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CARGO SECURITY

GOVERNMENT

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HEARINGS

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BEFORE THE

SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

NINETY-SECOND CONGRESS

SECOND SESSION

ON

H.R. 5080, H.R. 9622, H.R. 10295, and S. 942

BILLS TO ESTABLISH A COMMISSION ON SECURITY AND
SAFETY OF CARGO

MAY 18 AND 23, 1972

Serial No. 92-70

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CARGO SECURITY

THURSDAY, MAY 18, 1972

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2318, Rayburn House Office Building, Hon. John Jarman (chairman) presiding.

Mr. JARMAN. The subcommittee will please be in order.

Today we are commencing hearings on a number of legislative proposals which primarily concern air transportation. For the convenience of all concerned, I will describe the various proposals under three separate headings:

I. THE SECURITY AND SAFETY OF CARGO

Under this subject, we have before us S. 942, H.R. 5080, H.R. 9622, and H.R. 10295. All of these relate to the establishment of a Commission on Security and Safety of Cargo. The House bills H.R. 5080 and H.R. 9622 were introduced by Mr. Wolff of New York. In the latter bill, he was joined by Mr. Carney and Mr. Podell of this committee.

H.R. 10295 was introduced by Mr. Pickle, our colleague on the committee, and we understand that he will testify on this important subject. We always look forward to hearing from Mr. Pickle, who earlier served as a very active member of the Transportation Subcommittee, and who continues to contribute materially to the hearings that this subcommittee holds.

II. THE PROHIBITION OF STATE TAXATION OF THE CARRIAGE OF PERSONS IN AIR TRANSPORTATION AND THE INCREASE OF THE FEDERAL SHARE FOR AIRPORT FACILITIES AND EQUIPMENT COSTS

The bills under this heading are H.R. 2337, introduced by our colleague, Mr. Moss, which deals only with the State taxation question; and H.R. 10326, introduced by Mr. Quillen, which deals with the Federal share of costs of the Airport and Airway Development Act; and H.R. 14847, which Mr. Adams of the subcommittee introduced. Mr. Moss, Mr. Metcalfe, and Mr. Helstoski and I joined Mr. Adams on this bill. This bill relates both to the increase in the Federal share and the State taxation questions.

III. INTERNATIONAL AIR TRANSPORTATION

H.R. 8108 was introduced by Chairman Staggers a little over a year ago. It would amend section 801 of the Federal Aviation Act to provide that the Civil Aeronautics Board shall make the selection of air carriers in the international route matters. It also provides for a Presidential veto, but prohibits selection of a particular carrier by the President. The desirability for a review of the procedures which govern international air transportation has been a matter of interest in this subcommittee for a long time. Last February, when the full committee reported H.R. 11416 providing for the regulation of rates and practices of air carriers and foreign air carriers, the interest of the subcommittee and the full committee on the President's power over international air transportation was reflected in the committee report—House Report No. 92-854—and the committee announced its intent to go into the question at the earliest possible time.

From the foregoing outline, you can see that we have interesting and challenging legislative proposals before us. We all recognize that our remaining time in the 92d Congress is growing very short, and I will ask the witnesses to cooperate with the committee by summarizing their statements—if possible, keeping their direct testimony down to no more than 10 minutes—and we will, of course, include and consider their more detailed statements in our record.

(The text of H.R. 5080, H.R. 9622, H.R. 10295, and S.942, and the agency reports thereon follow:)

[H.R. 5080, 92d Cong., 1st sess., introduced by Mr. Wolff on Feb. 25, 1971, and H.R. 9622, 92d Cong., 1st sess., introduced by Mr. Wolff (for himself), Mr. Carney, and Mr. Podell on July 7, 1971,

are identical as follows:]

A BILL

To establish a Commission on Security and Safety of Cargo.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 FINDINGS OF FACT AND DECLARATION OF POLICY

4 SECTION 1. (a) The Congress finds that one of the
5 fundamental bases for the development and growth of com-
6 merce and trade on an interstate and international basis
7 is the security and safety of movement of such goods and
8 cargo. The Congress has become aware that there is an
9 alarming growth of criminal activity which results in loss
10 of and damage to goods moving in interstate and interna-

I—O

1 tional commerce. Such loss and theft are increasing to the
2 degree that it represents a clear and present danger to the
3 national economy, especially American business and partic-
4 ularly the small business community, which bears the great-
5 est portion of such losses. The Congress further finds that
6 the Constitution places the control, regulation, and stimu-
7 lation of interstate and international commerce and trade
8 within the purview of the Federal Government. Prevention
9 of larcenies and malfeasances in connection with goods in
10 interstate and international transit is an inherently difficult
11 phase of crime control; goods in motion or in large-scale
12 storage are hard to watch closely; the multijurisdictional
13 nature of thefts facilitates criminal evasion; and protection
14 arrangements impose unwelcome and often disastrous ex-
15 penses in terms of operational delays, added paperwork, and
16 increased costs for insurance and protection. The Congress
17 finds that common carriers in cargo transportation by air,
18 truck, rail, and water, manifest a serious deficiency in the
19 level of coordination and effort needed to establish deterrents
20 and preventive measures and utilize resources to combat
21 criminal activity. These criminal activities and attendant
22 losses pose an especially serious threat to the economic sta-
23 bility of small business. The apparent magnitude of the re-
24 sultant costs suggests that the Federal Government make a
25 further detailed and continuing inquiry to determine what

1 remedial measures can and should be implemented by cargo
2 carriers, their agents and assigns, possibly supported by Fed-
3 eral assistance, to minimize criminally inspired losses of
4 cargo during storage and transit.

5 (b) The Congress further finds that State and local
6 governments, through exercise of their regulatory powers,
7 have an equal responsibility in stimulating measures to en-
8 hance the safety and security of cargo storage and trans-
9 port. Accordingly, attempts by the Federal Government to
10 deter and curb such losses, thefts, and pilferages should be
11 coordinated at various levels of government.

12 (c) It is the purpose of this Act to establish a com-
13 mission which shall conduct an inquiry and research into
14 matters of cargo security for the purpose of designing pro-
15 grams to achieve maximum security and safety for such
16 cargo when in storage and in transit in interstate and for-
17 eign commerce. It is a further purpose to create an or-
18 ganization which will administer this Act and implement its
19 purposes by establishing liaison and coordination with, by,
20 and between the common carriers, their agents and as-
21 signs, as well as supporting organizations such as private
22 terminal operators, port authorities, and others, engaged in
23 all modes of transportation, distribution, and storage of
24 goods and cargo in transit, and by fostering consultation and

1 coordination with appropriate governmental and private
2 agencies and concerns.

3 ESTABLISHMENT OF COMMISSION

4 SEC. 2. (a) For the purpose of carrying out the
5 intent of Congress as expressed in this Act, there is hereby
6 created a commission to be known as the Commission on
7 Security and Safety of Cargo (hereinafter referred to as the
8 "Commission").

9 (b) The Commission shall be composed of individuals
10 who, by virtue of their education and experience, demon-
11 strate an ability to discover causes, develop solutions, and
12 implement strategies to solve the problem of cargo loss and
13 theft. Members shall include one representative from each
14 mode of the cargo transportation industry, air, truck, rail,
15 and water: two representatives from the cargo handlers
16 labor organizations; one representative from a shipper-
17 import/export concern; and three representatives of the Fed-
18 eral Government, consisting of the Attorney General of the
19 United States, the Secretary of Transportation, and the
20 Secretary of Commerce.

21 (c) The members of the Commission, other than those
22 designated to represent the Federal Government, shall be
23 appointed by the President. Not more than four of such
24 appointed members shall be members of the same political
25 party.

1 (d) The Chairman of the Commission shall be elected
2 annually from among the members of the Commission.

3 (e) The following shall be ex officio members of the
4 Commission: the Chairman of the Interstate Commerce
5 Commission, the Civil Aeronautics Board, and the Federal
6 Maritime Commission; the Commissioner of Customs; one
7 representative having expertise in providing security for the
8 storage and movement of Federal cargo appointed by each
9 of the following: the Secretary of Defense, the Atomic En-
10 ergy Commission, and the National Aeronautics and Space
11 Administration; one representative of the National Bureau
12 of Standards appointed by the Secretary of Commerce; one
13 representative from the Law Enforcement Assistance Ad-
14 ministration appointed by the Attorney General; and one
15 representative from the cargo underwriters-insurance indus-
16 try. Ex officio members of the Commission shall not partici-
17 pate except in an advisory capacity to the Commission in the
18 formulation of its findings and recommendations.

19 (f) Vacancies on the Commission shall be filled in the
20 same manner as initial appointments.

21 (g) A quorum of the Commission shall consist of six
22 members, but two members shall be sufficient for the purpose
23 of taking testimony, or conducting any hearings on a matter
24 within the purview of the Commission's jurisdiction.

1 COMPENSATION OF COMMISSION MEMBERS

2 SEC. 3. (a) Members of the Commission who are
3 officers or full-time employees of the Government shall serve
4 without compensation in addition to that received for their
5 services as such officers or employees; but they shall be
6 allowed travel expenses, including per diem in lieu of sub-
7 sistence as authorized by section 5703 of title 5, United
8 States Code, for persons in Government service employed
9 intermittently.

10 (b) Other members of the Commission who are not
11 officers or officials in the employ of the United States shall
12 be compensated at the rate of \$50 per day when engaged in
13 the actual business and duties vested in the Commission, and
14 in addition be allowed travel expenses, including per diem in
15 lieu of subsistence as authorized by section 5703 of title 5,
16 United States Code.

17 STAFF OF THE COMMISSION

18 SEC. 4. (a) The Commission may appoint such per-
19 sonnel as it deems necessary without regard to the provisions
20 of title 5 of the United States Code concerning appointments
21 in the competitive services and such personnel may be paid
22 without regard to the provisions of chapter 51 and subtitle
23 3 of chapter 53 of such title, relating to classification and
24 general schedule pay rates.

1 (b) The staff of the Commission shall be composed of,
2 but not limited to, individuals having expertise determined to
3 be pertinent to the conduct of a systematic operations re-
4 search study of the problem of cargo theft, such as persons
5 qualified in statistical mathematics, applied mathematics,
6 human factors engineering, security engineering, cargo op-
7 erations and movement, police and law enforcement, social
8 psychology, criminology, business management, traffic engi-
9 neering, security architecture, and deterrence, detection, and
10 apprehension technology and methodology.

11

POWERS OF THE COMMISSION

12 SEC. 5. (a) The Commission, or any two members
13 thereof as authorized by the Commission, may conduct hear-
14 ings anywhere in the United States or otherwise secure data
15 and expressions of opinions pertinent to the study. The
16 Commission shall publish notice of any proposed hearing
17 in the Federal Register and shall afford a reasonable oppor-
18 tunity for interested persons to present relevant testimony
19 and data. In connection therewith the Commission is author-
20 ized by the majority vote—

21

22

23

24

(1) to require, by special or general orders, cor-
poration, business firms, and individuals to submit in
writing such reports and answers to questions as the
Commission may prescribe; such submission shall be

1 made within such reasonable period and under oath or
2 otherwise as the Commission may determine;

3 (2) to administer oaths;

4 (3) to require by subpoena the attendance and testi-
5 mony of witnesses and the production of all documentary
6 evidence relating to the execution of its duties;

7 (4) in the case of disobedience to a subpoena or
8 order issued under this subsection, to invoke the aid
9 of any district court of the United States in requiring
10 compliance with such subpoena or order;

11 (5) in any proceeding or investigation to order
12 testimony to be taken by deposition before any person
13 who is designated by the Commission and has the power
14 to administer oaths, and in such instances to compel
15 testimony and the production of evidence in the same
16 manner as authorized under clauses (3) and (4) of this
17 subsection; and

18 (6) to pay witnesses the same fees and mileage as
19 are paid in like circumstances in the courts of the United
20 States.

21 (b) Any district court of the United States within the
22 jurisdiction of which an inquiry is carried on may, in case
23 of refusal to obey a subpoena or order of the Commission
24 issued under subsection (a) of this section, issue an order
25 requiring compliance therewith; and any failure to obey the

1 order of the court may be punished by the court as a con-
2 tempt thereof.

3 (c) The Commission is authorized to request from any
4 department, agency, or independent instrumentality of the
5 Government any information it deems necessary to carry out
6 its functions under this Act; and each such department,
7 agency, or independent instrumentality is authorized to co-
8 operate with the Commission and, to the extent permitted
9 by law, to furnish such information to the Commission upon
10 request made by the Chairman or the Vice Chairman when
11 acting as Chairman.

12 (d) The Commission is authorized to enter into con-
13 tracts with Federal or State agencies, private firms, institu-
14 tions, and individuals for the conduct of research or surveys,
15 the preparation of reports, and other activities necessary to
16 the discharge of its duties.

17 (e) (1) When the Commission finds that publication of
18 any information obtained by it is in the public interest and
19 would not give an unfair competitive advantage to any per-
20 son, it is authorized to publish such information in the form
21 and manner deemed best adapted for public use, except that
22 data and information which would separately disclose the
23 business transactions of any person, trade secrets, or names
24 of customers shall be held confidential and shall not be
25 disclosed by the Commission or its staff: *Provided, however,*

1 That the Commission shall permit business firms or individu-
2 als reasonable access to documents furnished by them for the
3 purpose of obtaining or copying such documents as need may
4 arise.

5 (f) The Commission is authorized to delegate any of
6 its functions to individual members of the Commission or
7 to designate individuals on its staff and to make such rules
8 and regulations as are necessary for the conduct of its
9 business, except as herein otherwise provided.

10 DUTIES OF THE COMMISSION

11 SEC. 6. It shall be the duty of the Commission to
12 undertake and compile inquiries and studies to determine the
13 causes, and practical and effective measures for the preven-
14 tion and deterrence of loss due to theft and pilferage of
15 cargo in interstate and international commerce. It shall be
16 a further duty of the Commission to encourage the use of
17 existing preventive technology and to promote the develop-
18 ment of new techniques, procedures, and methods to en-
19 hance the safety and security of cargo storage and trans-
20 portation. Such duties shall include, but not be limited to—

21 (1) definition and description of the causes, scope,
22 and value of losses due to cargo theft;

23 (2) evaluation of methods to deter cargo theft,
24 including analysis of labor-management practices; pack-
25 aging and labeling of cargo; containerization; preven-

1 the different modes of transportation, and evaluation of
2 the adequacy of such limits of liability;

3 (9) evaluation and recommendation on the need
4 and desirability of developing a Federal system for the
5 licensing and/or identification of all individuals engaged
6 in the handling of cargo, in any code of transportation,
7 moving in interstate or international commerce. The
8 report under this section shall be made to the President
9 and to the Congress pursuant to the provisions of this
10 Act;

11 (10) development of physical facility security stand-
12 ards and encouragement of voluntary implementation by
13 the various industries involved;

14 (11) continuous reassessment of programs, plans
15 and operations to determine necessary revisions; and

16 (12) recommendations for legislative, administra-
17 tive, or other actions deemed necessary to promote the
18 safety of cargo transport.

19 REPORTS

20 SEC. 7. The Commission shall report to the President
21 and to the Congress its findings and recommendations as
22 deemed desirable and necessary, but in no event less often
23 than annually.

1 tion, detection, and apprehension systems and devices;
2 physical security protection, including lighting, fencing,
3 gate placement, and other similar means; sociological
4 and psychological deterrents and remedies; liaison of
5 cargo security programs between law enforcement
6 agencies and cargo terminal operators, forwarders, and
7 transporters;

8 (3) design, implementation, and analysis of pilot
9 experimental programs to demonstrate the effectiveness
10 of different security systems;

11 (4) establishment and maintenance of liaison with
12 the various modes of transportation of cargo to exchange
13 and disseminate data to promote safety and security of
14 cargo;

15 (5) periodic consultations with appropriate gov-
16 ernmental and private agencies to discuss problems and
17 investigate solutions;

18 (6) complementing programs and activities of dif-
19 ferent modes of cargo transport to produce an effective
20 and low-cost program of safety and security;

21 (7) development of a system of comprehensive,
22 continuous and uniform loss and damage reporting by the
23 different modes of transportation;

24 (8) study and evaluation of present carrier liability
25 limits for losses ~~incurred in the~~ transport of cargo by

1 AUTHORIZATION

2 SEC. 8. There is authorized to be appropriated for the
3 purpose of this Act not to exceed \$250,000 for each fiscal
4 year.

5 FREIGHT SECURITY STANDARDS

6 SEC. 9. (a) Prior to the termination of the Commis-
7 sion established pursuant to this Act, the Secretary of Trans-
8 portation, after consultation with the Commission, the Civil
9 Aeronautics Board, the Interstate Commerce Commission,
10 and the Federal Maritime Commission, shall promulgate
11 such regulations as may be necessary for the security and
12 safety of freight in transportation (including at terminals)
13 by each of the separate carrier modes including freight for-
14 warders under the jurisdiction of each agency.

15 (b) Regulations promulgated pursuant to this section
16 shall be deemed to have been promulgated pursuant to the
17 Interstate Commerce Act, the Federal Aviation Act of
18 1958, and the Shipping Act, 1916, respectively.

19 UNIFORM WATER CARRIER LOST AND DAMAGED CARGO

20 REPORTING

21 SEC. 10. (a) Section 21 of the Shipping Act, 1916, is
22 amended by inserting "(a)" after "SEC. 21" and by
23 inserting at the end thereof a new subsection as follows:

[H.R. 10295, 92d Cong., 1st sess., introduced by Mr. Pickle on Aug. 2, 1971, and S. 942, 92d Cong., 1st sess., passed by the Senate Sept. 8, 1971,

are identical as follows:]

A BILL

To establish a Commission on Security and Safety of Cargo.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Cargo Commission Act
4 of 1971".

5 FINDINGS OF FACT AND DECLARATION OF POLICY

6 SEC. 2. (a) The Congress finds that one of the funda-
7 mental bases for the development and growth of commerce
8 and trade on an interstate and international basis is the secur-
9 ity and safety of movement of such goods and cargo. The
10 Congress has become aware that there is an alarming growth
11 of criminal activity which results in loss of and damage to

I

1 goods moving in interstate and international commerce. Such
2 loss and theft are increasing to the degree that it represents
3 a clear and present danger to the national economy, espe-
4 cially American business and particularly the small business
5 community, which bears the greatest portion of such losses.
6 The Congress further finds that the Constitution places the
7 control, regulation, and stimulation of interstate and inter-
8 national commerce and trade within the purview of the Fed-
9 eral Government. Prevention of larcenies and malfeasances
10 in connection with goods in interstate and international
11 transit is an inherently difficult phase of crime control; goods
12 in motion or in large-scale storage are hard to watch closely;
13 the multijurisdictional nature of thefts facilitates criminal
14 evasion; and protection arrangements impose unwelcome
15 and often disastrous expenses in terms of operational delays,
16 added paperwork, and increased costs for insurance and pro-
17 tection. The Congress finds that common carriers in cargo
18 transportation by air, truck, rail, and water, manifest a seri-
19 ous deficiency in the level of coordination and effort needed
20 to establish deterrents and preventive measures and utilize
21 resources to combat criminal activity. These criminal activ-
22 ities and attendant losses pose an especially serious threat
23 to the economic stability of small business. The apparent
24 magnitude of the resultant costs suggests that the Federal
25 Government make a further detailed and continuing inquiry

1 to determine what remedial measures can and should be
2 implemented by cargo carriers, their agents and assigns,
3 possibly supported by Federal assistance, to minimize crim-
4 inally inspired losses of cargo during storage and transit.

5 (b) The Congress further finds the State and local
6 governments, through exercise of their regulatory powers,
7 have an equal responsibility in stimulating measures to en-
8 hance the safety and security of cargo storage and transport.
9 Accordingly, attempts by the Federal Government to deter
10 and curb such losses, thefts, and pilferages should be coordi-
11 nated at all levels of government.

12 (c) It is the purpose of this Act to establish a com-
13 mission which shall conduct an inquiry and research into
14 matters of cargo security for the purpose of designing pro-
15 grams to achieve maximum security and safety for such
16 cargo when in storage and in transit in interstate and foreign
17 commerce, and shall administer this Act and so as to imple-
18 ment its purpose by establishing liaison and coordination
19 with and between the common carriers, their agents and
20 assigns, as well as supporting organizations such as private
21 terminal operators, port authorities, and others, engaged in
22 all modes of transportation, distribution, and storage of goods
23 and cargo in transit, and by fostering consultation and co-
24 ordination with appropriate governmental and private agen-
25 cies and concerns.

ESTABLISHMENT OF COMMISSION

1
2 SEC. 3. (a) For the purpose of carrying out the intent
3 of Congress as expressed in this Act, there is hereby created
4 a commission to be known as the Commission on Security and Safety of Cargo (hereinafter referred to as the
5 "Commission").
6

7 (b) The Commission shall be composed of individuals
8 who, by virtue of their education and experience, demonstrate an ability to discover causes, develop solutions, and
9 implement strategies to solve the problem of cargo loss and
10 theft. Members shall include one representative from each
11 mode of the cargo transportation industry, air, truck, rail,
12 and water; two representatives from the cargo handlers labor
13 organizations; one representative from a shipper-import/
14 export concern; and three representatives of the Federal
15 Government, consisting of the Attorney General of the
16 United States, the Secretary of Transportation, and the
17 Secretary of the Treasury. If a member designated to represent the Federal Government on the Commission is unavoidably
18 absent, he may designate any officer of his department
19 appointed with the advice and consent of the Senate to serve
20 on the Commission as his alternate.
21
22

23 (c) The members of the Commission, other than those
24 designated to represent the Federal Government, shall be
25 appointed by the President. Not more than four of such

1 appointed members shall be members of the same political
2 party.

3 (d) The Chairman and Vice Chairman of the Commis-
4 sion shall be elected annually from among the members of
5 the Commission.

6 (e) The following shall be ex officio members of the
7 Commission: the Chairmen of the Interstate Commerce
8 Commission, the Civil Aeronautics Board, and the Federal
9 Maritime Commission; a representative of the Secretary of
10 Commerce; one representative having expertise in provid-
11 ing security for the storage and movement of Federal cargo
12 appointed by each of the following: the Secretary of De-
13 fense, the Atomic Energy Commission, and the National
14 Aeronautics and Space Administration; one representative
15 of the National Bureau of Standards appointed by the Sec-
16 retary of Commerce; one representative from the Law En-
17 forcement Assistance Administration appointed by the
18 Attorney General; and one representative from the
19 cargo underwriters-insurance industry and one repre-
20 sentative from the freight forwarders industry to be ap-
21 pointed by the President. Ex officio members of the Com-
22 mission shall not participate except in an advisory capacity
23 to the Commission in the formulation of its findings and
24 recommendations.

1 (f) Vacancies on the Commission shall be filled in the
2 same manner as initial appointments.

3 (g) A quorum of the Commission shall consist of six
4 members, but two members shall be sufficient for the pur-
5 pose of taking testimony, or conducting any hearings on a
6 matter within the purview of the Commission's jurisdiction.

7 (h) In addition, the Commission shall have four ad-
8 visory members composed of—

9 (1) two Members of the House of Representatives
10 who shall not be members of the same political party and
11 who shall be appointed by the Speaker of the House of
12 Representatives, and

13 (2) two Members of the Senate who shall not be
14 members of the same political party and who shall be
15 appointed by the President of the Senate.

16 The advisory members of the Commission shall not par-
17 ticipate, except in an advisory capacity, in the formulation of
18 the findings and recommendations of the Commission.

19 COMPENSATION OF COMMISSION MEMBERS

20 SEC. 4. (a) Members of the Commission who are offi-
21 cers or full-time employees of the Government (including
22 Members of Congress appointed under section 3 (h) of this
23 Act) shall serve without compensation except for that re-
24 ceived for their services as such officers or employees; but
25 they shall be allowed travel expenses, including per diem in

1 lieu of subsistence as authorized by section 5703 of title 5,
2 United States Code, for persons in Government service em-
3 ployed intermittently.

4 (b) Other members of the Commission who are not
5 officers or officials in the employ of the United States shall
6 be compensated at the rate of \$50 per day when engaged
7 in the actual business and duties vested in the Commission,
8 and in addition be allowed travel expenses, including per
9 diem in lieu of subsistence as authorized by section 5703
10 of title 5, United States Code.

11 STAFF OF THE COMMISSION

12 SEC. 5. (a) The Commission may appoint such per-
13 sonnel as it deems necessary without regard to the provisions
14 of title 5 of the United States Code concerning appointments
15 in the competitive services and such personnel may be paid
16 without regard to the provisions of chapter 51 and sub-
17 chapter III of chapter 53 of such title, relating to classifi-
18 cation and General Schedule pay rates, but no individual so
19 appointed shall receive compensation in excess of the rate
20 authorized for GS-18 under such title.

21 (b) The staff of the Commission shall be composed of,
22 but not limited to, individuals having expertise determined
23 to be pertinent to the conduct of a systematic operations
24 research study of the problem of cargo theft, such as persons
25 qualified in statistical mathematics, applied mathematics,

1 human factors engineering, security engineering, cargo opera-
2 tions and movement, police and law enforcement, social
3 psychology, criminology, business management, traffic engi-
4 neering, security architecture, and deterrence, detection, and
5 apprehension technology and methodology.

6 POWERS OF THE COMMISSION

7 SEC. 6. (a) The Commission or any two members
8 thereof as authorized by the Commission, may conduct hear-
9 ings anywhere in the United States or otherwise secure data
10 and expressions of opinions pertinent to the study. The Com-
11 mission shall publish notice of any proposed hearing in the
12 Federal Register and shall afford a reasonable opportunity
13 for interested persons to present relevant testimony and
14 data. In connection therewith the Commission is authorized
15 by the majority vote—

16 (1) to require, by special or general orders, cor-
17 porations, business firms, and individuals to submit in
18 writing such reports and answers to questions as the
19 Commission may prescribe; such submission shall be
20 made within such reasonable period and under oath or
21 otherwise as the Commission may determine;

22 (2) to administer oaths;

23 (3) to require by subpena the attendance and tes-
24 timony of witnesses and the production of all documen-
25 tary evidence relating to the execution of its duties;

1 (4) in the case of disobedience to a subpoena or
2 order issued under this subsection to invoke the aid of
3 any district court of the United States in requiring com-
4 pliance with such subpoena or order;

5 (5) in any proceeding or investigation to order
6 testimony to be taken by deposition before any person
7 who is designated by the Commission and has the power
8 to administer oaths, and in such instances to compel tes-
9 timony and the production of evidence in the same man-
10 ner as authorized under clauses (3) and (4) of this
11 subsection; and

12 (6) to pay witnesses the same fees and mileage as
13 are paid in like circumstances in the courts of the United
14 States.

15 (b) Any district court of the United States within the
16 jurisdiction of which an inquiry is carried or may, in case of
17 refusal to obey a subpoena or order of the Commission issued
18 under subsection (a) of this section, issue an order requiring
19 compliance therewith, and any failure to obey the order of
20 the court may be punished by the court as a contempt
21 thereof.

22 (c) The Commission is authorized to request from any
23 department, agency, or independent instrumentality of the
24 Government any information it deems necessary to carry out
25 its functions under this Act; and each such department,

1 agency, or independent instrumentality is authorized to co-
2 operate with the Commission and, to the extent permitted
3 by law, to furnish such information to the Commission upon
4 request made by the Chairman or the Vice Chairman when
5 acting as Chairman.

6 (d) The Commission is authorized to enter into contracts
7 with Federal or State agencies, private firms, institutions, and
8 individuals for the conduct of research, surveys, and the
9 preparation of reports. All contracts negotiated without
10 advertising pursuant to this subsection shall include a clause
11 to the effect that the Commission and the Comptroller Gen-
12 eral of the United States or any of his duly authorized repre-
13 sentatives shall until the expiration of three years after final
14 payment have access to and the right to examine any directly
15 pertinent books, documents, papers, and records of the con-
16 tractor or any of his subcontractors engaged in the per-
17 formance of and involving transactions related to such con-
18 tracts or subcontracts.

19 (e) When the Commission finds that publication of
20 any information obtained by it is in the public interest and
21 would not give an unfair competitive advantage to any per-
22 son, it is authorized to publish such information in the form
23 and manner deemed best adapted for public use, except that
24 data and information which would separately disclose the
25 business transactions of any person, trade secrets, or names

1 of customers shall be held confidential and shall not be dis-
2 closed by tthe Commission or its staff: *Provided, however,*
3 That the Commission shall permit persons reasonable access
4 to documents furnished by such persons for the purpose of ob-
5 taining or copying such documents as need may arise.

6 (f) The Commission is authorized to delegate any of its
7 functions to individual members of the Commission or to
8 designate individuals on its staff and to make such rules and
9 regulations as are necessary for the conduct of its business,
10 except as herein otherwise provided.

11 DUTIES OF THE COMMISSION

12 SEC. 7. It shall be the duty of the Commission to un-
13 dertake and compile inquiries and studies to determine the
14 causes, and practical and effective measures for the preven-
15 tion and deterrence of loss due to theft and pilferage of cargo
16 in interstate and international commerce. It shall be a fur-
17 ther duty of the Commission to encourage the use of exist-
18 ing preventive technology and to promote the development
19 of new techniques, procedures, and methods to enhance the
20 safety and security of cargo storage and transportation. Such
21 duties shall include, but not be limited to—

22 (1) definition and description of the causes, scope,
23 and value of losses due to cargo theft;

24 (2) evaluation of methods to deter cargo theft, in-
25 cluding analysis of labor-management practices; pack-

1 aging and labeling of cargo; containerization; preven-
2 tion, detection, and apprehension systems and devices;
3 physical security protection, including lighting, fencing,
4 gate placement, and other similar means; sociological
5 and psychological deterrents and remedies; liaison of
6 cargo security programs between law enforcement agen-
7 cies and cargo terminal operators, forwarders, and
8 transporters;

9 (3) design, implementation, and analysis of pilot
10 experimental programs to demonstrate the effectiveness
11 of different security systems;

12 (4) establishment and maintenance of liaison with
13 the various modes of transportation of cargo to ex-
14 change and disseminate data to promote safety and
15 security of cargo;

16 (5) periodic consultations with appropriate gov-
17 ernmental and private agencies to discuss problems and
18 investigate solutions;

19 (6) complementing programs and activities of dif-
20 ferent modes of cargo transport to produce an effective
21 and low-cost program of safety and security;

22 (7) development of a system of comprehensive,
23 continuous, and uniform loss and damage reporting by
24 the different modes of transportation;

25 (8) study and evaluation of present carrier liability

1 limits for losses incurred in the transport of cargo by the
2 different modes of transportation, and evaluation of the
3 adequacy of such limits of liability;

4 (9) evaluation and recommendation on the need
5 and desirability of developing a federal system for the
6 licensing and/or identification of all individuals engaged
7 in the handling of cargo, in any mode of transportation,
8 moving in interstate or international commerce. The re-
9 port under this section shall be made to the President
10 and to the Congress pursuant to the provision of this
11 Act;

12 (10) development of physical facility security
13 standards;

14 (11) continuous reassessment of programs, plans,
15 and operations to determine necessary revisions; and

16 (12) recommendations for legislative, administra-
17 tive, or other actions deemed necessary to promote the
18 safety of cargo transport.

