

Center for American Progress



CRITICAL INFRASTRUCTURE SECURITY SERIES:

“NEW STRATEGIES TO PROTECT AMERICA: PUTTING RAIL SECURITY ON THE RIGHT TRACK”

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P.J. CROWLEY: Welcome to the Center for American Progress. My name is P.J. Crowley. I'm a senior fellow and director of national defense and homeland security and welcome to the second in our series of discussions on critical infrastructure security. Here at the Center, we are spending all of this year focused on critical infrastructure security of protection, the roles of various governments at echelons – you know, federal, state, local, and the capacity of the private sector to meet its homeland security requirements and certainly this week – you know, sometimes it's got to be good, it's good to be lucky, and this week we are both thanks to Judge Emmet Sullivan of the District Court. And now the issue is front and center of here in the District and growing and notoriety around the East Coast and around the country as we grapple with how, in fact, to improve real security as part of our national critical infrastructure.

The core assumption and the Bush administration's approach to homeland security is that much, if not most, of critical infrastructure protection will be done, you know, by the private sector, and justifiably so: 85 percent of critical infrastructure rests in private hands. Ours is an open society and it's clearly evident when you look at rail security. There are hundreds of thousands of miles of track, there are thousands of rail stations, rail sidings. It is impossible to defend every bridge, every tunnel, everything that might be vulnerable to attack. You know, physical security has been improved, but it is not in itself sufficient. When it comes to catastrophic terrorism, it's also important to look at operations and the extent to which how things function actually make them into a potential terrorist target. CSX in its appeal to the U.S. Court of Appeals this week basically said that all terrorism risk is equal, and I think that's a statement that ignores the reality of the adversary that we face, al Qaeda and similar global jihadist terror networks.

There is a clear reason why New York has been attacked twice and the District of Columbia has been attacked once. There is a clear reason why a terrorist like Ahmed Ressam was heading for Los Angeles. Al Qaeda is attracted to a stage in which – a stage that is big and with the potential for political, economic, and social damage and disruption. So the key is to focus on the threat and the risk and to try to work to reduce our society and our economy's vulnerability to terrorism, and in that capacity while all echelons of governments – state, local, the federal government are – have critical roles to play, the federal government ultimately has to lead, which is really what Judge Sullivan said in his opinion on Monday.

The District of Columbia disputes a case study and what is wrong with homeland security one year after Madrid and within sight of the fourth anniversary of 9/11. We have today here in homeland security a divided, not a united, front. We have not done enough to protect our society and economy from the threat of terrorism. We are not devoting enough resources to the task. Homeland security is – it only receives about 6 percent of our national security spending.

We have not only not decided what to do, we have not even decided who should do it under what circumstances. The one point of agreement, however, among all of the key participants in homeland security and rail security is that the federal government is in the best position to enact a national, comprehensive approach. The railroads say that only the federal government can tell it what to do. The District is arguing that we can take steps to protect ourselves if the federal government has yet to act and until it does. Lurking in the background are other cities – Baltimore, Philadelphia, other locations that have significant real operations – that have similar interest and perhaps are prepared to act in ways in which the District already has.

So how did we get to where we are and what should we do to secure our national rail infrastructure? Who should do it? If the federal government is in the best position to act, how should it proceed? What will cities – other cities in the region do based on the DC action? How do we build a more effective homeland security partnership? To answer these questions we have a very distinguished group of experienced panelists here to help us and to present – you know, different vantage points on this issue.

In your packets, there are extensive biographies that show the great experience that each of these panelists brings to the issue. I won't repeat them here other than to introduce my fellow colleagues starting on the far right. You know Stephen J. McHale, partner at Patton Boggs, LLP, and former deputy administrator of the Transportation Security Administration. Kathleen Patterson, Ward III representative to the council for the District of Columbia. To my left, Dr. Fred Millar, who has written a paper for this occasion that is in your packets; a consultant and former toxic director for the Friends of the Earth. And David Shuman, managing director of R.L. Banks and Associates.

Just a word of caution before we start – you know, and Kathy probably has the purest of motives here. She is an elected official of the District of Columbia and her task is to help defend the citizens of the city. Others among us have different allegiances or affiliations or past experiences. Probably you will find out that at the end of this none of us agree on – you know, some things not other things, but I will caution – you know, Steve is here to kind of represent, you know, the evolution of the TSA, but it is important to emphasize he was a member of the Clinton administration; was a hold over, and did serve with distinction in the Bush administration at TSA. We are grateful for his service, but he is not necessarily here – he will explain some decisions that have been made, and he is not necessarily here to defend them.

And both of the gentlemen to my left are – were actually expert – provided expert testimony in the district court case. You know, in particular we've asked David Shuman, given that in his past experience he has done work on behalf of the Railroad Association and has worked against the Railroad Association at times, but we have asked him to again represent that point of view for us today. We did invite the American Association of Railroads to participate in today's program and they could not spare a senior representative to join us. (Laughter.)

As is our custom, we will start off – you know, with – with the discussion among the panel for about 30 to 40 minutes and then open up to questions from the floor. We will start with representatives of the media who might be present and then move to the general audience. When we get to that stage, by all means please wait for the microphone and then please identify yourself and your affiliation before asking a question. We prefer to have questions and have this be as dynamic a presentation as possible as opposed to filibusters. You know, we will employ the nuclear option here if necessary.

With that, let me begin. Kathy almost literally – you started this, and so start off – you know, tell us a little bit about what would the DC Act do and particularly why did you feel the council – it was necessary for the council to act the way it did?

KATHLEEN PATTERSON: Thank you. I would like to – just do a very short chronology – a long chronology and I will try to do it briefly. I am an ex-newspaper reporter, though, so I already have questions for P.J. based on his presentation when he said physical security has been improved. I would kind of like to know how and where.

After 9/11, the issue that most seriously confronted the District of Columbia is framed by this fact: that in 1993 terrorists tried to takedown the World Trade Center and eight years later they succeeded. The plane that was on its way to Washington, DC, to either hit the White House or the Capitol or someplace in between perhaps, where we are now sitting, was taken down in a field in Pennsylvania. This says to me we have perhaps eight years or maybe less before the next attack on this city and that really concentrates the mind.

In the weeks that followed 9/11, the city did a couple of things. Our water and sewer authority stopped using chlorine, stopped holding these 90-ton tank cars out on the lines near the water treatment plant. That was an important thing to do to get rid of that chemical and change to a safer chemical. The mayor created an emergency preparedness council; we redid our emergency response plan. The council, working with the mayor, did omnibus legislation to try to give ourselves whatever tools we thought were necessary to be prepared and to mitigate in case of another disaster coming our way. We tried to survey the territory and do everything we thought needed doing.

One big issue we missed. It wasn't until the summer of '03 that Fred Millar, Rick Hind from Greenpeace, Jim Dougherty from the Sierra Club met with me and said, "Here is a big issue," and did the PowerPoint that some of you may have seen that Sierra Club has done showing the – the slow moving toxic trains; chlorine, propane, very dangerous materials coming through the nation's capital within a couple of blocks to the U.S. Capitol, a really inviting target similar to a jet airliner full of fuel. So we took action to introduce legislation to regulate this material coming through the community.

Introduced in October of '03, there was a hearing in January, 2004. The federal government said, you can't do it; this is our business. The railroads said, you can't do this; we are already safe enough. The chemical industry said, we really take pains to be

safe. And we waited and waited for the federal government to take effective action. There were a couple of briefings for myself and other council members. We learned there was a DC rail corridor initiative: TSA and Homeland Security and U.S. Department of Transportation working together to try to come up with something for the rail lines through the city, and we waited and we waited and we waited.

We had a private briefing last November where they actually shared with us some details of this plan that I respected the secrecy of until a couple of months later when others started talking about it publicly. What I understood the security plan to be is basically more bells and whistles. To make sure that we get pictures of the terrorists so we will have them next time, too, but nothing to keep the hazardous materials out of town. The council then acted. I tried November – December to move emergency legislation; did not get sufficient votes. With three new council members February 1st, we enacted emergency legislation.

This is regulatory legislation. It's not an outright ban. It basically says you can't bring specific enumerated ultra-hazardous materials within 2.2 miles of the U.S. Capitol without a permit. The only way you can get a permit is by making a case for that permit; either an emergency use of that chemical or material somewhere within the zone or there is some kind of a delivery within the zone or an emergency. Those are the grounds for which you could get a permit. The assumption I make is that no one would ever get a permit, but it is a regulatory structure, not a ban. That's the legislation we enacted on an emergency basis – we enacted on a temporary basis, so assuming that the temporary bill is not done away with by the United States Congress, this ban should be in effect for most of this year assuming we win each round of the court challenge.

