

STATEMENT OF THE HONORABLE SAMUEL I. “SANDY” ROSENBERG

DELEGATE, 41st DISTRICT OF MARYLAND

U.S. SENATE COMMITTEE ON THE JUDICIARY

“HOLOCAUST-ERA CLAIMS IN THE 21ST CENTURY”

June 20, 2012

Chairman Leahy, Ranking Member Grassley, Senator Schumer, and distinguished members of the Committee, thank you for the opportunity to express my support for the Holocaust Rail Justice Act (S.634) and share my experiences in Maryland to require transparency from SNCF. On behalf of the victims of Société Nationale des Chemins de fer Français (SNCF) in Maryland and around the world, I would like to express my gratitude for holding this important hearing. Senator Schumer, your leadership on this issue for so many years and your tireless fight to provide these survivors their day in court has been remarkable.

I applaud all those who support this important legislation in the House and the Senate and for setting aside partisan differences to ensure SNCF is finally held accountable for its role in the suffering and death of thousands of innocent victims. I would especially like to thank my dear friend and former colleague Senator Cardin, Senator Mikulski, and the members of the Maryland Congressional delegation who have cosponsored this legislation. On a very personal note, I am certain that Telford Taylor, my Constitutional Law professor at Columbia University Law School and the Chief Prosecutor for the Nuremberg War Crimes Tribunal, would be immensely proud of the work we are doing to hold SNCF accountable. With this hearing and the increasing number of bipartisan supporters of this legislation – including Majority Leader Reid, Foreign

Relations Committee Chairman Kerry, and Senator Rubio, to name a few – I am confident, now more than ever, that Congress will provide SNCF’s victims with their long awaited and much deserved day in court.

I learned about the French railroad company, SNCF, last year when some of my constituents brought to my attention that SNCF’s majority owned joint venture company intended to bid on MARC commuter rail contracts. Over the following months, I was stunned by what I learned about SNCF’s actions during the Holocaust and about the company’s ongoing treatment of my constituents and other SNCF victims throughout America. SNCF’s blatant refusal to fully acknowledge its role in the Holocaust led me and my colleagues to pass legislation requiring transparency for SNCF’s numerous victims. I am here today to share what we learned in Maryland about SNCF and its deplorable past and to urge the enactment of the Holocaust Rail Justice Act so that SNCF’s victims can finally attain the justice they so rightfully deserve.

SNCF’s Role in the Holocaust

During World War II, SNCF collaborated with the Nazis to deport 76,000 Jews and thousands of other so called “undesirables,” including U.S. airmen shot down over France, to Nazi death camps. For each transport, SNCF was paid per head, per kilometer. Fifty people were herded into each SNCF cattle car, with 20 cars per convoy, as they set out from France toward near certain death. These innocent victims were locked inside with barely any food or water and only one sanitary bucket on board. Fewer than three percent of the Jews deported by SNCF survived the Holocaust, and many did not even survive the train journey to the death camps due to the inhumane conditions imposed by SNCF.

Since SNCF has become interested in U.S. high-speed rail contracts and partially federally funded state rail contracts, SNCF has claimed that it was wholly coerced, as if this somehow exonerates the company. However, after examining the facts and the history, I have come to believe, as I expect you will too, that SNCF actively collaborated with the Nazis and negotiated to retain control and responsibility for its trains, including the technical conditions of the deportations. SNCF's actions and the conditions it imposed led directly to the deaths of countless victims. According to the Bachelier Report, commissioned by SNCF itself, the company even protested when Red Cross workers attempted to provide aid to the victims in the trains because it slowed down the transports.

SNCF billed quarterly for the deportations and continued to seek payment for "services rendered" even after the liberation of Paris, after the Nazis were gone. While SNCF's current leadership contends that they were wholly coerced by the Nazis, they have been utterly unable to explain away the active role they played in these deportations and why they sought payment even after the Nazis were defeated. This is because it simply cannot be explained away. This is SNCF's lamentable history.

SNCF's Victims' Fight for Justice

While SNCF does not deny that it sent thousands of innocent people, including 11,000 children, to their deaths, the company refuses to take responsibility for its actions. Instead, it hides behind foreign sovereign immunity and claims it should not be held accountable in U.S. courts. In the 67 years since the Holocaust, SNCF has neither paid any reparations to its victims nor to existing French reparation programs. Furthermore, those reparation programs do not

specifically cover the SNCF deportations. As a result, SNCF's victims who were deported are ineligible to receive any reparations attributable to SNCF's egregious actions.