19 REPORTS

20 SEC. 8. The Commission shall report to the President
21 and to the Congress its findings and recommendations as
22 deemed desirable and necessary, but in no event less often
23 than annually. The first such report shall be due six months
24 from the date of the enactment of this legislation.

25 SEC. 9. There is hereby authorized to be appropriated

1 such funds as may be necessary to accomplish the purposes
2 of this Act not to exceed \$2,000,000.

3 FREIGHT SECURITY STANDARDS

4 SEC. 10. Upon the submission of the Commission's final
5 report as provided in section 12 of this Act, the Secretary
6 of Transportation, after consultation with the Commission,
7 the Department of the Treasury, the Civil Aeronautics
8 Board, the Interstate Commerce Commission, and the Fed-
9 eral Maritime Commission, shall promulgate such regula-
10 tions as may be necessary for the security and safety of
11 freight in transportation (including at terminals) by each
12 of the separate carrier modes including freight forwarders
13 under the jurisdiction of each agency.

14 UNIFORM WATER CARRIER LOST AND DAMAGED CARGO

15 REPORTING

16 SEC. 11. (a) Section 21 of the Shipping Act, 1916, is
17 amended by inserting "(a)" after "SEC. 21" and by insert-
18 ing at the end thereof a new subsection as follows:

19 "(b) The Federal Maritime Commission is authorized
20 to require of each common carrier subject to this Act
21 periodic reports listing and evaluating all cargo damaged,
22 lost, missing, stolen, or presumed stolen from such carrier or
23 any agent thereof during such period. The Commission is
24 authorized to promulgate such rules as may be necessary to
25 effect the provisions of this subsection."

CIVIL AERONAUTICS BOARD,
Washington, D.C., May 16, 1972.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the Board's views on H.R. 5080, a bill "To establish a Commission on Security and Safety of Cargo."

H.R. 5080 would establish a two-year Commission to investigate and recommend methods for achieving security and safety for cargo of all modes of transportation. The Commission would be composed of ten members drawn from the air, truck, water, and rail carriers, cargo labor unions, shipper-import/export concerns, the Attorney General, the Secretary of Transportation and the Secretary of Commerce. *Ex officio* members would include the Federal transportation regulatory agencies and the cargo underwriters—insurance industry. The Commission's duties would include an evaluation of methods to deter cargo theft; the development of a uniform loss-reporting system by all modes of transportation; an evaluation of the adequacy of the present carrier liability limitations; and the development of physical facility security standards. Prior to its termination date, the Commission would be required to submit its final recommendations to the Congress.

Also prior to the termination of the Commission, the Secretary of Transportation would be required, after consultation with the Commission, the CAB, the ICC, and the FMC, to promulgate such regulations as may be necessary for the security and safety of freight in transportation (including at terminals) by each of the separate carrier modes, including freight forwarders.

H.R. 5080 differs principally from H.R. 18243, which was considered by your Committee last year, in the requirement for the establishment of freight security standards by the Secretary of Transportation prior to the termination of the Commission. In submitting a report to your Committee on September 30, 1970, the Board noted that it had been concerned with the problem of security of goods in transit, and that its staff had worked informally with the domestic air carriers in an effort to develop meaningful loss and damage reports. The Board stated that in these circumstances it was in accord with the objectives of the bill. However, the Board added that it did not have any information as to the need for the establishment of a Commission for cargo safety, and deferred to the views of the Treasury Department and the Department of Transportation (which were engaged in studies of the problem of cargo theft prevention) as to whether H.R. 18243 was the most appropriate method for accomplishing its objectives.

Since its report of 1970, the Board has found that the loss and damage reports filed by the domestic carriers are incomplete in various respects. Consequently, the Board has amended its Economic Regulations so as to require report forms by domestic carriers designed to correct these deficiencies. Also, the Regulations require loss and damage reports to be filed for the first time by air freight forwarders, international air freight forwarders, commuter air carriers, supplemental air carriers and foreign flag route air carriers.

The Board continues to be in full accord with the objectives of H.R. 5080. However, the Board defers (as it did in the case of H.R. 18243) to the views of the Treasury Department and the Department of Transportation as to whether the bill is the most appropriate method for accomplishing its objectives. Both Treasury and DOT have taken several actions as the result of their studies of the cargo security problem. Presumably, both of these agencies will submit their views on the bill and will set forth in detail the steps which they have taken to combat cargo thefts.

In the event that favorable consideration is to be given to legislation of this nature, the Board believes that the provision in S. 942, which also is pending before your Committee, requiring the establishment of freight security standards by the Secretary of Transportation would be preferable to the comparable provision in H.R. 5080. As the Senate Commerce Committee pointed out in its report (S. Rep. No. 92-358) on S. 942, the Secretary would not be required under such bill to establish standards before he received the Commission's recommendations.

The Board has been advised by the Office of Management and Budget that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

SECOR D. BROWNE,
Chairman.

DEPARTMENT OF COMMERCE,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., June 22, 1971.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department concerning H.R. 5080, a bill "to establish a Commission on Security and Safety of Cargo."

The Commission proposed in this bill would conduct an inquiry into matters of cargo security to determine steps necessary to achieve maximum security and safety for cargo in storage and in transit whether by land, water or air. The Commission duties would include, *inter alia*, evaluation of methods to deter cargo theft, design and implementation of pilot experimental programs, complementing programs and activities of different modes of cargo transportation to produce an effective and low-cost program of safety and security, and the development of physical facility security standards and their voluntary implementation by the various industries involved.

In addition, section 9 of H.R. 5080 would require the Secretary of Transportation, prior to the termination of the two-year life of the Commission, to promulgate such regulations "as may be necessary for the security and safety of freight in transportation (including a terminals) by each of the separate carrier modes including freight forwarders under the jurisdiction of each agency." The regulations are to be promulgated after consultation with the Commission, the Civil Aeronautics Board, the Interstate Commerce Commission, and the Federal Maritime Commission. The section 9 regulatory proposal was not included in the otherwise similar bills introduced in the last Congress.

Finally, section 10 would require submission to the Federal Maritime Commission, by common carriers subject to its jurisdiction, of quarterly reports listing and evaluating all cargo damaged, lost, missing, stolen, or presumed stolen from carriers or agents thereof.

Although we have no objection to the creation of a special commission if it is the judgment of Congress that the proposed Commission is necessary, we are concerned about aspects of the Commission's composition and duties. Also, we object to the proposed grant of regulatory authority to the Secretary of Transportation under section 9. We defer to the Federal Maritime Commission regarding section 10.

As proposed, the composition of the ten member Commission would include three Federal Government representatives (the Attorney General and the Secretaries of Transportation and Commerce) one representative from each of the four modes of the cargo transportation industry (air, truck, rail, and water), two representatives from the cargo handlers labor organizations, and one representative from a shipper-import/export concern. Advisory status is given to the chairman of the ICC, the CAB, and the FMC, as well as to the Commissioner of Customs and one Federal cargo movement expert from the Department of Defense, the Atomic Energy Commission, and the National Aeronautics and Space Administration. Advisory status is also given to one representative from the National Bureau of Standards (appointed by the Secretary of Commerce), the Law Enforcement Assistance Administration (appointed by the Attorney General) and one representative from the cargo underwriters-insurance industry.

We believe the Secretary of the Treasury should also be a member of the Commission because of his Department's considerable experience in this area both with regard to physical security standards and the needs and problems of shippers and carriers. We also recommend that the Commission should include more than one "shipper-import/export" member.

With regard to the duties of the Commission beyond those of conducting an inquiry, we have some questions. For example: Does the duty to evaluate methods of determining cargo theft carry with it the power to require certain methods to the exclusion of others? Section 6(2). To what extent, if any, does the duty to design, implement and analyze pilot programs to demonstrate the effectiveness of different systems empower the Commission to impose its experiments on others? And to what extent is the Commission really expected to implement experimentation in the first place? Section 6(3). What is meant by the duty to have "complementing programs and activities of different modes of cargo transport to produce an effective and low-cost program of safety and security? Section 6(6). In view of its limited two-year life, would the Commission have sufficient time to plan, implement and evaluate these methods and programs effectively?

Another duty imposed on the Commission is the "development of physical facility security standards and encouragement of voluntary implementation by various industries involved." Section 6(10). The relationship between this and the Section 9 regulatory powers in the Secretary of Transportation should be made clear. Is it anticipated that Commission issued voluntary guidelines will exist together with section 9 regulations? Or will the guidelines be a preview of the regulations?

As noted above, we oppose section 9. There is no indication as to when these regulations would be issued other than "prior to the termination of the Commission." If section 9 envisions no regulations until well into the Commission's life there would seem to be no need for the provision at this time. Whether additional regulatory authority is needed and where it should be exercised are questions which can perhaps better be answered in light of the Commission findings.

The problem H.R. 5080 seeks to attack is a serious one. The various agencies concerned are seeking and will continue to seek solutions to it. In addition, the Administration has submitted a proposal in this area. We hope that establishment of the Commission will not delay action on that proposal and urge the Congress to give prompt attention to it.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to your Committee from the standpoint of the Administration's program.

Sincerely,

WILLIAM N. LETSON,
General Counsel.

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., June 13, 1972.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.*

DEAR CHAIRMAN STAGGERS: Pending before the Subcommittee on Transportation and Aeronautics of the House Committee on Interstate and Foreign Commerce are four bills, S. 942, as passed by the Senate, H.R. 5080, H.R. 9622 and H.R. 10295, which would establish a Commission on Security and Safety of Cargo. The views of this Commission have been requested.

While we have no direct jurisdiction over cargo theft, we, as economic regulators of the surface transportation industry, are deeply concerned about this problem. The economic loss from cargo theft and pilferage directly affects the viability of this industry and is ultimately reflected in the rates paid by the shipping and consuming public. Thus, we support any effort which will find a solution. If those more closely involved than we are with law enforcement and with the provision of security services believe that further study is called for, we have no objection to the establishment of a Commission to investigate cargo security.

There is, however, one provision in the bills which we think needs to be clarified or amended, and we would like to call it to the Committee's attention. Each of the bills would require the Secretary of Transportation, after consultation with this agency and other Federal regulatory agencies, to promulgate such regulations as may be necessary for the security and safety of property being transported in interstate commerce. First, we question whether this requirement belongs in the legislation now being considered, or whether the need for further rulemaking on the Federal level is not rather something that the proposed study Commission might take up in its report.

If this requirement is to be included, we would point out that there is no provision establishing responsibility for the enforcement of those regulations. In H.R. 5080 and H.R. 9622, however, there is a provision in section 9(b) that the regulations would be promulgated under the Interstate Commerce Act, the Federal Aviation Act of 1958, and the Shipping Act, 1916. This might be construed as imposing enforcement responsibility upon the agencies immediately concerned with administering those acts, including the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission. A similar provision was eliminated from S. 942, as passed by the Senate, and is omitted from H.R. 10295. We favor this latter approach, because we believe the rules which

would apply to all regulated modes of transportation should be promulgated and enforced by one agency. Thus, if the Department of Transportation is to be given the responsibility for promulgating the regulations, it also should have the responsibility for enforcing them.

We note also that each bill requires the proposed study Commission to develop a system of comprehensive, continuous and uniform loss and damage reporting by the different modes of transportation. Here, it should be pointed out that in No. 35345, *Quarterly Report of Freight Loss and Damage Claims*, the Interstate Commerce Commission has promulgated rules to require motor common carriers and contract carriers of property with annual average operating revenues of \$1 million or more to file quarterly reports on loss and damage. The reports require that losses due to theft and hijacking be detailed. Such reporting, we feel, will at least begin to define the scope of the problem, in the surface transportation industry. Moreover, in Ex Parte No. 263, *Loss and Damage Claims*, 340 I.C.C. 515 (1972), this Commission in addition to seeking legislation which would empower it to adjudicate loss and damage claims on the merits, promulgated broad regulations governing certain procedural aspects of handling by regulated carriers of loss and damage claims. These regulations should also be of value in finding a solution to the problems of cargo security and safety.

Sincerely yours,

GEORGE M. STAFFORD, *Chairman.*

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., July 30, 1971.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Office of Management and Budget on H.R. 5080, a bill "To establish a Commission on Security and Safety of Cargo."

We concur generally with the views of the Department of Transportation on H.R. 5080 as expressed in its report to you of June 29, 1971.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

DEPARTMENT OF TRANSPORTATION,
OFFICE OF THE SECRETARY,
Washington, D.C., June 29, 1971.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Department with respect to H.R. 5080, a bill "to establish a Commission on Security and Safety of Cargo."

H.R. 5080 would establish a two-year commission which would conduct an inquiry and research into matters of cargo security for the purpose of designing programs to achieve maximum security and safety for such cargo when in storage and in transit. The commission would be required to undertake and compile inquiries and studies to determine the causes, and practical and effective measures for the prevention and deterrence of loss due to theft and pilferage of cargo in interstate and international commerce, and to encourage the use of existing preventive technology and to promote the development of new techniques, procedures and methods to enhance the safety and security of cargo.

Prior to termination of the commission, the Secretary of Transportation, after appropriate consultation, would be required to promulgate such regulations as may be necessary for the security and safety of freight in transportation (including at terminals) by each of the separate carrier modes, including freight forwarders.

The commission is required to report to the President and the Congress on its evaluation and recommendation with respect to the need and desirability of

developing a Federal system for the licensing and/or identification of individuals engaged in cargo handling. In addition, the commission shall report no less than annually on its findings and recommendations generally, and prior to its termination provide a complete report to the Congress containing its final recommendations.

Last year this Department reported to your Committee on H.R. 18243, a bill introduced by Mr. Wolff, which is essentially similar in nature to H.R. 5080.

H.R. 5080, however, differs from H.R. 18243 because of four revisions relating to the evaluation of the need to establish a Federal system for the licensing of cargo handlers, the promulgation of freight security standards by the Secretary of Transportation, a uniform water carrier lost and damaged cargo reporting system, and a reduction from five to two years in the existence of the proposed commission. We feel that with one major exception, these revisions appear to strengthen the bill. In particular, we are opposed to the provision set forth in section 9(a), which would require the establishment of mandatory freight security standards prior to the termination of the commission. We feel that any attempt to establish these standards prior to the completion of the commission's studies and recommendations would be inappropriate and could in fact prove to be counterproductive. Furthermore, in view of the lengthy proceedings necessary in the formulation of these regulations, little, if any, consideration could be given to the activities being carried on simultaneously by the commission.

Our opposition to section 9(a) does not mean the Department intends to be dormant pending the outcome of the commission's efforts. During the commission's existence, the Department, in cooperation with industry and other interested governmental agencies, intends to formulate voluntary guidelines for the prevention of cargo loss and theft in the transportation industry. These guidelines would be made available to industry to bolster their cargo security activities until the commission makes its final determination. At that time, we would be in a much better position to formulate effective and practical regulations, if it is then determined that Federal regulations are in fact needed.

In addition, there are two suggestions that we wish to make in order to strengthen H.R. 5080. First, we feel that state and local participation on the commission should be increased. Since so much of cargo in transportation is shipped via non-Federally regulated carriers who are involved in either intrastate or local traffic, the commission's activities could be substantially benefitted by participation of appropriate state and local interests. Secondly, we think the legislation should direct the commission to give consideration to the means by which the private sector could best assume the cost of implementing any proposed cargo security measures engaged by the commission.

Hence, subject to the above comments, we would favor the enactment of H.R. 5080. We also favor it because it signals to the transportation community that the Congress is determined to give its support and financial assistance to a broad based government-industry commission with authority to help generate a stronger national effort in this area.

On the basis of the foregoing, this Department urges the enactment of H.R. 5080.

The Office of Management and Budget has advised that from the standpoint of the Administration's program there is no objection to the submission of this report for the Committee's consideration.

Sincerely,

J. THOMAS TIDD,
Acting General Counsel.

DEPARTMENT OF THE TREASURY,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., July 28, 1971.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 5080, a bill "To establish a Commission on Security and Safety of Cargo." The proposed legislation would establish a commission in matters of cargo security for the purpose of designing programs to achieve maximum security and safety for goods moving in interstate and international commerce. The commission would foster consultation and coordination with the common

carriers, terminal operators, port authorities and others who are engaged in the transportation, storage and distribution of goods and cargo.

The commission would be made up of individuals who by virtue of their education and experience demonstrate an ability to discover causes, develop solutions and implement strategies to solve the problem of cargo loss and theft. The commission would have ten members, of whom four would represent the various modes of the cargo transportation industry, air, truck, rail, and water; two would represent labor organizations; one would be a representative from a shipper-import/export concern; and three would be representatives of the Federal Government, consisting of the Attorney General, the Secretary of Transportation and the Secretary of Commerce.

In addition, the Chairmen of the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission, and the Commissioner of Customs would be ex officio members of the commission, together with a representative of the Secretary of Defense, the Atomic Energy Commission, the National Aeronautics and Space Administration, the National Bureau of Standards, the Law Enforcement Assistance Administration, and of the cargo underwriters-insurance industry. The ex officio members would participate only in an advisory capacity to assist the commission in formulating its findings and conclusions.

The commission would be authorized to issue subpoenas, conduct hearings and require corporations, business firms, and individuals to submit written reports and answers to questions under oath. It could invoke the aid of any district court of the United States to secure compliance with its subpoenas or orders.

It would be the duty of the commission to seek to determine the cause of, and effective measures for the prevention and deterrence of, loss, theft and pilferage of cargo in interstate and international commerce. The commission would also promote the development of new techniques, procedures and methods to increase the safety and security of cargo storage and transportation.

Section 9 of the bill would provide the Secretary of Transportation with immediate statutory authority to issue regulations for the physical security and safety of freight in transportation, which would include vehicles, docks, piers, and terminals.

The Treasury Department supports the general purposes of H.R. 5080. We have specific comments to offer concerning two provisions: one deals with the composition of the commission, the other is Section 9.

With respect to the composition of the commission, this Department recommends that, because of Treasury's detailed knowledge of the problems with which the commission would be concerned and its own activities in the field of prevention of theft of merchandise in international commerce, the Secretary of the Treasury be included as a member of the commission. Because of the broad experience of the Department of Defense in this field, it is also highly desirable that the Secretary of Defense be a member.

With respect to Section 9, the Department regards it as premature and potentially wasteful to establish at this time a new super-regulatory activity superimposed on existing agencies, whether it be the Department of Transportation or any other entity, before the results of the commission's studies indicates that this is necessary. At the present time detailed knowledge of the extent and nature of the problem is lacking, although the Treasury Department, through the Bureau of Customs, already has in operation a loss reporting system and the other regulatory agencies involved are in the process of establishing such systems. The proposed commission will provide a useful function in acting as a central clearing house for these loss and damage reports. As the commission identifies the problem areas, both functional and geographical, and determines which commodities are most vulnerable to theft, then, without waiting for its formal report, it will be in a position to bring the matter to the attention of the appropriate regulatory agency or executive department to be assured that that agency has already taken, or to recommend that it take, action on the various aspects which lie within its domain.

The Department of the Treasury has already moved aggressively to attack the problem of theft of international cargo. New regulations covering this field, based on existing authority of the Secretary, were issued in January and February of this year and became effective April 1, 1971. Administration-endorsed legislation has been introduced into both houses of this Congress to extent the Secretary's authority in carefully defined areas. These measures are aimed at the identification and remedying of specific abuses. They represent a selective

approach which we believe will eliminate the major vulnerabilities in the handling of international cargo, at the lowest enforcement cost and with minimum intrusion on the domains of local government and private industry. Any additional action program should be carefully designed to complement existing programs and to provide the most effective combination of Federal, State, local and private efforts. We believe that after the commission's work has been completed and after the current efforts of the Department of Treasury, the Department of Transportation, and other departments have been carefully evaluated, the proper Federal response to the cargo security crisis can be effectively designed.

We believe that it is unnecessary and unwise to superimpose another administrative layer of supervision in this area. Until the results of the reporting systems are analyzed, the foci of theft identified, and the effectiveness of existing regulatory agencies in taking remedial action appraised, it would seem premature to assign any overall regulatory role to the Department of Transportation or any other agency. Indeed, when the commission completes its inquiry, it might recommend an entirely different solution, including more effective enforcement action at local levels, additional authority for the existing regulatory agencies, or one of many possible alternatives.

After the commission's final report and recommendations are filed, the Congress will have the facts upon which to base any further legislation that may be necessary and proper.

The Department was advised by the Office of Management and Budget that there was no objection from the standpoint of the Administration's program to the submission to the Senate Committee on Commerce of an identical report on S. 942, an identical bill.

Sincerely yours,

SAMUEL R. PIERCE, Jr.,
General Counsel.

Mr. JARMAN. Our first witness this morning is our distinguished colleague from Texas, the Honorable J. J. Pickle.

Mr. DINGELL. Mr. Chairman?

Mr. JARMAN. Mr. Dingell.

Mr. DINGELL. I would like to join in welcoming our good friend and colleague, Mr. Pickle. He has been a most valuable member of our subcommittee here, and he has served in the House with great distinction, and we are pleased to have him with us.

STATEMENT OF HON. J. J. PICKLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, ACCOMPANIED BY DAVID RICHESON, STAFF ASSISTANT

Mr. PICKLE. Thank you, Mr. Chairman and members of the committee.

I would like to have a member of my staff sit at the table with me.

I appreciate the privilege of appearing before your committee, my committee. I am very mindful of the kind things you said about my own services on that committee, and I am grateful for it and thank you.

Mr. Chairman, I would like to ask consent to insert for the record my entire statement and to summarize the provisions of H.R. 10295 which I have introduced creating a Commission on Security and Safety of Cargo.

Mr. JARMAN. The committee will be glad to receive the statement in full. The prepared statement will appear following your comments.

Mr. PICKLE. Thank you, Mr. Chairman.

This bill which I have introduced is in effect the same bill which Senator Alan Bible had introduced in the Senate and which passed last year in the Senate on September 8 by unanimous vote.

Also essentially, this same bill has been introduced by Congressman Lester Wolff, who will appear also here this morning.

Time is of the essence because this bill has already passed the Senate by unanimous vote. Unless we move quickly then, we will have lost a valuable study and work of nearly 2 years' time, and therefore time is critically of the essence.

The bill has widespread support and no definite opposition that I know of. The reason that we need this measure is that the losses through cargo theft have been so staggering that it is almost beyond the comprehension.

The Senate Select Committee last year estimated the losses reached at least \$1.5 billion, and other agencies estimated that the loss in cargo theft alone has exceeded \$3 billion.

Organized crime is literally raping the public at the gangplank. Unless we take actions to stop it and to establish a coordinated effort, then this type of theft will go on, and not only will it be in existence, it will be so commonplace that it will be a laughing matter as it has become in some instances as was depicted in Mike Wallace's story recently, "60 minutes," in which young hoodlums literally stopped trains and stole what they wanted off the trains and do it with almost commonplace acceptance.

So we need to do something about it.

Now, the reason we need the type of commission is that we need to coordinate our efforts. The bill that we have recommended would create a 10-member commission appointed by the President along with approximately 11 others of the nonvoting capacity and they would sit as the members of this commission to coordinate the efforts of work between the ICC, CAB, the Federal Maritime Commission, and other organizations.

They would have the power to issue subpoenas, to hold hearings, to require reports. They would be given the responsibility to holding meetings and coordinating the work and trying to understand the causes and the best approaches of correcting the evils of cargo theft.

They will be given the power and the authority to do something about cargo theft.

Now, at the end of 2 years' time this commission would go out of existence but at the end of that time the Secretary of Transportation would be empowered to issue rules and regulations for those methods they think best to control cargo theft and keep it at an absolute minimum.

So it is not a commission that would be gathering dust. It gives them power to require these meetings and the submission of reports, it brings all the coordinating groups together and then at the end of that time it goes out of existence.

One of the few differences between my bill and the one introduced by Senator Bible is that I say at the end of 6 months there would be a preliminary report made by this commission.

Senator Bible's bill says it would be within a year. I just think we have had enough progress in the last 18 months that surely we ought to have the first report in the first 6 months. But there is not a material difference between what has been passed in the Senate and what I recommend in my version.

One other suggestion I make to you is that the committee instead of having 10 members might have 12 members on the commission to include representation from local and State governing agencies. They were not included. That is something that the committee may want to consider.

The only other question involved is, do we have enough money in it; \$2 million has been asked for the appropriation. GAO thought it might need \$2.8 but we believe that we can do it for \$2 million in view of the great progress that has been made.

Some of the agencies are requiring the definite steps of improvement now. Mandatory reporting is being started by CAB. CAB is also studying changing the old horse-and-buggy rule that the carriers do not have to insure more than 50 cents up to \$50, a hangover of the old Wells Fargo days.

We are trying to update it with approaches for containerization. We think there ought to be uniform carrier liabilities. There are a lot of improvements that are being made and we have made progress in the last year but the only way to really bring this thing to a head is to set up a cargo security commission that will coordinate the efforts of all of these agencies.

It is not a duplication. It is a supplemental effort that will bring all the forces together. I think it is high time that we go forward with this measure, that we pass it, that the commission get started so that we can receive a report within 6 months and then within 2 years that Commission would make definite recommendations and then it would be up to the Secretary of DOT to put such rules and regulations into force as he thinks would be advisable.

I have appeared before various groups in behalf of this measure. I was privileged last year to attend a meeting called by the Department of Transportation and the Transportation Association of America. We have in the audience today General Davis who heads up the very valuable and effective work we have carried on in the Department of Transportation and which agency supports this bill.

I am proud to ask the committee to pass this measure and I hope that we can move it quickly so that this evil of massive cargo theft can be brought to a stop.

(Mr. Pickle's prepared statement follows:)

STATEMENT OF HON. J. J. PICKLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

H.R. 10295—CARGO SECURITY COMMISSION ACT

Mr. Chairman, it is my privilege to appear here today in support of H.R. 10295, the Cargo Security Commission Act. As you know, a similar bill passed the Senate under the leadership of Senator Alan Bible on September 8, 1971, by a unanimous vote. Congressman Wolff has also introduced similar legislation. We need to act quickly to pass this legislation, thus enabling the Cargo Commission to get underway this year. Otherwise, the work that has been done in both the Senate and House on this bill will be lost for this session—time is of the essence. The bill has widespread support from interested groups and organizations. The seriousness of the cargo theft problem was first brought to the attention of Congress by extensive hearings held by the Senate Select Committee on Small Business in 1969.

In a series of reports summarizing its findings, the Select Committee identified the following as contributing factors to the cargo theft problem and barriers to the development of the effective solutions:

- (1) Lack of uniform loss data
- (2) Lack of interest in or knowledge of basic physical security practices on the part of management
- (3) Lack of interest on the part of the regulatory agencies with respect to the facilitation of cargo thefts as a result of inadequate liability limits and embargo practices; insufficient claims, rules, and procedures, and other certification matters
- (4) Lack of private sector initiative to improve security
- (5) Inadequate coordination among law enforcement agencies and between such agencies and the private sector.
- (6) Failure of the federal departments and agencies to mount an effective response to the problem

In the two years since the Select Committee's findings, a lot of progress has been made by government and industry to eradicate and control some of the listed contributing factors. However, the fact is we still don't even know how much is being stolen. We've been able to make some pretty good estimates. The Select Committee on Small Business estimated a loss of \$1.5 billion in 1970. The ICC, the Federal Maritime Commission, and the CAB have adopted uniform loss reporting rule-making procedures. However, mandatory reporting requirements of these agencies will certainly not cover all the transportation industry. Therefore, we are still a long way off from getting some definite and comprehensive figures on the over all cost of cargo theft.

The Department of Transportation has created an office of Assistant Secretary for Safety and Consumer Affairs, ably headed by General Benjamin O. Davis. Also, to call attention to the seriousness of the problem, Secretary John Volpe held a four-day cargo theft conference in Washington in June, 1971. This was the first time that federal agencies and the business community had actually sat down and discussed the cargo theft problem and outlined the roles and responsibilities in combating the problem. This was a major first step.

Also, the Department of Transportation has set up a 12-point federal program including physical security guideline measures and pilot security programs.

The Justice Department has urged all U.S. attorneys to give particular attention to cargo crime areas for active prosecution.

Industry also has been stepping up its efforts to curb cargo theft. Carrier, labor, insurance, shipper, and associated private industry organizations and manufacturers have formed the Transportation Cargo Security Council to assist in the federal-state efforts to curb cargo theft. The American Trucking Association has set up TICOTH which is attacking the security and theft problem in the trucking industry. Railroads have been experimenting with new packaging in an effort to prevent cargo theft. Since industry and government are stepping up their efforts on cargo theft, a pertinent question may be—Why is the Cargo Security Commission needed?

The airline industry has begun to tighten up its security. Cargo theft on the premises of John F. Kennedy Airport is on the decline. However, hijacking of freight on trucks leaving Kennedy has picked up. This fact points up the need for a coordinated approach. We cannot successfully control cargo theft through the efforts of one mode of transportation or through regional efforts.

Cargo theft must be attacked through a coordinated and uniform effort. I think the Cargo Security Commission can provide this coordination. Attention has now been brought to the problem. The spotlight is now on cargo theft. The federal government, state and local governments, and industry have started an attack on cargo theft. We must now take steps to keep our efforts coordinated. We must make sure that we do not duplicate our efforts. We need to establish more definitely the roles and responsibilities of government and industry.

At this point, I would like to quote language from the Senate report that describes the purpose of the Cargo Security Commission:

"S. 942 (companion bill to H.R. 10295) is based on the rationale that cargo security is largely an interstate and intermodal problem requiring a coordinated National approach; that present information concerning the nature and scope of the problem is not sufficient to formulate definitive solutions; and that the best method of acquiring such information is through a commission with representation from the major affected parties."

With this basic purpose in mind, let me tell you more about the Cargo Security Commission Act. H.R. 10295 would establish a Presidentially appointed Commission on the Security and Safety of Cargo, with 10 members chosen from affected groups.

The Commission will be composed of the Attorney-General, the Secretaries of Transportation and Treasury, one representative from each mode of the transportation industry (air, truck, rail and water), two representatives from the cargo labor organizations, and one representative from a shipper-import concern to be appointed by the President, plus 11 ex-officio, non-voting members from the transportation regulatory agencies and other federal agencies involved in cargo security, the cargo industry and the freight forwarders, and four advisory members from Congress.

Mr. Chairman, I think that inadvertently, state and local governments are not represented on the Commission. If this Committee agrees, I believe representatives from state and local governing bodies should be included on the Commission.

To control cargo theft, it will take the federal, state, and local governments working together.

The Commission is authorized to appoint such personnel as it deems necessary to conduct hearings, to administer oaths, to require the submission of reports and answers to questions, to issue subpoenas, and to enter into contracts of research, surveys, and the preparation of reports.

The Commission will have the responsibility of undertaking and compiling inquiries and studies to determine the causes and the practical and effective measures for the prevention and deterrence of loss due to theft in interstate and international commerce.

Under both my bill and the bill passed by the Senate, the Commission is required to report to the President and to Congress periodically and to submit its final report and recommendations no later than two years after the appointment of its members. However, I added in my bill a provision that requires a preliminary report no later than 6 months after enactment. I think we need some immediate feedback from this Commission.

Mr. Chairman, I also want to point out that this is not a dead-end Commission. This Commission won't just prepare a lengthy study that will be placed on a shelf to gather dust. At the time the Commission submits its report, the Secretary of Transportation has the responsibility—after consultation with the Cargo Security Commission, the ICC, FMC, and CAB and the Department of Treasury—to promulgate such regulations as may be necessary for the security and safety of freight in transportation.