Immediately after the mayor signed the emergency bill, CSX Transportation took the District to court, joined fairly quickly by the Department of Homeland Security, the Department of Justice, and the U.S. Department of Transportation, which was really disheartening to me as a federal taxpayer to have the government weighing in on the side of continuing to pose a security threat to the city that I am proud to live in and work for. That in a nutshell is what got us to where we are today.

I continue to believe this is – as Eleanor Holmes Norton has said, the most serious threat to our community today is the slow moving, hazardous materials trains coming through the nation's capital, arguably the number one target for terrorists in this country; second potentially to Manhattan, but a very close to second, if second, to Manhattan. That's what brings us here today.

MR. CROWLEY: David Shuman, I think the mayor signed the bill on the 15th of February and CSX filed a motion I think a day later saying you are not allowed to do this. Obviously I think there is some history and perhaps some economics and perhaps some culture behind that response.

DAVID SHUMAN: That indeed, although first before I address that question I would like to invite anyone here who wishes, afterwards you can come to my office. It's

about five blocks from here where some of my colleagues, former railroad people, are hanging me in effigy for what I'm about to say. (Laughter.)

Not only that, but it's with some –

MR. CROWLEY: We will offer you asylum. (Laughter.)

MR. SHUMAN: It's also out of respect for precedent that I speak with some trepidation because the last time I did have occasion to say some non-positive things about the American Railroad Industry, I was on a panel in Phoenix, Arizona, and I was also situated here on the left side. And while another consultant was speaking, my chair and myself toppled over the side. (Laughter.) Thankfully, here it's only six or eight inches off to floor, so it won't be as bad.

But yeah, I would like to present as best I can, the railroads' view or the railroads' arguments against the HAZMAT ban, and they are several and they are varied. Most have little substance, but some, or one or two in particular, are quite substantive and have a history that goes back well into the 19th century. But one thing – one thing I have been seeing missing from the – all the discussion about the HAZMAT ban is the railroads' up, close and personal view of the dangers of ultra-hazardous materials such as chlorine.

I had the occasion to speak with the fellow the next cubical over, who is ex-Norfolk Southern and he had spoken with train crews soon after the Granville accident where nine people were killed on January 6th of this year. He said when the train crew realize that they had been switched off on to a siding and that they were going to be headed for a collision they leapt from the train cab at speeds in excess of 40 miles an hour. And they hobbled as best they could as far – to get as far away from that crash as possible. What could not be verified was that a police car was in the vicinity spotted them, saw them hobbling towards the police car and it quickly turned around and went away as fast as it could. Eventually, a lady saw the two men, one who later died, and one who was severely injured, and drove up to them. The locomotive engineer put his hands on the car and he started spitting up and his spit started destroying the finish of the car.

This chlorine is nasty stuff. Not everyone realizes that the first major chemical weapon used in World War I in – I don't know if I can pronounce this properly – Ipriz (ph) in 1915 was fired by artillery canisters at the French positions from the German, and it quickly blew a gap in the lines 4 to 5 miles wide, but it was never exploited by the Germans because the German troops, wisely as it turned out, refused to rush into where this chlorine gas had dispersed.

Now, the railroads are at great pains to point out that chlorine is essential to purify the nation's water, even though I understand that the District's filtration plant – in order to get the several tanker trucks full of chlorine out of there they have changed to a less toxic chemical. The chlorine, of course, is also very critical to pharmaceutical industry. Propane, which is also banned, is necessary, as was pointed out, to heat the homes of the many people right in the District.

Chlorine also has a – you know, kind of a spectacular history of its own. The 1979 – November of 1979, Mississauga, Ontario, where 75,000 people had to be evacuated for six days over a 17.4 square mile area because of an accident involving several different hazardous chemicals, particularly chlorine and propane. The propane tanks, which were the first ones to be involved in the derailment, had what is – I do not know if it's a proper pronunciation for this acronym, BLEVE, but it's a boiling liquid expanding vapor explosion. One of these cars – what's left of the car was blown 2,222 feet to the southeast. And if you can imagine a 90-ton tank car flying in the air almost half a mile, you can understand the possibilities for an explosion involving propane. If you could see that 17.4 miles had to be evacuated, you can understand the possibilities for what chlorine can do.

Now, the railroads' principal public relations position has been that – and this is supported by the Bush Justice Department, by the *Wall Street Journal*, by shippers as well, particularly the chemical manufacturers, is that if you do indeed force a rerouting of cars – and there has been voluntary rerouting where the majority of ultra-hazardous chemicals have moved out of the district, though far from all, all you are doing is increasing the risk and you are diverting the risk from Washington to the other cities and towns on the routes. Norfolk Southern says we won't accept any of these cars or not many of them from CSX because we wouldn't want to impose this hazard on the communities which run along our tracks. This is interesting because the railroads are also at great pains to point out that since hazardous chemicals transportation is pervasively regulated it is extremely safe. Safety has improved by a factor of about 100 percent over the past 25 years. The chances of a hazardous material car releasing any chemicals is one in about 10,000 or one in 5,000 according to their numbers, one in 20,000 according to mine, and that only amounts to about 75 accidental releases a year. You know, a little more than one every four or five days or so and that isn't too bad, you know. They could be in trucks.

Also it was pointed out by the railroads that, hey, you are going to be diverting these cars onto less safe tracks; tracks where the speeds are going to be lower and, you know, the ground may be less stable, there's a higher chance of accidents and the emergency responders along the route haven't been as fully trained as those who work along the routes which are the usual routings for hazardous materials. I'd refer you to an analysis by Steven Briddle (sp) of Don't Waste Arizona Organization, who went down to Granville, South Carolina, and just excoriated the local emergency responders and the railroads for how poor the response was on a city which was used to carrying hazardous chemicals. And this Azaga (ph) report, you know, from 25 years ago – an official inquiry by the governor of Ontario did the same thing; that, geez, you know, after these 23 cars exploded or released their gases and we had to evacuate the city the emergency responders didn't know what they were doing. They had not been sufficiently trained.

So if you reroute it onto some other tracks I am not sure that your emergency responders – and I am sure that you need less of them because it would be less populated areas – would necessarily be a bad trade, but of course what the railroads are doing here

in this argument talking about the diversion of risk along with the diversion of the cars is conflating security with safety. The DC government's law is not aimed at improving the safety of a day-to-day transportation of hazardous chemicals; they are concerned about someone doing something with these train cars: blowing them up, non-accidentally forcing a release of gas. And this conflation is consistent, and I can understand as a public relation argument it sounds good, but I have lot of problems with Justice Department repeating the same fallacious argument.

MR. CROWLEY: Why is federal regulation so important to the railroads?

MR. SHUMAN: Well now, there is long, sorry history. Why the railroads are fighting this? Why have they spent so much more on litigation already than they would have spend (unintelligible) two or three years of actually abiding by the transportation ban? Well, some of you may know that the railroads were first formed as charters by – they were state chartered institutions and New York fought bitterly with Massachusetts. Massachusetts was a little bit late in coming and one of the reasons that is a transportation backwater to this day is that New York beat them to the punch soon after the creation of the Erie Canal. Maryland chartered the B&O, the first railroad in the United States. The charter was in the 1827; it created the Port of Baltimore. Maryland kind of split its bets and also created the B&O Canal at the same time, seeing the success of the Erie, but the B&O had a heck of a time trying to get its right-of-ways through Pennsylvania, which had started up to Pennsylvania, and then so one state would either help along its own railroads and harass those of another.

After the Civil War came the Grange rebellion when intense competition in the railroad industry resulted in tremendous discrimination between various shippers, depending upon whether they were served by multiple carriers or not and this led to the Supreme Court case of *Munn v. Illinois* involving warehouses in Chicago in the 1870s, which for the first time allowed states to regulate transportation. And what happened was that every states set up its own little interstate commerce commission and they just gave – they were arbitrary, they were nasty, they controlled the rates of railroads, they set them at absurdly low levels and they set them up differentially depending upon who was – you know, whether the railroad was a native son or not.