Even worse, I believe that SNCF is actively seeking to deceive its victims into thinking they are eligible for those reparations. On November 4, 2010, SNCF's chairman stated that the company was "establishing a service to work one-on-one with individuals to help them process their claims and receive reparations from these existing State programs," all the while knowing full well that those programs do not specifically cover SNCF's victims for their deportation.

Unfortunately, SNCF has deployed this campaign of deception in both California and my state of Maryland. SNCF America's former CEO sent a letter to California Assemblymember Bob Blumenfield on March 1, 2011, offering to assist any of his constituents who may have been "affected" by the deportations in obtaining "reparations to which they are entitled." In September 2011, an ad ran in the *Baltimore Jewish Times* which offered assistance in applying for French reparations programs. The ad neglected to inform SNCF victims that these programs are inadequate and do not specifically cover the SNCF deportations.

While SNCF may believe that its ads and public relations campaign may help the company as it seeks to compete for public rail contracts in the United States, it has the unfortunate and unacceptable effect of engendering false hope among those who have already suffered so egregiously. An SNCF employee exposed the true – and deeply troubling – intent of the company. I would like to read directly from a letter written by California Assemblymember Bob Blumenfield to SNCF America's former CEO. Assemblymember Blumenfield states, "First, SNCF seems to now be making clear that it has no intention of providing reparations to its victims, many of whom are California residents. On January 25th, 2011, an SNCF representative

told me, in no uncertain terms, that ‘SNCF will never pay the survivors anything’ and that the company ‘would rather not do business in California’ than take any such actions.”¹ I would like to enter this letter into the record.

SNCF’s Spin Campaign

SNCF’s actions during the Holocaust were unconscionable and unforgivable; however, the company’s regrettable actions today have convinced me that these are no longer the sins of SNCF’s fathers. Through my work on the Maryland legislation, I became well acquainted with SNCF, its representatives, and the company’s disingenuous conduct during the Maryland General Assembly’s consideration of the bill.

In 2009, SNCF officially expressed interest in entering the U.S. high-speed rail market. Due to survivors’ concerns and SNCF’s continued refusal to accept responsibility, SNCF’s role in the Holocaust was scrutinized in newspapers across the country. While steadfastly refusing to engage with its victims and to accept responsibility, SNCF launched a full scale public relations campaign to spin its role in the Holocaust and the reality of what existing French reparations programs cover, and to try to stem the growing tide of opposition standing between the company and lucrative state and federally funded rail contracts.

It was not until 2010 that SNCF issued its first apology for its role in the Holocaust, almost seven decades after World War II. This long overdue apology rings hollow for Leo Bretholz and SNCF’s other victims. The *Los Angeles Times* editorial board perhaps said it best,

¹ Letter from California Assemblymember Bob Blumenfield to SNCF America CEO Denis Doute (February 2, 2011) available at <http://holocaustrailvictims.org/wp-content/uploads/2011/02/Blumenfield-Letter-2-2-11.pdf>

noting in a November 20, 2010 editorial that SNCF's apology "doesn't save any lives or compensate any survivors. What's more, it comes about 65 years late, at a time when most of those with firsthand memories of the Holocaust have died." The editorial board went on to note that the apology "was apparently not prompted by regret. Rather, it seems to have been spurred by the company's desire to win multibillion-dollar high-speed rail contracts in California and Florida, contracts that were in jeopardy because of stiff resistance from survivors of the deportations and the families of those who died."

State Level Actions

In the face of SNCF's history and its treatment of its victims, I am proud that my state, California, and Florida have all taken a stand against the company.

In Florida, at a time when the state was contemplating a \$2.6 billion high speed rail project, SNCF sought to influence the teaching of the history of the Holocaust in Florida classrooms by underwriting a partnership between the Shoah Memorial of France and Florida's Department of Education Task Force on Holocaust Education. As the facts of the agreement between the parties came to light, the potential partnership was met with fierce opposition from Holocaust survivors, Congressional leaders, and even Task Force members, who had been kept in the dark about the decision to engage with SNCF. Survivors were outraged that SNCF, responsible for deporting them and their family members toward the death camps, might have some role in shaping the education of their grandchildren, while still refusing to be held accountable to the survivors. Roughly half of the Florida Congressional delegation, including Senators Nelson and Rubio, wrote a letter to Florida's Commissioner of Education, which I would also like to enter into the record. In that letter, the Congressional leaders stated plainly

that “[i]nstead of attempting to engage in a public relations campaign, SNCF would be wise to resolve the claims of the Holocaust survivors as a consequence of their actions.” How could a company that cannot even face its own role in the Holocaust be allowed to influence how the subject of Holocaust history is taught to the next generation of Americans? Thankfully, we do not have to face that prospect, as the Florida Education Commissioner ultimately, and rightfully, cancelled the partnership with SNCF and returned the money.