To carry out the provisions of this bill, there is an authorization of \$2,000,000. A cost estimate prepared by the General Accounting Office at the Senate's request indicated that the cost of operating the Commission could run as high as \$2,870,000. However, hopefully, the Commission can stay within the \$2,000,000 level.

Mr. Chairman, I want to re-emphasize the fact that the Commission will not be duplication of other federal and industry efforts to control cargo theft. The Senate Report addressed itself to this problem. I would like to quote at this point:

"The Committee is aware that a number of federal agencies have recently taken some steps, within the scope of their respective jurisdictions, to deal with the cargo theft problem; for example, the uniform loss reporting regulations which have been proposed by the CAB, and the ICC. The Committee is also aware that an Interagency Task Force has recently been established to better coordinate the activities of the various agencies in this field. However, it is believed that the establishment of a Commission on Security and Safety of Cargo will not interfere with these efforts and will, in fact, make them more effective by providing a forum for discussion and interchange of information and news between the federal agencies, interested groups in the private sector and the Congress.

"The Committee does not want or expect a competitive situation to develop between the federal agencies and the Commission established by this bill."

Mr. Chairman, I think the Senate Commerce Committee's words speak for themselves. This Cargo Security Commission will serve as a lightning-rod for the fight against cargo theft.

Mr. Chairman, we know there is a cargo security problem. Representatives of industry and government presenting statements here today can testify to that. In the last year we have started the initial steps toward curbing cargo theft. However, we need coordination of these efforts. H.R. 10295 can give us that.

Mr. Chairman, there are many businessmen who can testify to the great monetary loss that cargo theft loss has caused them. There are re-

corded examples of businesses that cargo theft have forced into bankruptcy. However, the major portion of cargo theft costs are borne by the consumer who has to pay higher prices for his goods.

Congress must act now. H.R. 10295 will be a sign of Congressional recognition that cargo theft must be stopped. It will be a Congressional mandate. H.R. 10295 will be a sign of recognition, also, that only a well-coordinated, uniform course of action will curtail cargo theft.

Mr. JARMAN. I think it is an excellent statement, and I say immediately that it is the Chair's opinion that it represents definitely a coordinated and uniform effort in trying to attack this problem that is of major magnitude in our country.

Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman.

I want to commend you, Mr. Pickle, for a very fine statement and for the valuable leadership you have been providing in this area for a long time. We have been aware of your efforts in the transportation industry and the whole transportation concerns of the United States by reason of our long association together in this committee.

I am curious here as to why we are going to a commission on this matter instead of having the Department of Transportation do the work.

Mr. PICKLE. The Department of Transportation is carrying on valuable work now but the Department of Transportation will testify that they would like to see an official commission which brings in all aspects of transportation, some of which they do not have jurisdiction over.

Now, let me give an example. The trucking industry is doing valuable work in this area but only in carrier I type trucking is the ICC requiring reporting this only touches one-fifth of the trucking industry as a whole.

So we need to bring in not only the Department of Transportation but the Federal Maritime Commission, the ICC, and the CAB, and the Department of Justice, and the Treasury into one coordinated body. It is not duplication and I think the DOT will testify to that fact because they are asking that this commission be established.

Mr. DINGELL. I never noticed that the DOT was shy about expanding its efforts. They have been moving into the FAA's business with a great deal of vigor. They have sought to move into ICC areas during your service and mine on this committee. They have continuously tried to get the Maritime moved from Commerce to the Department of Transportation.

I am curious to know why this sudden shyness on the part of DOT.

Mr. PICKLE. I am sure that General Davis, who will testify in a few minutes, will comment on that. In my contacts with them and my attendance at the various conferences we have had, I think DOT is moving forward with aggressiveness and would welcome this approach.

I also would point out to you that rather than allow the DOT just to continue their work this is a commission which after bringing in all elements, and has the coordinated advisory capacities of all phases of transportation, at the end of that time by virtue of the commission, the law says that the DOT Secretary will have rulemaking power to do something about cargo theft, so it is not just an advisory commission, it is a commission with some teeth in it.

Mr. DINGELL. Thank you.

Mr. JARMAN. Mr. Harvey?

Mr. HARVEY. Thank you, Mr. Chairman. I too want to welcome our colleague here this morning. It is nice to have you back with us.

I would like to ask this question: What enforcement powers would the Commission have? Is it contemplated that the Commission, for example, would promulgate rules and regulations, or would this be done by the Department of Transportation? Exactly what role would DOT play?

Mr. PICKLE. It would be done primarily by the Department of Transportation.

Now we recognize that enforcement could be a problem and it will be interesting to see what they do recommend and what rules and regulations are adopted.

Already the Federal agencies have been instructed through the Department of Justice to coordinate with local and State officials as a matter of jurisdiction and it does constitute a problem and it will be interesting to see what approach they take on it.

To answer your question directly, the enforcement would be given to the Department of Transportation.

Mr. HARVEY. I thank you very much.

Mr. JARMAN. Thank you very much, Mr. Pickle, we will be working closely with you on this.

Mr. PICKLE. Thank you, Mr. Chairman, very much.

Mr. JARMAN. Our next witness this morning is another distinguished colleague of ours in the House of Representatives, Hon. Lester Wolf of New York. We appreciate your being with us to help make the record on this subject.

STATEMENT OF HON. LESTER L. WOLFF, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. WOLFF. Thank you very much, Mr. Chairman.

I want to share the sentiments of the previous witness, our distinguished colleague, Mr. Pickle, who has been in the forefront of this effort to establish some safe system of cargo handling and increased security.

I appreciate having this opportunity to testify in support of H.R. 5080, a bill coauthored by Senator Bible and myself, which provides for the establishment of a Commission on Security and Safety of Cargo. As I am sure you are aware, the Senate bill, which is similar to mine, was adopted on September 8, 1971, by a unanimous vote. I think that this unqualified endorsement by the other body indicates the importance of this measure.

It is time, Mr. Chairman, that the available resources of the Federal Government and appropriate organizations in the private sector were joined in the total effort to solve the problem of stolen truck, marine, and aircargo. This legislation provides the means for coordinating such a unified and thorough effort.

We must recognize that this is truly a national, not a regional problem, requiring nationwide solutions. A patchwork of local efforts may temporarily ease the problem in a specific geographical area or in a particular mode of transportation, but only a coordinated national

approach will permanently solve this problem. The 2-year study that this Commission on the Security and Safety of Cargo would undertake is a necessary and desirable step toward that national solution.

Another point I would like to emphasize, Mr. Chairman, is that stolen and pilfered cargo have proved to be a serious drain on the economy, especially now that the entire economy is weakened.

Small businessmen, unable to pay prohibitive insurance premiums, are seriously hurt by this situation. The necessity of businessmen passing the cost of lost shipments onto the consumer has meant increasing prices, with the consumer an ultimate victim of these crimes.

It is interesting to consider that we cannot discuss with any certainty the extent of this problem. Haphazard reporting procedures have enabled carriers to keep the extent of losses from public view, thus hiding shocking truths from the consumer who is paying the bill. I am certain that if consumers understood what stolen cargo shipments cost them annually, they would be demanding action.

Even with the limited exposure this problem has received, there is great public sentiment in support of this legislation. I personally have received many letters, telegrams, and petitions in support of the Commission, especially from shippers. But, of course, shipper awareness goes much deeper than this, and Senator Bible's committee hearings dramatized the depth of shipper concern.

Because of the incomplete nature of reported losses, I am hopeful that the Commission's first responsibility will be to provide appropriate agencies with proposals for effective and complete reporting procedures. It is folly to attempt a deal with a problem whose character and size is not known. It is shocking that Federal agencies with the power to do so have not previously implemented effective reporting procedures. One can only assume that they either enjoy tilting at windmills, or else prefer not to ponder the true magnitude of this problem.

The Presidentially appointed Commission which would be established by this bill would include representatives of all interested groups in the private sector, appropriate Federal departments and agencies, as well as the Congress. The Commission would have a broad mandate to study all aspects of the problem of cargo security and would be instructed to propose specific solutions to the problem within a limited time frame of not more than 2 years after its creation. I might add that the administration and the transportation industry both support this measure.

Mr. Pickle mentioned some billion and a half dollars that was involved. Actually, perhaps that billion and a half dollars is just surface of this entire iceberg. There probably is much more that goes unreported. There have been statements made that the pilferage in the Port of New York amounted to some 1 to even 4 percent of the total traffic through the Port.

Now, Mr. Pickle—and you, I am sure, are aware of the various aspects of this legislation which deals with the development of standards for handling, the administrative procedures and the length of the Commission, and so forth.

The Commission, as constituted in our legislation, would have broad responsibilities, including the following major duties:

To examine thoroughly the causes and possible means of preventing theft and pilferage of cargo in interstate and international commerce.

To develop a system of comprehensive, continuous, and uniform loss and damage reporting by the different modes of transportation.

To study and evaluate present carrier liability limits for losses incurred in the transport of cargo by the different modes of transportation and to evaluate the adequacy of those liability limits.

To study the feasibility and make recommendations in regard to suggestions that there be a Federal system for the licensing and/or identification of all individuals engaged in the handling of cargo in all modes of transportation.

To develop security standards for cargo handling and storage facilities.

To recommend legislation and/or administrative procedures to increase the security and safety of cargo moving in interstate or foreign commerce.

Quite clearly the Commission is being given an elaborate mandate covering virtually all phases of cargo handling. To enable the Commission to carry out this mandate the legislation includes adequate staff authority and funds to fulfill the broad responsibilities being given to the Commission.

Mr. Chairman, in closing, let me say that exactly 3 years have passed since my unannounced inspection of the cargo security situation at New York's Kennedy International Airport. At that time, I was shocked to find, despite airline cooperation to cut losses through their own airport security council, how lax security was and how easy it would be to pilfer or steal entire shipments of valuable cargo.

Yesterday's New York Times reports that this deplorable situation has been somewhat improved. However, it is estimated that more than half a million dollars worth of goods will be reported stolen at Kennedy International Airport alone this year. What goes unreported cannot be totaled. Thus, I feel strongly that enactment of this legislation is essential, and that its swift adoption by the House will accelerate the crucial fight against cargo theft. Thank you very much.

Mr. JARMAN. I say to our colleague that is an excellent statement. Representative Harvey?

Mr. HARVEY. Thank you, Mr. Chairman.

I want to say also that we thank the gentleman from New York for being with us this morning. I think in the years he has been in the House that he has become aware that the House is reluctant to create new commissions. He has heard many arguments against them, so certainly I can ask what this Commission can do that the Department of Transportation cannot already do.

Mr. WOLFF. It can provide a combined effort of various departments of Government to actually reinforce the activities of the Department of Transportation. Using the various disciplines that are available to Treasury, to Commerce, and the advisory services that we have recommended here of the ICC, the CAB, Maritime Commission, the Defense Department, Atomic Energy Commission, National Aeronautics and Space Administration, the Bureau of Standards, and representatives of Law Enforcement Assistance Administration and the freight boards, we are able to actually concentrate in this Commis-

sion and its advisory board virtually every area and every discipline that would be involved in security to make the activity as effective as it possibly can be.

Mr. HARVEY. The other question that would certainly be asked is, would it not be a better alternative to give the Department of Transportation the necessary authority, rather than create a new commission?

Mr. WOLFF. It will give a certain independence to this commission to act outside of the limited authority of the Department of Transportation. It will set and promulgate the rules under which the Department of Transportation will ultimately act to enforce these regulations.

Mr. HARVEY. We thank you for appearing here today.

Mr. JARMAN. Mr. Adams?

Mr. ADAMS. Thank you, Mr. Chairman.

I have no questions Mr. Wolff.

We appreciate your being here and it was an excellent statement.

Mr. WOLFF. Thank you very much, Mr. Chairman.

Mr. JARMAN. We are proud to have with us this morning Senator Alan Bible of Nevada. Senator Bible wishes to present a statement on his bill, S. 942.

Welcome to the committee, Senator.

STATEMENT OF HON. ALAN BIBLE, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator BIBLE. Thank you, Mr. Chairman, it is a pleasure for me to appear before your committee this morning in support of my bill, S. 942, and the companion bills, H.R. 10295 of Congressman Pickle and H.R. 5080, introduced by Congressman Wolff to establish a temporary Federal Commission to develop and propose solutions to the growing crisis posed by cargo theft and pilferage from air, truck, rail, and water transport industries—a crisis that is costing American business upwards of \$1 billion per year and is contributing to the inflationary spiral.

Early in 1969 the Senate Small Business Committee, of which I have the honor of being chairman, began an investigation and public hearings into the impact of crime against small business growing out of our interest in the Small Business Protection Act of 1967.

The first phase of our series of hearings centered on air cargo thefts, then maritime and truck losses, and finally the railroads, our oldest cargo transport system.

It is graphically clear that a cargo crime crisis is upon us today. Up to this point, law enforcement agencies, our Federal transportation regulatory and policy bodies, and our transport carrier industries generally have been unable to mount an effective response.

As the president of the National Association of Transport Security Officers told our committee:

Too many carriers have not yet identified the problem in their record keeping, too many law enforcement bodies have thrown up their hands at the magnitude of the problem and choose to ignore it, and too many prosecutors have chosen not to pursue what they do not understand. * * *

And what kind of dollar losses are we talking about? Because there are no accurate, intermodal uniform loss reporting systems in use by the Government or by industry, it is impossible to determine the true extent of cargo loss. However, the Senate Small Business Committee has developed some meaningful statistics we believe approach reality. Crime-based cargo losses nationwide for 1970 totaled approximately \$1½ billion.

General Benjamin Davis, Assistant Secretary of the Department of Transportation, in his examination of cargo loss, has recently stated:

*** we believe that the cost of theft in the [transportation] industry probably exceeds the billion dollar sum we have been able to document. Theft may, in fact, be a sizable share of the \$2.8 billion in losses from all causes for all modes. That total represents 4.5 percent of the industry's revenue, a high price to pay for the attrition of merchandise, for whatever reasons.

This loss figure, as I stated, is merely a conservative estimate and represents only the direct loss for those goods stolen or pilfered.

The American Trucking Association told our committee that for every \$1 of direct loss, it costs motor freight carriers from \$2 to \$5 in indirect costs for processing claims, paperwork, and manpower. Shippers say their indirect losses are even greater—or \$5 to \$7 for each \$1 in direct losses in not having goods for sale, loss of profit dollars, disruption of production lines, loss of customer good will, and the tieup of moneys due and delayed in the claims reimbursement pipeline. By adding the direct dollar theft loss, plus the carriers' and shippers' indirect costs, we may be talking about costs to the national economy approaching \$8 to \$10 billion annually. Actually, the Justice Department says interstate shipment thefts in 1970 increased 21 percent over 1969, the largest increase in 4 years. As always, it is the consumer who is talking louder these days, and who pays the crime-tagged price as the inflation spiral goes round and round.

We do have statistical evidence of one major aspect of air cargo theft. Chief Postal Inspector William J. Cotter has informed me that thefts of U.S. mails at New York's John F. Kennedy Airport between 1967 and 1969 were \$65 million. If U.S. mail losses at this one facility are this great, I am confident that our estimates of air cargo losses of consumer commodities are, at the very least, conservative.

The cargo-theft pilferage problem is at the heart of the biggest multibillion-dollar racket nationally today—stealing from business. Its worst victims are the small businessmen, who can least afford it, and the general public paying crime-inflated prices. The grim is that, as the problem accelerates, there is no real coordinated effort on the part of the Federal, State or local governments to seek a solution.

Today, all cargo carriers are plagued with losses never thought possible a few short years ago. One basic question is: Without some new innovative, hard-hitting, and coordinated security methods, will the transport industry have the capability of dealing with these increasingly bold and schemingly clever criminal acts as we move into the 1970's and 1980's with their record cargo loads?

There is every evidence that cargo thefts from airports, from railway, from waterfront piers, and from trucks serving all three modes of transportation, have become the favorite target of organized and unorganized crime. The answer is simple. The pickings are richer and

easier. Cargoes have overwhelmed facilities. Security efforts do not provide security. Insurance payments can no longer be substituted for good security because loss-inflated premiums have skyrocketed or policies have been canceled out.

But, Mr. Chairman, most of all, the cargo theft problem must be attacked within the entire transport chain—truck, air, rail, and water. For if security breaks down in one segment, the whole chain breaks.

These bills seek to take a hard look at this spiraling cargo theft problem, with a partnership of Government, carrier, labor, and shipper leaders involved. They provide an opportunity for innovative security methods to be developed that would be keyed, not as a hindrance to the free flow of commerce, but as an adjunct to it.

These bills would establish a Commission on Security and Safety of Cargo, with members drawn from air, truck, water, and rail carriers, cargo labor unions, a shipper, plus the Attorney General, the Secretary of Transportation, and the Secretary of the Treasury. Ex officio advisory members would include Federal transportation regulatory agencies, the insurance industry, and other key governmental departments. Briefly, the Commission's duties would be:

(1) To define the causes, scope, and value of cargo losses and their methods of disposal.

(2) To evaluate and devise cargo theft deterrents including packaging, containerization, personnel security, physical security, and law enforcement liaison.

(3) To establish a uniform, centralized loss reporting system for all cargo.

(4) To examine carrier insurance liability limitations.

(5) To encourage development of crime prevention technology.

(6) To provide permanent regulatory authority by the Secretary of Transportation.

(7) To determine the feasibility of a Federal licensing or identification system.

(8) To recommend appropriate solutions to the Congress, the President, and other interested parties within 1 year after establishment of the Commission.

Mr. Chairman, the following brief points will provide the rationale for the temporary Federal Commission approach to the problem of cargo theft as proposed in these bills:

(1) The primary need is for adequate loss/damage reporting systems. These can be established and put into effect only by the different independent regulatory agencies.

(2) A second need is for an investigation into carrier insurance liability. This also comes under the jurisdiction of the regulatory agencies.

(3) Physical security of ports, airports, and terminals would fall within the jurisdiction of agencies of the Department of Transportation. Also, certain aspects dealing with common carrier certification are under the independent regulatory agencies.

(4) A law enforcement program would have to be coordinated among the Department of Justice, the Department of the Treasury, and local police units.

An independent commission, by an examination of loss reports from the carriers, would be able to determine what commodities were most vulnerable to theft and those factors dealing with the criminal redistribution system (fence operations). It would be in a position to work with the law enforcement community to develop a strike force to curtail these criminal acts.

(5) It is important that consideration be given to industry personnel policies having an effect on cargo security. Employment screening systems designed to weed out and to prevent new hires of active thieves must be considered. The most effective means of doing this would be by private sector and labor union cooperation, as proposed in these bills.

(6) Private sector security operations need to be evaluated and examined by an independent commission in order to determine the efficacy and interchangeability of cargo security systems among the different modes. Mass private sector input is necessary in this regard.

As the above points show, the responsibilities and authority for developing a realistic security program for cargo are vested in many executive departments, independent regulatory agencies, and the private sector. Maximum cooperation from the insurance industry, labor organizations, and shipper groups is also vital. An independent commission, such as is recommended in these bills, would be able to examine into the multiagency aspects of security in a manner better than could be done by a task force reporting to one agency. Reports and proposed solutions would be disseminated to the executive branch, the independent regulatory commissions, the Congress, and the private sector.

Mr. Chairman, there are those who may say that the last thing the Nation's cargo problems need is another layer of Federal bureaucracy. I agree wholeheartedly, and that is why I would insist this should be a purely temporary commission. It seems crystal clear to me that the growing magnitude of the cargo theft problem makes it imperative that a more expeditious, concentrated approach be taken by the proposed commission so that its recommendations can be developed and implemented at the earliest possible time.

I believe strongly that evidence developed by our committee in the past several years shows beyond a doubt that the ability of the shipper to have his cargo moved nationwide is in serious jeopardy to the detriment of thousands of businesses and millions of customers dependent upon that cargo.

Mr. Chairman, I believe these bills offer the promise of far-reaching remedial action for an increasingly critical problem that hits every American's pocketbook * * * certainly something more than has been proposed by any other source, governmental, or industry, that has come to my attention. The problem will not wait—delay will only accentuate it.

Mr. JARMAN. Thank you, Senator Bible, for taking time from your busy schedule to be with us today. The committee is most appreciative.

Are there any questions? If not, thank you again, Senator.

Senator BIBLE. Thank you, Mr. Chairman, it has been my pleasure.

Mr. JARMAN. Our next witness this morning is Hon. Benjamin O. Davis, Jr., Assistant Secretary for Safety and Consumer Affairs, Department of Transportation.

We are very pleased to have you with us this morning.

STATEMENT OF BENJAMIN O. DAVIS, JR., ASSISTANT SECRETARY
FOR SAFETY AND CONSUMER AFFAIRS, DEPARTMENT OF
TRANSPORTATION; ACCOMPANIED BY RICHARD F. LALLY,
DIRECTOR, OFFICE OF TRANSPORTATION SECURITY, DOT

Mr. DAVIS. Thank you.

With your permission I would like to have sit at the table with me Mr. Richard F. Lally, director of our Office of Transportation Security.

Mr. Chairman, in accordance with your expressed desire I shall limit my remarks to a very few minutes and ask that my complete statement be entered into the record.

Mr. JARMAN. Your complete statement will be received by the committee for the record.

Mr. DAVIS. We believe that cargo theft and pilferage is a widespread problem requiring the attention of all levels of government and of the private sector. It is intermodal, intrastate, and interstate in its dimension.

We know from the studies that we have made during the past year that it is more than a \$1 billion problem adversely affecting the users of the Nation's transportation system who depend on having their goods delivered safely.

The public pays this bill, cargo theft and pilferage feeds inflation and support crime, it erodes profit and it aggravates in particular the economic problems of the small businessman and it adds insidiously to the cost of the products that all of us purchase.

We know there is no simple solution to this problem. The directly involved parties in the problem are the shippers, freight forwarders, carriers, consignees, each a link in the transportation chain who must maintain appropriate security measures and connect them with the other links in the chain to produce a secure transportation network.

Last summer Secretary Volpe convened a 4-day conference in coordination with the Transportation Association of America. It was then that Secretary Volpe announced the Department of Transportation's leadership for coordinated Federal action.

It was then that Secretary Volpe organized an interagency committee composed of some 14 different agencies of government. The interagency committee has developed since June of last year a 12-point program that has been carried out with some great successes.

The Department of Transportation has analyzed the problem. We are now convinced that 85 percent of the cargo theft problem is internal, involving employees of businesses and vehicles that belong to businesses. I should add that, except for rail losses, the analysis accurately reflects the facts.

The grand larceny of entire loads and the spectacular truck hijackings—while they are important—represent a much smaller part of the problem than does the internal action in the industry.

Secretary Volpe has given his operating administration orders to combine cargo security inspections with their safety inspections.

We believe that the Commission activities contemplated by the proposals under consideration will be a valuable aid in our Federal effort to combat cargo theft.

We also believe that the broad representation and the hearing and subpoena powers which the Commission would have will serve to expedite the Federal effort.

I have given our recommendations in our full statement as to minor changes in the Commission. I would like to add two thoughts that we have which are not in that statement.

We believe that the provisions of section 10 of H.R. 10295 dealing with the authority of the Secretary of Transportation to promulgate regulations for the safety and security of freight should be broadened to permit the Secretary to initiate such actions at any time after the enactment of this legislation.

As we read the current language of section 10 such regulatory action could be initiated by the Secretary only upon submission of the Commission's final report, 2 years after appointment of Commission members.

Section 10 as currently proposed is considered unduly restrictive in that it would prohibit the Secretary from initiating regulatory action when determined necessary and desirable even if it were recommended by the Commission.

Modification of section 10 as we propose would be consistent with the provisions of section 8 which require the Commission to report to the President and to the Congress on its findings and recommendations as deemed necessary and desirable but in no event less often than annually.

This change would also provide for an immediate and continuing action oriented program responsive to cargo theft and pilferage problems rather than a study and mark-time approach tied to recommendations to be made 2 years in the future.

In conclusion, sir, I would like to respond to a question that has already been asked. What functions would the proposed commission perform which would not be performed by the DOT?

As I see it, Mr. Chairman, one of the principal functions that would be performed by the Commission would grow out of its authority to hold public hearings and to subpoena witnesses and records relating to the cargo theft problem. This authority, coupled with the Commission's responsibility to report and make recommendations as needed to the President and to the Congress would aid greatly in focusing public, private, and government attention on necessary remedial action.

As an independent broad-based body I believe that the Commission's efforts along these lines would be more effective than those of DOT or any executive branch agency by itself.

That concludes my statement, sir, and we would be pleased to answer your questions, Mr. Chairman.

(Mr. Davis' prepared statement follows:)

STATEMENT OF BENJAMIN O. DAVIS, ASSISTANT SECRETARY FOR SAFETY AND CONSUMER AFFAIRS, DEPARTMENT OF TRANSPORTATION

Mr. Chairman, I appreciate the opportunity to appear this morning to present the views of the Department of Transportation on the various proposals to establish a Commission on Security and Safety of Cargo, and to apprise your Committee of the Department's activities in this area of such vital concern to all of us.

I am accompanied today by Richard F. Lally, Director of my Office of Transportation Security.

Before commenting specifically on the proposals under consideration, I would like to briefly describe the cargo security problem as I see it after a year of experience; cite the progress made during this past year; and express our support for cargo security legislation.

Cargo theft and pilferage is a widespread problem requiring the attention of all levels of government and the private sector. It is intermodal, intrastate and interstate in its dimension. We know that it is at least a \$1 billion problem, adversely affecting the users of the Nation's transportation system who depend on fast, safe, efficient, convenient, economic and secure transportation.

The public, of course, pays indirectly in the form of higher retail prices necessitated by the cost of replacing stolen goods, increased insurance premiums and administrative expenses. Cargo theft and pilferage feeds inflation, supports crime, erodes profits, aggravates, in particular, economic problems of the small businessman and adds insidiously to the cost of the products we all purchase.

There is no simple solution to the problem of cargo theft and pilferage. The directly involved parties in the problem are the shippers, freight forwarders, carriers, and consignees—each a link in the transportation chain who must maintain appropriate security measures and dovetail them with the other links in the chain to produce a secure transportation network.

The solution to the problem demands more than investigation and prosecution of violators of the law. The integrity of goods in transit must be protected from theft and pilferage.

In June and July of 1971, the Department of Transportation and the Transportation Association of America jointly sponsored a highly successful four-day Conference of top congressional, private sector and Government officials who reviewed, discussed and documented ideas and recommendations for combating the cargo theft problem. There was clear consensus that the problem was indeed severe and that Federal involvement and action was necessary. It was at this Conference that Secretary Volpe announced DOT's leadership for coordinated Federal action. The Conference was the starting point for joint action to correct the problem—the Federal Cargo Security Program.

In June of 1971, the Office of Transportation Security was created within our Department with responsibility for executing DOT's new role of Federal leadership for the protection and safety of passengers and cargo in the transportation system. This new office has four major elements: an Office of the Director, responsible for overall program coordination and management; a Civil Aviation Security Division responsible for both ground and air security of aircraft and passengers; a Cargo Security Division responsible for the secure shipment of cargo in the transportation system; and a Program Development Division which concentrates on the development of systems and procedures for assuring the application of the most modern technology possible in solving these problems.

Also in June 1971, during the Cargo Security Conference, Secretary Volpe announced the establishment of the Interagency Committee on Transportation Security sponsored by the Department of Transportation. This Federal Task Force, of which I am Chairman, is composed of high-level representatives from Federal Departments and agencies concerned with the cargo theft problem. Membership on this Committee—which I must stress is *not* a study group—includes representatives of the Departments of Transportation, State, Treasury, Justice, Commerce, Defense and Labor, the General Services and Small Business Administrations, the Postal Service, the Federal Maritime, Interstate Commerce and Atomic Energy Commissions, and the Civil Aeronautics Board. The Office of Management and Budget participates regularly with an observer at Committee meetings. The primary functions of the Committee are the coordination of actions for the total Federal effort in the prevention of theft and pilferage of cargo from the Nation's transportation system and for the investigation and prosecution of violators of cargo theft laws.

More importantly, this Committee serves as our vehicle for carrying out a 12-part Cargo Security Program developed through the joint efforts of DOT, the Interagency Committee, and the Transportation Industry Cargo Security Council. The Industry Council is the private sector counterpart to our Interagency Committee. The 12-part program consists of objectives and tasks which when accomplished—as some now have been—should produce a strengthening of the links of the transportation chain:

1. Cargo Loss Reporting
2. Cargo Accountability and Documentation

3. Packaging and Unitizing, Marking and Sealing of Cargo Shipments
4. Carrier Liability, Insurance and Loss Claims
5. Physical and Procedural Security Measures
6. Personnel Security Measures
7. Coordination of Federal Programs
8. Coordination of State and Local Government Programs
9. Law Enforcement and Criminal Procedures
10. Pilot Projects
11. Security Research and Dissemination of Technical Data, and
12. Shipper and Consumer Activities.

Some positive accomplishments resulting from these program activities this past year are as follows:

An analysis of the cargo theft and pilferage problem has been completed which has subsequently been confirmed by the best experts in transportation security and top industry management. Except in the case of rail cargo, approximately 85 percent of cargo theft and pilferage is internal—that is, the goods are being taken from cargo facilities by individuals and on vehicles authorized to be in the area. Only some 15 percent of this national problem is in the category of break and enter burglary, armed truck hijackings and grand larceny of entire loads.

We have identified the high risk commodities for each mode of transportation.

Better data has been obtained on the extent of losses by mode and the types of theft.

A set of recommended security guidelines have been developed and published for the transportation system. (Copies have been provided this Committee.)

Experimentation, with encouraging success, on such innovations as helicopter surveillance to deter or prevent truck hijackings, motion sensors, collective security arrangements, and modal port facilities devices designed for maximum security.

The operating administrations of the Department (Federal Highway, Rail, Aviation, U.S. Coast Guard) have been asked to include cargo security checks as part of their ongoing safety inspection work.

The first class from our new theft prevention training program at the University of Louisville has been graduated.

Through funding by the Law Enforcement Assistance Administration, there will be published next month a deskbook on the involvement of organized crime in cargo theft.

Mr. Chairman, I have attempted to only briefly highlight the Department's involvement in the cargo security area, and to give you some indication of the magnitude of the total cargo security problem as we perceive it. We are making progress in our cargo theft prevention activities and anticipate even better results as our procedures and security systems are further developed and implemented.

I, nevertheless, believe the Commission activities contemplated by the proposals under consideration will be a valuable aid in our Federal effort to combat cargo theft. We also believe that the broad representation and the hearing and subpoena powers which the Commission would have will serve to expedite the Federal effort and synthesize the many ongoing activities at all levels of Government and in the private sector.

I would now like to comment specifically on the proposals under consideration. We favor enactment of H.R. 10295 in preference to H.R. 5080 and H.R. 9622 because it provides under Section 10, that the Secretary shall consult with the Department of the Treasury prior to the promulgation of regulations. We believe this provision to be proper because of Treasury's extensive involvement and responsibilities in the collection of duty on import cargo at our international ports of entry. For the same reason, we favor the provision in Section 3(b) which places the Treasury Department on the Commission.