And eventually the Supreme Court in 1886 in the *Wabash* case finally put it to them and said, “It cannot be too strongly insisted upon that the right of continuous transportation from one end of the country to the other is essential in modern times to that freedom of commerce and the restraints which the state might chose to impose upon it that the commerce clause was intended to secure; that this clause giving power that regular – the power to regulate commerce amongst the states and with foreign nations, as this Court has said before, was among the most important of the subjects which prompted the formation of the Constitution and it will be a very feeble and almost useless provision if at every stage in the transportation of goods and chattels (through?) the country the state within whose limits a part of this transportation must be done could impose regulation.”

Finally, 1887, the railroads were free of regulation by all these states beating upon them. The Interstate Commerce Act was passed. They weren't all that pleased with it and it being able to regulate rates, which in 1906 it was given the formal authority to do so, but the railroads still even after – by the way, one thing I should point out about Wabash: this was during the Gilded Era when the corporate America really controlled – railroads were the dominant industry, they controlled the courts as well. This law was found constitution – well, this constitutional decision was based on the 14th Amendment, where they found that corporations were persons that were given rights subject to the 14th Amendment; that the equal protection went through them. Three years earlier they had found unconstitutional the Civil Rights Act of 1875, which found that blacks were not entitled to such protections since – unless the states were acting directly to –

MR. CROWLEY: So let me stop you there and just say that, so, Kathy Patterson is stepping on 125 years of federal regulation of the –

MR. SHUMAN: It persisted. In 1976, the Four-R Act was passed which created Conrail. In that also there was a following report to the Senate called the Doyle Report, a report that over the past – the previous nine years, railroads were discriminated against in taxation by this states to the tune of \$900 million. Even after the Interstate Commerce Act was permitted, the states were still really giving it to the railroads and the Four-R Act prohibited discrimination by states against the railroads in the realm of taxation.

Since then – since the pass of the Staggers Act, which has largely deregulated the railroads, there's been similar snortings around by the shipper community trying to – who (unintelligible) a lot of them are now captive with all the mergers that we have had. There are only four major railroads left. Many of them are served only by a single carrier and they tend to charge extortionate rates. Well, shippers want competitive access. They want to allow another railroad to go on to some other railroad's tracks. Railroads don't want anything to do with any law that even hints at going down the slippery slope to someone can possibly tamper with their free use to use the rights-of-way which they – well, were largely given through land grants, but the ones that they weren't given they took through their eminent domain powers.

Yeah, the railroads are not fighting the HAZMAT ban which will cost them a fraction of what it's going to cost to fight them. What they are interested in is making sure that states, localities stay out of the business of regulating railroads; that there is no move afoot that would possibly give a legal foot up to shippers trying to get competitive access onto their right-of-ways where there can be regulation of their right-of-ways by anybody other than the federal government; and that the federal government, for which – and the organizations within the government, the FRA and the STB in particular, which have been largely, frankly, coopted by the railroads. That's not surprising. Regulation is – regulatory authority is –

MR. CROWLEY: A perfect segue. So, here we are – we have a well regulated, but perhaps friendly regulator in the FRA, the Surface Transportation Board under the Department of Transportation, and now after 9/11 we have this thing called the

Transportation Security Administration under initially DOT, but then ultimately DHS, given a very substantial mandate for aviation security and then in the – in the act that created it, oh, by the way, do surface transportation as well.

Yeah, take us through – how did TSA evolve and how did the domination of the aviation requirement affect its stability or willingness to get in the middle of this real transportation situation?

STEPHEN MCHALE: Good. Well, thank you. The – and Kathy, thank you for the – actually this legislation which my house is actually two and a half blocks from the B&O railway line (laughter) in Kensington, Maryland, but your act actually affects that as well.

But – and P.J., let me just start by saying, I actually wasn't a member of the Clinton administration, I was actually a 23-year government career civil servant going to TSA, but I certainly was not a member of the Bush administration and for a variety of reasons that will come out now, I am very pleased to be in the private sector.

The Aviation and Transportation Security Administration Act was passed, obviously, just about three months – two months after 9/11 and it's about a 96-page statute, about 94 pages of which deals with aviation and there is really only a couple of paragraphs – a couple of very short sections and subsections that deal with anything else. But it is actually very sweeping because Congress' initial review in that act was that – and the act specifically says that all of the authority of the secretary of transportation for transportation security in any mode was to be vested in the head of TSA.

I started at TSA on actually just before Christmas of 2001. I was the second employee there and our major focus was clearly aviation. Congress had passed a statute that had an incredible number of very tough deadlines and the terrorists had attacked the military establishment, they had attacked the financial establishment, but I would say, and it's pretty clear from looking at their writings and their speeches, that they had also attacked America's right to travel, America's right to move the transportation sector and particularly the aviation sector. And in the same vein that the administration moved to restore the Pentagon within a year, to try to get the financial system back up as quickly as they could, the Congress and the administration made it very clear that they wanted to reestablish the aviation system as rapidly as possible.

As those of you will remember, the public was extremely wary about traveling in the air and it took about over a year for those levels of confidence to come back, about 18 months altogether for at least surveys to show that the public had more confidence again in security of the aviation system. And the aviation system then as a sector took the biggest hit in loss of confidence, so obviously our biggest job in that first year was to get a system up and in place to greatly improve aviation security. Despite what you might read in the newspapers, I am very confident that this system is incredibly stronger today than it was before 9/11. And that – but that that was our main focus. That's where we

spent our money. In fact, over a period of time I believe we spent in excess of almost \$14 billion in about a three-year period to bring the aviation system back up in place.

But about half way through 2002, as we started to shift our resources, as we started to have the plans in place and begin to have a little bit more confidence that we were going to hit the deadlines and knew what we had to do, we began to turn our attention to the surface transportation area. There was really no money in TSA's budget for that. TSA's budget had had – if you think about when TSA was created, it was created after the 2002 budget cycle. Indeed, it was really created – in the way the government creates its budget, it was really created too late almost for the 2003 budget cycle.

When we reviewed the TSA budget for fiscal year 2003 with the Office of Management and Budget, there was hardly any money in there at all for anything other than aviation. When we questioned that, we were told that it was expected that the Federal Railroad Administration and other parts of DOT would take care of that; that the railroads were primarily a private sector entity and therefore it should be a private sector responsibility to secure their systems and TSA should really just have a sort of an oversight, guidelines kind of role perhaps giving out some sort of grants, but there was no specific money for railroads in there.

And that actually has been fairly consistently the budget picture when it comes to securing the railroads. I think when you – if you look overall the different money that's being given to the different sectors, the most money is being given to the aviation sector, the second most has been given to things like port security; investments in the Coast Guard as well as port security grants. And, actually, remarkably little money has flowed to passenger train security, although some, and to mass transit, but very little has flowed in direction of cargo security.

The administration's view throughout has been that we should cooperate with the railroads, we should have a partnership with them, we should rely on their security plans and the American Association of Railroads and the railroad companies have developed security plans, which they have somewhat reluctantly but have shared with the federal government. And have essentially said – interestingly, they may change their tune now, but have essentially said, “Federal government, you stay out of our business. We will secure ourselves,” so they are basically saying the same things to the state and locals.

About a year ago – a little over a year ago obviously, we had – well, after the Madrid bombing, we had obviously a huge interest in rail security although the main thrust was in passenger rail security because the Madrid attack was obviously on a commuter train. And as a result of that, TSA, in conjunction with the administration and the Federal Railroad Administration and the railroads, put together a series of pilot programs which were very interesting and got a lot of media attention. We screened baggage at Union Station, we screened passengers at New Carrollton, and we equipped the commuter railcar that ran around Connecticut with walk-through metal detectors and trace detection devices, but there – and it demonstrated that in fact we have technology

that we could actually put out there to some extent to address some of the risks in commuter and passenger rail traffic, but again there was no follow-up to that. There is no money associated with that, there is no plan to put those kinds of measures in place, and it seems it's almost a wait until we have a threat or an incident and then we will out there and put the measures in place. The reality is that even with that measures, the ability to secure our national rail passenger system is going to – and our mass transit system is still probably beyond our technological capabilities. We can do better than we are doing today, but it's going to be extremely difficult, really, given the scope of the system and the necessary openness of that system.

In the in the cargo area, obviously there has been a lot of studies of vulnerabilities – of vulnerability assessments. The railroads have done some. The TSA has issued a series of security directives over time and for the first time this year Congress directed TSA to hire 100 security inspectors to work with the railroads, and TSA is in the process of hiring them as we speak. That is actually the first significant budget for TSA to have an enforcement mechanism, or at least a compliance mechanism, on rail security. And as P.J. pointed out, we are almost four years after the attacks.

