

Testimony of

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STATEMENT OF
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BEFORE THE

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COMMITTEE ON THE JUDICIARY

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Good morning, Mr. Chairman and distinguished members of the Committee. Thank you for the opportunity to join you today to discuss the adequacy of the laws protecting America's mass transportation and railroad systems.

In the wake of the Madrid rail bombings and the subsequent discovery of unexploded bombs underneath railway lines in France and Spain, this hearing addresses a timely and important issue. Mass transportation and railroad systems play a vital role in the life of our nation. Americans regularly use trains, buses, airplanes, and other mass transportation vehicles to commute to work, visit loved ones, and go on vacations. Railroads are also used to transport vital goods and materials across the country. The availability of safe and reliable mass transportation and railroad systems is critical to the health of our nation's economy as well as Americans' quality of life, so we must remain vigilant and prepare for the possibility that terrorists may attempt to launch attacks on those systems.

The protection of mass transportation and railroad systems obviously requires a multifaceted approach. In my testimony today, however, I would like to focus on one critical element of any strategy for safeguarding our nation's railways, buses, subways, ferries, and passenger aircraft: the existence of strong, consistent, and effective criminal sanctions under federal law for those perpetrating attacks on mass transportation and railroad systems.

In 2001, Congress took an important step towards protecting mass transportation systems when it passed the USA PATRIOT Act. Section 801 of the Act created a new federal statute, 18 U.S.C. § 1993, which criminalizes terrorist attacks and other acts of violence against mass transportation systems. That statute, to give a few examples, makes it a federal crime to willfully: (1) wreck, derail, set fire to, or disable a mass transportation vehicle; (2) place a biological agent or destructive device on or near a mass transportation vehicle with the intent to endanger the safety of any passenger or employee of a mass transportation provider or with a reckless disregard for the safety of human life; or (3) use a dangerous weapon with the intent to cause death or serious bodily injury to an employee or passenger of a mass transportation provider while on the property of a mass transportation provider.

As the U.S. Attorney for the Eastern District of Tennessee, I have witnessed firsthand the value of this new statutory provision. Recently, a passenger on a Greyhound bus traveling from Nashville, Tennessee to Knoxville allegedly caused disturbances on the bus and then attempted to assault the bus driver with a knife. Thankfully, other passengers were able to subdue this individual before he was able to reach the driver. But the driver, other passengers, and even members of the general public were put at significant risk by this passenger's alleged conduct. After reviewing the available options, prosecutors in my office determined that the best avenue for prosecuting this violent passenger effectively was to charge him under the new federal statute prohibiting terrorist attacks and other attacks of violence against mass transportation systems contained in section 801 of the USA PATRIOT Act. The passenger was subsequently indicted for violating 18 U.S.C. § 1993, and a jury trial has been scheduled for June 8, 2004.

The Department also attempted to use the new mass transportation statute in the case of Richard Reid, the individual charged with attempting to blow up American Airlines Flight 63 with bombs concealed in his shoes. A federal grand jury in Massachusetts indicted Reid on a variety of federal charges, including violating 18 U.S.C. § 1993.

Unfortunately, however, a federal district court in Massachusetts dismissed this charge against Reid, finding that he could not be charged with attempting to wreck a "mass transportation vehicle" because an airplane was not a

"vehicle" as that term was used in the statute. Following this decision, Congress acted swiftly to correct this problem. Last year, in section 609 of the PROTECT Act, Congress amended the mass transportation statute to broaden the definition of "vehicle" to include "any carriage or contrivance used, or capable of being used, as a means of transportation on land, water, or through the air," which clearly includes passenger aircraft. The Department of Justice thanks Congress for moving quickly to close this loophole and to ensure that passengers using all types of mass transportation vehicles are protected by 18 U.S.C. § 1993.

As you can see, Congress and the Administration have taken significant steps towards ensuring that those who attack mass transportation and railroad systems are effectively prosecuted and appropriately punished. But there is still more to be done to close gaps in these statutes and make them clearer and less vulnerable to legal challenge. This is why the Department of Justice strongly supports S. 2289, the Railroad Carriers and Mass Transportation Protection Act of 2004, recently introduced by Senator Sessions. This same legislation has also been introduced in the House of Representatives by Congresswoman Capito.

S. 2289 would make a number of significant improvements to the federal criminal laws protecting mass transportation systems and railroad systems. I will highlight a few of the most important changes. To begin with, S. 2289 would consolidate the new mass transportation statute, 18 U.S.C. § 1993, and the statute imposing criminal sanctions on "wrecking trains", 18 U.S.C. § 1992, into a new criminal prohibition against attacks on "mass transportation systems on land, on water, or through the air, and against railroad carriers."