However, there are two suggestions we wish to make in order to further strengthen H.R. 10295. First, we feel that State and local participation on the Commission should be increased. Since so much of cargo in transportation is shipped via nonfederally regulated carriers who are involved in either intrastate or local traffic, the Commission's activities could be substantially benefited by participation of appropriate state and local interests. Secondly, we think the legislation should direct the Commission to give consideration to the means by which the private sector could best assume the cost of implementing any proposed cargo security measures suggested by the Commission.

Mr. Chairman, we favor the enactment of H.R. 10295 because it signals to the transportation community that the Congress is determined to support a broad-based Government-industry commission with authority to help generate a stronger national effort in this area.

This concludes my prepared statement.

Mr. JARMAN. Thank you, gentlemen.

The subcommittee is very aware of the program and efforts of the Federal task force, of which you are Chairman, and your recommendations on this proposed legislation. Your endorsement of the Commission is certainly important to our hearing record.

Mr. Adams?

Mr. ADAMS. Thank you very much.

We appreciate your statement, Mr. Davis.

There has been public statements in the press that the theft, particularly in the Kennedy International Airport, is conducted on an organized basis; in other words, that there is a type of organized crime, including fencing of the materials and so on. Does your study and task force indicate that as true or not?

Mr. DAVIS. We believe it is true. We believe that many employees would not steal if there were no fences who provided a ready market for the goods that they do steal.

Mr. ADAMS. In other words, you have indicated in your testimony that 85 percent approximately of the materials that are taken are taken by internal as opposed to external sources.

What is your position or what has your task force found with regard to the pilferage, it is pilferage for personal use of high-valued commodities such as liquor, furs, and so on, or pilferage for resale by

Mr. DAVIS. It is both, sir, and of the 85 percent internal losses, we fencing?

believe 25 percent to be pilferage of less than one case and 60 percent to be theft of a case or more but less than a full load.

Now, my understanding of this, very simply, is that in both cases there is a ready market for the goods that are stolen or pilfered. Otherwise, the amount of stealing now prevalent would not take place.

But the fact of the matter, and we think it the most important fact, is that we are dealing largely with individuals who work for the company involved. Therefore, it is largely within the capability of company management to effectively stop a large amount of this theft and pilferage.

Mr. ADAMS. The press reported that there was fear on the part of many of moving in to accomplish this. To what degree has the Department of Justice through the Federal Bureau of Investigation, which has jurisdiction over interstate thefts, which are what are involved here, penetrated into this operation?

Mr. DAVIS. The Department of Justice has been a very strong supporting element within our interagency committee. One important action taken 7 months ago by Acting Attorney General Kleindienst, the Deputy Attorney General at that time, was to instruct the U.S. attorneys all over the country to seek and enter into informal agreements with local prosecutors to more effectively achieve prosecutions and perform investigations in the cargo theft area.

The Deputy Attorney General insisted that the U.S. attorney report back to Washington those cases in which agreements were reached, or reasons why agreement could not be achieved.

I understand that the number of prosecutions being conducted by U. S. attorneys has since increased, with the new emphasis placed on cargo theft by the Department of Justice and by its field organizations.

Mr. ADAMS. I have been a U.S. attorney having jurisdiction over both port facilities and airport facilities, and that is why I am a little confused as to what the Commission is supposed to accomplish here as compared to what is already available in the field.

We have always through the Justice Department prosecuted interstate thefts, both in rings and in individual cases, but it involved the assignment of a certain number of agents and penetration into an area. As I understand it, this is not being done, and the press says it is not. I want to know what the FBI is doing.

Mr. DAVIS. Sir, it is my personal opinion that it is not alone an interstate problem. A large part of the problem is intrastate and intracity. This is the reason that emphasis was placed by the Attorney General on having the U.S. attorney push that aspect of the problem. The agreement with local law enforcement would serve to increase the number of local prosecutions, in addition to those being made by the Federal agencies concerned with the interstate aspect of the problem.

Mr. ADAMS. You have mentioned in your testimony that you have had a training class of people that have been graduated in this area. To what degree and who has jurisdiction over security guards now at air facilities such as Kennedy, and I keep mentioning that because this is the one that has been held up as being the worst example of cargo movement security in the United States.

Mr. DAVIS. Congressman Adams, it is generally local authority, except in the case of the federally owned airports of Dulles and National. In other words, the security guards at Kennedy Airport belonged to local authority.

Mr. ADAMS. Are you placing in this class that you graduated any of these people there to work on interstate security of shipments or suggesting that they do so?

Mr. DAVIS. May I ask Mr. Lally to answer that question, sir?

Mr. LALLY. I think the function to be performed by the first graduating class from the theft prevention course will be directed only at theft prevention and not guard duty. They will be doing surveys of the air, maritime, rail, and trucking industries to determine that effective security cargo security programs are in place and what deficiencies exist that could be corrected based on the advisory service.

The emphasis would be on adequate safeguards to reduce theft in the first instance, rather than performing guard duties or followup on law enforcement or prosecutive efforts.

Mr. ADAMS. Who does watch the cargo at this point?

Mr. DAVIS. Sir, it is a problem of shipper, carrier, and receiver management. The cargo belongs to them. It achieves the attention of the Federal Government when there is a violation of Federal law, and it achieves the attention of local law enforcement when it is a violation of local law or when company management sees fit to enter into a prosecution effort. But cargo security, we believe very strongly, will be

achieved only when efficiency of operation by management improves, and we think that is the main solution to the problem.

Mr. ADAMS. Thank you, Mr. Davis.

Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Harvey?

Mr. HARVEY. Thank you, Mr. Chairman.

We welcome you here this morning, Mr. Davis.

I am somewhat mystified in this respect also. If this problem of cargo theft is a national problem and if it is going to require a national solution, are you saying that we need a national police force to solve it?

Mr. DAVIS. Congressman, our ready answer to that question is definitely "No." As I indicated a little earlier, and I must restate our strong belief, the solution to this problem is within the purview of industry management with the cooperation of the Federal Government.

Mr. HARVEY. Let me ask you this question: Whose responsibility is the security of cargo at an airport? For example, is it the responsibility of the airline, the airport, or the Federal Government?

Mr. DAVIS. It is the responsibility of the airline in whose custody this cargo rests.

Mr. HARVEY. Who has the enforcement responsibility, assuming that cargo is stolen?

Mr. DAVIS. It is the local law enforcement, sir, and Federal in the case of the interstate aspects of the theft.

Mr. HARVEY. If the cargo was stolen, who would prosecute the theft?

Mr. LALLY. It would depend on the facts of each case. If a theft was made from a trucking terminal, for example—

Mr. HARVEY. Let's take the air terminal since I started with that.

Mr. LALLY. If there was a shipment coming in from Paris to New York and there was a theft at JFK Airport before that cargo was delivered to the consignee it would be a Federal offense. It would be a violation of theft from interstate foreign shipment which is under the investigative and enforcement jurisdiction of the FBI and the Department of Justice.

However, it would also at the same time be a violation of local New York State statutes, so there would be dual enforcement jurisdiction.

What the Deputy Attorney General, Mr. Kleindienst's instructions to the local U.S. attorneys were intended to accomplish was that the U.S. attorneys would enter into agreements with their local counterpart prosecutors, the objective being that no cargo theft case that warrants prosecution would be denied prosecution at whatever appropriate level.

This was to make sure that there were no cases falling into the cracks, because of dual jurisdiction and that each case received appropriate prosecutive consideration and was, in fact, prosecuted if the facts warranted that action.

Mr. HARVEY. Are there any figures available at the present time with regard to the prosecution of these cases? In other words, which units of government are pursuing and prosecuting the largest number of cases?

Mr. LALLY. We do not have the figures at our disposal here but I am sure the Department of Justice or the FBI would be able to make

available theft from interstate shipment investigations, prosecutions, and convictions.

Mr. HARVEY. If I understood correctly, the majority of these were either intrastate or intracity cases, is that right? Therefore, the State agencies or the county or city agencies should be prosecuting these for the most part.

Mr. LALLY. We believe, Congressman, that there is a substantial proportion of these cases that are interstate and a substantial portion that are intrastate or local. We don't have, through our studies, a definite fix on the exact percentages at the present time. We know they fall in both categories and there is a mix depending on the nature of the shipment. The shipment can be a mixed load, it can include both local and interstate commodities.

Mr. HARVEY. On page 5 of your statement, you stated that approximately 85 percent of cargo theft and pilferage is internal, that is, the goods are being taken from cargo facilities by individuals authorized to be in the area.

Now, my question in that regard is, wouldn't improved security clearance be the solution to internal problems such as that?

Mr. DAVIS. Congress Harvey, I would say that the solution is not really simple. However, we believe that it is within management's capability to solve the problem. A security clearance though, with the temptations that exist in the environment I don't believe would alone do the job. I think that a systems approach to security is necessary if management is to achieve the success that it can achieve.

We have many examples where management has achieved this type of success by increasing its study, analysis, and application of security measures.

Mr. HARVEY. Would the Department of Transportation at the present time have the authority to issue regulations with regard to the clearance of individuals handling the matters in this regard?

Mr. DAVIS. No, sir. Part of our recommendation for a minor change in the bill at hand, is that as the Commission created by the bill uncovers situations and makes recommendations to the Congress and to the President, the Department of Transportation should have at that particular time regulatory authority to take appropriate action.

Mr. HARVEY. I would certainly think they should have. I am bothered by that and I am bothered by that portion of your statement in which you say or infer that the Department of Transportation does not now have the power to hold hearings or to issue subpoenas, and that such authority would be a particular attribute of the Commission.

When the Department of Transportation was created a few years ago, it was certainly our intent to vest in that agency the power to hold hearings and to issue subpoenas and to use it in instances such as this.

I would not want to diffuse that power at the present time by spreading it about unnecessarily.

Mr. DAVIS. It is my impression, Congressman, that we do not have that authority at the moment. Are you qualified, Mr. Lally, to comment on that?

Mr. LALLY. The General Counsel's Office of the Department of Transportation has prepared an analysis of the Secretary's authority

and responsibilities in this area which we could make available if the committee so desires.

Basically it is my understanding that the Department's authority is limited primarily to the area of safety. If, however, cargo security, the prevention of theft of cargo, could be properly interpreted as being within the purview of safety, then the Secretary and the Department would have such authority.

The General Counsel cited a definition of safety as given by Webster which does encompass security. However, our analysis also indicates that "safety" when used by the Congress has been restricted in intent to the prevention of accident or harm to persons and things.

Mr. HARVEY. I would ask unanimous consent that analysis be placed in the record at this point and made available to all members.

Mr. JARMAN. That will be done.

(The analysis referred to follows:)

AUTHORITY OF DOT TO REGULATE CARGO SECURITY

Memorandum from John W. Barnum, General Counsel to
Assistant Secretary for Safety and Consumer Affairs—August 16, 1971

This is in response to your predecessor's memorandum of June 10 which raises several questions relating to the legal foundation for the Department's cargo security program.

I. GENERAL

Under present law the Secretary has adequate authority to conduct research into the problem of cargo theft and to coordinate with other agencies and private interests efforts to reduce such theft. Guidelines or voluntary standards could be published with respect to security of cargo in all modes of transportation. However, authority to issue mandatory regulations or standards is much less clear and varies from mode to mode.

DOT has general authority over all modes of transportation to regulate for the purpose of "safety." Indeed, most of the Department's regulatory authority relates to transportation safety. There are, however, no statutes which specifically mention cargo security or theft prevention as proper subjects for regulation. In some modes, security regulation may be based on non-safety responsibilities but security regulations covering all modes of transportation would generally have to be derived from the Secretary's authority to promulgate safety regulations.

The term safety has broad connotations. Webster's defines "safety" as "freedom from danger, injury, or damage" or simply "security." While transportation safety generally connotes protection of persons, in everyday language safety will often mean freedom from theft as well as from other dangers. It may therefore be argued that the authority to regulate for safety contains authority to regulate theft prevention. However, when Congress has used the term "safety" it is generally concerned with freedom from damage or injury by *accident*. See e.g., Coal Mine Health and Safety Act, 30 U.S.C. § 801. In the National Traffic and Motor Vehicle Safety Act of 1966, Congress took the unusual step of defining the term safety.

"Motor vehicle safety" means the performance of motor vehicles or motor vehicle equipment in such a manner that the public is protected against unreasonable risks of *accidents* . . . to risk of death and injury to persons in the event accidents occur . . . 15 U.S.C. § 1391(1), (emphasis supplied).

There are some exceptional areas (e.g., hijacking, auto theft, hazardous materials) where security is so interrelated with safety of life and limb that security measures can be required even under the most strict definition of safety. However, it is unlikely that most cargo thefts fall in these categories. Moreover, it is probable that most cargo theft takes place before or after transit where the relationship to personal safety and to DOT regulatory authority is weakest. Any effective program against cargo theft will have to cover the storage and handling of cargo in terminal areas. DOT regulatory authority over the various modes is discussed below.

II. AVIATION

The authority to regulate for security is perhaps strongest in the field of aviation.

1. *Safety Regulations.*—Under § 601 of the Federal Aviation Act, the Secretary of Transportation may prescribe rules and regulations “to provide adequately for national security and safety in air commerce.” Under section 604 of the Act the Secretary may issue air carrier operating certificates and establish “minimum safety standards” for the operation of such carriers. Section 612 of the Act also provides that “safety standards” may be established under the new airport certification program. Because of the possibility of aircraft hijacking or sabotage, security and safety are directly related to each other in the aviation field. Limiting access to the nonpublic areas of airport terminals (to include cargo facilities) could be required as a “safety standard.” Requiring fencing and security personnel could also be justified. Surveillance of cargo could also be required on the same grounds that surveillance of passengers is authorized. However, safety authority would decrease as the proximity to aircraft decreases. Little or no safety authority exists with respect to cargo storage areas which are not on airport property or with respect to cargo which has completed the air portion of its journey.

Security measures at airports may be required to the extent that they reduce the possibility of hijacking or sabotage, but regulations exclusively directed against cargo theft could probably not be justified as “safety” regulations.

2. *Fostering air commerce.*—Section 305 of the Federal Aviation Act empowers and directs the Secretary of Transportation to “encourage and foster the development of civil aeronautics and air commerce in the United States.” Section 313 of the Act grants to the Secretary general regulatory power to carry out the provisions of the Act.

If the Secretary found that cargo theft was placing an undue burden on air commerce he could require antitheft measures thereby “fostering air commerce.” There is the possibility of jurisdictional overlap with CAB over theft prevention. Cargo theft is arguably an economic problem and therefore within the regulatory authority of the CAB. It could be argued that CAB already has the authority to regulate theft prevention under its general certificate and permit powers in §§ 401(e) and 402(e) of the Federal Aviation Act.

It should be noted that both DOT and CAB theoretically have full statutory authority over air freight forwarders. See section 103(3) of the Federal Aviation Act, definition of air carriers. However, air freight forwarders have been exempted for certification requirements by CAB regulation, 14 CFR 296.11. Air freight forwarders must, however, obtain “operating authority” from CAB and conditions may be attached to that authority, 14 CFR § 296.45.

III. RAILROADS

Section 202 of the Railroad Safety Act of 1970, provides that the Secretary of Transportation shall “prescribe, as necessary, appropriate rules, regulations, orders, and standards for *all areas of railroad safety.*” (Emphasis supplied.) The language of the statute as well as the legislative history indicate that the regulatory power is to be all encompassing. However, the declaration of purpose (§ 101 of the Act) and the legislative history indicate that Congress was concerned primarily, if not exclusively, with “accidents” and personal injuries. There is no mention in the legislative history of theft problems. There would be no precedent for interpreting the safety statute to cover theft prevention. Again, security measures directed toward accident prevention could be required even though such measures may also have the incidental effect of discouraging cargo theft. For example, restricting access to rail yards could be required to protect the public from unnecessary exposure to accidents. DOT could require that box cars be secured to discourage trespassers and thereby reduce the probability of accidents.

The Department has little general regulatory authority over the operation of railroads apart from the safety statutes.

IV. MOTOR CARRIERS

The Interstate Commerce Act (49 U.S.C. § 304(a)) provides for the regulation of common carriers and contract carriers with respect to “safety of operation and equipment.” These powers and duties were assigned to the Secretary of

Transportation under the DOT Act. (The Interstate Commerce Commission retains authority for economic regulation). As in the case of the other modes, safety regulation has been limited to accident prevention. Since truck hijacking has been a serious problem and there is the possibility of hijacking trucks being involved in accidents, security measures to prevent hijacking may be justified as safety measures. There is however, no precedent for regulations to prevent mere theft of cargo. It could be argued that theft prevention is an economic matter over which the ICC has regulatory jurisdiction. See 49 U.S.C. § 304(a). The ICC could find that security measures are part of providing "adequate service." See also 49 U.S.C. § 1003 where ICC may require freight forwarders to provide "adequate service."

V. MARITIME

1. *Safety Regulations.*—Section 2 of title 14 U.S.C. provides: "The Coast Guard . . . shall administer laws and promulgate and enforce rules and regulations for the promotion of safety of life and property on and under the high seas and waters subject to the jurisdiction of the United States. . . ." The above section was enacted in 1949 during the recodification of title 14 of the Code. Although it may be argued that "safety of life and property" extends to theft prevention, there is no indication in the legislative history that Congress intended a broader meaning for "safety" than in previous statutes.

Other statutes granting regulatory powers to the Coast Guard are found in title 46, Section 375 of title 46 U.S.C. provides: "The Commandant of the Coast Guard shall establish all necessary regulations required to carry out in the most effective manner the provisions of title 52 of the Revised Statutes. . . . and such regulations shall have the force of law."

There is also a similar grant of authority in 46 U.S.C. § 416. Title 52 of the Revised Statutes referred to in the above sections is codified in approximately 75 sections of title 46 U.S.C. These sections cover licensing and inspections of vessels and crews. Most of the sections deal with specific safety problems (e.g., boiler inspection, size of crew, capacity). Even the more comprehensive sections use a limited concept of safety. See, e.g., 46 U.S.C. § 481 and § 489 which use "life saving appliances" and "instruments for the security of life" instead of the potentially broader terminology "safety appliances or equipment." In the exercise of its regulatory powers, the Coast Guard has limited itself to the prevention of accident, fire, and similar casualties involving danger to human life or to the vessel itself. There is little precedent for mandatory anti-theft regulations by the Coast Guard, based on safety considerations.

2. *National Security.*—The Coast Guard presently has authority to regulate the security of waterfront facilities. The current security program which is outlined in 33 C.F.R. part 125 includes the screening of those who work at such facilities and the issuance of identification cards. This program is authorized by 50 U.S.C. § 191 and Executive Order 10173 (October 18, 1950). However, the present security program is directed exclusively toward "national security," and no effort is made to screen out potential thieves. It is doubtful that authority exists for such screening since potential or actual thieves are not necessarily potential saboteurs. The program is authorized only so long as a declaration of national emergency is in effect.

VI. HAZARDOUS MATERIALS

The regulatory power over transportation of hazardous materials is very strong in all modes. Security regulations would be clearly authorized as safety regulations because of the inherent danger to life and limb. Such regulations could apply to both transit and loading and unloading. See 18 U.S.C. §§ 834, and 902(h) of the Federal Aviation Act and 46 U.S.C. § 170. For example, DOT could require shipments of dynamite to be in well secured vehicles or even accompanied by guards since tampering by thieves or trespassers could lead to an explosion. Current regulations cover labeling, packaging, and fire prevention but do not cover theft prevention.

VII. CONCLUSION

DOT unquestionably has the authority to regulate for theft prevention of certain hazardous materials. Vehicle theft is also within our regulatory authority because of its close relationship to safety. A certain amount of security regulations could be promulgated to prevent hijacking or to prevent unauthorized

access to areas where there is a danger to life or limb or to the "national security." Such measures could also reduce cargo theft as an incidental effect. Most of the regulatory authority within DOT has been delegated to the modal Administrators.

Although DOT does have licensing powers over some workers in some modes of transportation (e.g., pilots, seamen), there is no authority for the screening of any transport workers with a view to theft prevention. Present licensing power is scattered and based on safety and national security considerations. DOT has no authority to regulate carrier liability for stolen cargo or claims settlements. Jurisdiction over these matters is the economic regulatory agencies.

Theft may be characterized as a safety matter but can also be characterized as an economic problem. (Most of the Congressional hearings on cargo theft have emphasized the economic impact on shippers and the public.) Agencies having economic regulatory jurisdiction may possess the necessary authority to regulate theft prevention. DOT should continue to explore with ICC, CAB and FMC the areas in which they can make effective contributions. If such efforts do not succeed, legislation may be desirable to establish the necessary authority and the appropriate agency for exercising the authority.

We wish to emphasize that the Secretary has ample authority to conduct research, coordinate activities, and establish *advisory* standards for all modes of transportation, at any point (be it interstate or intrastate) regarding cargo theft.

Please feel free to call upon us for advice concerning any specific proposals that you may have, or any other assistance we may be able to provide in connection with this important program. Also, we will continue to be as helpful as we can in your current activities to develop program trends for this area.

Mr. HARVEY. I would ask, in your judgment, wouldn't it be desirable for the Department of Transportation to have this authority?

Mr. LALLY. Yes, sir; in my judgment it definitely would be desirable. That is the sense of the recommendation that General Davis made—that modifications of the bill be made to give the Secretary regulatory authority immediately upon enactment so that he could, in consultation with the Commission, initiate such regulatory action as may be deemed necessary and desirable without waiting 2 years or until the final report of the Commission before taking such action.

Mr. HARVEY. I have no further questions, Mr. Chairman.

Mr. JARMAN. Mr. Thompson?

Mr. THOMPSON. Thank you, Mr. Chairman.

General Davis, I note that you state that the primary cause of the fact there are so many thefts is that the management has not been diligent enough or efficient management is the way I believe you phrase it, efficient management would be perhaps the greatest tool in overcoming the cargo thefts.

Now, when there is a cargo in the hands of a carrier is he in fact the insurer of that cargo?

Mr. DAVIS. Congressman Thompson, I am not a lawyer, but under the common law the carrier is responsible and is in a sense an insurer. But the common law has been changed by action of the regulatory agencies within Government. It is these regulations which state specifically the responsibility of the carrier.

Mr. THOMPSON. Let's take, for example, at Kennedy an airline company has in its possession cargo being shipped from one terminal to another and a theft occurs, who suffers the monetary loss, does the airline in whose custody it is at the time of the theft?

Mr. DAVIS. It is my understanding that it is the airline that is responsible.

Mr. THOMPSON. Yet you feel as though the management have not been diligent enough in cutting down internal thefts?

Mr. DAVIS. Sir, in that case I am speaking of the carrier management.

Mr. THOMPSON. The airline or if it is a truck the trucking company?

Mr. DAVIS. Yes, it is management in every case. Please understand that I am not here to castigate management, I am simply pointing out that our studies indicate that management has an opportunity to make very great inroads into the solution of this problem.

Mr. THOMPSON. It is somewhat difficult for me to understand why management has not been more diligent if they in fact suffer the losses, and I think they do suffer the losses when a theft occurs and the cargo is in their possession, and also it concerns me that here we are thinking of providing legislation for something which you may already have the authority to do. It may be that you have to put it under safety, as you mentioned. But frankly, I am getting to the point where I guess H. R. Gross has had a little bit of influence on me, I hate to see any new commissions established and the new spending of particular funds particularly when it appears to me that it may be the private sector that should be solving this problem.

There may be enough laws and commissions on the books now so we don't have to keep spending money. The Department of Transportation may already have the desired necessary jurisdiction.

Mr. HARVEY. Will the Congressman yield?

Mr. THOMPSON. Yes.

Mr. HARVEY. Aren't the insurance companies concerned about this? Aren't they concerned about the clearances? If 85 percent of the theft and pilferage is internal, aren't the insurance companies involved and haven't they told the companies that they must establish certain security clearances before they will write another insurance policy?

Mr. DAVIS. Congressman Harvey, they are vitally concerned; and as a matter of fact, our interagency committee meets with the Transportation Industry Cargo Security Council, headed by Mr. Harold Hammond, on which there are insurance representatives and representatives from other industry elements.

But, sir, I would add this one major point, and that is that the ultimate payment for these losses is made by you and me. The consumer is the one who pays. The system really passes the loss on to the consumer.

Mr. HARVEY. I can't believe that, General. I just can't believe that insurance companies will go on paying losses without insisting upon having some investigation made into the cause of those losses.

Mr. DAVIS. Most insurance companies do insist on making a security survey before they underwrite cargo loss coverage.

Insurance companies also increase premiums or the deductible amounts in the cases where company security is not proper. Insurance companies take all sorts of actions in order to avoid suffering losses due to lax security on the part of inefficient company operation.

Mr. HARVEY. In the act creating the Department of Transportation, section 4 sets forth certain general provisions and defines the Secretary's general powers. It says that the Secretary, in carrying out the purposes of this act, shall exercise leadership in transportation mat-

ters, including those affecting the national defense and those involving national or regional emergencies.

It would seem to me that what we are talking about at Kennedy Airport, if I read yesterday's New York Times correctly, is a regional emergency. The same thing, perhaps, is occurring at O'Hare and some of the other airports.

I don't know about your legal counsel, but I and others on this committee would be inclined to give the Secretary the authority, the power, to issue subpoenas and hold hearings and do the things he needs to do in this matter without creating a separate commission. Would you care to comment on that?

Mr. LALLY. Yes, I think that Secretary Volpe would agree with you. That is the reason we are here today, and that is the reason for the Interagency Committee sponsored by Secretary Volpe and chaired by General Davis. It is the reason we have the 12-part cargo security program. It is the reason we have conducted the analysis, because the Department of Transportation did recognize this as a problem.

We acknowledge and clearly understand the Secretary's responsibility to provide leadership in the identification and solution of transportation problems. This is what we are trying to do. Where our General Counsel drew the line was at the regulatory authority.

There is no limit to our authority to conduct studies, to analyze, to make recommendations, to issue advisory guidelines or standards. The defect lies in the authority to promulgate enforceable regulations to assure at least a minimum level of cargo protection. There the General Counsel appeared to me to be drawing a line of distinction between safety and security.

Mr. HARVEY. My comment to that is that I would think we would be better served if the Secretary were to ask for the specific authority he needs to meet this problem, rather than recommend that we set up a separate commission.

I feel like some of the others. By establishing a separate commission, I think we are actually diffusing the Secretary's power, that which we intended to give him. We would be diffusing the responsibility rather than putting it right where it belongs.

I thank the gentleman for yielding.

Mr. THOMPSON. It concerns me that 85 percent of these are internal thefts and yet management is not taking the necessary steps to cut it down substantially. Management does recognize that there is the loss, their insurance premiums go up, and this must affect profits in some way. I think that to say it is passed entirely on to the public is true to some degree, but it is not completely true, it must affect profits.

If management for one particular carrier has a very good security system, they would not have these losses, and they would probably have higher profits than another carrier would. But the establishment of a separate commission is the thing that does concern me.

I note, of course, that you have the Attorney General on it, the Secretary of Transportation, the Secretary of Treasury, and one representative from each mode of transportation, two representatives from cargo labor organizations, one representative from the shipper import concerns, one to be appointed by the President and so on, and if they are authorized to conduct hearings and administer on it, and so on, I don't know what good this is going to do if it is a problem with the individual carriers.

I think we should read the riot act to the individual carriers and insist they get their house in order insofar as their own internal security is concerned, rather than establish a commission.

Mr. DAVIS. I might add that we are convening a national cargo security conference on June 20 and 21 of this year. It is a sequel to a 4-day conference of that nature held last year. This year we intend to do exactly what you have said—to air the matter as we have already done to the industry representatives on our cargo security council.

We have made numerous attempts to educate the public as to the nature of the problem. A year ago it was the strong belief of almost everyone that this problem lay in the area of burglary and truck hijacking. A year ago, the primary role of organized crime was mistakenly understood to be stealing, not the fencing and distribution of stolen commodities.

It was not recognized a year ago, as I think it is today, that it is within the hands and capability of management to do something about solving the problem.

We are trying to get this message out. We believe a commission would bring it to the attention of the public and the transportation industry to a very great degree. We believe that the Commission could highlight what is going on and make recommendations to the Department of Transportation, to the Government generally, and to industry. The Secretary would then be able to exercise regulatory authority based on such recommendations. These we think are the reasons for having the Commission.

Mr. THOMPSON. Do you have any statistics or any information pertaining to how many employees have been fired or indicted through cargo theft from various carriers? Are the carriers reluctant to bring charges against one of their employees, do they allow this employee to stay on, are the unions involved, is there a problem that becomes involved in the internal problem that makes it difficult for management to solve their own problems?

Mr. LALLY. I would like to answer that if I could, Congressman Thompson.

I think that management does not have a completely free hand in personnel matters. Management is restricted to a certain extent both from the standpoint of operational requirements and from the standpoint of their authority to act against employees.

As General Davis mentioned, up until recently we believed that there has not been the top-level commitment and determination of management to really get at this problem. We think that situation is changing now.

For too long it has been too easy to steal from the transportation system. The emphasis has been in effect, "Don't count it or look at it, just move it," and a loss was not detected until it failed to show up on a consignee's dock. Also, the documentation was so poor that there was no audit trail, so to speak, to pinpoint responsibility or the point of loss.

We think that is changing now.

With regard to labor and management aspects of the cargo theft problems, we believe, and properly so, that collective bargaining agreements require the management to have evidence that the employee was, in fact, guilty. However, under some interpretations—

Mr. THOMPSON. You don't see anything wrong with that, do you?

Mr. LALLY. Absolutely not, as I say we agree with it. However, under some interpretations the evidence of guilt must be supported by a court conviction. So that there have been times when after lengthy prosecutive efforts a case may have been dismissed solely for technical reasons, but the employee, nevertheless, could not be terminated.

This particular problem varies from locality to locality depending upon the collective bargaining agreements in force.

Mr. THOMPSON. You used one phrase, "Don't count it, move it." Now, am I to infer by that the management where it is a trucking company, a barge company in Carolina, whatever it is, feels that there are certain losses that they are willing to take in order not to slow up their operation, in other words, they would rather just go ahead and pay the losses, it is cheaper for them to pay a certain amount of theft losses rather than to put the necessary security procedures into their operation to determine the entire path of an article; is that what I am to infer by your statement?

Mr. LALLY. Yes, sir; I think that was exactly the situation until recent years. The losses incurred were relatively minor and the outlay to correct the deficiency may have cost more than the loss itself.

So I think that management tended to tolerate a loss rate that from a financial judgment was acceptable to them.

However, that is all changing now. The losses that have been increasing as a result of that condition now have risen to the point where they are a very vital consideration of transportation management.

Mr. THOMPSON. How would a commission change the view of management in this regard? Apparently the monetary figure is changing management's position but how would a commission change the management's attitude about counting or moving it or keeping track of it and so forth?

Mr. DAVIS. By education, sir. I think that education is really the key to solution of the problem.

Mr. THOMPSON. General, if I may interrupt you at this point, the Commission would not have any teeth, so to speak, to go in and insist and demand that management put in any particular type of a security system, would it?

Mr. DAVIS. That is correct, sir.

Mr. THOMPSON. So you say by education, don't you, that the dollar educates management pretty well?

Mr. DAVIS. Yes, sir; but as I indicated earlier, I firmly believe that the nature of the problem has not been understood until recently.

For example, I don't think that management has appreciated the fact that by security actions they can move dollars from the debit side of the ledger over to the profit side of the ledger, and for that reason I think management has not acted in the past.