About two years ago, the administrator of FRA – former administrator of FRA was asked in a Congressional hearing how many inspectors he had because the administration had said that in fact it was FRA's responsibility to do inspections of railroad security plans, and FRA does inspections of safety so it does have a inspection workforce that's out there. The idea was to do a bit of cross-training. But when he was asked how big his staff was to actually inspect railroad security plans, he said he had three inspectors: three inspectors for the entire nation. It took another two years for Congress to move and for the administration to move to recognize that three was not enough. I am not sure 100 is enough either because it is such a big system, but it is a substantial increase over what we had before and will be the first time, I think, that the federal government has its own capacity to go out and do real on-the-ground assessments – hopefully quite targeted to vulnerability sites – as to as to how the railroads are in fact coping with security issues.

Again, though, I think you will find, as has historically been in the case, that a lot of that resource will go to passenger rail security, although I am hoping – I am hopeful that some of that will go to cargo.

Well, let me just – P.J., just wrap up by saying I – as I said to Kathy at the outset, I – for personal and family reasons I am glad about her act. On the other hand, I am sad that the District after all this time felt that it was necessary to do this. The mission statement for TSA, of which I was very proud – I was one of the authors and we wrote it about a month after TSA was created and I still think it encompasses really the very important mission of that agency – was not to protect, was not to prevent acts of terrorism, was not to protect the transportation system. It was to protect the freedom of movement of people and commerce because it is that freedom of movement, that very fundamental American right, that the terrorists attacked on 9/11. And it is that that is so

essential for us not to give an unearned, unwarranted victory to the terrorists by fundamentally changing the way we work and we live.

I generally will look for any solution that will keep us being able to move both our people and our commerce in ways that are protected and a ban like this I think goes against it. The most disappointing decisions I ever was involved in it at TSA – actually there are probably many, but the most important ones around here was the decision, which is still in effect, not to reopen Reagan to general aviation. That to me was a loss in this fight to protect the freedom of movement of people and commerce, and it was one that was based on obviously security risks, security assessment, but it was also a recognition that there are in fact a number of other readily available and safe and secure alternatives for general aviation in this region.

One of the concerns, and we'll talk about this, I think, in the next round of questions, is what happens to that cargo that doesn't come through DC? And I have some very great concerns about that.

MR. CROWLEY: Well, we come now out of the crux of the issue: can we have both? Can we have better security to reduce the probability of terrorism while protecting the freedom of movement of people and commerce? Fred, you have put forward some ideas along the lines of what I will call the Sullivan test, you know, that if in fact the District is free to act until the Federal government does, what in fact and you, here should the federal government do?

FRED MILLAR: Well, you know, as somebody who worked for 15 years on the Local Emergency Planning Committee in Washington, DC, I can sometimes just call emergency planners in different cities and ask them about stuff like this and just have a kind of professional relationship. But as the 9/11 Commission said, you know, one of the really – one of the real problems in homeland security is failure of imagination. I spend, I guess, 98 percent of my time talking to people who tell me, "Fred, that's not my job. It's not my job to deal with homeland security." And that's true, you know, because it's just too new a subject, but if we don't deal with this issue of transporting really horrendously dangerous cargoes through our high-threat, target cities, what I say is that we are prepositioning these cargoes for the benefit of the terrorists right exactly where they want to have them. So that's the question: how do we avoid doing that?

Now, it turns out that for years there's been a whole discipline in the United States called catastrophe avoidance routing. That just means you figure out how to go around densely populated areas in order to reduce your accident consequences in case of a serious accident. It's been in existence for decades to reduce accident risks; it's not such a big stretch to also impose it in terms of terrorism risk. So we thought it was kind of a no-brainer in Washington, DC, that you don't unnecessarily bring through the city through-shipments of the most horrendous kinds of cargoes that the federal government calls weapons of mass destruction when you could go around. We are just talking about through-shipments that can go around; we are not talking about shipments that have origin and destination in the major cities.

I called a bunch of the major cities; there wasn't a single one in the United States that was doing any rerouting and hardly – and there is none still doing it except for DC as far as I know. So the fact is, it's a huge gap in homeland security that we should be able to do deal with. Now, there are some ways that people – I mean, people will say, well, you're shifting the risks. Well, in a sense we are. You know, we thought what we would do is try to bump that traffic off the I-95 corridor up and down the East Coast that goes through DC, Baltimore, Philadelphia, Wilmington and Newark – the fattest target cities in the country arguably – and bump them out onto a route that goes 50 miles west of DC; the Norfolk Southern line that goes through Luray, Virginia, and Hagerstown.

Now, all due respect to the citizens of Luray, I say, but I don't think there is too many terrorists trying to figure out how blow up a rail car in Luray, Virginia, right? And so, I called the Emergency managers of Luray, Virginia, and I said, we think we are doing a responsible thing to bump this traffic around the major target cities. This is – what – emergency managers know about the hazard; they've looked at plume maps and stuff. They don't tell people about them. You know, most local officials have this terribly unhappy mindset that we don't want to alarm the public, you know. We don't want to alarm the public, but they know and so when you ask those – them as a professionals, is it responsible to send the traffic through your towns? They say it's all right with us; better here than through Washington, DC. One fire chief in Dallas said, "I've got a son in the Persian Gulf. It's really important for me not to have a toxic gas cloud drifting over the Pentagon," you know. So to us it seemed like a no-brainer, right.

Now, the fact is we've been engaged in bitter fights with the railroads and the governments about this. It is true that the federal government – we basically say the federal government ought to have a national regulation on this. We call it some kind of strategic rerouting plan and there's several ways that that can happen. It's really not very – it's not very sophisticated. You compile a list of that most dangerous cargoes, you get a list of the target cities that are the most important, you try to figure out what are there alternative routes available and what you can do to shift cargoes around or through those cities. And then here's the real crux of the matter: you have to require the railroads to engage in interchange agreements. In other words, some railroads have to be willing to change their cargo over to another railroad to go around that target city, and this is sort of what we heard earlier in terms from David. I mean, the fact is that's the – really the political crux of this matter. The railroads refuse to do that and in fact they've said that in court. We refuse and you can't make us. Okay, it's our property, we are going to use our property and we don't want the government coming in here and telling us to drop – even for homeland security, uh-uh. So, it's a matter of high principal, you have to admit.

Now, what the feds can do, of course, is try to break through that resistance. We can also work on rail storage. I mean, a lot of cities are concerned about storage of rail cars all over town like in Baltimore with graffiti on them, that, you know, that's a wonderful advertisement of how porous and open the system is to terrorism if you have got graffiti on all your rail cars, which we do. And so we could work on that.

Now, this might require – I mean some railroads are beginning to sense that this could require a big change in sort of the image of the railroads. We might have to have remote rail yards outside the populated areas. We might have to have dedicated corridors that go across the United States but don't go through any big cities. We might have to have some pretty serious re-marshalling of the most dangerous cargoes. Now, we are not talking about a lot; we are just talking about a small percentage of the cargoes. In fact, in DC, in the court case it was revealed by some experts that the percent of cargo that CSXT would have to give over to Norfolk Southern to move around DC is 0.007 of their total car miles in the United States. This is peanuts compared to what the railroads could afford to do. However, it's a matter of principle you have to understand. We don't want the government involved in our business, and that's the basic thing we had to break through there.

There is also a huge amount of – there is a huge problem with secrecy and this is another reason why we have to think really hard about this. We find that most state and local officials have very little access to security plans and to other kinds of information about the remaining problems with homeland security and the progress that has been made. The accountability is very, very difficult. What happens is that there are only a few officials that “have an operational need to know about this” and the rest of us should sit down and shut up, and that means elected officials too. Kathy Patterson knows more about this than many of us.

We need to think of new ways to – maybe even new institutions at the local level, maybe taskforces, and Kathy Patterson has in her new omnibus homeland security bill a DC homeland security commission that would have as its major job to assemble a whole bunch of “sensitive security information, review it, and pass as much as possible through to the public” because right now it's exactly the opposite. It gets brought into a very limited number of people and they are largely law enforcement-oriented people and they don't want to show you anything. So, we need a whole new kind of – like the 9/11 Commission did, we need to have institutions that assemble a bunch of sensitive information and consider it their job – their job – to get this information out to the public so that there can be some accountability, otherwise democracy is out of the window, right? I mean, otherwise we have just got police state kinds of stuff going on and lord knows people are worried enough about the Patriot Act and all that kind of stuff. So this is our piece of – this is our piece of a job.

