C. § 70119 (2005).

Strategy. The transit grants should be sent directly to mass transit systems within a designated timeframe. In additional more surface inspectors are needed. 100 men and women may valiantly try to make difference but they will ultimately fail without support. Similarly, additional funding is also required for the TSA canine program.

Improve Information Sharing With State and Local Governments

The new legislation should include measures to improve communication between the Department and state, local, and tribal officials so that miscommunication about threats like the incident in New York City are prevented. State, local, and tribal personnel will be the first ones to respond to a terrorist attack or natural disaster. As such, they should be given the necessary information they need to properly do their jobs.

The men and women who work on these systems should also be actively involved in security because they provide the vital eyes and ears of what is occurring on a daily basis. At the same time, these men and women must be given whistleblower protections to ensure that they do not face retribution for providing accurate and timely information.

Mandate Security Training for All Front Line Employees

TSA should also identify the gaps that currently exist in front-line employee training and mandate training to close this critical gap. This training should be developed using TSA resources and should be required for all front-line rail and mass transit employees. TSA should work with FTA, FRA, NTI, and the National Labor College when developing this training.

X. Appendix: Acronyms

AAR	American Association of Railroads
APTA	American Public Transportation Association
ATSA	Aviation and Transportation Security Act
ATU	Amalgamated Transit Union
CCTV	Closed Circuit Television
CTA	Chicago Transit Authority
DHS	Department of Homeland Security
DOT	Department of Transportation
FAMS	Federal Air Marshal Service
FTA	Federal Transit Administration
FRA	Federal Railroad Administration
GAO	Government Accountability Office
HAS	Homeland Security Act
HSPD	Homeland Security Presidential Directive
HTUA	High Threat Urban Area
MOU	Memorandum of Understanding
MTA	Maryland Transit Administration
MTSA	Maritime Transportation Security Act
NTI	National Transit Institute
NY-MTA	New York Metropolitan Transportation Authority
OSCE	Organization of Security and Co-operation in Europe
PHMSA	Pipeline and Hazardous Material Safety Administration
R&D	Research and Development
SD	Security Directive
S&T	Science and Technology
STSI	Surface Transportation Security Inspector
TIH	Toxic by Inhalation
TIPP	Targeted Infrastructure Protection Program
TRIP	Transit and Rail Inspection Pilot
TSA	Transportation Security Administration