I think that management is acting now and I believe that their actions are producing profits for them. If I may, I want to add just one thing. There is a trucking company by the name of Davidson in the vicinity here. The president of that company, a firm of eight brothers, that is 50, 70 years old, came to see me. He had put into effect, he thought, all of the measures recommended by the Federal Government and by industry. He was still having losses. He asked that we come visit him.

I think this is an indication that the word is getting around. He recognized that fact that management, proper management, could help solve this problem, he came to us for assistance. I think that type of attitude on the part of more and more managers in industry is going to help solve this problem.

Mr. THOMPSON. You are doing this within the present structure of DOT and I think that is fine. I support that 100 percent. I still say it is difficult for me to see how a commission is really going to help. You know it appears that what we have had has been an indictment of the management in the fact that they have not been concerned apparently about the 85 percent of the thefts. They are concerned, but not as concerned as they should be about the 85 percent of the thefts.

I think this is what we have right here is an indictment of lax management.

Mr. DAVIS. Sir, I don't think they knew this was the nature of the problem. I don't think that we knew this was the nature of the problem.

Mr. THOMPSON. If management doesn't know what is going on in its own business I say that is an indictment of that particular management, I don't care whether it is airline, truck, barge, or whatever it is.

If thefts are taking place and they are paying the losses, or their insurance companies are, they should know what is going on and that is an indictment of that management, in my judgment, even though it may be through ignorance they don't know, they should not be that ignorant.

Thank you very much.

Mr. HARVEY. Mr. Chairman, may I ask two other questions?

Mr. JARMAN. Yes.

Mr. HARVEY. A spokesman for Kennedy Airport reported on page 17 of yesterday's New York Times that, and I will quote him, "For the first 4 months of this year a total of 71 items valued at \$161,159 were reported missing at Kennedy International Airport."

This, he noted, compared with losses of \$3.3 million at the airport in 1969 and of \$566,000 there last year.

My question to either one of you gentlemen is, first of all, in your judgment is this an accurate report, and are losses at Kennedy Airport declining in this fashion?

Mr. DAVIS. The losses at Kennedy Airport, in my opinion, are definitely declining. The airport security council, an effort by the airline industry and management has substantially and dramatically reduced the losses at Kennedy Airport over the last several years.

I do not know whether those figures are accurate but I will attempt to get a report to you for the record.

(The following information was received for the record:)

SUMMARY OF AIR CARGO THEFT LOSSES AT KENNEDY AIRPORT REPORTED BY 34 AIRLINES TO THE NEW YORK PORT AUTHORITY FOR THE PERIOD JANUARY THROUGH APRIL 1971 AND 1972

	1971	1972	Percentage change
Number of incidents.....	89	71	-20.2
Value of cargo.....	\$180,690	\$161,382	-10.7

Value of cargo losses at Kennedy Airport for calendar years 1969, 1970, and 1971

Year:		
1969	-----	\$3, 387, 317
1970	-----	1, 445, 386
1971	-----	568, 341

Mr. HARVEY. My next question is, do the national figures also reflect a similar decline?

Mr. DAVIS. The national figures we don't know. We have a contractor at the moment who did the analysis for us that produced the losses in 1970. We hope to give him an additional contract that will provide us with the cargo loss information management system.

We hope that this cargo loss information management system will provide us with current information on losses throughout the transportation industry and we will be able, at some future time, to answer that specific question. We cannot do so today.

Mr. HARVEY. What you are saying is that you cannot tell us the total amount of cargo that was stolen in the years 1968, 1969, 1970, 1971, or even today?

Mr. DAVIS. Our study is for 1970 only, and I might add that it is a very complex undertaking, based upon samplings and stratification, rather than specific or absolute numbers.

The regulatory agencies have just recently within the last several months required reporting of a nature which will contribute to the answer to the question you asked.

Mr. HARVEY. Thank you very much.

Mr. THOMPSON. Will the gentleman yield?

Mr. HARVEY. Yes.

Mr. THOMPSON. Is there anything in the legislation establishing the commission which would do away with the delay in the prosecution of a percentage before he could be discharged or whatever it was or any problems that there may be with a labor union that would not want a person discharged?

In other words I asked you earlier if a person is accused, does management have enough freedom to solve the problem, are there labor problems in there? Would the commission in any way change the present situation?

Mr. DAVIS. I do not think so, sir. I think that the establishment of the commission would not change the current powers of management with respect to employees, but under the legislation the commission would evaluate labor-management practices.

Mr. LALLY. I believe personnel screening and licensing and employee relations is one of the general categories that this legislation would require the commission to study and to report on with recommendations.

But as to actual accomplished facts—

Mr. THOMPSON. You mean licensing of trucklines going into a freight area?

Mr. LALLY. No, licensing of cargo handling personnel, these will be employees.

Mr. THOMPSON. Thank you.

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. JARMAN. General, the subcommittee has been furnished a copy of a DOT publication, Guidelines for the Physical Security of Cargo.

I notice the publication date on it is this month, 1972. It looks like a very good publication.¹

In line with your comments on the need for education in the country, how much dissemination is being made of this pamphlet?

Mr. DAVIS. It is being widely advertised, Mr. Chairman. We are going to give a copy along with other documents we have produced to each attendee at our national security conference in June. We hope that the word will get around that such a document exists and that people will buy it for the 40 cents it will cost them.

Mr. JARMAN. Gentlemen, we appreciate very much your helping us make the record.

Our next witness is Mr. Leo Seybold, vice president of federal affairs, Air Transport Association, with offices here in Washington.

I will ask Mr. Seybold to introduce his associates.

STATEMENT OF LEO SEYBOLD, VICE PRESIDENT, FEDERAL AFFAIRS, AIR TRANSPORT ASSOCIATION; ACCOMPANIED BY JOHN ZORACK, ASSISTANT VICE PRESIDENT, FEDERAL AFFAIRS; AND HARRY MURPHY, DIRECTOR OF SECURITY

Mr. SEYBOLD. Thank you, Mr. Chairman.

I have with me Mr. John Zorack, assistant vice president of Federal affairs and Mr. Harry Murphy, director of security for the Air Transport Association.

We have a prepared statement and I would like to submit it for the record and then make a few comments.

Mr. JARMAN. The committee will be glad to receive the statement.

Mr. SEYBOLD. First I want to say, in view of the questions and comments that have been made, that the airlines are very much concerned with security.

Almost 2 years ago the president of the Air Transport Association wrote a letter to the Secretary of Transportation urging the Department of Transportation to take the lead in exploring and pulling together government and industry efforts to insure security of cargo in transportation.

Three and a half years ago the airlines in the New York area combined with other affected parties to set up a security council known as the Airport Security Council to deal with the problem of security at the three airports.

The results have been rather dramatic. We have also followed through in terms of stepping up the program of security at airports around the country, 45 airports today have airport security committees which meet regularly, once a month, to coordinate their activities with local airport authorities and with police officials.

So we are concerned with security. We have supported and do support the idea of establishing a study commission. The reason is that we feel that a commission can get at the facts as to the actual losses, the causes of these losses, and the solution to those losses.

We feel there has been some misinformation about the extent of the losses, at least in air transportation. We have no reason to quarrel

¹A copy of this publication, Guidelines for the Physical Security of Cargo—May 1972 (DOT P 5200.2) may be found in the committee files. This publication is also for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (40 cents).

with the figures that are shown and referred to in the New York Times article yesterday by the Customs Bureau official. We know that losses have come down dramatically at Kennedy and at the New York airports and it is also our opinion that they have come down nationwide.

So far as we know the total losses nationwide in air cargo last year on \$800 million worth of volume were approximately \$11 million from all causes, and those included theft, damage, pilferage or property that was missing for one reason or another, whatever the cause. That is a little over 1 percent compared with an 8 percent loss in the retail trade, sometimes referred to as shrinkage.

So the airline industry is concerned with and is doing something about cargo security. We are also concerned about piecemeal approaches to the cargo security problem.

I want to refer specifically to a measure which is pending in the Rules Committee, H.J. Res. 375. We have attached a lengthy analysis of our opposition to that bill.

Congressman Wolff referred to this bill and stated that he was a co-sponsor of it. The bill would grant the consent of Congress to a compact between the States of New York and New Jersey to establish the Waterfront Commission jurisdiction over airports and to give them taxing and police power over persons in the so-called air cargo business.

One of the principal reasons we are opposed to this compact is that it would permit onerous taxes to be imposed on the airlines, truckers or others. For the airlines alone the taxes would be somewhere between \$10 and \$15 million per year to support an organization which would be burdensome and ineffective, yet the airlines losses, according to our best information last year, were about \$750,000.

Now I submit to you that there is something wrong with that kind of approach. There is no benefit to the airlines to have that type of a bureaucratic organization licensing our employees.

Reference has been made to the problem of licensing. We cannot get an FBI clearance on an employee security check. We do not have access to FBI fingerprint files. We cannot take a new employee, take his fingerprints and submit those to the FBI and get an opinion from them about his record.

We would have no objection to the Department of Transportation having licensing powers. We believe that the DOT should take the leadership. They have done a very good job in the last year or year and a half of showing leadership in the cargo security area and are working assiduously at it. We have no problem about them having additional authority if they need it.

We have supported the study commission because we felt someone had to get the facts. There are various Federal agencies working on security programs. We have the DOT and Customs in the overall cargo security area. FAA is working within the Department of Transportation at the President's direction on airport security and the security of aircraft in flight, Customs has a program as referred to in the article in the New York Times yesterday which involves the passage of a bill giving them the authority to license airline and other employees dealing with incoming cargo.

That is the reason we felt there was merit in the idea of a study commission.

That concludes my statement. I have experts with me and we will be glad to answer your questions.

(Mr. Seybold's prepared statement and attachment follows:)

STATEMENT OF LEO SEYBOLD, VICE PRESIDENT, FEDERAL AFFAIRS,
AIR TRANSPORT ASSOCIATION

My name is Leo Seybold. I am Vice President, Federal Affairs, of the Air Transport Association of America. The Association is a trade and service organization representing virtually all of the U.S. certified scheduled airlines. I am accompanied by John Zorack, Assistant Vice President, Federal Affairs, and Harry Murphy, Director of Security. We appear in behalf of our airline members, including those serving the New York/New Jersey airports, to express our support for the cargo commission concept detailed in S. 942, H.R. 10295, H.R. 5080, and H.R. 9622.

THE NEED FOR A NATIONAL PROGRAM

We welcome the opportunity to give the Committee our views on air cargo security, and on the need for a national program to deal effectively and systematically with a national problem. What is necessary, in our opinion, is a coordinated, intermodal endeavor. What must be avoided is piecemeal, local regulation—such as the New York/New Jersey Airport Commission Compact (H.J. Res. 375) now being considered by Congress.

There is a cargo security problem in transportation. We do not believe the problem is as serious as some have contended. Our own knowledge of the extent and causes of the problem is somewhat limited because of its intermodal character. Air cargo must, of course, be transported to and from airports by some surface means. But from the air transport user's point of view, it makes little difference whether an air cargo loss occurs while the shipment is in the possession of Customs, the Post Office Department, a private trucker, express company, air freight forwarder, warehouseman or broker, or whether the loss occurred in transportation to or from the airport.

We have taken steps to improve our own informational gathering process. But there still will be serious information gaps unless a coordinated information program is developed. We all need to know much more about when, where and why cargo losses occur, and what the real effects of these losses are. There is a general scarcity of accurate intermodal information concerning the extent of cargo losses, their impact on shipper and carrier costs, and of equal importance, the conditions under which the losses occur.

Establishment of a Cargo Security Study Commission would provide the means of determining exactly what the total problem is, and what kind of effort is required to attack it. In short, such a commission is an essential step in the national endeavor to improve cargo security and public service. It should precede any other proposed action affecting interstate and foreign commerce, such as the New York/New Jersey Compact, which we will discuss later.

For this reason, we endorse the approach in the bills now being considered by this Committee. These bills will provide a logical, national approach to the cargo security problem, defining its scope, identifying its causes, and determining the range of action necessary to bring it under control.

FEDERAL CARGO SECURITY ACTIVITIES

It is important for this Committee, in analyzing the need for a Cargo Commission, to consider the security efforts now in the mill at the State and Federal level—some are commendable, others not.

At the national level the Treasury Department, starting in 1970, has spearheaded a drive to combat international cargo theft and pilferage with a three-pronged program under the direction of the Bureau of Customs. This program includes procedures for stricter cargo accountability, new regulations for personnel identification and improved physical security of cargo, and the proposal of legislation for establishing national standards for cargo facilities, H.R. 8476, known as The Customs Port Security Act. In addition, the Bureau of Customs has already instituted a successful special cargo security program at JFK and other ports of entry. Treasury recently reported that in the program's first year, reported cargo thefts at JFK declined by 28% and the dollar value of stolen goods by 69% (from \$3.3 million). For the six-month period ending November 31,

1971, reduction of 27% in number and 45% in value, were achieved. This trend has continued to date.

The Department of Transportation, under the able direction of Lt. Gen. Benjamin O. Davis, Assistant Secretary of Safety and Consumer Affairs, has recently established an Office of Transportation Security. This office is working closely with the transportation industry in attacking the cargo security problem.

Another federal program which promises to have a direct impact upon cargo security is under the auspices of the Federal Aviation Administration. The FAA on March 9, 1972, at the request of President Nixon, issued special airline/airport security regulations (14 CFR 121-538). These regulations were promulgated because the President believed there was an immediate need to protect passengers and airlines from hijacking and extortion. Although primarily designed for passenger and airline security, the concept under the rules encompasses a total airline/airport security program, including such things as fences, lighting, perimeter intrusion devices, and the identification of people and vehicles.

A total airport security program will have a great impact on cargo security. Both airlines and airport operators must submit implementing plans to FAA by June 16. No one knows exactly what the total impact will be, but I can assure you that the airlines are working hand-in-hand with the FAA to insure that passengers and property traveling in air commerce are afforded the best protection and security possible.

These programs, although not coordinated in effort, do represent the correct approach to what is a national problem. On the other hand, the States of New York and New Jersey decided over two years ago to pass a bi-state security compact, extending the jurisdiction of the Waterfront Commission to encompass the airports of JFK, LaGuardia and Newark. This Committee should be totally aware of this compact since it highlights the pressing need for national leadership in the cargo security area. The proposed New York/New Jersey Compact represents an example of perhaps well-intentioned, but otherwise ill-conceived, uncoordinated, and ineffective local regulation. It is completely unnecessary in view of the effective security program of the industry-established Airport Security Council.

The compact legislation is not an economical or effective answer to air cargo theft and pilferage. The problem is national in scope and should be attacked on a national basis. The proposed compact legislation falls far short of accomplishing its goal—even at the state level. Specifically, the compact legislation would dilute the federal responsibility for the regulation and protection of interstate and international commerce; would burden the NY/NJ area's air freight industry with a 10-15 million dollar expense, including license fees, employer taxes, administrative expenses, costly delays and further damage the competitive position of the NY/NJ air cargo industry complex.

This, despite losses of only approximately \$750,000 in 1971. It would grant a bi-state agency unprecedented powers to license, regulate and tax airlines and trucking companies presently subject to control by the Civil Aeronautics Board and the Interstate Commerce Commission and would establish a precedent for other states to enact similar legislation leading to multiple state regulation and taxation. It would also create a serious inequity—responsible operators being taxed to support the inadequacies of the irresponsible operators. Further, it would "over-license" by including such non-cargo handlers as ticket agents, skycaps, aircraft storeroom personnel, food service attendants, aircraft cleaners, airline mechanics and others having little to do with air freight security. On the other hand, it would *not* provide for the licensing of over 120 trucking companies directly involved in air freight handling, would *not* include a large number of freight forwarders (36) located off the airport, and would *not* include customs brokers located off the airport.

In addition, rather strangely, part V of the NY/NJ Compact which would prohibit unions from having officers, agents or employees who have been convicted of certain offenses enumerated in the Compact (Art. IV, Sec 3(a)) as well as felonies and misdemeanors involving moral turpitude, was *not submitted to Congress for approval*.

It represents a serious obstacle to the achievement of progress on a national basis. Its approval would encourage the development of other independent and equally conflicting local regulatory actions effectively frustrating a national cargo security program. A detailed analysis of this bill is contained in Appendix A.

As can be seen, the Compact would create severe competitive inequity while leaving ample opportunity for avoiding security regulation. In summary, I think

you will agree that the analysis of the New York/New Jersey Compact clearly and dramatically demonstrates the need for someone to come to grips with the problem of security at the national level. We believe that the new FAA airline/airport security program is a step in the right direction. There is, however, a need to pull all the pieces together, and the Cargo Security Study Commission, working with General Davis, Customs and FAA, will be able to do just that. In this way, there would be a coordinated Federal program. If such direction and leadership was in being, the transportation industry would not now be faced with a bi-state compact which clearly is unnecessary and conflicts, in essence, with federal programs under way.

Since we are still faced with the very real spectre of Congressional approval of H. J. Res. 375, we now ask the support of this Committee. "We" includes scheduled, supplemental, and foreign flags at JFK; it includes truckers and forwarders, and the labor unions (Transport Workers Union of America, Brotherhood of Railway (Airline and Steamship Clerks, Teamsters Union) who would be subjected to stringent licensing requirements, and possibly denied the right to work for having a misdemeanor record.

If the Cargo Commission were a reality, then there would be someone in charge at the federal level who could say "Let's take a look at the overall cargo security program. Is there a need for state action? Is there a conflict with federal activity?" This must be done before Congress gives its consent to the Compact. Even though Subcommittee Chairman Kastenmeier held three hearings on the subject over a two-year period, no thorough examination was given to all government security activities. Security has become such an important issue that the FAA program mentioned previously was just recently inaugurated, March 9, after the last hearing held by the House Judiciary Committee.

H. J. Res. 375 will soon be considered by the House Rules Committee. Mr. Chairman, in behalf of those who would be adversely affected, we urge that you go before the Rules Committee and request that action on the bill be delayed until a comprehensive evaluation can be made of the total impact of present federal programs on cargo security. In this regard, the scheduled airlines are now in the process of having such an evaluation made. At such time as this comprehensive study is complete, it is hoped that you would take it to the Rules Committee.

CONCLUSION

In view of the widespread security activities now underway, some overlapping and inconsistencies are developing. Enactment of a Cargo Commission will serve to bring all of the parties of interest together thereby assuring effective measures enhancing, rather than hindering interstate and foreign commerce. It would help avoid conflicting and ineffective measures such as H. J. Res. 375 and similar regulations being considered by other local jurisdictions.

The bi-state Compact which was discussed in some detail would dilute federal responsibility for the regulation and protection of interstate and foreign commerce. It would grant a bi-state agency unprecedented powers to regulate, license and tax transportation industries which are already subject to the jurisdiction of federal regulatory agencies such as the Civil Aeronautics Board and the Interstate Commerce Commission. It would unnecessarily burden the New York/New Jersey area's air cargo industry with a multimillion dollar expense and the airlines would be called on to bear virtually the total cost, and finally, I will reiterate again that it starkly dramatizes the urgent need for a Cargo Commission program and positive federal leadership.

We strongly urge the Committee to take immediate steps to approve a Cargo Commission program, and to urge the Rules Committee to delay action on H. J. Res. 375 until the federal security programs can be totally evaluated.

APPENDIX A

AIRLINE VIEWS ON H. J. RES. 375 (NY/NJ AIRPORT COMMISSION COMPACT)

A review of the provisions of H. J. Res. 375 clearly indicates lack of understanding about air transportation and airports. The most glaring shortcoming is that the Compact simply does not add any significant degree of cargo security—certainly not of the degree to offset the high cost and commercial interference involved.

One of the fundamental concerns we have with the Compact, and one which underlies many of the Compact's practical deficiencies, is the obvious effort to

impose on air transportation, regulatory and security techniques developed for maritime operations for wholly different reasons. There is just no similarity between air transport and maritime facilities, personnel, procedures and services.

John F. Kennedy International Airport, for example, may have as many as a thousand commercial flight arrivals and departures each day. Air freight, express, mail and baggage are handled in relatively small units which flow constantly through the airport—to and from shippers and customers, and to and from connecting flights. The cargo security problem at the airport, therefore, is entirely different from that on the waterfront where great volumes of cargo from relatively fewer ships are handled at separate, self-contained facilities.

The essence of the air cargo business is speed and service. The Compact would impose bureaucratic administrative requirements, regulations and paperwork adversely affecting both air transport services and air cargo security. Most critical in cargo security is speed of movement—that is, moving cargo in and out as quickly as possible. The longer cargo remains in one place, the more vulnerable it is to loss. To subject air cargo to regulatory and security techniques designed for other purposes to meet the needs of other, slower forms of transportation can only be detrimental to air transportation.

The New York/New Jersey Waterfront Commission was created some seven-teen years ago to deal primarily with problems related to longshoremen employment. While there may have been employment problems on the waterfront, that certainly is not the case in the airline industry. Yet the Compact seeks to expand to the airport the same licensing arrangement used on the docks. This would create an administrative nightmare.

THE PERSONNEL LICENSING REQUIREMENT

The Compact would require the licensing of any airline personnel falling within the definition of "air freightmen"—a new term, and fairly meaningless in air transportation. As defined in H. J. Res. 375, the term "air freightmen" would include virtually all airline employees in the New York Metropolitan area who come in contact with baggage, express, freight, mail and stores.

This means that as many as 55,000 airline employees in the area would be affected. Many of these employees are engaged in work totally unrelated to cargo security or to any risk of cargo loss. The group includes all ticket counter personnel, all ramp personnel, virtually all maintenance personnel since they are in contact with aircraft stores, all baggage handlers including skycaps, all food service personnel, those who service, clean and provision aircraft, all ground operational personnel, all line mechanics and a host of others.

Those who designed the Compact apparently had no conception of the completely different set of employment practices and relationships existing in the airline and maritime industries. Personnel handling cargo on the waterfront are, for the most part, day laborers brought in on a temporary basis to meet temporary requirements at a number of different locations. This kind of licensing arrangement might well have proper application under that circumstance.

But the 55,000 airline employees who would require licenses under this concept are permanent employees of individual airlines. They have gone through the rather rigid airline screening process for employment, their references checked and their qualifications investigated. Those whose jobs directly concern the handling of air cargo have had their records also cleared through the Airport Security Council, and have been issued identification badges, as a part of the airline industry's own internal security program.

Airline employees are specially trained for their jobs and regard their employment as permanent with opportunity for advancement. They are beneficiaries of transportation privileges, retirement plans, and other fringe benefits. Their labor organizations are national, system-wide unions designated by elections conducted under the auspices of the National Mediation Board. It is just incomprehensible that these employees would be forced to go through this complex, costly licensing procedure on some theory that actual or potential airport crime will be curbed simply because the procedure would be patterned on those used to regularize longshoremen employment.

Proponents of the Compact claim that the licensing requirement is designed to prevent persons convicted of a felony or a serious misdemeanor from serving as officers or employees of an air cargo labor organization or air cargo trucking employer organization. That claim just has no justification.

Congress took care of this problem some eleven years ago with the enactment of the Landrum-Griffin Act—the Labor Management Reporting and Disclosure

Act of 1959. Section 504 of the Act is precisely on point and just as precisely fastens upon the Federal Government the responsibility for dealing with that problem. It would be sheer duplication, and would make little sense, to give a bi-state agency powers clearly established at the Federal level more than a decade ago.

Finally, the cost of the licensing program deserves special consideration. Under the scheme encompassed by the Compact, all expenses would be underwritten by the collection of licensing fees and assessments. Employees pay up to \$100 annually for every person licensed, plus a payroll tax of up to two per cent of the gross payroll of those requiring licenses. This would subject the airline industry to an additional expense of up to \$10-15 million annually.

If the public benefited from this program there could be little objection to a reasonable increase in costs. But the potential costs are not in any way reasonable and the proposed program holds little promise of any public benefit. It would be incongruous for the airlines (scheduled, supplemental, and foreign flag) to pay in excess of \$15 million per year when on airport cargo losses are now less than \$1 million. This is comparable to killing a fly with an atom bomb.

COMPACT IMPERFECTIONS

Anyone making even the most cursory investigation of the cargo security situation at John F. Kennedy International Airport would quickly conclude that it is a facility problem, more than a personnel problem, which exists. As the Committee is aware, air cargo has had phenomenal growth—a growth which has overwhelmed airport facilities. Nowhere is this more evident than at Kennedy Airport.

Space within the airport boundaries is severely limited. More and more of our air cargo activity is spreading outside the airport—some of it to adjacent areas, and some further out to Brooklyn, Queens, Manhattan and Long Island. These off-airport facilities are being used by most air freight forwarders, and include truckers and their terminals, custom house brokers, airline freight terminals, and the facilities of others who transport, store or otherwise handle air cargo.

A very serious flaw in the Compact is that it fails to take into account this very extensive off-airport activity. This failure, in addition to minimizing security, raises serious questions of equity as between those located on the airport who would be regulated, licensed and taxed, and their competitors located outside the airport boundaries who would not be affected. Moreover, this failure will encourage some relocation to avoid direct regulation. Surely, such an obvious security defect must challenge any claim of real cargo security.

It should be noted that the authority of the Commission established by the Compact is restricted to activity on the airport itself. The Commission would establish security areas on the airport and would limit access to licensed personnel or those obtaining special permits after establishing identification. Those securing special permits may also be required to submit to vehicle inspection upon leaving the security area.

There are many security defects and inequities inherent in the Compact program. For example, most of the airline cargo terminals are on the airport but several, both foreign and domestic, have found it necessary to locate off the airport, including a major all-cargo carrier. Under the Compact all appropriate airline personnel would be licensed, both on and off the airport, with the airlines required to pay the payroll tax. Those terminals on the airport likely would be in a designated security area and any trucker or other customer seeking to deliver or pick up cargo either would have to be licensed or go through the cumbersome and time-consuming procedure of getting a permit, surrendering it on exit and be exposed to vehicle search. On the other hand, the truckers and customers dealing with those airlines with terminals off the airport would not be required to face similar requirements. Truckers, licensed or unlicensed, could move freely to and from these off-airport facilities—no permit needed, no security check, no vehicle search, no security regulation of any kind.

Freight forwarders will be presented with the same inequity. There are some eighty freight forwarding firms doing business in the JFK area. Of these eighty forwarders, only two are located on the airport. These happen to be among the largest of the forwarders and handle between them on the airport about one-third of the total forwarding business. Under the Compact these two forwarders would be licensed, all their employees would be licensed, their payrolls would be taxed, and any other truckers or customers coming on the airport to deal with them would have to secure a permit and submit to a possible vehicle search.

Their competition, the seventy-eight freight forwarders located off the airport, would in no way be affected. Neither these forwarders nor their employees would be licensed. They would not pay the special tax and, as in the case of the off-airport terminals, there would be no restrictions on trucker or customer access. Thus, approximately two-thirds of the total freight forwarding business would be completely outside direct Compact regulation.

The same situation exists with respect to the customs brokers, some being located on the airport and others off. Those on the airport and their employees would be licensed, taxed and regulated; those off the airport being completely free of these disadvantages.

The situation with respect to the truckers is a little more complicated, since there are three categories with differing treatment under the Compact proposal. Some trucking firms, not under contract to the airlines or an on-airport freight storer, have limited cargo storage facilities on the airport. They would be licensed, all their employees who handle air cargo would be licensed and they would be required to pay the payroll tax.

There is a second category of truckers which would be subject to the full licensing, taxation and regulatory features of the Compact. These are the thirteen trucking companies and their 318 drivers who are under contract to the airlines through Air Cargo, Incorporated and REA Express. These ACI truckers and REA Express handle less than 20% of the total air cargo trucking in the New York area.

In contrast, consider the large number of independent truckers—the “over the road” truckers, the “itinerants,” the so-called “gypsy” truckers—who together handle the great bulk of the air cargo surface transportation, but yet would be completely outside direct Compact regulation. Our best estimate is that the regulated truckers—those with on-airport storage terminals, the ACI truckers, and REA Express—together account for about one-third of the total air cargo trucking activity. Notwithstanding the significance of air cargo losses associated with trucking, and the great outcry about this problem, the way this Compact is designed fully two-thirds of the air cargo trucking business within the New York area would be completely outside whatever security may be hoped for under direct Compact regulation.

MR. JARMAN. Thank you very much for the kind of counsel that the subcommittee has come to rely on you for in relation to matters. It certainly makes sense to me that we approach this from a national level rather than from a piecemeal local regulation level.

Mr. Adams?

MR. ADAMS. Thank you, Mr. Chairman.

Mr. Seybold, I gather it is your position that the establishment of a local area compact even in conjunction with a national compact would not be the way to handle the problem mentioned by General Davis of local shipments as opposed to interstate shipments?

MR. SEYBOLD. I would not want to make that as a statement for all compacts for the future without seeing them but it certainly is true in connection with H.J. Res. 375, the New York-New Jersey Airport Compact.

That is a burdensome ineffective wholly unnecessary proposal and we are completely and unalterably opposed to it. It was rammed through the New York Legislature with no hearings in 3 days' time and signed by the Governor. No one was allowed to testify.

The Secretary of the Waterfront Commission who helped to write the compact testified in the House Judiciary Committee that the reason the compact was so poorly drawn was that he and the others working on it didn't know what the problems were. Since there were no legislative hearings, the bill was not subjected to the give and take which might have clarified some of the errors and inequities in it and that was one of the reasons he felt the compact should be opposed.

I would like to ask Mr. Zorack to comment further.

Mr. ZORACK. The last witness called by the House Judiciary Subcommittee was Thomas Mackel, the district attorney of Queens County and in proposing the compact in New York no one ever asked him what the problem in Queens County at JFK was. He said there is no problem with cargo theft and pilferage, organized crime, on the airport at JFK. He was the last man to testify, the Queens County district attorney.

Mr. ADAMS. Where does he say that the problem is occurring then, in the feeder truck lines and in other points which I gather from prior testimony is one of the purposes that the commission would be attempting to establish, to pinpoint where the pilferage is occurring?

Mr. ZORACK. One of the big problems is in the air freight trucking industry off airports. This was brought out by the New York State Crime Commission. We don't deny there is a problem. There always will be somewhat of a problem on the airports. But the big problem we think is off the airport.

Mr. SEYBOLD. I would like to ask Mr. Murphy to comment on the experience we have had with Air Cargo, Inc. an industry-owned organization designed to expedite the surface handling of air freight, and comment on the loss experience in that.

Mr. MURPHY. Air Cargo, Inc. is owned by the airlines and they have 220 contract truckers throughout the United States who haul cargo to and from an airport. They haul approximately 30 percent of all cargo to and from an airport.

The last time we had a hijacking of an Air Cargo truck was June 25 of 1971. When you consider the number of hijackings throughout the United States you can certainly see that we are doing something right in regard to the security of those trucks. Air Cargo, Inc., insurance premiums have been dropped twice and we hope that they will be dropped again.

We in the airline industry have devoted much time and much money to security, particularly at JFK. We have spent \$13 million at JFK, LaGuardia, and Newark in the last three and a half years on security. We have seen the losses drop from over \$3 million to \$732,000 in 1971.

Another item I would like to call attention to is the nationwide loss rate which has dropped correspondingly. Our loss ratio from all causes net claims paid in the last quarter of 1971 was 0.96 which was exactly one half of the rate in the last quarter of 1970.