Those of us who know about hazardous chemicals, our job is to remove the most egregious and unnecessary risks that you can imagine. Chlorine tank cars – according to the testimony in the DC council, one Chlorine tank car if released in a populated area like DC with a huge crowd of people on the mall, say for the fireworks, could kill 100,000 people in half an hour. We are not talking about peanut butter, you know. We are talking about weapons of mass destruction and right now they come through our cities like part of the scenery but that's very misleading. And if our local officials continue – have this attitude of, well, I certainly don't want to alarm the public, okay. We will go – you know, some of us will die very unalarmed. That is crazy. That is insane.

And we can do something about this. This is a doable job. We can go around most of the targeted cities in the country with very little extra distance, very little extra cost. That's what the academics who do catastrophe avoidance routing can show us. So we have got that underway in terms of helping local officials to see this. DC has taken a wonderful lead in all of this and I think that we ought to – you know, all of you ought to be thinking about, do you have relatives and friends in cities that are big fat target cities and you would not like them to be the first one to have a toxic chlorine cloud released in that city. And if you do, talk to some councilperson there or some state legislator. I mean, you could have a job. Of course, it's not your job, right? This is not anybody's job until you take it on. But anyway, it's a very useful kind of thing that we can do. It has very progressive implications because it basically it ends up fighting for a government that will protect people as opposed to letting people just put us at risk, mostly unknowingly.

MR. CROWLEY: Let us pause there. I want to go through one very fast round of follow-up questions, and then we'll promise to open it up.

Kathy, CSX says, "Hey, I can't run a railroad if the cities and states are trying to regulate me." Are you content – if the federal government comes back under the Sullivan test with a credible national rail strategy, will the District back off?

MS. PATTERSON: We didn't act until a protracted period of time when the federal government failed to act, and I want to underscore that. My own view is that if the federal government would have, as Fred refers to it, a strategic rerouting policy, I would be fine. I think the notion of – and that would certainly take some things off my plate – the notion of removing the risk from high-threat cities and removing the risk from densely populated areas makes complete sense to me and there would be no need for a DC law if that were federal law.

MR. CROWLEY: Now, David, behind you on the screens here we show an example of an alternative. Fred mentioned handoffs from CSXT to Norfolk Southern. To what extent, unless they are ordered to do it from the federal government, will the railroad industry buy into this kind of approach?

MR. SHUMAN: They absolutely will not. Norfolk Southern, which is a fierce competitor with CSX, did appear in the DC Hazmat case to deny that they would ever accept such horrible, dangerous chemicals on their rail lines from CSX; and besides, it's up to the shipper to route it. If the shipper wants to route it through DC, that's where it's going to go. They are standing as one and refusing to exchange traffic if they can at all avoid it.

MR. CROWLEY: Now, but would the interchanges that Fred is advocating – I mean, there is a precedent here. It really – if this happens, it has potential to change the entire economic scheme of the railroad industry. Is that what they are afraid of?

Mr. SHUMAN: Well, they are concerned about any indentation made into the shield that they have around interference with their business. Norfolk Southern, of course, would welcome this business on their own. And they can also move the traffic much more safely than CSX irregardless of – or regardless of the threat, but their opposition is on principle; the principle being preservation of their freedom of action.

MR. CROWLEY: Okay, Steve, you are whispering in Admiral Stone's ear. You are whispering in Michael Chertoff's ear. It's hard to argue with the logic that removing these railcars from the center of the capital of the United States is a bad idea.

MR. MCHALE: Well, that's certainly what you've told me a couple of times, P.J. (Laughter.) Yeah, the – District was very patient. The discussions about the DC rail corridor went on for several years, and as I pointed out before, I'm disappointed really in the amount of resources that the federal government has put into this issue. But that said, I'm not a fan in any way of the strategic rerouting concept. That the two rail lines you can see – I think they are still up behind me – are not really comparable. The line that goes down the Shenandoah Valley is much narrower; it winds, at some parts I believe it's single track, it doesn't have the same capacity, it can't move at the same speed because of its winding. It's not regarded as as safe a route of the CSX route.

The idea of DC being – that all we are talking about here is rerouting around DC I think is a little bit of a fallacy for this discussion. Yes, DC is a target, but so are other cities in the United States. We just celebrated – commemorated the tenth anniversary of the Oklahoma City bombing. No one would have predicted that Oklahoma City – the Oklahoma City federal building would have been a target. And al Qaeda has shown time and time again that it will pick the unexpected target; also, as Kathy pointed out, it does return to some to its targets, but it does pick the unexpected target. No one really was actively predicting the bombing in Madrid. No one was actively predicting the bombings of the U.S. embassies in East Africa.

So just to sort of say that DC is the number one target – I think you will have a good argument from the emergency planners in Baltimore and Chicago in Atlanta and so many other cities which have major rail lines going through the center of them. I don't think it is as easy as Fred suggests to do a strategic rerouting around all of our cities on rail because our rail structure – our rail infrastructure has been really in place pretty much for 50 or 60 years and I believe we are having the first major new rail line constructed in the West in something like 40 years and that's a subject of great debate and concern – that rail line. So the idea that we can build new rail lines in the East to facilitate movement of traffic I think is very unlikely.

So what's the other alternative? It's going to be a long time before we can take these hazardous chemicals out of our society and our industrial infrastructure, however much we might want to do that. So another alternative is to move it onto the roads. That, too, presents its own safety and security hazards. Our interstate highway system for the large part, not in DC for the most part because of our beltway, but our interstate highway

system for the most part goes right through our city centers as well and that raises its own set of risks.

I would prefer, and I believe that they are good – that we have the ability if we want to put the money in, and frankly I think as an economy it will probably be less – cost us less than the strategic rerouting alternatives to put some additional funds into effective security planning that enables us to continue to move the traffic along the routes that we traditionally move it. Whether that is protecting the information about when the hazardous materials are actually coming through, moving the car through city centers in a scheduled way so that they do not stop and stand at sidings, avoiding bringing them past things like the Superbowl or the mall on the Fourth of July, which is something we do today.

You know, that kind of planning as well as security cameras, inspections of the rail lines makes it extremely difficult for a terrorist operation to plan and terrorists don't want to have an attack and fail. They want to succeed because getting caught is terrible for their image. Success is what they are all about, making it hard or impossible for them to plan for a success is what good security is all about and that's something that is eminently doable, something that we can work on, and something that frankly we should be three years farther down the road on today than we are.

And P.J., you did asked me actually in the opening to talk about the split of jurisdiction, and if I can just take a moment on that. I think that is a challenge in the government. As I had mentioned, the Aviation and Transportation Security Administration Act really gave all the authority originally to TSA. Very shortly after that, within a year, that authority was split so that the Federal Railroad Administration had concurrent jurisdiction over security, and then split again when what was then RSPA and today is the Pipeline and Hazardous Material Administration was given concurrent jurisdiction over hazardous material shipments.

In addition, obviously, you have roles for the Coast Guard when it comes to bridges and other sorts of things. You have roles for Customs as the rail crosses the border, as does a lot domestic freight going across through Canada. And you have – so you have a huge sort of – now you have a lot of different federal agencies that are looking at security and a number of different state agencies that are looking at security. TSA is no longer a grant-giving agency; there is now another office within the Department of Homeland security that sets grant policy, so you have a lot of diffusion rather than centralized policy-setting when it comes to security, particularly rail security. And whether it's TSA or not – at this point I am no longer at TSA, so I am not defending anybody's turf – I don't know that it has to be TSA, but I do believe we need to have one agency that clearly has the authority to set federal rail security policy and to be able to work, then, effectively with the states, localities, and the rail companies to effect that policy. With the diffusion today you have a lot of people pointing in different directions and there are some potentially very large gaps in the process.

MR. CROWLEY: Kathy, you had one thing you wanted to say before we opened up the floor for questions?

MS. PATTERSON: I have so many things I would like to say. Just by way, I guess, of a bit of a little bit of rebuttal, one of the things that I have learned in this – working on this legislation over the last two years, for my money we have in this nation no effective regulation over the rail industry. We have in this country no effective regulation of the chemical industry. So, David, when you say that it will take some time to reduce our dependence on dangerous chemicals however much we might want to do it, I see no evidence with the federal government has any interest in doing that.