In both California and Maryland, when SNCF sought to obtain taxpayer funded contracts, California Assemblymember Bob Blumenfield and I introduced legislation in our respective states to ensure our constituents would know the character of the companies receiving public funds. The Maryland bill, which unanimously passed both chambers of the legislature last year and was signed into law by Governor Martin O’Malley, requires companies seeking to bid on MARC contracts to digitize and post relevant Holocaust-era archives online.

Since the law’s enactment, SNCF has released its digitized archives to three Holocaust museums. When it did so, SNCF issued a press release claiming it opened and digitized its archives of the 1939–1945 period as part of a “new phase of transparency.” True to form, SNCF presented its digitization and online-posting of its archives as a purely altruistic endeavor. Although it is a positive development that SNCF has donated its archives to these Holocaust museums, it is par for the course that SNCF approached this as a PR exercise, failing to mention that the posting of these archives was required in the first instance to allow SNCF and its related companies to compete for lucrative contracts.

Accountability Through the Holocaust Rail Justice Act

I am proud that the law we passed in Maryland should result in long-awaited transparency from SNCF, not only for Maryland residents, but for the world. The archives will become a part of the historical record of the Holocaust and will help to ensure that we as a society will never forget the lessons of the Holocaust or SNCF's role in the deportations and deaths of thousands.

Unfortunately, transparency is not enough for Leo Bretholz and his fellow survivors. As many of them enter the winter of their lives, accountability from SNCF will never be obtained without the help of the members of this committee and this Congress.

For over ten years, SNCF's victims have sought to hold the company accountable for actively collaborating with the Nazis during the Holocaust. So far, SNCF has been successful in escaping responsibility by claiming it is an arm of the French Government entitled to foreign sovereign immunity.

I was shocked to learn that SNCF succeeded in evading jurisdiction and had a suit dismissed from French Administrative court based on the argument that it was performing a *private* function when it deported countless thousands toward their certain death. In the U.S., however, SNCF argues just the opposite - that it is an arm of the French government, to once again evade the jurisdiction of the courts. That SNCF has succeeded in ducking accountability by advancing these contradictory arguments is unconscionable.

Leo Bretholz and his fellow survivors deserve truth, justice, and accountability from SNCF. It is appalling that some 67 years after the Holocaust, SNCF still refuses to accept full responsibility for its actions. I am proud of the progress Maryland has made in seeking to provide transparency to SNCF's victims, but now this Committee and the Congress must provide

the other necessary component of justice – accountability. SNCF’s victims have never had their day in court; they have never had an opportunity for accountability. The Holocaust Rail Justice Act would allow Leo Bretholz and SNCF’s countless other victims to have their stories told in open court for the first time. This legislation represents the only hope for these survivors before it is too late.

The Holocaust Rail Justice Act does not assign blame or mandate the payment of any reparations. Nor will the act affect existing restitution or reparations agreements. The legislation simply provides SNCF victims with access to court - to the justice they so very much deserve. SNCF’s ability thus far to evade legal accountability in U.S. courts - as the company is pursuing federally funded contracts - is a failure of justice. By finally forcing SNCF out of the shadows, and by precluding SNCF from hiding behind foreign sovereign immunity, the Holocaust Rail Justice Act will finally provide necessary accountability.

I recently returned from a trip to Israel. While in Jerusalem, I visited the national Holocaust museum, Yad Vashem. “We’ve identified many of the people in this film,” stated our tour guide. The people in the film were about to be executed by a Nazi firing squad before falling into a shallow mass grave. “Our goal is to give all 6 million a name,” declared our guide at the conclusion of our tour. “Thus far, we have done that for 4.1 million.” While it is too late for the victims in that film to seek justice, it is not too late for SNCF victims like Leo Bretholz to finally have a chance at justice.

As members of this Committee know all too well, many Holocaust survivors, like Leo, are in the twilight of their lives. Leo now sits before this committee, 91 years old, still waiting for justice after battling SNCF for over a decade. While SNCF tries to run out the clock on

survivors like Leo, we must all stand up – on the local, state, and federal levels – and together demand that this company finally be held accountable.