The number of claims filed have dropped, the volume has gone up considerably and despite that the losses have dropped dramatically, I am speaking nationwide, Kennedy as well as the rest of the country.

The airline industry is not sitting back on its haunches doing nothing. We are actively working toward better security and we are getting results.

Mr. ADAMS. Would the proposal that you have opposed, the compact resolution, combine into one overall system both the New York and New Jersey waterfront as well as the airport facilities?

Mr. SEYBOLD. It would theoretically set up a separate commission but it is basically the Waterfront Commission and the Waterfront Commission has, to say the least, had problems in handling its waterfront problems.

Mr. ADAMS. As I understand it, the waterfront problems in New York and New Jersey should not be held up as an example of how we

should handle matters in the other parts of the country. That is what I wanted to know. Would this be one overall commission with jurisdiction over both, so that your money is going into one pot with the waterfront or would the moneys be divided between the two commissions?

Mr. SEYBOLD. It is our understanding that it is the same commission with two different names. We had not thought our money would go into the waterfront but I don't believe you could even be sure of that.

Mr. ADAMS. We had a proposal, and I will not ask you this in detail because we discussed it with the chairman and with counsel, on potentially making available funds from the airport and airway development system for security within the terminals.

I may get into this with the airport operators themselves. To avoid head taxes among other things, to pick up these expenses, do you think that would be a helpful way of approaching the overall security problem of both cargo and passengers?

Mr. SEYBOLD. We do think so; yes, sir.

Mr. ADAMS. In other words, you do believe that we should have an overall federalized system on cargo security and passenger security for the airlines?

Mr. SEYBOLD. We do, yes; we do.

Mr. THOMPSON. Will the gentleman yield on that?

Mr. ADAMS. Yes.

Mr. THOMPSON. Do you feel it is necessary to have a commission in order to have this overall Federal system or can this be done within the present structure?

Mr. SEYBOLD. Mr. Thompson, we have supported the idea of a commission. When you put me on the spot and say "is it necessary," I think possibly it could be done in the Department of Transportation with additional emphasis and support from the subcommittee. But we have supported the commission idea because we felt that was one way to get at the facts and to bring in and take a look at the whole broad spectrum.

We have three or four Federal agencies involved plus the independent agencies and that is why we thought the commission would be the best approach.

Mr. ADAMS. Thank you, I have no further questions, Mr. Chairman.

Mr. JARMAN. Mr. Harvey?

Mr. HARVEY. Thank you, we welcome you here Mr. Seybold.

In your statement on page 4, you discuss the complete airport security programs, including such things as intrusion devices, lighting, and other things. Who should pay for the cost of all those things?

Mr. SEYBOLD. As I understand it, this will be the subject of the hearing that the committee is going to take up on Tuesday. But it is our feeling that the federally required or recommended security items should be 100 percent funded from the airport and airway trust fund.

Mr. HARVEY. Would this go for the clearance of employees, for example?

Mr. SEYBOLD. I think we are speaking of capital items, not operational items. So I would say it would not.

Mr. HARVEY. What would you say with regard to security of trucks, for example, when transporting items to and from airports. Should the security in these instances also be the responsibility of the Federal Government?

Mr. SEYBOLD. I don't see anyway that it would be, no. The regulations might be but the cost of checking the people who drive the trucks and have access to the airport, I think that should be an airline cost. We have only recommended the 100 percent Federal funding on capital items. We will probably discuss that in more detail on Tuesday.

Mr. HARVEY. Are the airlines self-insured.

Mr. SEYBOLD. They are partially self-insured but they also carry public liability.

Mr. HARVEY. You were here earlier when I was asking the question of General Davis and Mr. Lally about the role of insurance companies in this matter. In the case of the airlines, are the insurance companies concerned? Have they had to pay these losses or have the airlines paid them?

Mr. SEYBOLD. The airlines carry insurance on that type of loss. Do you want to comment on this?

Mr. MURPHY. The insurance companies were very concerned 3 years ago, I don't think they are nearly as concerned now because the loss ratio has dropped so much.

Mr. HARVEY. All right, thank you very much.

Mr. THOMPSON. Let me clarify one point. You feel that the Federal Government should pay 100 percent of the capital items in security, you mean basically so far as the passenger security is concerned, not necessarily cargo security?

Mr. SEYBOLD. We were thinking primarily of passenger security.

Mr. THOMPSON. Such as having devices at each gate that would detect metal on a person or a knife or something of that sort.

Mr. SEYBOLD. We were speaking of such things as magnetometers, extra lighting, special fencing, possibly the necessity to construct an arrangement to separate the actual passengers from the visitors, you might say.

Mr. THOMPSON. You are not advocating that the Federal Government take over the responsibility of management insofar as maintaining the basic security of the cargo that is within the possession of the company as it is being transported from one aircraft to another, or whatever it is?

Mr. SEYBOLD. Definitely not.

Mr. THOMPSON. I judge from your statement that you probably will be very very happy were we to somehow influence the Rules Committee on this New York-New Jersey Compact, not to let it come up on the floor. I frankly am somewhat astounded by the comments you made that this compact would authorize the local agency to tax the airlines, did you say \$10 to \$15 million?

Mr. SEYBOLD. The compact authorizes a tax of 2 percent on payrolls of all persons affected at the three New York airports. We estimate in the airlines alone it would cover approximately 55,000 employees. At an average salary of over \$10,000, a 2-percent tax would cost the airlines almost \$10 million a year just for that tax alone. There are also licensing fees and other fees that have to be paid.

Mr. THOMPSON. Would there be any benefits that you would derive from this other than possibly the reduction of your \$732,000 in losses maybe down to \$500,000 or something?

Mr. SEYBOLD. We see absolutely none whatsoever.

Mr. THOMPSON. There are no other benefits you would derive?

Mr. SEYBOLD. We can't see a single thing this organization would do for us that we are not doing for ourselves or with the cooperation of police and other law enforcement people.

Mr. THOMPSON. Do you feel that the airline management has become much more aware of the cargo theft problem in the last year or 18 months than they were before and are actively taking the necessary steps to remedy the situation internally? Now I am not speaking about the trucks that bring it to them, but once it reaches the airline?

Mr. SEYBOLD. There is no doubt about it at all, General Davis' statement was quite accurate and I was glad to hear him say it.

I should say that General Davis appeared at our request before the board of directors of the Air Transport Association some 6 or 9 months ago and discussed this whole matter and urged the presidents to take a personal interest in cargo security and security generally.

I think it made quite a favorable impression and I think there has been a considerable amount of followthrough and concern on the part of airline management.

Mr. THOMPSON. I frankly must share the outrage that you evidenced on the proposed tax that could be levied on the airlines through this compact. I had no idea that you would be gouged to that extent and I think you would be gouged.

I am not at all receptive to the idea that the Commission is going to spend some \$2 or \$3 million of the taxpayers' money. I think if we need more education and more education materials sent to the trucking companies, the airlines and so forth it would have to be done through the present structure of DOT.

But I am delighted to hear you say that the airline companies in the last year or year and a half have tightened their own internal security and the problem within the company on the loss of cargo while it is in their possession is being reduced.

Mr. SEYBOLD. There is no question that a great deal has been done; there is more to be done and we think we are doing it and getting at it. I would like to accept the opportunity you offered to urge this committee to take some form of formal action to oppose or otherwise delay the bill H.J. Res. pending in the Rules Committee at least while this committee has an opportunity to look at this matter. There is no question that this additional tax burden on the carriers would have to be reflected in their costs and in turn their prices. It is an absolutely wasteful proposal in our opinion.

Mr. THOMPSON. Thank you.

Mr. JARMAN. Thank you very much, gentlemen.

Mr. SEYBOLD. Thank you.

(The following letter was received for the record:)

AIR TRANSPORT ASSOCIATION OF AMERICA,
Washington, D.C., June 6, 1972.

HON. JOHN JARMAN,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In recent testimony before your Committee on H.R. 10295, a bill which would establish a national Cargo Security Commission, Congressman Thompson asked whether or not the airline loss figures given the Committee were based on an arbitrary \$.50 per pound which is their liability, or whether it is an actual cost accounting of the national dollar value of the cargo lost.

The witness, Mr. John Wilson, stated that the figures represented the actual dollar accounting of the cargo claims paid.

The answer given by Mr. Wilson is in error. The \$732,000 loss figure given to the Committee by the Air Transport Association represents the full, actual value of cargo losses (from all causes) at Newark, LaGuardia, and John F. Kennedy Airports for 1971. Whenever a loss is reported by the airlines to the Airport Security Council, such losses are investigated thoroughly. In most cases the declared value of the loss by the shipper is accepted, but if the investigation discloses that the loss value is not accurate, then actual value figures are included. For example, some shippers will ship high value merchandise at a low value released rate in order to get a better price on the tariff. Thus, released valuation would not reveal true value. If such loss is discovered, the Airport Security Council would include actual value in all reports.

Thus, the \$732,000 amount which was lost in the New York area is a full actual value of the goods amount and is not related in any fashion with the \$.50 a pound released value concept.

A further explanation of the \$.50 a pound concept might be helpful. This concept applies to all shipments since this is the normal transportation rate concept used by the airlines.

Rule 32 of Official Freight Rules Tariff IB C.A.B. 96 states that the air carriers rate for the transportation of any shipment in part is dependent upon the value of the shipment. The airlines have no limit of liability as a shipper may declare any value he wishes on any air shipment and pay the transportation rate accordingly. Under the released value concept, in the event a shipper chooses not to declare a value for his shipment, then the value is determined to be \$.50 a pound for the total weight of the shipment. For example, if a shipment of watches is lost and the shipper has not declared a value and thus chooses to ship these watches at a lower rate, his subsequent *claim* for any loss would be based on \$.50 a pound for the total weight of the shipment. As indicated previously, this claim figure would not necessarily be used to show actual value. However, if the actual value of the watches being shipped was shown and the shipper paid the additional transportation charge he would be paid in full value in the event of any loss.

Sincerely,

LEO SEYBOLD,
Vice President, Federal Affairs.

Mr. JARMAN. The House of Representatives will go into session in about 6 minutes. It will not be possible for the subcommittee to sit this afternoon while the House is in session.

We will ask that the two witnesses who were scheduled to testify today, whose offices are here in Washington, to come back on Tuesday when we will try to finish the hearings on the cargo safety bill.

It is our understanding that Mr. John Wilson has come here from outside the city and has a short statement. Rather than ask him to return next week the subcommittee will sit long enough to hear Mr. Wilson.

Mr. Wilson is transportation adviser, Hartz Mountain Pet Foods, Inc., Harrison, N.J., appearing on behalf of the Pet Industry Joint Advisory Council.

Mr. Wilson, the committee will be glad to receive your statement in full and we would appreciate it very much if you could hit the highlights.

STATEMENT OF JOHN WILSON, TRANSPORTATION ADVISER, PET INDUSTRY JOINT ADVISORY COUNCIL

Mr. WILSON. Mr. Chairman, I would like to digress from the statement and request that the committee receive the statement in full and just speak a few minutes on various points of the previous witness's testimony.

Mr. JARMAN. That would be very satisfactory.

Mr. WILSON. First of all, the basic problem in regard to prosecution in the disappearance in transportation is the great time lapse

from the time the actual theft occurs until the carrier is being made aware of it by a shipper supplying a claim.

There is no local awareness in a depot that the thefts are occurring in this depot and the claims are generally forwarded to management in a central office. This is one defect in the prosecution.

With regard to insurance, insurance companies at the present time are restricting in their policies on certain high valued items as well as liquor, tobacco, electronic equipment, and this precludes the carriers from handling, diverting these commodities from the normal traffic mix in interstate transportation into private carriage which is a sector that at the present time there are no regulatory bodies involved with.

It is the pet industry's opinion that the only comprehensive solution to the problems now affecting us is an overall coordination with representatives of labor and representatives of the shipping public so that the matters or the malpractices now in existence can be corrected.

The claim affects carriers' performance. We have a situation just recently in which the air cargo incorporated carriers attempted to embargo on fur products moving in the New York City area, putting the fur industry in desperate straits. There are many ills that come about on a day-to-day basis. The carriers have found it expedient to either stop handling a product or to pay the claims on their pilferage rather than take corrective measures.

I personally had occasion to visit 80 airline freight handling facilities and in four of the freight facilities I was challenged. I also have been to O'Hare Airport, driving in the airport and I was with a security man from Air Express and we personally picked up three cartons, laying on the access roads, of merchandise in interstate transportation.

We have an ostrich-like attitude of the management of these transportation companies in which they would rather pay a small amount of claims and continue doing business without instituting proper handling procedures or proper security.

It was mentioned that Davidson Transfer had been to the Department of Transportation. I also am aware that Davidson Transfer embargoed a geographical area in its operating area rather than handle the high risk products generated there.

The airline claim reporting or the loss figures that were given to this committee are based upon primarily a released value of 50 cents per pound which is an archaic figure. There is a proceeding that has been going on for the past 2 years before the Civil Aeronautics Board which is nowhere near resolution testing the validity of the 50 cents per pound evaluation. So the actual loss that the airlines sustain are still unknown.

Mr. ADAMS. Excuse me, you mean the reported losses are just simply taken at 50 cents per pound rather than a cost accounting reporting to some agency?

Mr. WILSON. No, I did not imply that, sir. What I meant to state was that in the airline tariffs that unless you declare excess value the airlines liability is 50 cents per pound for the merchandise entrusted to its care.

Mr. ADAMS. What do they report as loss then, the 50 cents or the value?

Mr. WILSON. They report as loss the dollars paid to the claimants which is primarily based on 50 cents per pound.

Mr. ADAMS. So then they are reporting 50 cents per pound, that is what I asked you.

Excuse me, Mr. Chairman.

Mr. WILSON. There are exceptions to that where the shipper declares full value but this is a great minority.

Mr. THOMPSON. Mr. Chairman, I think an important question has been raised here, a point, and I would like to if we could get from Mr. Seybold or someone else whether or not the \$732,000 that was mentioned lost in the New York area is a 50-cent per pound figure or if there happened to be cargoes of watches that obviously would be worth much more and the actual dollar figure be greater, this might change my thinking somewhat.

Mr. WILSON. The 50 cents per pound in the airlines liability unless they assess a charge for so much over and above that.

Mr. THOMPSON. I realize what you are saying there. The question I have in my mind is, are the figures being given this committee as to what the dollar losses are, is it based on an arbitrary 50 cents per pound which is their liability or is it an actual cost accounting of the actual dollar value of the cargo loss?

Mr. WILSON. It is the actual dollar accounting of the cargo claims paid.

Mr. JARMAN. I would say to the gentleman we can certainly ask Mr. Seybold for a comment on that.

(See letter dated June 6, 1972, from Leo Seybold, Vice President, Federal Affairs, Air Transport Association, to Chairman Jarman, p. 80, this hearing.)

Mr. THOMPSON. Thank you.

Mr. JARMAN. Does that conclude your testimony?

Mr. WILSON. Yes, sir.

(Mr. Wilson's prepared statement follows:)

STATEMENT OF JOHN WILSON, TRANSPORTATION ADVISER, PET
INDUSTRY JOINT ADVISORY COUNCIL

The Pet Industry Joint Advisory Council consists of basically all the organizations concerned with the transportation and sale, of not only the livestock necessary for our business, but all of the products associated with Pets. The organizations making up the membership of our Council embrace a broad spectrum of transportation users, manufacturers, importers, exporters, jobbers, distributors, breeders, as well as fish farmers, (see attachment) all dependent on safe, secure transportation of the products that they ship or receive.

It has been estimated that the Pet Industry has an annual volume of sale in excess of 3 billion dollars, employing many thousands of workers. The transportation of these products utilize all types of carriage, whether, rail, motor carrier, water and air, and as the Transportation Advisor, I must be completely concerned with the state of each of these transportation modes.

In the recent period of time, we have noted both within our industry, and in transportation of all commodities, a surging upgrowth of criminal activity in all modes of transportation.

Our Council became interested in Senate Bill S. 942, from the time it was introduced into the Senate by Senator Allan Bible. We have followed with interest, the progress of Senate Bill S. 942, and we were gratified when it was passed in the Senate by voice vote.

The Pet Industry Joint Advisory Council had furnished our member associations with reports gleaned from transportation publications, as well as articles that have appeared continually in newspapers, throughout the country, showing

the alarming growth rate of merchandise missing, in interstate and foreign commerce, and bring to them, the awareness of how this affects them, both as consumers, who ultimately pay the cost of crime in transportation, and as shippers, or receivers, whose businesses are hurt, by their products being sold in competition to themselves, in illegal outlets.

Besides acquainting our member organizations with the above reports, speeches were made at our periodic meetings, outlining the contents of H.R. 5080, and this bill, being the only logical solution to the problems seriously afflicting our transportation systems.

The responses of our organizations were unanimously in support of this so necessary legislation, and they were of the undivided opinion, that only the passage of H.R. 5080, will create a tool that will have meaningful results in collecting data, examining the data, pinpointing flaws, and creating corrective measures that are so desperately needed.

The creation of this commission, with its membership including a shipper export import member, to represent the shipping public, and embracing those federal agencies concerned in this very grave problem, of security in transportation, will establish a forum in which the problems of all modes of transportation, water, rail, motor carriers, and air, can be evaluated, explored, and corrective measures introduced, compatible to the practicalities of each mode of transportation.

In retrospect, over the past two years, progress has been made in the area of claim reporting, in response to the vigorous efforts of the United States Senate, Select Committee on Small Business, spear headed by Senator Allan Bible, the Civil Aeronautics Board, has instituted and implemented claim reporting procedures, for our airline industry, the Interstate Commerce Commission also has established similar claim reporting requirements for the nation's rail and motor carriers, the Federal Maritime Commission also is seeking to establish a claim reporting procedure, for ocean carriers. All steps in the right direction, but not enough.

What is vitally needed, is this commission to take the next steps to essentially explore this indicative data and formulate cures for transportation's affliction.

The Pet Industry Joint Advisory Council had occasion recently, to investigate freight handling procedures, in the various modes of transportation, the result of these investigations, indicated that security was lacking, that unauthorized persons were not even noticed, much less challenged, goods were available to whomever passed by, all accumulatively contributing to this growing problem.

In closing, the Pet Industry Joint Advisory Council wishes to express its wholehearted support for H.R. 5080, and its admiration for this bill's architects, whose foresight created a structured document, fulfilling a need for the close participation of the involved federal agencies and the shipping public.

Our member organizations with members in every state of the United States, prayfully hope that H.R. 5080, will be passed, and this commission will come into being, and undertake the enormous task to find ways to eliminate this drain on our economy.

American Pet Products Manufacturers Association, Inc., Florida Tropical Fish Industries, inc., National Association of the Pet Industry, National Retail Pet Supply Association, Inc., Pet Industry Distributors Association, United Pet Dealers Association, Western Wholesale Pet Supply Association, Inc., National Turtle Farmers & Shippers Association, Inc., Association of Animal & Fish Distributors, Maryland Association of Pet Dealers, Maryland Pet Industries Association, Michigan Pet Retailers Association, Association of animal and Fish Distributors.

Mr. ADAMS. I have no further questions; thank you very much for your testimony.

Mr. HARVEY. No questions.

Mr. JARMAN. Thank you, Mr. Wilson, for being with us.

This concludes the hearings of the subcommittee today and we stand adjourned until next Tuesday morning. The hearing next Tuesday will be in this same room.

(Whereupon, at 12:03 pm. the hearing adjourned, to reconvene Tuesday, May 23, 1972.)

CARGO SECURITY

TUESDAY, MAY 23, 1972

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2318, Rayburn House Office Building, Hon. John Jarman (chairman) presiding.

Mr. JARMAN. The subcommittee will please be in order.

We continue to hear testimony on bills relating to the establishment of a Commission on Security and Safety of Cargo.

Our first witness this morning is the Honorable Secor D. Browne, Chairman of the Civil Aeronautics Board.

We are pleased to welcome you, Mr. Chairman, and we will be interested in your comments.

STATEMENT OF HON. SECOR D. BROWNE, CHAIRMAN, CIVIL AERONAUTICS BOARD; ACCOMPANIED BY R. TENNEY JOHNSON, GENERAL COUNSEL; ROBERT J. SHERER, DIRECTOR, BUREAU OF ECONOMICS; AND BRADFORD H. SMITH, SPECIAL ASSISTANT FOR PROJECT DEVELOPMENT

Mr. BROWNE. I have a short statement that I would like to read, if I may.

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to present the Board's views on the several bills which would create a Commission on Security and Safety of Cargo. It is common knowledge that crime against cargo carried in air transportation is increasing alarmingly. But in determining what to do, we need to know exactly where the problem is and precisely what it is.

One step the Board has taken will help in pinpointing the air cargo security problems. We now require the air carriers to file special recurrent reports concerning claims for loss of or damage to air freight. The requirements applies both to U.S. and foreign air lines serving U.S. points and also covers U.S. domestic and international air freight forwarders.

Each carrier and forwarder will report the type of commodity and location (airport) with respect to each claim paid for \$100 or more which involves theft, pilferage, or robbery. These reports are to be filed each quarter beginning with April 1, 1972. The first reports are due July 31, 1972.

These reports should afford a comprehensive body of information to carriers, airport and local authorities, and Federal agencies con-

cerning incidents of theft of air freight. The breakout of air freight stolen by location and by type of commodity will reveal precisely where security improvements are needed most and the most vulnerable kinds of products being shipped by air. Carrier and law enforcement authorities will be able to use a rifle instead of a shotgun approach, so to speak, in improving security. By the same token, the availability of this information, carrier by carrier, will enable all concerned to monitor relative carrier performance over a reasonable time span.

The Board has another regulatory matter in process which should also ultimately bear upon the security of air freight transportation. Most of the domestic carriers limit their liability of loss or damage to air freight to 50 cents per pound or \$50 per shipment, whichever is greater. This limitation has been part of the carriers' tariffs for many years and, as such, may no longer be reasonable. The Board has initiated a formal investigation of this and other carrier liability rules to inquire into their lawfulness under current conditions. While I cannot comment at this time on the merits of the matters at issue in this investigation, it would appear that a reasonable liability limitation, if indeed any limitation is required, would increase the carriers' incentive to protect the property entrusted to their care.

Mr. Chairman, the Board recently submitted a formal report to the committee on one of these bills. The Board indicated agreement with the objectives of the bill, but deferred to the Department of Transportation and the Treasury Department as to whether the bill constituted the most appropriate method for accomplishing its objectives. The Board deferred to these departments because of several actions which they took as the result of their studies of the cargo security problem.

The Board also stated in its report that if favorable consideration was to be given to legislation of this nature, the Secretary of Transportation should not be required to establish freight security standards for the various modes of transportation before receiving recommendations from the Security and Cargo Commission.

Mr. Chairman, for assistance in answering questions, I would like to ask our general counsel, Mr. Johnston, and the Chief of our Bureau of Economics, Mr. Sherer, to join us at the table.

Mr. JARMAN. That will be satisfactory.

Mr. Chairman, when do you anticipate getting results of the investigation as to carrier liability rules?

Mr. BROWNE. I would defer to Mr. Sherer for this question.

Mr. SHERER. The hearing commences, Mr. Chairman, on September 6. The prehearing conference was held last July, and the initial steps have involved the collection of massive information from the carriers and from shippers. This time has been consumed in preparation for the actual hearing.

Mr. JARMAN. Mr. Murphy?

Mr. MURPHY. I have no questions, Mr. Chairman.

Mr. JARMAN. Mr. Kuykendall.

Mr. KUYKENDALL. Is the matter of liability by most carriers a self-insured item, or do some of the carriers buy an overall coverage from some casualty insurance company to cover the general area of loss?

Mr. SHERER. I believe I understand the question to relate to—

Mr. KUYKENDALL. The carrier himself. How does he cover his own losses that he is responsible for?

Mr. BROWNE. In other words, self-insured, or does he place it outside.

Mr. KUYKENDALL. That is correct. Are they generally self-insured, or do they place it with a carrier?

Mr. SHERER. It is my understanding most coverage is described as a legal liability coverage in their insurance. However, when there are excess declarations of value made by the carrier and premiums paid by the shipper, many of the companies are placing this with casualty companies in a reinsurance sense.

Mr. KUYKENDALL. I understand. Do you have any figures yet that would determine to what extent customer-purchased insurance against damage and loss is available?

Mr. BROWNE. May I ask Mr. Smith, who is a specialist in this, to reply to that?

Mr. SMITH. Let me touch on the first question. Mr. Sherer is correct in his answer, but I can give you a little better specific answer. The two extremes might be typified, first, by an Ozark Airlines, who is totally a noninsurer. Every claim is covered by his underwriter.

The other extreme would be American Airlines with a \$250,000 deductible. He has simply got catastrophe insurance.

Mr. KUYKENDALL. With regard to available theft and damage insurance for which the customer pays, what has happened to those rates in the last few years with the increase in carrier losses?

Mr. SMITH. You have to differentiate between what we call the "declared value," which is again under the tariff. That has changed only once. It has been 10 cents per \$100 domestically for many, many years, and I think today three carriers have managed to show sufficient data to get it up to 15 cents.

Mr. KUYKENDALL. In other words, a 50-percent increase?

Mr. SMITH. That is right.

Mr. KUYKENDALL. But only three carriers have done that?

Mr. SMITH. That is correct. We have been watching that fee for, I would say, the last 5 years. A good many air freight forwarders have attempted to accelerate it pretty high, and we have suspended a substantial number of those.

To my knowledge or recollection, only three airlines have been able to get it up to 15 cents.

Mr. KUYKENDALL. Are we saying then that there is not enough data available to present sufficient facts on the matter of loss as a tangible item, as it would affect insurance policy rates?

Mr. SMITH. That is correct, and this is what we are working on now in the liability case. We hope to finish our studies in mid-July.

Mr. KUYKENDALL. Are there any cases where the record is so bad or the payout so great that insurance carriers are refusing to underwrite?

Mr. SMITH. The only example I can give you—

Mr. KUYKENDALL. Let me compare it to something that will put it closer to layman's terms.

I think most of you are aware that in many high-crime areas small stores can't buy any insurance anymore. In fact, there is now a new government program to subsidize and "even out" their rates. Have we run into anything even vaguely similar to that yet?

Mr. SMITH. We had one airfreight forwarder who attempted to increase his declared value fees, and he insisted on going to hearing. Part of his evidence consisted of the fact that over the years his underwriter had not only substantially increased his deductible but had also increased fees.

A third area of erosion would be the exclusion of known commodities that have a high risk, such as furs, jewelry, and items such as that.

So the underwriter is hedging his bet three ways: either the premium goes up and/or the deductible goes up and/or the highrisk commodities are excluded from coverage entirely.

Mr. KUYKENDALL. You mentioned "deductibles." Is it your opinion that all the underwriters are using a deductible policy?

Mr. SMITH. I would say the great majority. It comes as a surprise to me to find, or at least to understand, that an airline will have a "not deductible" policy. In other words, a claim for \$10 with the underwriter collecting a premium on it.

I suppose the reason would be that an airline doesn't want to maintain an expert to handle claims of any kind.

Mr. KUYKENDALL. Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Chairman, we have had a good bit of testimony during the course of the hearings that a good share of the theft problem is internal. Am I correct in understanding an employer cannot suspend an employee who has been charged with theft until after conviction?

Mr. BROWNE. I would have to appeal to my colleagues.

Mr. JOHNSON. I am sorry, Mr. Chairman, we have no information on that question, sir.

Mr. JARMAN. Of course, with a good defense lawyer, if that be true—and we have had some testimony on this—a year can easily pass from the time a charge is made until a legal decision is rendered. It would certainly seem important that management be able to move against that kind of internal problem expeditiously, at least as far as suspension is concerned.

Mr. BROWNE. I believe we would agree to that, sir.

Mrs. JARMAN. Mr. Adams?

Mr. ADAMS. It is nice to see you and your staff here this morning. I notice from your prepared testimony that you have indicated that it is common knowledge that theft of aircargo is increasing alarmingly. We have had testimony that indicates it has sharply dropped within the last year.

Do you have the most recent figures for JFK, for example, so we know which is the fact?

Mr. BROWNE. I do not. Mr. Smith?

Mr. SMITH. We do not. The reports referred to on JFK are not filed with us.

Mr. ADAMS. In other words, we don't really know from your testimony whether theft is going up or it is going down. I am talking now about the carriers, the terminal areas, the areas in which we are greatly concerned.

Mr. BROWNE. That is correct, Mr. Adams. Of course, the purpose in our reporting requirement is to try to pinpoint whether the losses are increasing or decreasing, and at what stations and more or less where these losses are going, whichever way they are going.

Mr. ADAMS. That is my next question, which is: From what we heard from the testimony last time, how is there a way of knowing? It is our understanding that there is no check on the freight as it moves along. Instead, what you get is a shipper who starts in San Francisco at his dock, with the truck taking it to the airport in San Francisco, flying it across the United States to JFK, and then it comes out to the dock where he is shipping it in New York, and it doesn't arrive. All he knows is some place in that total intermodal sweep it did not arrive and nobody can tell where it left.

Does your reporting system correct that?

Mr. BROWNE. I think what you are pinpointing, Mr. Adams, is a problem of who is in charge here. Under the construction of the Board we can essentially only require economic reports, which is what we are doing here.

As I said, we will "require"—and I believe there is not much more that we can lawfully do as the Civil Aeronautics Board. As we say here: "Each carrier and forwarder will report the type of commodity and location with respect to each claim paid for \$100 or more which involves theft, pilferage, or robbery."

Obviously, this does not address your point as to where in the system does the threat occur. Again, it is a question of whether this is an area where the Board could or should intervene.

Mr. JOHNSON?

Mr. JOHNSON. I have nothing to add.

Mr. SMITH. Mr. Chairman, may I add a point. The report goes one step further that we hope will help. We ask the air carrier in filing this report to give us the airport-city code involved in the haul. If he can pinpoint the loss at Philadelphia, then he tells us Philadelphia. If he can't pinpoint it, then he allocates 50-50 between the origin and destination.

Mr. ADAMS. We understand these are not often discovered until a considerable period of time has elapsed after it has happened. By "discovered" I mean the shipper makes a claim, which I gather goes through a stack on his desk and he files them at the end of the month with the carrier.

Aren't you looking at this from an enforcement viewpoint at least about 2 or 3 months after it has occurred?

Mr. SMITH. I don't think "enforcement" would be the word. We don't have the power to adjudicate claims. If the carriers are suffering losses at Philadelphia, maybe one carrier doesn't know what the other carrier's losses are.

The purpose of this report, as I see it, is to primarily alert the carriers' and the shipping public as to what airlines and what commodities are suffering what losses to what airport cities. There is not much we can do about it.

Mr. ADAMS. You have testified here that the liability for loss or damage to airfreight is limited to 50 cents a pound or \$50, whichever is greater.

Are your reports and your claims going to be filed on actual value of the commodity lost or upon the limitations which the carrier, in effect, places as a total loss limit?

Mr. BROWNE. Mr. Sherer replies "both."

Mr. SHERER. The claim payment amount; also, the value placed on the material by the shipper will be reported to the Board commencing with the quarter that started April 1.

Mr. ADAMS. The claim value, plus the —

Mr. SHERER. Plus the value placed on the material by the shipper that was damaged, lost or stolen, will be reported.