And I would like to take – go back and just ask David a follow-up question if I might.

MR. CROWLEY: Steven, Steven (not: Excuse me).

MS. PATTERSON: I am sorry. Sorry. I'm calling...this end of the table (unintelligible). I'm sorry.

MR. MCHALE: Yes, I was happy. I thought (it?) was going down there and I was just going to sit back. (Laughter.)

MS. PATTERSON: Sorry, a little excited here.

You talked about the mission of TSA: freedom of movement of people in commerce. The first part of that I absolutely buy, freedom of mission, freedom of movement of people because it's something here we have lost in the District of Columbia. All you have to do is try to drive across the Capitol Hill and you know we have lost that. I don't see as a value the freedom of movement of commerce, equally at all, and if it's okay to keep general aviation out of National Airport because there are – Reagan National Airport because there are alternatives, why isn't it also okay to do the kind of regulatory structure that Fred is talking about?

I guess I see them as equivalent.

MR. MCHALE: Yeah right.

MS. PATTERSON: What's the difference?

MR. MCHALE: Right. I actually don't – one, as I said the other – I am not really okay with keeping general aviation out of Reagan and there are, in fact, I think ways ultimately to bring general aviation back to the Reagan we should continue to explore. But the alternatives for Reagan are a large number of general aviation fields relatively close to the District. I do not believe, though, that the capacity is there to safely – to concentrate – I mean let me address this slightly differently. If you look at this map, those are in fact the two north-south rail lines on the East Coast of the United States. The

next one is on the other side of the Appalachian Mountains, way off there. What we are talking about here, then, is concentrating, focusing all of the hazardous material traffic onto that one rail line north-south. It is not, I believe, a rail line that has that capacity to safely move that kind of commerce, and I also don't think it really answers – fundamentally answers the question of eventually this hazardous material has to move through cities somewhere; it presents a target at some place and all we are really doing is kind of a not-in-my-backyard argument.

I think what we have to do is look at the way we run our economy and we run our country and then make appropriate, effective security plans to enable us to continue to do as much of our business as possible in a normal and safe and secure way, I think we can do that with appropriate planning in the District. I am disappointed that we haven't gotten there to date.

MR. CROWLEY: Now, Fred, you obviously think that there is – it's possible to do this, albeit more so than – clearly than Steve believes.

DR. MILLAR: Yeah, I mean the railroads for years have been telling us, "Hey, we were built 200 years ago to connect cities and now you want us to go around?" you know, as if that was out of the question. The fact is within the last six months the major railroads have made two major announcements. One is they are not going to – they are not going to go through Chicago anymore. Now, that's a little bit like saying Hershey, Pennsylvania, is not going to make chocolates anymore. Chicago has 17 railroads converging in those rail yards but you know what? They are all congested, so the major railroads are going to go around Chicago.

In Texas, a lot of people are totally fed up with long trains blocking emergency vehicles and all kinds of other traffic in Texas cities. The railroads have just made an agreement with the governor of Texas to go around. I mean it's – when it's in their economic interest, they can do all kinds of wonderful rerouting.

MR. SHUMAN: We are working on rerouting in Indianapolis right now. It's expensive, prime real estate going through the middle of cities; eventually it will all move out of the major cities.

DR. MILLAR: I mean it is not brain surgery to try to figure out that you can reroute. I mean, I am not saying that there is easy ways around some places, but I am saying there is ways around many, many places. And the long impact of this is, if there are still origin and destination shipments going into Washington, DC, or other kinds of cities, delivering chlorine for your wastewater treatment plant, then of course you will have people starting to think do we really need to bring chlorine gas in to treat our sewage? In Washington, DC, the day after 9/11 they started planning to get rid of chlorine at the wastewater treatment plant, so it's true that the long range impact of this is to put downward pressure on the most dangerous chemicals that we can do without.

MR. CROWLEY: On that note, we will open up the floor for questions. If there are – go ahead. Wait for the microphone; please identify yourself.

Q: Brian Stempeck; I'm a reporter with Greenwire. A question for Mr. McHale. You mentioned there is 100 inspectors that are going to be hired as part of TSA. I'm just wondering, what is the budget for that and is this getting any more attention in Congress or the administration to try to address this in the – you know, in the next budget cycle.

MR. MCHALE: I don't know the budget number for that. I am not at TSA; wasn't at the time that budget was passed. As I said, that is the first money that TSA, or in fact as far as I know any federal agency, has received since 9/11 to hire an inspection workforce for the railroads. It's probably not – it's probably by no means an adequate number given the size of railroad system. This has periodically received attention on the Hill, and it's sort of episodically a lot obviously after Madrid, not so much recently. There have been some members who continue to push for rail security bills and plans but it's – I would say it is not a major focus. It's not, for example, as much of a focus as port security or even air cargo security.

MR. CROWLEY: I think \$32 million is the current figure for surface transportation outside of aviation security, which I think is running at \$4.6 billion this year. I think, to pick up what Steve said, we have 45,000-person work force on the aviation side and its screening force; we now have 100 surface transportation inspectors most of whom will work for – on rails. So there is this imbalance that ultimately – you know, I mean no one is suggesting there needs to be a dollar for dollar proposition here, but you know, \$4.6 billion, \$32 million, it tells you all you need to know.

All right, we will work our way from back to front.

Q: Hi, Rick Hind from Greenpeace. I just want to thank Kathy Patterson for being brave enough to and stick to this legislation long enough to make it happen. Also a few months ago no one would have predicted Judge Sullivan's decision this week, which was a slam dunk, mostly because the federal government's inaction combined with the common sense solution, but I have a couple of comments and a question.

MR. CROWLEY: We will go to the question. (Laughter.)

Q: Yeah, right. We will get there. The railroads are well represented here. Mr. McHale's comments of – the kind of can't do, can't go around, don't have – you know can't flood the alternative routes with these chemicals – the fact is that we are talking about a very small sliver of rail business. Even CSX's inflated numbers are only less than 3 percent; probably less than seven cars a day that the DC statute would effect. The Norfolk Southern line is already receiving all those same chemicals. So if it's not – if it's not safe over there, they shouldn't be going over there either. And – but Kathy probably set the stage best with the comment about eight years difference between the two World Trade Center attacks.

MR. CROWLEY: All right, Rick, and now get to the question.

Q: You know, we are running out of time much more important than this meeting, and that is that it is possible, as Fred said, to reroute, but it's also possible to substitute these chemicals and there is two national legislative bills moving on this. One is Markey's bill, HR-1414, on rerouting in the House and then in the Senate there'll be similar legislation on rerouting. And then in the Congress, like in the Corzine bill from last Congress, that will be reintroduced to push for safer chemical alternatives. Probably the chlorine used –

MR. CROWLEY: Rick, the question please.

Q: – in these plants is the major threat around the country. It's either going through or to these communities, unnecessarily.

MR. CROWLEY: Was there a question in there?

MR. MCHALE: I don't think so, but let me respond anyway. The figure seven cars a day – you know, there wasn't actually a lot of – there really was not a lot of evidence in the – presented in the recent case in the district court. For strategic reasons that are beyond me I am not sure why the government did not present any of the facts that it does have. But let me just say that, you know, I commuted on the B&O line for years. I stood on the side of the line while the trains went by me. There is a hell of a lot more than seven cars a day of chlorine that go down that line. You see the cars, they are labeled clearly, "chlorine," which is it's own sort of security issue. But they are labeled clearly and they go by and there can be 10 or 12 cars in a single train and there are other hazardous material cars that go through there.

I don't know whether that's a good thing or a bad thing, but all I can say is that the numbers that the people are throwing around of just a few cars certainly do not purport with either the way the problem was explained to me when I was at TSA or just don't think on personal observations; it seems like a lot more than that.

MR. SHUMAN: Well, the best numbers that I have seen from CSX, and CSX admits that the numbers change all the time depending upon how they query their database. It comes out to be about 17 cars per day of the ultra-hazardous chemicals that would be banned currently or pass through the District until the voluntary rerouting from the last year.

MR. MCHALE: Is that just on the I-95 line?

MR. SHUMAN: That's both lines, east-west and north-south. It's about 6,000 or so cars a year.