This consolidation would harmonize the laws protecting mass transportation systems, including passenger trains, and the laws protecting railroads, including freight trains. Under existing law, for example, the wrecking trains statute does not prohibit many types of attacks that are currently covered by the mass transportation statute, such as interfering with, disabling, or incapacitating a dispatcher or driver. S. 2289 would eliminate these inconsistencies.

Conversely, the wrecking trains statute currently prohibits one type of attack that the mass transportation statute does not address. The wrecking trains statute makes it a federal crime to undermine or make unworkable, unusable or hazardous to work on or use railroad infrastructure, such as terminals, but the mass transportation statute contains no comparable provision. S. 2289 would extend this protection to mass transportation systems. Thus, S. 2289 will ensure that railroad carriers and mass transportation providers receive the same protection under federal criminal law.

In addition, the current wrecking trains statute lacks some of the provisions in the mass transportation statute that facilitate successful federal prosecutions. The mass transportation statute, for example, applies where a person "in the course of committing [a prohibited act] . . . travels or communicates across a State line in order to commit such act, or transports materials across a State line in aid of the commission of such act." The wrecking trains statute, however, does not contain these jurisdictional provisions, which makes it more difficult for federal prosecutors to bring charges for certain attacks on non-passenger trains. S. 2289 would correct this problem by making the same jurisdictional provisions applicable both to attacks against railroad systems and against mass transportation systems. S. 2289 also would eliminate the inconsistency between the mens rea standard in the mass transportation statute and the mens rea standard in the wrecking trains statute. While the mass transportation statute currently requires that an individual willfully commit one of the acts prohibited by that statute, the wrecking trains statute requires that an individual committing some of the acts prohibited by that statute specifically intend to derail, disable, or wreck a train. This heightened intent standard is not justified and may hamper our ability to prosecute those attacking railroad systems in certain cases. S. 2289 would fix this problem by requiring that the actor "knowingly" commit the prohibited acts, and with respect to certain acts involving railroad or mass transportation infrastructure (subsection (a)(3) of the new statute), require that actor commit those acts with intent to, or knowing or having reason to know such activity would likely derail, disable, or wreck railroad on-track equipment or a mass transportation vehicle.

In addition to providing consistency, S. 2289 would strengthen the protection of mass transportation and railroad systems by updating the law to match current developments and by making the statutory language more precise in several respects. For example, the bill would expand the types of railroad property and equipment that are explicitly protected by federal law to include electromagnetic guideways, locomotive tenders, and on-track equipment. It also would broaden the statute's coverage by updating the definition of "dangerous weapons" to cover box cutters and other previously unrecognized weapons. Likewise, the bill would expand the types of prohibited attacks to include causing the release of a hazardous material or a biological agent or toxin on or near the property of a railroad carrier or mass transportation provider, with the intent to endanger the safety of any person or with a reckless disregard for the safety of human life.

S. 2289 would also ensure that terrorists who attack mass transportation systems are punished with the appropriate severity. Currently, for instance, while those violating the wrecking trains statute are eligible for the death penalty if their offense results in death, those violating the mass transportation statute are not eligible for the death penalty. S. 2289 would end this senseless discrepancy. It would increase penalties for the most serious attacks against mass transportation systems by making it an "aggravated offense" to commit the prohibited terrorist acts in situations

involving vehicles carrying passengers, high-level radioactive waste, spent nuclear fuel, or a designated hazardous material. The penalty for these attacks could include a fine, imprisonment for up to life, or both. An attack on a vehicle transporting nuclear material would be subject to a 30-year minimum penalty. For an offense resulting in the death of any person, the defendant would receive either capital punishment or life imprisonment.

Finally, the bill would add the word "attempt" to the penalties provision of the mass transportation statute--it already appears in the provision describing the criminal offense--to avoid an issue that arose in the recent prosecution of Richard Reid. Reid raised the omission of the attempt language in the penalties provision as a technical defense to the charge against him, contending that Congress did not intend to make attempt crimes punishable. The court correctly rejected Reid's interpretation as meritless. Adding "attempt" to the penalties provision, however, would eliminate any future uncertainty as to Congress's intent and avoid any future litigation on this point.

In conclusion, the Department of Justice believes that the S. 2289, the Railroad Carriers and Mass Transportation Protection Act of 2004, would greatly assist in prosecuting those who perpetrate terrorist attacks upon this nation's mass transportation and railroad systems. By eliminating inconsistencies in current law, expanding the scope of legal protection provided to mass transportation and railroad systems, and increasing penalties for those who attack those systems, S. 2289 would improve the security of our nation's mass transportation and railroad systems.

The Department would be happy to work the Congress in the weeks and months to come on legislation to protect our nation's mass transportation and railroad systems. Thank you once again for allowing me to appear before you today to discuss this very important issue.