Mr. ADAMS. My final question leads to some of the other bills that are before us. What we are getting out of this testimony is that a great part of this problem is internal. In other words, it is pilferage or it is within the carrier or terminal or the trucking dock operation and that it has been greatly overblown that people are coming in with masks and high-powered rifles and that people are stealing whole vans of things, that high-value objects are lifted.

So we really get, as far as you are concerned, to terminal operations and aircraft in motion.

There has been very little or no testimony that anybody is going into the hold of any airplane and breaking anything open. So your transshipment points are the points of difficulty. What is your position, Mr. Chairman, or the Board, of the proposals before this committee that we make available Federal funding for security of passengers and cargo? In other words, we say that you can start to put devices to alert you in areas where you don't have personnel that somebody has come into the area or the increase in various security devices in the terminal area.

Should we be thinking of doing that since we apparently can't pinpoint where this happens? At least then the burden should be shifted of people having to find that it is really a ground theft in truck operations as opposed to a terminal operation?

Mr. BROWNE. The Board has not taken a position, As you perhaps know, I personally have considerable concern over the total problem of airport security.

What you suggest there, I personally view as a desirable step to increase security.

Mr. KUYKENDALL. Would the gentleman yield?

Mr. ADAMS. In just a moment. Let me follow to the next step, which is of great concern to us. If we are to do this, we understand now that there are beginning to proliferate around the country a series of head taxes. Some of us are suggesting that the Federal Government preempt the field of head taxes because we have already placed a ticket tax on all passengers. From traveling elsewhere in the world where they have these head taxes, they have become an immense problem, because you pay one thing going and another coming off and so on. But where we require terminals to do certain things in security, they are going to say they have to do this.

Has the Board or have you a position on whether or not we should pay for it out of the Airport and Airways Development Fund, or should we allow every community, both inboarding and outboarding passengers, to put on a terminal tax?

Mr. BROWNE. I cannot give, of course, the Board's position. My personal position, both in private life and public life, has been in opposition to head taxes as a matter of principle.

The form of the airport-airway bill, to me, is admissible, but it makes me nervous. I do have a statement, Mr. Chairman, which I brought in

the event this matter should come up which might answer Mr. Adams, or you might like it deferred until later.

Mr. ADAMS. Mr. Chairman, if you prefer to do it at a later time, I will be happy to withdraw my question.

Mr. BROWNE. I understood we would be recalled to deal with this specific point later. But whatever your pleasure is.

Mr. JARMAN. We had decided, I might say, Mr. Adams, and Mr. Chairman, we would take each segment and that we would concentrate first on the cargo and security, and then move into the other fields. We thought it would be confusing otherwise.

Mr. ADAMS. I will withdraw my question, then, until we proceed in that.

I yield to the gentleman from Tennessee.

Mr. KUYKENDALL. For the matter of the record, and to get the picture a little clearer for the record, what percent—and I know this will have to be a ball park figure, and maybe we will ask the next witnesses the same question—to what extent is the cargo containerized in airfreight today?

Mr. SMITH. On an industry basis, about 10 percent. It is substantially better than that in the major markets. Ten percent includes the Amarillo-Nashvilles. If you take Los Angeles-New York or Los Angeles-Chicago, it could be as high as 60 or 70 percent.

Mr. KUYKENDALL. In those areas any pilferage would have to take place before or after the container is sealed; is that right?

Mr. SMITH. If you appreciate the fact that all containers are currently not sealable, you are correct in that instance. Some containers still have a net over the face, and it doesn't take too much intelligence to sneak through that.

Mr. KUYKENDALL. One other question concerning enforcement. I believe as I was returning, Mr. Chairman, I heard you use the phrase "who is in charge here." Let us get this clear as far as enforcement is concerned. Is it not true now that the area of interstate commerce—and you are only involved in interstate commerce; is that correct?

Mr. BROWNE. That is correct.

Mr. KUYKENDALL. The area of interstate commerce enforcement is automatically a Federal function?

Mr. JOHNSON. Yes.

Mr. KUYKENDALL. So we narrow it down there, Mr. Adams, to saying that in the matter of enforcement as regards interstate cargo it is automatically in our lap. We don't know whether it is in the right hand or left hand or on our knees. But it is in our lap as far as the Federal function is concerned.

Mr. JOHNSON. Yes, sir. You have the power to make it so. Pilfering and stealing may be a local crime and may be, of course, charged and dealt with in the local State courts. It is not exclusively a Federal function. But you certainly have the authority to provide for greater Federal involvement in the protection of interstate commerce.

Mr. KUYKENDALL. You will probably want to refer to your colleague again, but take, if you will, a package of 25 pounds that is being shipped from here, let us say, from my home in Maryland, taken out to National Airport, boarded on a plane, delivered at Memphis, Tenn., and so forth. At what point do you have the responsibility and at what point do you lose your responsibility?

Mr. JOHNSON. We have responsibility over the conditions of shipment, the price of shipment—

Mr. KUYKENDALL. No. At what physical point? Where did you take over? When are you responsible? Tell me at what moment. In other words, my wife takes a 25-pound package out to National Airport and my son picks it up at Memphis, Tenn. Where do you take over and when do you give it back to somebody else?

Mr. JOHNSON. It is under interstate commerce the moment you give it to the carrier.

Mr. KUYKENDALL. That means when you shove it across the desk at Air Express.

Mr. JOHNSON. That is correct, because it is an interstate shipment.

Mr. KUYKENDALL. At this moment the Feds are in charge; is that correct?

Mr. JOHNSON. Yes, sir; they have a responsibility. But I will say that, just to make it clear, the Federal responsibility over the conditions of shipment, and so on, does not exclude the States from being able to prosecute for crimes committed.

But you are absolutely correct that there will be Federal regulatory constraints applied.

Mr. KUYKENDALL. From counter to counter; is that correct?

Mr. JOHNSON. Yes, sir; from the time it enters interstate commerce to the time it leaves.

Mr. KUYKENDALL. Thank you, Mr. Chairman.

Mr. JARMAN. Thank you gentlemen, very much for being with us.

Our next witness this morning is Mr. Paul J. Tierney, executive vice president and general counsel, Transportation Association of America.

Mr. Tierney is also secretary of the Transportation Cargo Security Council.

**STATEMENT OF PAUL J. TIERNEY, EXECUTIVE VICE PRESIDENT
AND GENERAL COUNSEL, TRANSPORTATION ASSOCIATION OF
AMERICA, AND SECRETARY, TRANSPORTATION CARGO SECURITY COUNCIL**

Mr. TIERNEY. Thank you, Mr. Chairman. My statement is brief. I will attempt to further compress it, so I would appreciate it if the statement would be included in the record.

Mr. JARMAN. The committee would be glad to receive it.

Mr. TIERNEY. As you indicated, I appear here in a dual capacity, Mr. Chairman, and I appreciate the opportunity to present views both on behalf of the association and the council in support of H.R. 10295.

H.R. 10295 is essentially the same as S. 942 which was approved by the Senate last September. I think the principal difference between the two bills is that H.R. 10295 would require the Commission to make its initial report within 6 months of enactment rather than within 1 year as provided by the Senate approved version. We have no objections to this change.

Just briefly about our association, we are a national transportation policymaking organization with a broad-based membership representing a cross-section of users of transportation, investors and carriers of all forms—air, freight forwarder, oil pipeline, rail, truck and

water. The basic objective towards which TAA directs its efforts is an efficient transportation system under continued private ownership.

TAA has long been concerned with the problem of illegal and criminal activities in transportation and the need for all reasonable steps by industry and Government to minimize its eroding impact on our privately-owned transportation system.

The TAA Board of Directors has adopted a general policy to that effect as well as more specific policies in the cargo security area. Respecting H. R. 10295, which is the subject of these hearings, the Board has adopted the following policy statement :

Cargo Security Commission—TAA encourages the establishment of a presidentially appointed Commission with a life span of not more than 2 years which would conduct research and inquire into matters of cargo security for the research and inquire into matters of cargo security for the purpose of recommending programs that would achieve maximum security and safety for cargo when in storage and in transit in interstate and foreign commerce.

The Transportation Cargo Security Council, on whose behalf I am also appearing, is currently composed of 26 members, representing four labor unions, and principal segments of the industry affected—users of transportation, insurers, importers and carriers—air, freight forwarder, motor, rail and water.

The Council was formed in August of 1971 and was an outgrowth of a highly successful Cargo Security Conference jointly sponsored by the Department of Transportation and the Transportation Association of America in June and July last year. That Conference marked the beginning of a concerted Government-industry, labor program to tackle the problem of crime in transportation by examining their respective roles and responsibilities and exploring methods or resolving it.

As General Davis of the Department of Transportation testified, integration of cargo security activities of Federal departments and agencies, under the guidance of DOT, is being accomplished through an "Interagency Committee on Cargo Security." The Cargo Security Council is maintaining close liaison with the Interagency Committee, cooperating in the implementation of a 12-point cargo security program.

Among a number of other activities, the council has established a legislative program and has taken positions on a variety of pending bills affecting cargo security. It has adopted a position favoring the creation of a Commission on Security and Safety of Cargo along the lines provided for by H.R. 10295.

Certainly, the Government-industry joint effort now underway represents progress. However, we feel that because of the nature of the transportation cargo security problem, the creation of an independent Commission with responsibilities buttressed by the power to hold hearings, power to administer oaths and power to subpoena as contemplated by H.R. 10295 would be of immeasurable assistance in providing an additional tool needed to achieve the end we all seek.

We believe it is conceded by all those close to the problem that it is one large in dimension and of extreme complexity in nature. This was brought out dramatically during the course of extensive hearings before the Senate Select Committee on Small Business chaired by Senator Alan Bible.

It is further agreed :

First, that the problem is one intermodal in nature involving the entire carrier chain—air, truck, forwarder, rail, and water ;

Second, that the problem is national in character affecting, as it does, the flow of commerce, the consumer, all the shipping public, insurers, a variety of law enforcement jurisdictions and so on ;

Third, and of extreme importance, that we are sorely lacking in reliable statistical and other information respecting the scope, cause and value of cargo loss to permit a rational, meaningful attack on the problem.

In short, the development of an effective deterrent program against cargo thefts and pilferage not merely for the immediate future but for the years ahead, with current projections of transportation needs doubling within the next two decades, will be a major challenge.

Under all the circumstances, Mr. Chairman, any meaningful resolution of the cargo security problem will not, in our opinion, be achieved by a piecemeal, fragmented or local attack. It will require a federally supervised program and the development of remedial methods based upon a systematic and analytical approach. That is precisely the approach embodied in H.R. 10295, and we, therefore, urge early approval.

(Mr. Tierney's prepared statement follows :)

STATEMENT OF PAUL J. TIERNEY, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, TRANSPORTATION ASSOCIATION OF AMERICA ; AND SECRETARY, TRANSPORTATION CARGO SECURITY COUNCIL

My name is Paul J. Tierney. I am Executive Vice President and General Counsel of the Transportation Association of America, and Secretary of the Transportation Cargo Security Council.

I appreciate the opportunity to present views on behalf of both the Association and the Council in support of H.R. 10295 introduced by Congressman Jake Pickle which would create a Commission on Security and Safety of Cargo. H.R. 10295 is essentially the same as S. 942 which was approved by the Senate last September. The principal difference between the two bills is that H.R. 10295 would require the Commission to make its initial report within six months of enactment rather than within one year as provided by the Senate approved version. We have no objections to this change.

The Transportation Association of America is a national transportation policy-making organization with a broad-based membership representing a cross-section of users of transportation, investors and carriers of all forms—air, freight forwarder, oily pipeline, rail, truck, and water. The basic objective toward which TAA directs its efforts in an efficient transportation system under continued private ownership.

TAA has long been concerned with the problem of illegal and criminal activities in transportation and the need for all reasonable steps by industry and government to minimize its eroding impact on our privately owned transportation system.

The TAA Board of Directors has adopted a general policy to that effect as well as more specific policies in the security area. Respecting H.R. 10295, which is the subject of these hearings, the Board has adopted the following policy statement :

"Cargo Security Commission—TAA encourages the establishment of a Presidentially appointed Commission with a life span of not more than two years which would conduct research and inquire into matters of cargo security for the purpose of recommending programs that would achieve maximum security and safety for cargo when in storage and in transit in interstate and foreign commerce."

The Transportation Cargo Security Council, on whose behalf I am also appearing, is currently composed of 26 members, representing four labor unions, and

principal segments of the industry affected—users of transportation, insurers, importers and carriers—air, freight forwarder, motor, rail and water.

Formed in August of 1971, the Council was an outgrowth of a highly successful Cargo Security Conference jointly sponsored by the Department of Transportation and the Transportation Association of America in June and July last year. That Conference marked the beginning of a concerted government-industry, labor program to tackle the problem of crime in transportation by examining their respective roles and responsibilities and exploring methods of resolving it.

As you are aware, integration of cargo security activities of Federal departments and agencies, under the guidance of DOT, is being accomplished through an "Interagency Committee on Cargo Security". The Cargo Security Council is maintaining close liaison with the Interagency Committee, cooperating in the implementation of a 12-point Cargo Security Program.

Among a number of other activities, the Council has established a legislative program and has taken positions on a variety of pending bills affecting cargo security. It has adopted a position favoring the creation of a Commission on Security and Safety of Cargo along the lines provided for by H.R. 10295.

Certainly, the government-industry joint effort now under way represents progress in providing means of coordination and cooperation needed to combat crime in transportation. However, we feel that because of the nature of the transportation cargo security problem, the creation of an independent Commission with responsibilities buttressed by the power of subpoena as contemplated by H.R. 10295 would be of immeasurable assistance in providing an additional tool needed to achieve the end we all seek.

To the best of our knowledge, it is conceded by all those close to the problem that it is one large in dimension and of extreme complexity in nature. This was brought out dramatically during the course of extensive hearings before the Senate Select Committee on Small Business chaired by Senator Alan Bible.

It is further agreed:

First, that the problem is one intermodal in nature involving the entire carrier chain—air, truck, forwarder, rail and water;

Second, that the problem is national in character affecting, as it does, the flow of commerce, the consumer, all the shipping public, insurers, a variety of law enforcement jurisdictions and so on;

Third, and of extreme importance, that we are sorely lacking in reliable statistical and other information respecting the scope, cause and value of cargo loss to permit a rational, meaningful attack on the problem.

In short, the development of an effective deterrent program against cargo thefts and pilferage not merely for the immediate future but for the years ahead, with current projections of transportation needs doubling within the next two decades, will be a major challenge.

Under all the circumstances, Mr. Chairman, any meaningful resolution of the cargo security problem will not, in our opinion, be achieved by a piecemeal, fragmented or local attack. It will require a Federally-supervised program and the development of remedial methods based upon a systematic and analytical approach. That is precisely the approach embodied in H.R. 10295—the creation of a Commission with broad representation in its membership, empowered to issue subpoenas and charged with a number of specific responsibilities including:

- (1) To define the cause, scope and value of cargo losses;
- (2) To evaluate cargo theft deterrents;
- (3) To conduct an inquiry into the feasibility of Federal licensing and/or identification systems;
- (4) To provide statutory authority for the Secretary of Transportation to establish minimum physical security standards;
- (5) To recommend appropriate legislation to Congress.

We, therefore, urge early approval of H.R. 10295 by your Subcommittee and the House.

Mr. JARMAN. Mr. Adams?

Mr. ADAMS. Thank you very much, Mr. Tierney. I have no questions.

Mr. JARMAN. Mr. Kuykendall.

Mr. KUYKENDALL. Do you anticipate the report giving us a definitive and clear picture of the custody of the cargo as it relates to when the

pilferage takes place? The carrier himself is seldom the actual business that deals directly with the user; isn't that correct?

Mr. TIERNEY. That is usually the case. You are talking about air carriers now?

Mr. KUYKENDALL. That is correct. I am speaking only of the air freight carrier, the person having either the straight plane loan or mixed bag of air cargo.

So, generally speaking, the carrier is doing business with the middle man, the person who does business with the customer; is that correct?

Mr. TIERNEY. I don't think in all cases. If I understand your question correctly, conceivably the air carrier might deal directly with the shipper.

Mr. KUYKENDALL. How often does this happen?

Mr. TIERNEY. That I am not sure of.

Mr. KUYKENDALL. Do you anticipate this being clarified in the report by the Commission?

Mr. TIERNEY. What we think will be clarified is where are the thefts and the pilferage occurring, where in this long line of an intermodal process are they occurring, and what is the nature of the commodity or the chief commodities, in effect, which are subject to theft and pilferage.

The idea, of course, with that information which we lack is to develop a rational method of attack.

Mr. KUYKENDALL. Don't you anticipate—and this is my principal question and I do realize we are putting the cart before the horse—that during the exposure time from the point of origin to the point of destination, the cargo will be in the custody of people other than the air carrier himself, such as the person who receives it, the dock operators, the short truck line that hauls it to the airport? We would have as many as three different agencies in custody of one particular shipment; couldn't we?

Mr. TIERNEY. That is correct. It is clearly not a problem involving the carrier only, but it involves everybody in that chain of movement.

Mr. KUYKENDALL. Those of us sitting here, of course, first ask how could a theft actually take place on the airplane. Of course, when you are thinking about a case of Scotch, it would be difficult; but when you are thinking about stealing a wristwatch, it could easily be done on the airplane.

Mr. TIERNEY. I agree that it would be highly unlikely.

Mr. KUYKENDALL. I am hoping these reports will be reasonably clear as to who is in charge at the time the theft is taking place. I would hate to see us embarking on a program that will cover the thefts but not eliminate them.

Mr. TIERNEY. I think that is the very purpose of the bill.

Mr. KUYKENDALL. So many times our well-intentioned programs have done nothing but build up enough insurance and enough assurance and enough coverage to make all of the thieves rich. That isn't what we want.

Thank you, Mr. Chairman.

Mr. JARMAN. Thank you very much, Mr. Tierney. We appreciate your adding to the hearing on this.

Our final witness this morning is Mr. J. Donald Reilly, the executive vice president, Airport Operators Council International, Inc., with offices here in Washington.

It is the Chair's understanding that Mr. Reilly is accompanied by Mr. J. J. Corbett, vice president of Federal affairs of that organization.

STATEMENT OF J. DONALD REILLY, EXECUTIVE VICE PRESIDENT, AIRPORT OPERATORS COUNCIL INTERNATIONAL, INC.; ACCOMPANIED BY J. J. CORBETT, VICE PRESIDENT, FEDERAL AFFAIRS

Mr. REILLY. Mr. Chairman, we would like to submit our statement for the record and, at this time, highlight some of its major points.

Mr. JARMAN. The committee would be glad to receive the statement in full.

Mr. REILLY. AOCI is in general support of the legislation to establish a Commission on Security and Safety of Cargo. Our members believe that the proposed cargo security commission can be most helpful in, first, coordinating Government and industry actions to improve cargo security, and, second, to focus public attention on this matter.

For the benefit of the committee, I want to emphasize that the division of responsibility for security matters at airports is rather clear, and the committee should clearly understand it. The airport operators and the operators of the aircargo areas have a standard landlord-tenant relationship, similar to that of one who leases an apartment from a building owner. The lessee has the responsibility for security within his leased area and the landlord maintains security for the public areas and for the facility as a whole.

AOCI has three specific recommendations regarding S. 942:

1. Section 3 of the pending bills provides that the membership of the Commission shall include one representative from each mode of the cargo transportation industry. At present neither State or local governmental interests nor terminal operators are included on the Commission. We urge that the Commission membership be expanded to also include a representative of a State or local government, such as a major airport operator.

2. Section 6(d) authorizes the Commission to enter into contracts with "Federal or State agencies." In our view, this section should be clarified to indicate that States and their political subdivisions will clearly be eligible under this section; for example, to conduct demonstration projects at a city-owned airport, if necessary.

3. Section 10 of the pending bills states that:

Upon the submission of the Commission's final report as provided in Section 12 of this Act, the Secretary of Transportation, after consultation with the Commission, the Department of the Treasury, the Civil Aeronautics Board, the Interstate Commerce Commission, and the Federal Maritime Commission, shall promulgate such regulations as may be necessary for the security and safety of freight in transportation

Mr. Chairman, our members are concerned that, unless this provision is modified, 2 years hence they will be faced with three separate sets of Federal regulations affecting cargo security.

For example, today, FAA's Federal aviation regulation part 107 requires airport operators to protect airside areas from unauthorized access by persons and vehicles. While intended to prevent hijacking-type breaches of facility security, these regulations also have an indirect effect on cargo security.

Further, the Department of the Treasury has already issued proposed "standards for cargo security" which—when and if Congress pass legislation pending before other committees—will involve a second set of regulations specifically for international cargo protection.

Lastly, under existing section 10 of S. 942, the Secretary of Transportation will be authorized to issue a third set of regulations covering protection of domestic cargo.

We believe that this provision should be expanded to authorize and direct the Secretary of Transportation to review all proposed freight security regulatory standards proposed by other Federal agencies and to make findings, prior to their adoption, that they will not impose overlapping or inconsistent requirements on affected carriers or airport terminal operators.

Thank you, Mr. Chairman. As I mentioned, we would like the entire text added to the record.

If you have any questions, we would be most happy to help in any way we can.

(Mr. Reilly's prepared statement follows:)

STATEMENT OF J. DONALD REILLY, EXECUTIVE VICE PRESIDENT, AIRPORT OPERATORS COUNCIL INTERNATIONAL

I am J. Donald Reilly, Executive Vice President of the Airport Operators Council International. Accompanying me today is Mr. J. J. Corbett, AOCI Vice President—Federal Affairs.

The Airport Operators Council International (AOCI) is the association of the governmental bodies which own and operate the principal airports served by the scheduled airlines in the United States, as well as in many countries abroad. In 1971, U.S. member airports enplaned more than 90% of the domestic and virtually all of the U.S. international scheduled airline passenger and cargo traffic. In addition, our local government members operate many reliever and other general aviation facilities which supplement the larger airports in their communities and regions. (A listing of our United States members is appended for your information.)

Mr. Chairman, we appreciate the opportunity to present the views of our United States members on the four bills pending before the Subcommittee to establish a Commission on Security and Safety of Cargo. While our suggestions for technical amendments are presented in terms of S. 942, as passed the Senate, they are generally applicable to the other proposals also.

Cargo theft, it should be recognized, is only one part of a broader aviation security problem which is of considerable concern to airport operators. Hijackings and other criminal acts against aviation are at present receiving greatest attention because of their connection with the safety of passengers in air transportation. Under recent Federal regulations, the local governments which operate airports receiving scheduled airline service are being required to undertake very expensive programs of fencing, ramp lighting and personnel identification to assure that unauthorized persons do not obtain access to airside areas under the control of the airport operator. In addition, the security forces at United States airports are continuing existing programs to help their tenants minimize pilferage within the airport complex.

AOCI is in full support of the pending legislation to establish a Commission on Security and Safety of Cargo and urges prompt enactment of S. 942, with amendments.

The Senate Select Committee on Small Business, in a series of reports summarizing its findings after hearings on the subject, identified the following as contributing factors to the cargo theft problem and barriers to the development of effective solutions:

- (1) Lack of uniform loss data;
- (2) Lack of interest in or knowledge of basic physical security practices on the part of management;
- (3) Lack of interest on the part of the regulatory agencies with respect to the facilitation of cargo theft as a result of inadequate liability limits and embargo

practices, insufficient claims rules and procedures, and other tariff and certification matters;

- (4) Lack of private sector initiative to improve security;
- (5) Inadequate coordination among law enforcement agencies and between such agencies and the private sector;
- (6) Failure of the Federal departments and agencies to mount an effective response to the problem.

Our members believe that the proposed Cargo Security Commission can be most helpful in coordinating government and industry actions to improve this situation.

It has been estimated that losses due to air cargo thefts approximated \$110 million in 1971, about 9% of the total \$1.5 billion in goods estimated to have been stolen from all transportation modes. Airport operators' support of S. 942 is based, in part, on their inability to determine, even in terms of magnitude, whether these estimates are accurate. In this regard, we are pleased that the Civil Aeronautics Board has recently adopted regulations requiring the airlines to report freight loss and damage claim data. This action will be helpful in providing statistical information to the Cargo Commission and to state and local governments so that more effective preventive actions can be recommended.

Further, cargo protection programs coordinated by the Department of Transportation under the able and forceful leadership of General Davis have been quite effective in making the regulated air carriers more aware of their responsibilities to the public for better security in areas of the airport leased to the carriers for cargo-handling purposes.

The division of responsibility for security matters at airports is rather clear and the Committee should clearly understand it. The airport operators and the operators of the air cargo areas have a standard landlord-tenant relationship, similar to that of one who leases an apartment from a building owner. The lessee, either the airline or the apartment dweller, has the responsibility for security within its leased area and the landlord maintains security for the public areas and for the facility as a whole. As the apartment dweller has only himself to blame if his cleaning woman steals or if he invites crime by leaving his apartment door unlocked, so also is the airport tenant responsible for maintaining internal security within the leased area.

The security forces maintained by airports—either employed directly or hired from the parent governmental body—are readily available to help the lessee reduce his cargo theft risks. Regular police patrols and prompt police response when notified of theft by alarm or other burglar systems are standard at all major airports.

AOCI RECOMMENDATIONS

1. Membership of Commission

Section 3 of the pending bills provides that the membership of the Commission shall include one representative from each mode of the cargo transportation industry: air, truck, rail and water; two representatives from labor unions; a member from a shipper-import/export concern and three Federal agency officials.

At present, neither state or local governmental interests nor terminal operators are included on the Commission. We suggest that the Commission membership should be expanded to also include a representative of a state or local government which owns and operates a cargo terminal such as an airport or a seaport.

In its June 9, 1971, comments on S. 942, the Department of Transportation supported this view:

"[W]e feel that state and local participation on the Commission should be increased. Since so much of cargo in transportation is shipped via non-Federally regulated carriers who are involved in either intrastate or local traffic, the Commission's activities could be substantially benefitted by participation of appropriate state and local interests."

2. Powers of Commission

Similarly, section 6(d) authorizes the Commission to enter into contracts with "Federal or State agencies," private firms, institutions, and individuals for the conduct of research, surveys and the preparation of reports. In our view, this section should be clarified to indicate that States "and their political subdivisions" will clearly be eligible under this section (e.g., a demonstration project at a city-owned airport).

3. Freight Security Standards

Section 10 of the pending bills states that:

"Upon the submission of the Commission's final report as provided in section 12 of this Act, the Secretary of Transportation, after consultation with the Commission, the Department of the Treasury, the Civil Aeronautics Board, the Interstate Commerce Commission, and the Federal Maritime Commission, shall promulgate such regulations as may be necessary for the security and safety of freight in transportation (including at terminals) by each of the separate carrier modes including freight forwarders under the jurisdiction of each agency."

Mr. Chairman, our members are concerned that, unless this provision is modified, two years hence they will be faced with three separate sets of Federal regulations affecting cargo security.

Today, FAA's Federal Aviation Regulation Part 107 requires airport operators to protect airside areas from unauthorized access by persons and vehicles. While intended to prevent hijacking-type breaches of facility security, these regulations also have an indirect effect on cargo security. Further, the Department of the Treasury has already issued proposed "Standards for Cargo Security" which—when and if Congress passes legislation pending before other Committees—will involve a second set of regulations specifically for international cargo protection. Lastly, under existing section 10 of S. 942, the Secretary of Transportation will be authorized to issue a third set of regulations covering protection of domestic cargo.

We believe that this provision should be expanded to authorize and direct the Secretary of Transportation to review all proposed freight security regulatory standards proposed by other Federal agencies and to make findings, prior to their adoption, that they will not impose overlapping or inconsistent requirements on affected carriers or terminal operators.

Already there are inconsistencies between FAA's security regulations and those issued by Treasury. Closer coordination of regulatory efforts by the Department of Transportation is required to eliminate the confusion and added costs which accompany Federal agency inconsistencies.

Mr. Chairman, we urge the Subcommittee's consideration of our suggestions for amendments and prompt action on the amended bill.

AOCI U.S. PUBLIC MEMBERS BY STATE

Alabama.—Birmingham, Department of Aviation; Huntsville, Madison County Airport Authority; Montgomery, City of.

Alaska.—Alaska, Department of Public Works.

Arizona.—Phoenix, City of.

Arkansas.—Fort Smith, City of.

California.—Fresno, City of; Hayward, Airport Department; Kern, County of; Los Angeles, Department of Airports; Oakland, Board of Port Commissioners; Palm Springs, City of; Riverside County Airports Department; Sacramento, County of; San Diego, Unified Port District; San Francisco, City and County of; San Joaquin County, Department of Aviation; San Jose, City of; Ventura, County of.

Colorado.—Colorado Springs, City of; Denver, City and County of; Pueblo Memorial Airport.

Connecticut.—Connecticut Department of Transportation.

Delaware.—New Castle County, Transportation Board.

Florida.—Broward County, Board of County Commissioners; Dade County, Port Authority; Hillsborough, County Aviation Authority; Jacksonville, Port Authority; Melbourne, Airport Authority; Orlando, City of; Palm Beach County, Board of County Commissioners; Pensacola, City of; Sarasota, Manatee Airport Authority; Volusia County, Daytona Beach Regional Airport.

Georgia.—Atlanta, Department of Aviation; Savannah, Airport Commission.

Hawaii.—Hawaii, Department of Transportation.

Illinois.—Greater Peoria Airport Authority; Chicago, Department of Aviation; Rock Island County, Metropolitan Airport Authority of; Rockford, Greater Rockford Airport Authority.

Indiana.—Fort Wayne, Board of Aviation Commissioners; Indianapolis, Airport Authority.

Iowa.—Cedar Rapids, Municipal Airport Commission; Des Moines, Department of Aviation; Mason City, Municipal Airport Commission; Waterloo, Airport Commission.