MR. CROWLEY: But I think the – I mean a couple of things; CSX admits the direct cost of rerouting in Washington will be \$2 or \$3 million per year. If you put that

up against, you know, various cost of 9/11, you know, \$30 billion in insured losses, maybe three times that in economic losses. You know, this is a solution that could be very easily, you know, compensated for if that's what it took.

MR. SHUMAN: Yeah, their loss per car would be about a \$150, against revenues nearly 3,000.

MR. CROWLEY: Okay, here then here. All right, go ahead.

Q: Okay. Let me just pose a question as if I was a terrorist for a minute. I am sorry, Hank Silverberg from WTOP Radio.

I see an either/or here and I was wondering why no one has thought of the possibility of both partial rerouting and stepped up security. You mentioned the tanks are clearly labeled "chlorine;" I mean that's a no-brainer. Why does it have to be either/or? Why does that not be a complete ban or rerouting? Why can't they come up with something in the middle, which would make it more confusing for anyone who is trying to blow these things up?

MR. SHUMAN: I think there is a pretty simple answer to that as to why a ban is required and that is it doesn't matter how many surveillance cameras you have out there, it doesn't matter how many inspectors you have out there, that those tank cars are vulnerable to high powered rifles. Just about a month ago we saw on *60 Minutes* .50 caliber rifles piercing half inch steel plate. Well, yeah it's eleven sixteenths-inch carbon steel that's on the chlorine tanker and it doesn't take a whole lot more effort to go those extra three sixteenths of an inch. Somebody on a rooftop can shoot them as they go by. I don't think that you can simply by time of day or making sure that the chemical contents aren't exactly as they are on the manifest – there have been some mistakes there as well – is going to be enough to solve this problem.

DR. MILLAR: Yeah, I think one I question I ask about that is, what is the design basis threat that we conceive of when we think about a terrorist attack on these cars? And if our design basis threat, like the nuclear plants that whenever they set up security they design against a design basis threat; namely, how many terrorists armed with what kinds of weapons, insiders and outsiders?

Do we think that a terrorist organization might have insiders in some chemical shippers who therefore might be able to inform people exactly when something is coming through here or is that too much work for them? I mean, I think – I would like to see what the design basis threat is. I don't think anybody out here has ever seen one of those things for this kind of situation, but you can't just assume that letting the most dangerous stuff go into cities even under some kind of surveillance cameras or changes of decoy cars or whatever is going to – I mean as long as you are putting that target right into proximity to the population, it is just very risky.

MR. MCHALE: The security plans actually do call for exactly what you suggested. Generally whenever you do any security planning you do talk about routing, timing, other kinds of security measures, decoys, cameras, inspections – a variety of different things as well as labeling. There has been a huge issue on the labeling because of course the labeling was put on there to help first responders and the fire chiefs who have really studied this issue extensively have come out and said we understand the security risk of labeling, we also understand the safety risk and in their view the safety risks outweigh the security risks and do – and they do want some kind of continued labeling. The issue is just how clear does that labeling have to be. It obviously has to be able to be understood by any fire fighter or first responder, but does it have to say in broad, big, white letters on a black background “chlorine gas?” I mean, I don’t know.

Q: Okay, thank you. Michael Siegel (sp); Stanford University. The – is it Dr. Millar? I want to try and get at this question which is one which I think is very important and that’s the issue of secrecy and accountability in terms of raising this level to a point where the general public can find out a little bit more information about this and understand it.

Many things happened in the last couple of weeks. I think that the general public understands the dynamic between state and federal on a much different level now, albeit on a case completely unrelated to this matter. Within the last two hours, Pricilla Owens just got confirmed by the Judiciary Committee 10 to eight. She’s fifth – what? – Fifth Circuit Court of Appeals out of New Orleans right now. Point being this: is there a role as we move through the confirmation of federal judges for the issue of rail security to play itself out in any sort of way that could raise this level of discourse so the general public can understand it better?

DR. MILLAR: I must say I don’t – I just – I don’t see the connection. But you know, it seems to me like we definitely need new institutions, maybe we could ask judges what their feelings are about secrecy that does not really allow much accountability, but I don’t really see –

MR. CROWLEY: Let me turn that question to Kathy a little bit because the issue the secrecy does come up. The DHS preaches partnership and yet they also say, “Okay, we expect the cities to do their part, but we are not going to tell you what’s going on.” How difficult is it?

MS. PATTERSON: That’s a huge issue for first responders all over the country; the chiefs of police, the fire chiefs all over the country. One of the things I learned in our – in a council hearing in November this issue – on the Hazmat issue, CSX executives testified before us, and they have federal government security clearance because they talk with TSA and Homeland – and other Homeland Security folks about their security plans, so they can share all their secret information with the feds and the feds can share their secret information with CSX that nobody every shares with the public.

But our fire chief at that point in time still hasn't gotten his federal security clearance, working on it since 9/11. So the whole – there you talk about a federal-state issue, that is one. We had trouble in the anthrax scare here – crisis here after 9/11 because we couldn't get all the right information from the federal health officials because some of our folks didn't have enough security clients to address the public health threat. That's another huge issue: the whole secrecy realm.

What came up in court a couple of weeks ago, the judge wanted to be able to go over the, you know, the secret rail plan. We are continuing to pursue access to that. If there is a plan, let us see it, not just a PowerPoint presentation that you then take away. I have been asking for two years for the results of the DC rail corridor plan, don't have it. I mean I was chair of our judiciary for four years, and I didn't have access to it.

MR. SHUMAN: I might want to add to that that whereas public officials haven't been able to get ahold of the rail secrecy – or the secret rail plans, the AAR in its own literature proclaims that in the committee that oversees the development of the rail security strategy they includes our Canadian and Mexican friends.

MR. CROWLEY: Interesting.

Q: Paul Orum, Working Group on Community Right to Know. Supposing two years from now the court strikes down what DC has done. Could DC try again based on fees – fees to compensate for higher costs of security? The question for David would be how high would fees have to be in order to help force the changes and technologies and use of chemicals around the country? For Kathy it would be, is this a route that the DC could go?

MS. PATTERSON: Our second try at this issue is reflected in the omnibus bill that Fred made reference to and there are copies in the back. A second bill that we just introduced a month or so that has a strict liability standard provision in it such that if there is a dangerous chemical release in the District of Columbia from a car that CSX has brought through, we go after them for punitive damages. It changes our insurance law. That was just introduced and there'll be a hearing on it June. It's different from the issue that you are raising, but in the sense of getting at the same issue that we want to reduce the risk and we will go – we will do plan A, plan, B, plan C until we get it done.

DR. MILLAR: Maybe I could also add that, you know, in today's op-ed piece – I mean in today's editorial in the *Post* they said that Judge Sullivan found that applicable federal law gave states and cities a limited sphere of authority over rail safety and security. In other words, a lot of people are looking at this law from other cities – looking at this court case and saying, is this some possibility that our legislators to do the same thing? I think that if we don't have other cities acting in the same way that DC acted, we are not going to have enough political pressure on the federal government to do a reasonable and responsible national federal regulation so – I mean, that's the strategy on my part that I think we – we need to encourage other major target cities to take their

role in this and not just rely on what happens in DC as if this is the only game in – in the country.

MR. SHUMAN: Of course that would fall – go right into the hands of the railroad strategy which is to say, “Hey, if the DC ban is upheld, then every city and hamlet is going to pass a similar ban and put interstate commerce into a paralytic stroke.”

MR. MCHALE: Well David, you know, actually I almost agree with Fred. (Laughter.) I am not sure I want to encourage cities all over the country to follow DC’s lead. On the other hand, I do think it’s – you know, this is – this is actually the best debate we had in the last two months on rail security, really almost since 9/11 and certainly since a couple of months after the Madrid attacks and this will I think focus – hopefully will focus the federal response and make the federal government recognize that it does have to have a more visible and stronger national strategy that it works with the railroads on, so in some ways I welcome that development.

MR. CROWLEY: Yeah and I think that’s one of the keys here, which is I understand the railroad position because they are saying this could be followed by 20 different solutions, where I think we were at a point where the federal government’s interest relative to the railroads’ interest should diverge at this point because from the federal security standpoint you can’t have 20 separate solutions. You really do have to have a comprehensive, integrated approach that finds a way to balance out these equities.

We will do one, two, and then we will wrap up or we will see what we can do quickly.

Q: Okay. I will try to make it a question. I am Pleasant Mann. I’m the head of the (unintelligible) local at FEMA headquarters and I guess I was – I will try to make it a question. I was curious why two arguments still came up in terms of this issue; one about the economic one when I thought the railroads said that they would – the cost would be \$3 million a year for a corporation where the president makes \$1.6 million, I think, last year. It doesn’t seem like it will put them out of business.

Two, how could you possibly argue that greater terrorist protection would actually – you know, when you have the opportunity of putting the chance to zero, how could a replacement be greater terrorist protection? Apparently, it’s not enough to open up Pennsylvania Avenue. You know, you could have – that could be an argument for opening up that, but in an area where the threat is actually an area where you have the headquarters of most of the agencies that would have to respond to a terrorist event there would be wiped out. It seems like that would be a high enough standard to try to reduce the potential to zero in that area.

MR. CROWLEY: Okay, let’s do the remaining questions and we’ll kind of wrap it into, you know, closing arguments for each of the – go ahead.

Q: I think my question is – I am Edward Stern and I am from AFG at the Department of Labor. I am their – I am the union’s rep on emergency planning, and frankly I am just wondering whether or not – and no disrespect to the panelists – whether in fact you have underestimated the hazard; that the risks you talked about of 100,000 people being killed in a half an hour or an hour and so forth. That – those are big numbers, but if the wind is right, and if it’s – you know, if a terrorist is lucky, it appears to me that they could pretty much take out almost all of the federal government. And you are talking about the destruction of the national offices of the United States federal government and I don’t think I’ve heard any of you speak about that.

And that, by the way, occurs because gas goes into buildings even with buildings with windows that don’t open.

MR. CROWLEY: (Unintelligible.) Okay?

Q: My name’s Steve Tetreault, I’m with the *Las Vegas Review Journal*. In the next maybe two, three years the government’s going to be looking to set transportation routes to ship spent nuclear fuel to a repository out in Nevada. I wanted to ask if the panel believes this will increase risks in any appreciable way and how that might affect the visibility of this issue.

DR. MILLAR : Well, of course.

MR. CROWLEY: And we’ll take the last one then we’ll –

Q: Leonora Tamera (ph) from Louisville (Nashville?) Security. I just had a general question following up on what Steve McHale had said. I think the sad but accurate statement that something – a terrorist attack has to happen to really generate impetus for change. Do you know or do any of you know if – what Spain is doing now and what has worked for them and what is not working following the commuter train bombing?

MR. CROWLEY: Okay, we have two questions that basically focus on the nature of the threat to Washington, DC. We have a question on the response in Spain and we have a question on nuclear spent fuel.

MR. MCHALE: You’re looking at me? (Laughter.)

Mr. CROWLEY: We’ll go from right to left.

MR. MCHALE: Spain – actually I don’t know what they are doing today. For about the six – at least six months, after the bombing, they just basically stepped up physical security presence at commuter rail stations that primarily involved extra police and extra armed guards and occasional searches of suspicious activity; a lot of warnings to the public about looking out for unattended baggage and that kind of thing.

As I mentioned in my earlier – the challenge of securing commuter rail and mass transit systems, which are by design and purpose and everything else open and very – and have to handle huge movements of people, is probably in my view the greatest transportation security challenge and there are some ideas that I’ve never – I have yet to see really good, effective things that really can move us onto a new level.

On the transportation of nuclear waste, that actually is another example of divided responsibility. That’s, I believe, entirely the responsibility of the Department of Energy and I once asked to be briefed on that as the Deputy Administrator of TSA was actually told that that wasn’t TSA’s responsibility and I didn’t need to get a briefing. So that’s the concern I think that will come up later on and is something that I think, you know, at some point needs to be coordinated more effectively with DHS.

Was there something else you wanted me to talk to?

MR. CROWLEY: I suppose, you know, obviously your answer to the first two questions would be yes. (Laughter.)

MS. PATTERSON: To mine, absolutely. But let me just agree with Steve; I think there’s a lot more to be done in terms of using the existing technology in terms of commuter rail and metro rail protections. I know our metro system has been looking at a lot of different options and it certainly would be welcome to have a little bit more federal attention on these issues.

MR. MCHALE: Right.

MR. CROWLEY: David, to the extent that you have worked with the rail industry, what are they thinking about on the nuclear issue? I mean, that – potentially that could be a – because its going to be so visible, it could actually be a catalyst where people focus not only on that unique situation, but some of the other issues as well.

MR. SHUMAN: Well, a couple of things. One of the things is that the casks that would be carrying the radioactive material are, I can’t say impervious to a terrorist attack, but they are going to – it would be pretty difficult to penetrate. And secondly that, yes, the stuff – the waste will be moving over the rail system, but that probably would raise less of threat than leaving it in pools in the individual – in the individual nuclear facilities.

But I just wanted to point one thing out. As long as Las Vegas came up, I want to agree and disagree with Stephen with two mutually contradictory statements. As far as, just from my – you know my count of the back of my head of major terrorist attacks over the past 20 years or so outside of Iraq and Israel, over 50 percent have occurred in capitals of nations. With that in mind, it was in Las Vegas about two years ago that a credible threat against railroad facilities was raised and a test of the secret plan – well, the AAR’s – the industry plan on security. The FRA did dispatch an inspector who wandered around three rail yards was unchallenged, eye contact wasn’t made with him by

railroad employees as he wandered around ten tank cars including some that are located right near some major hotels. So without inspectors – without a big increase in inspectors, we can't count on the rail industry to police itself very well.

DR. MILLAR: You know, I worked on nuclear waste issues a long time in terms of transportation, and the fact is that the Department of Energy has done tests that show that you can breach a nuclear waste cask with shoulder-held kinds of missiles that have armor-piercing capabilities, and so when some maps from the National Academy of Science were leaked out for the first time many years ago that showed the routes across the United States converging on Denver and Las Vegas, it created a heck of an uproar. The mayor of Denver at the time called a corridor cities conference and people came from San Francisco all the way out to St. Louis. There was a lot of concern. I mean, if anybody were to ask the question rhetorically, is this a good time to start a program that is going to last 20 years of putting nuclear waste out on the highways and rail lines at a time of terrorism concern? I mean, just rhetorically you know the answer to that, right?

The fact is the Nevada State Nuclear Waste Policy Office has done research on 17 different kinds of shoulder-held missiles that can blow a hole in these kinds of casks, just as one issue. And so what is Las Vegas doing? They are thinking about putting a route around Las Vegas. Maybe that is the one that Steve referred to earlier. In other words, rerouting is definitely going to be on the agenda of the Department of Energy when they start moving this – if they start moving this stuff across the country in the massive numbers that they anticipate over a 20-year period of time.

MR. CROWLEY: I think one of the reasons why – just to finish up – one of the reasons why we think that there does, in fact, need to be a strong federal role in these areas is expressly because the federal government is the only entity that has the ability to rise above the individual economical interests that are impediments to change. I completely understand why the private sector can only say we can only do so much, because it is in their economic interest to do so or because of the market conditions are such that they are. If we are going to have – to go beyond that, it's going to have to be the federal government that provides the combination of mandates and incentives and grants if necessary to be able to in some case just strictly compensate the private sector for what it needs to do for the collective security. I mean, and all you have to do is keep looking at the macro numbers here, you know, which is if the next attack is going to create hundreds of billions of dollars in economic impact or direct damage, then a couple of million dollars to CSX here or another railroad there – just the cost-benefit analysis alone just suggests: solve this problem. And that's why in our view, particularly when you focus on catastrophic terrorism, the federal government has to be more aggressive and in that situation voluntary efforts just are going to fall short simply because of the dynamic in the market place.

One of the areas where this is, I think, pretty clear is in the area of port security and you know we are closing our ports, as we did our airlines on September 11th, it's going to create far more economic impact than the attack itself so to do port security

effectively will cause roughly \$5 billion. For the federal government offer up only 150 just doesn't make any economic sense at all.

With that in mind, we will have future programs; on May 4th we are going to talk about private databases and the confluence of the data revolution, privacy concerns, security concerns and the management of personal information, so we will invite you to that. And on June 15th we will have the next in our series of critical infrastructure security programs on port security one year after the passage of the Maritime Transportation Security Act.

I do want to thank my colleagues, Antoine Morris, Theo LeCompte, Ben Armbruster, Matt Brown, and Alex Pryor (sp) for their help in setting up this program today. We appreciate your coming. Have a good day and we will see you on May 4th. (Applause.)

(END)