- Kansas.*—Wichita, Board of Park Commissioners.
- Kentucky.*—Louisville and Jefferson County Air Board; Paducah Airport Corporation.
- Louisiana.*—Baton Rouge, Greater Baton Rouge Airport District; Calcasieu Parish, Airport Authority for Airport District No. 1; Lafayette Airport Commission; New Orleans Aviation Board; New Orleans, Board of Levee Commissioners.
- Maine.*—Bangor, City of; Portland International Jetport.
- Maryland.*—Friendship International Airport Authority.
- Massachusetts.*—Massachusetts Port Authority.
- Michigan.*—Flint, City of; Kent County Aeronautics Board; Tri-City Airport Commission; Wayne County, Board of County Road Commissioners.
- Minnesota.*—Minneapolis-St. Paul Metropolitan Airports Commission.
- Mississippi.*—Jackson Municipal Airport Authority.
- Missouri.*—Columbia, City of; Joplin, City of; Kansas City, Department of Aviation; St. Louis Airport Authority; St. Louis Metropolitan Area Airport Authority; Springfield Municipal Airport.
- Montana.*—Great Falls international Airport Commission.
- Nebraska.*—Lincoln, Airport Authority; North Platte Airport Authority; Omaha, Airport Authority of the City of Omaha.
- Nevada.*—Clark, County of.
- New Hampshire.*—Manchester Airport Authority.
- New Jersey.*—Mercer County, Board of Chosen Freeholders.
- New Mexico.*—Albuquerque International Airport.
- New York.*—Broome County Airport; New York and Newark, The Port of New York Authority; Niagara Frontier Transportation Authority; Syracuse, Department of Aviation.
- North Carolina.*—Charlotte, City of; Greensboro, High Point Airport Authority.
- Ohio.*—Akron-Canton Regional Authority; Cleveland, Division of Airports; Columbus Metropolitan Airport and Aviation Commission; Dayton, Department of Aviation; Kenton County Airport Board; Toledo, City of; Youngstown Municipal Airport.
- Oklahoma.*—Oklahoma City Airport Trust; Tulsa, Airport Authority.
- Oregon.*—Portland, Port of.
- Pennsylvania.*—Lehigh-Northampton Airport Authority; Pennsylvania Aeronautics Commission; Philadelphia, Department of Commerce; Allegheny, County of.
- Rhode Island.*—Rhode Island, Division of Airports.
- South Carolina.*—Greenville, Spartanburg Airport Commission; Richland, Lexington Airport Commission.
- Tennessee.*—Chattanooga, Department of Public Works; Knoxville, City of; Memphis, Shelby County Airport Authority; Nashville, Metropolitan Nashville Airport Authority.
- Texas.*—Dallas, Department of Aviation; Dallas-Ft. Worth Regional Airport Board; El Paso, City of; Fort Worth, Aviation Department; Houston, Aviation Department of the City of Houston; San Antonio, Department of Aviation.
- Utah.*—Salt Lake City International Airport.
- Vermont.*—Burlington Airport Commission.
- Virginia.*—Norfolk Port and Industrial Authority; Peninsula Airport Commission.
- Washington.*—Boeing Field International; Seattle, Port of Seattle Commission; Spokane Airport Board.
- Washington, D.C.*—Washington, D.C., FAA National Capital Airports.
- West Virginia.*—Tri-State Airport Authority.
- Wisconsin.*—Milwaukee County Airport Department.
- American Samoa.*—American Samoa, Government of.
- Puerto Rico.*—Puerto Rico Ports Authority.
- Virgin Islands.*—Virgin Islands Port Authority.

MR. JARMAN. Thank you, Mr. Reilly, we appreciate having your comments on the legislative proposal before us.

Mr. Adams?

MR. ADAMS. Thank you, Mr. Chairman. It is a pleasure to have you here today. I gather from your statement that you believe that the Secretary of Transportation should take responsibility for seeing that there is one set of security regulatory standards. I can see your prob-

lem with having FAA standards, Treasury standards, and Department of Transportation standards all operating at the same time.

Are you telling us we should have the Commission do this, but be sure out of it just comes one set of regulations?

Mr. REILLY. Basically, I think that concept is correct. I think the Commission can do a great duty here in reviewing the quantity and quality of the various cargo standards around the country in various forms of regulations; make recommendations as to what has been evidenced as meet effective and functional, and then I think it is responsible to recommend the best. Thus, the individual agencies are not promulgating separate security regulations to take care of their own individual needs, that may be inconsistent to some extent or overlapping with other agencies. We can estimate a focal point in the Department of Transportation to review them.

Mr. ADAMS. Do you think the Commission should have the authority at this point to, in effect, require one set of terminal security regulations—I think I agree with your statement—which should cover both cargo and passengers? In other words, that you look at the terminal area and put down one set of method of handling it?

Mr. REILLY. No, sir; I don't believe it gives that type of responsibility as it is presently written.

Mr. ADAMS. Do you have a proposed amendment that would do that?

Mr. REILLY. No, we don't. But we would like to see it done.

Mr. ADAMS. I would be hopeful you might send to the members of the subcommittee and to counsel your proposals on it. This is of great concern to many of us, particularly in light of your testimony on page 2, which says that you are going to have to undertake expensive programs of fencing, ramp lighting and personnel identification to assure protection, in effect, in areas of the terminal.

This seems to me to be the thing that keeps coming out of this hearing, that the responsibility of this committee and those involved in the air transport industry, that is, the operators, the companies and the regulatory agencies, is going to be to put in some rigid security requirements within the terminal, because we don't know where the theft is occurring, and that if you standardize and protect your terminal facilities, then you have to rely on entirely different sets of approaches in trying to protect thefts from trucks or on the docks of shippers or on the docks of trucking concerns. But the transshipment points within the terminals are the places we should be directing our attention; is that correct?

Mr. REILLY. Absolutely, sir.

Mr. ADAMS. In other words, if we can make the terminals secure for transshipment between airplanes and get them on the trucks by a security system that is pretty well standardized, at least in the major terminals, then we will have taken a step forward.

Mr. REILLY. I believe that all of the evidence indicates that most of the pilferage does occur in the cargo terminal facilities. Certainly not in the aircraft while it is in flight. Of course, it is much easier to pin-point pilferage when it occurs in the truck on its way to the airport or leaving the airport, because, generally, the consignment slip has been given out on an item transferring it to the truck, as I understand it.

While it is in the possession of the airlines in their individual or leased cargo space, I think this is really where the basic problem lies.

Mr. ADAMS. I will not go into the other questions, because we are going to do that later, as to how we approach this in terms of both financing it and so on. But I am trying to get at the thrust of your testimony, which is that we need a security system for the terminals and it ought to be standardized among the various Federal agencies in the creation of one set of regulations or one method of going about it.

Mr. REILLY. I think probably you have expanded my comments a little bit in that there is a distinct difference between what the airline requirements are, and what the airport-operator requirements are as the landlord.

I think there is no way to get around the requirement for regulations that would pertain to the airlines who are the actual holders of the cargo, and such regulations as may pertain to the airport operator who is, in essence, only the lessor of the cargo facility real property.

Mr. ADAMS. But you would assume this Commission would tell us that?

Mr. REILLY. That is correct. They will be looking at the whole picture and come out with some concrete recommendations.

Mr. ADAMS. I have no further questions.

Mr. JARMAN. Mr. Kuykendall.

Mr. KUYKENDALL. I would like to extend Mr. Adams line of thought. I believe Mr. Adams will join me in urging you, perhaps as the focal point of all of these varying jurisdictions. For an organized theft ring the various and sundry jurisdictions are just "made-to-order" chaos, which they, of course, thrive on.

You spoke of overlapping jurisdictions. You know, it is not the overlap in those jurisdictions, but the gap in them that creates the opportunity for theft rings. Where there are so-called overlapping jurisdictions, the result is great big holes in the fence.

Maybe we have too many cooks for this dinner. I would like to see you forcefully attack that problem.

I understand that in your position you are a bit reluctant to stand before the committee and say most of you Federal agencies ought to get out of this mess and leave it to one. In my opinion you should not hesitate to say it. I think someone should be in charge.

The fact that no one is in charge is probably the biggest source of the trouble.

Mr. REILLY. I am glad to hear you say that, sir. This is why we are proposing that, potentially, the Department of Transportation be given the overall responsibility to coordinate what is going on in Customs and Treasury, and FAA, et cetera.

Mr. KUYKENDALL. I don't see any way to have a satisfactory system without anyone particular in charge, and I see no suitable candidate except the DOT.

Do you anticipate or do you see here that baggage and luggage could be covered under the same general program of security as cargo?

Mr. REILLY. Again, sir, the general baggage areas are under the control of the airlines. I believe that there is certainly the potential there to assist the airlines by providing uniform regulations that they all abide by.

Mr. KUYKENDALL. You say that baggage areas are under the supervision of the airlines. Is it not true that with the relationship you have with your tenant, let us say REA, Railway Express or Air Express, that the cargo is always in the custody of some private concern?

Mr. REILLY. That is absolutely correct.

Mr. KUYKENDALL. Always—it is never actually within the custody of the Feds at all; is that correct?

Mr. REILLY. In the custody of the Feds?

Mr. KUYKENDALL. Any Federal agency.

Mr. REILLY. Customs, I believe, will have jurisdiction over goods at certain times.

Mr. KUYKENDALL. In interstate, though, is there ever a time that the Federal Government agencies, any of them, are in direct custody of the cargo?

Mr. CORBETT. I think this is correct with the exception of the International Customs holding area for cargo where goods are retained until duties have been paid. In interstate commerce the cargo is always in the protective care of the airlines and other carriers.

Mr. KUYKENDALL. Are we not saying—and I think this is in line with what you are talking about—that whatever Federal system we have has to be superimposed over the free enterprise system operating within that carrier, because in every case we have free enterprise operating?

Mr. REILLY. That is correct.

Mr. KUYKENDALL. We hope they will have some security of their own.

Mr. REILLY. I am sure everybody is concerned, the airline and every group. Rather than saying superimposed upon them, I would hope to see coming out of this Commission some good recommendations. I don't think they would go begging for implementation.

Mr. KUYKENDALL. I am speaking of a broad umbrella of supervision. It has always been the practice of this committee and this Congress to give any local jurisdiction, whether it be State or city or county, preemption if they can do the job.

Mr. ADAMS (presiding). Would the gentleman yield at this time?

Mr. KUYKENDALL. Yes.

Mr. ADAMS. When you have a valuable cargo coming into an airport, is the call made by the airlines to the airport security people to say there is a shipment of furs or liquor or jewels coming into this particular area, and we would like to have a couple of people to be dispatched to watch this as it comes through?

Mr. REILLY. Mr. Chairman, I would say sometimes yes, most times no.

Mr. ADAMS. When you talk about security people, the thing Mr. Kuykendall was talking about, of the individual airlines, I have been in a lot of airports, and I have seen very few actual security people hired by the airlines, men walking around to watch the cargo.

I am getting this feeling out of this, just as Mr. Kuykendall said, that nobody is really watching the store down there at a lot of transshipment points. We are talking about large, major terminals as opposed to every terminal in the United States.

Mr. REILLY. I don't know if we can really answer that, sir.

Mr. CORBETT. Let me expand on the last question, Mr. Adams. The airport operators around the country stand ready to offer additional assistance upon request on high-value shipments. I know this is offered in a lot of cities. The airport operator has to be on call. You are talking about leased area security.

In the past, we have had many airports where we have had security people assisting the carriers when they were asked to do so. When there is a high-value shipment, the airport operator does offer additional assistance to the carriers.

Mr. ADAMS. What do you use, deputy sheriffs or local police departments, or people that are hired directly by the terminal itself?

Mr. CORBETT. The airport operator has its own security force, policemen generally, for protection of the airport, because it has a responsibility to make sure the entire airport is secure.

In addition, in many larger areas where you have a number of local law enforcement agencies, there are agreements entered into to delineate the responsibility of local government, the airport operator, the State and Federal agencies, and FBI where there is an interstate question involved.

So whenever a question comes up, that plan is put into effect using whatever forces are required to protect the shipments.

Mr. ADAMS. Have you found that your area where you have, in effect, Customs operating has a lower rate of theft than in the other areas generally?

Mr. CORBETT. One of the problems we have, Mr. Adams, and we mentioned it in the testimony, is that we don't know how much cargo loss there is. We have to go on the reports of the airlines and the others who have charge of the cargo. The type of publicity that has been given to a number of different cities where it is alleged there is a very large cargo problem, those figures do not always correspond to the figures supplied to the airport operator.

So we do have need for better statistics, as suggested by the CAB, a reporting method which the Chairman of the CAB made reference to, and also the type of statistical reporting that would come from the Commission.

Mr. KUYKENDALL. In the area of luggage and baggage security, there is a fairly large number of airports, I believe, that are now checking luggage in and out by use of tickets with stubs. To what extent is this present throughout the country?

Mr. REILLY. I believe that is done primarily in larger airports. But most of those people who check in the baggage, outside in the front driveway, are in the employ of the airlines.

Mr. KUYKENDALL. What about the security police we see? Are they with the airlines?

Mr. REILLY. In most cases, I assume—

Mr. KUYKENDALL. I am talking about the ones who look at the ticket and check it against the stub.

Mr. CORBETT. In some cases, the carriers decide they want to put up the protection and require the checking of a ticket number against the baggage number. Sometimes that is paid for by the carriers. They hire their own Pinkerton-type agents. In other places, they make arrangements with the local airport operator for him to provide police for that purpose.

Mr. KUYKENDALL. Does the airline pay them for that service?

Mr. CORBETT. I would assume he would, yes.

Mr. KUYKENDALL. So in all cases this particular service is paid for by the carriers, is that correct?

Mr. CORBETT. That is correct.

Mr. KUYKENDALL. Do you have any idea how he decides when to obtain this particular type security in an airport?

Mr. CORBETT. I would imagine when the claims reach a painful point, the airlines decide to increase the security.

Mr. KUYKENDALL. Mr. Browne, is that correct?

Mr. BROWNE. I would imagine so. Some have higher security.

Mr. ADAMS. Thank you, gentlemen.

This completes this portion of the hearings on cargo security, and the subcommittee will be adjourned.

(The following telegram, statements, and letters were received for the record:)

[Telegram]

SAN FRANCISCO, CALIF., *September 16, 1971.*

Re pending bill H.R. 10295 dealing with cargo security.

Hon. HARLEY O. STAGGERS,

Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.

Senate has just passed parallel S. 942 without we believe full consideration of all implications. While all segments of shipping industry would certainly share Senate Commerce Committees concern over cargo theft and pilferage S. 942 and H.R. 10295 are not non-controversial because of their sweeping grant of report-gathering power to Federal Maritime Commission, a provision added to the bills, without any publicity, when reintroduced this year and passed by the Senate without hearings or other opportunity for public airing. Forty-seven members of the Foreign Shipowners Association of the Pacific Coast, headquartered in San Francisco and representing carriers flying the flags of virtually every foreign maritime nation serving United States ports, are gravely concerned about over-board and extra-territorial features of this provision. Though stated purpose of the bills is to provide basis for "a national intermodal program for cargo security," grant of report-seeking power to Federal Maritime Commission is not limited to national operation, but appears to reach and indeed has already been interpreted by Senate and by Federal Maritime Commission as reaching, not only cargo losses in U.S. ports but also those in foreign ports as well. Yet clearly this latter category is an area in which substantive U.S. programs, laws or regulations, unilaterally adopted, can have no efficacy or legal force. Hence the reports which would be authorized are at least twice as burdensome as maximum possible utility would warrant.

Carriers also concerned that, though study commission which S. 942 and H.R. 10295 would establish and for which F.M.C. reports are ostensibly to be gathered, has a maximum two-year life, grant of report power to F.M.C. is apparently in perpetuity, hence would appear to be beyond any legitimate purpose, scope, or stated intent of proposed legislation. Finally, even as to U.S. domestic port losses, carriers question whether this additional power to F.M.C. is necessary, proper, or appropriate, largely overlapping as it does the current substantive authority of the U.S. Customs Bureau to act in this area and the port security regulations already issued by that body. You will perhaps know that in the 1970 Senate small-business hearings F.M.C. itself shared this view and questioned need for and/or desirability or utility of any new reporting requirements. For your information however F.M.C. without waiting for passage of authorizing legislation, has now reversed its position and has already instituted a rule-making proceeding to require just such reports, without limit as to time or place. Such proceeding, designated F.M.C. docket 71-74 was inaugurated with an announcement of the F.M.C. Chairman that "to properly implement such a program the Commission will be required to increase its number of personnel." Such statement bears consideration with respect to its unspoken corollary, the substantial additional personnel requirements which would be required by the already overburdened shipping industry, to prepare such reports (the cost of which would have to be recovered in increased freight rates). It also bears noting in conjunction with the third-mentioned point above, the questionable appropriateness of the F.M.C. as the agency to gather the information, even assuming it is to be gathered at all, in any part. F.M.C. has of course no substantive authority or accumulated expertise in matters of cargo losses.

As previously noted, there has to date been no hearing on any of these questions nor on any aspect of F.M.C.S. obtaining such broad new power. Particularly no hearing has been held on the sensitive extra-territorial question and the sharp break with prior congressional restraint in this regard which section eleven of the proposed legislation would constitute. Accordingly and in recognition of principles of international law and comity as well as economic well-being of international water-borne commerce of the U.S. members of the foreign shipowners association urgently request that your committee not act on H.R. 10295 without first holding hearings with opportunity for full industry participation.

We are authorized to state that the Baltic and International Maritime Conference representing members in seventy-nine countries, controlling 73.4 million G.R.T., join in the above views. Copy this wire being air mailed to you and all members your committee.

Thanks for your consideration.

Respectfully,

By F. CONGER FAWCETT,
GRAHAM & JAMES,

(For Baltic and International Maritime Conference).

STATEMENT OF JAMES P. FERNAN, DIRECTOR, COMMITTEE ON THEFT AND
HIJACKING, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. Chairman, and members of the House committee, my name is James Fernan. I am Director of the Trucking Industry Committee on Theft and Hijacking (TICOTH) of the American Trucking Associations, Inc., 1616 P Street, N.W., Washington, D.C. 20036. ATA is the national trade association of the motor carrier industry and as such, represents all types of motor carriers. ATA has affiliated associations in every state and the District of Columbia.

As a representative of ATA, I am here today to urge your favorable consideration of H.R. 10295, a bill introduced by Congressman J. J. Pickle. This bill will establish a Commission on Security and Safety of Cargo, with a two year life, to study cargo theft losses and report to the Congress and Executive branch on that subject and to recommend measures to reduce these losses.

We supported enactment of a Cargo Security Commission in testimony before the Senate Commerce Committee on September 30, 1970, which was then considering Senate Bill 3595 to provide for such a Commission. This position was re-stated before the Senate Select Committee on Small Business on June 8, 1971 when it was exploring the nature and extent of cargo thefts in the trucking industry.

From available information, theft-related losses from the trucking industry were less in calendar year 1971 than in 1970. We believe the reduction was accomplished through enlightened self-interest within the industry. Certainly the interest shown by Congress as well as the Departments of Justice and Transportation encouraged this industry activity.

Despite this improvement, we still consider theft losses as a most serious problem in the motor carrier industry. We believe that continued improvement in reducing theft losses will have to be predicated on a clearer understanding of the role which must be played by not only the motor carriers, but the shippers, the consignees, insurers, the law enforcement agencies and their working relationships on cargo crime, the judicial system, the unions and the other governmental agencies and departments.

Theft of cargo from docks or terminals, or by hijacking, is nationwide in scope and involves all modes of transportation. It cannot really be solved piecemeal, by one industry or by one locality alone, however dedicated or well-considered and well-designed program, a program nationwide and transportationwide in scope.

Because of the complexity of the problem, we believe the Commission approach of H.R. 10295 is the best means of providing an in-depth study of what is real in cargo loss, the relationships that now exist amongst all sectors, private and governmental, and what needs to be done, by whom, to reduce these losses.

We believe the Commission, representative of Congress, government agencies, industry and labor, as provided in this bill, offers the promise of producing a sound approach to the entire subject—cause, effect and remedy.

The reports of the Commission should afford to the Congress and to the Executive branch an objective appraisal of the situation, for use in developing and evaluating possible legislation regulation.

In the absence of this Commission, we may, each of us, continue to expend time and energy chasing down or reacting to undocumented "horror stories" which may or may not typify crime in the trucking industry.

Even more serious, those concerned with cargo theft may well pursue individual efforts which would be less productive than the coordinated approach envisaged in this legislation.

May we again urge your favorable consideration of H.R. 10295.

STATEMENT OF CASEY, LANE & MITTENDORF ON BEHALF OF 59 COMMON CARRIER STEAMSHIP LINES¹

This statement is presented by Casey, Lane & Mittendorf, 26 Broadway, New York, New York, on behalf of the 59 common carrier steamship lines listed in Appendix A of this Statement (the "Carriers") which operate in the foreign commerce of the United States between Atlantic and Gulf ports on the one hand and, on the other, the Caribbean, the entire continent of South America, the West Coast of Central America, South and East Africa, India, Ceylon, Japan, Korea, Taiwan, Hong Kong, the Philippines, Viet Nam, Cambodia, Laos, Malaya, Thailand and Indonesia. The Carriers submit this Statement in order that this Committee may have before it the views of ocean carriers who would be vitally affected by the companion bills S. 942 and H.R. 10295 and, in particular, by Section 11 of H.R. 10295.

The Carriers are concerned about the manner in which the legislation now before this Committee, establishing a Commission on Security and Safety of Cargo and enlarging the information-gathering powers of the Federal Maritime Commission (the "FMC") passed the Senate without effective notice to or comments by common carriers by water, the industry vitally affected by Section 11 of this bill.

A review of the history of this legislation from the introduction of its predecessor, S. 3595, in the 91st Congress indicates that neither testimony nor information was elicited from shippers or water carriers bearing on the need for a Commission on Security and Safety of Cargo to deal with waterborne commerce or, in particular, on the need for the FMC to require the reporting of lost, damaged or stolen cargo. The hearings in 1969 before the Senate Select Small Business Committee on the impact of crime, which were in part incorporated by reference into subsequent cargo security hearings in the Senate, focused almost exclusively on loss, damage and pilferage of cargo at United States airports. S. 942, however, proposes to confer increased authority on the FMC, ancillary to the bill's main purpose.

When Chairman Bentley of the FMC presented her views to the Senate Select Committee on Small Business and the Senate Committee on Commerce, she indicated that the task of gathering information on cargo losses could best be performed by the Bureau of Customs. Mrs. Bentley pointed out that a substantial amount of information on cargo loss by carriers is currently reported to the Bureau of Customs on Customs Form 5931. Despite this position, an amendment to S. 942 grants authority to the FMC to establish a loss reporting system. Since this amendment was not introduced until after the commencement of the cargo security hearings, neither interested shippers nor the maritime industry had notice that a substantive amendment to the Shipping Act, 1916 (the "Shipping Act") was even under consideration. As a result, there was no testimony in the 491 pages of the record of the cargo security hearings addressed to this substantive matter. It was only after the FMC initiated its Docket No. 71-74, a rule-making proceeding on the reporting of cargo loss and damage, that the shipping industry became aware of the fact that a bill designed to study the problems of cargo security, but which incidentally would amend Section 21, a key provision of the Shipping Act, was then before the Senate.

H.R. 10295, which parallels S. 942, was introduced on August 2, 1971. This bill, because of its overall purpose in establishing a Commission on Security and Safety of Cargo, has been referred to this Subcommittee. Section 11 of H.R. 10295 would amend Section 21 of the Shipping Act in a manner similar to that proposed by the Senate. The House Merchant Marine and Fisheries Committee, which is most familiar with the Shipping Act and the industry regulated by its provisions will, as a result, not be considering this substantive amendment to the Act.

¹ See Appendix A attached.

The Carriers respectfully point out in regard to these bills that, when proposals to amend Section 21 of the Shipping Act have been advanced in the past, the maritime industry has been given an opportunity to comment on such amendments before the House and Senate Committees possessing extensive knowledge and expertise in the special nature and problems of international maritime commerce.

In 1961, the Federal Maritime Board (the predecessor of the FMC) and the Department of Commerce proposed extensive amendments to Section 21 of the Shipping Act. Common carriers by water had an opportunity to comment on the amendments. Subsequent to extensive hearings held by both the Senate Subcommittee on Merchant Marine and Fisheries and a special subcommittee of the House Committee on Merchant Marine and Fisheries, in which representatives from shipper groups, the maritime industry and interested government agencies made extensive comments on the legislation, the proposed amendments to section 21 were deleted.

Among the special problems of international shipping, which have an intimate relationship to the entire structure of the Shipping Act are that no one nation has an exclusive interest in any aspect of international maritime commerce and that the conference structure, as established under the Shipping Act and administered by the FMC, is affected by any changes in the Shipping Act. The Carriers submit that the expertise and experience of the House and Senate Committees familiar with the Shipping Act would be especially important in considering any amendment to Section 21 of the Shipping Act.

THE PROPOSED COMMISSION WOULD BE REDUNDANT

While it is unpopular to be opposed to anything which is arguably directed against organized crime, the Carriers must respectfully point out to this Committee that there has been no pressing need shown for the creation of yet another body to review this field. The hearings to date on cargo security have pointed up the substantial problem of cargo theft, most particularly at airports. For example, the hearings held during 1970 on this topic focused almost exclusively on the so-called "JFK Mess" and on activities at major airports, such as Los Angeles and Logan Airport at Boston. If a commission such as that proposed is designed to bring public attention to the problem, the Carriers respectfully submit that public attention already has been brought to bear. If the purpose of such a commission is to ascertain which areas are "critical" in terms of theft of cargo, then we again submit that the Congress and all regulatory and enforcement agencies are well aware of the problems of theft. In terms of collection of data and further investigation into activities at areas such as JFK Airport, the Carriers must respectfully point out that various agencies, among them the Treasury Department and its Customs Bureau, the Law Enforcement Assistance Administration of the Department of Justice, and the Department of Transportation, already have programs of enforcement and data collection in this field. As each of these agencies has, to one degree or another, an enforcement as well as data collection interest in such activities, the Carriers submit that the addition of yet another layer and another series of report-gathering personnel would merely serve to impede the attempts on the part of these and other agencies to stamp out the severe problem of cargo theft.

Given the volume of theft as estimated by the Senate, what certainly is needed is not further study but more adequate enforcement of existing laws by such offices as the Treasury, the FBI, and regional, state and local bodies. It is submitted that two more years of study of this problem will merely lead to the same conclusions: that the critical problem is in the airports, through which the high-value and low volume commodities are transported; that the largest portion of thefts is conducted by so-called "insiders"; that state and local enforcement authorities have not focused adequate attention on these crimes, in part because such crimes are "transitory" and do not raise the ire of the citizenry as do crimes such as breaking and entering. At the end of two years, therefore, we will have a report which will note that the problem of cargo theft is a severe one and recommending stronger enforcement of existing laws, coupled perhaps with extension of the current authority of such agencies as the Department of the Treasury and the Department of Transportation into areas in which they are already operating.

For the above-stated reasons, the Carriers urge that there is no need to create a Commission on Security and Safety of Cargo and that H.R. 10295 and S. 942 not be enacted.

THE PROPOSED AMENDMENT TO SECTION 21 OF THE SHIPPING ACT IS INAPPROPRIATE

The bills before this Committee are primarily designed to institute an overall two-year study of theft of cargo in interstate and foreign commerce. Under Section 7(7) of H.R. 10295, at the end of this two-year study the Commission is to develop a "system of comprehensive, continuous, and uniform loss and damage reporting by the different modes of transportation." At the same time, under Section 11 of this bill, the Congress will authorize the FMC to institute its own system of reporting all cargo losses and theft. The Carriers submit that the timing of this proposal is highly inappropriate. The FMC, once granted authority, will undoubtedly immediately institute extensive and quite detailed regulations on the reporting of cargo theft and loss, probably modelled along those in FMC Docket 71-74. Thus, the Carriers and all others under the supervision of the FMC will, for at least two years, be subject to detailed and onerous reporting requirements while a special Commission created by this Congress would consider (a) the necessity for maintenance of such records, (b) in what form reporting requirements should be issued, and (c) by whom such data should be collected and to whom such data should be transmitted.

The Carriers respectfully submit that, for the two-year duration of this study, they would be merely participating in an experiment, for there is no certainty whatsoever that the regulations as proposed by FMC would be in the form which the Commission on Security and Safety of Cargo would eventually deem appropriate. For this reason, the Carriers submit that the FMC should not be permitted to institute such regulations until the Commission on Security and Safety of Cargo has ascertained both the need for such reporting as well as the form such reporting should follow.

In this instance, the Congress knows in advance in what manner its legislative intent will be implemented by a regulatory agency. In Docket 71-74, the FMC in 1971 proposed an extensive series of reporting requirements on both cargo theft and cargo loss. The Carriers and others affected filed extensive comments with the FMC noting the immense burdens which such regulations would place on both the Carriers and the FMC in the collection and processing of such new data. The volume of cargo carried by the Carriers and others in the maritime industry is enormous. Substantial increases in personnel and, thus, in freight rates would be required by the enactment of Section 11 of H.R. 10295. Further, the staff of the FMC would require significant enlargement to monitor in a meaningful way the information that Section 11 would require.

The Carriers of course do not wish to impede any review by the Congress or its special Commission of the substantial problems of cargo theft. As the Carriers have pointed out earlier in this Statement, various agencies already have systems of reporting and data collection which reflect activity in international shipping. More specifically, the Carriers point out (as has the Chairman of the FMC) that data already collected by the Bureau of Customs would provide information which would aid the proposed Commission should this legislation be passed. If the Congress should deem it necessary that this Commission be created (a point which the Carriers do not concede), then the maritime industry should not be burdened by additional duplicate paperwork. Rather, this Commission should review the currently available data in all areas.

The Carriers have noted the unique problems of dealing with international maritime commerce. One problem which the Carriers believe may arise due to the proposed amendment of Section 21 of the Shipping Act is a potential conflict with foreign governments. As those familiar with international maritime commerce know, a large number of carriers under the supervision of the FMC are foreign-flag or state-owned carriers. This means that many records of those carriers are kept in their foreign home nations and not in the United States. Even if these carriers should be able to compile data on losses caused by theft and other causes, it cannot be assumed that their data will segregate losses incurred in the United States as opposed to other ports. Particularly in the age of intermodal transportation, it will be very difficult, if not impossible, for many of these carriers to establish whether loss or damage to cargo occurred in the United States because much of the cargo is now shipped in containers so that loss, damage or theft of export cargo is often undetectable until it reaches its foreign destination. The same is true for import cargo.

The FMC, as well as the Committee on Merchant Marine and Fisheries, is well acquainted with the hard fact of regulatory life in international maritime commerce: foreign-flag carriers have historically been unamenable to the production of information which their governments do not regard as being within the FMC's jurisdiction or prerogative. The Carriers, of course, cannot state that foreign governments would oppose production of information which

would be required under the proposed amendment to Section 21 of the Shipping Act, but the history of the regulation of foreign maritime commerce clearly raises substantial questions in this area.

It should be noted that the last major attempt by the FMC to obtain information located abroad (purportedly under the authority of section 21 of the Shipping Act) eventually resulted in the cancellation of several orders issued by the FMC pursuant to agreements reached at an inter-government conference held in January 1965 in Washington, D.C. This conference was the outgrowth of an extended conflict over the authority of the FMC to review the records of foreign-flag or foreign-owned carriers. The conference referred to above was attended by representatives of the United States and of 14 maritime nations, including Great Britain and Japan.

After an extended period of negotiation, it was finally agreed that, in consideration of the withdrawal of certain orders issued by the FMC, only certain limited and less burdensome information, on an aggregate basis, would voluntarily be supplied through governmental channels. The document resulting from this conference expressly stipulated that, in the future, the United States Government would consult with these 14 maritime governments before resorting to such efforts, and that such consultations should also concern alternative methods of approaching the problems involved. In view of this relatively recent experience, the Carriers submit that this Committee should stay its hand from mandating or authorizing the FMC to issue extensive detailed regulations on the reporting of cargo theft or loss which might be expected to invite further international repercussions.

In hearings on an earlier version of these bills, it was suggested that other nations would, of course, cooperate fully in the collection and transmission of data on cargo theft and losses because it would be in their own interests. The Carriers respectfully submit that while it is in the interest of all nations to eliminate theft of cargo in international commerce, it must be left to the foreign governments involved to determine what are their legitimate interests and in what way their common interests in the elimination of losses due to theft can be best advanced. Such a sensitive step demands full review by both the regulatory body most familiar with this problem, the FMC, the Congressional Committee most familiar with the sensitive international problems of maritime commerce, the Committee on Merchant Marine and Fisheries, and the Department of State, as well as direct consultation with all affected maritime nations.

In view of the international implications of Section 11 of H.R. 10295, the Carriers respectfully submit that it is inappropriate for this Committee to amend Section 21 of the Shipping Act as an adjunct to the principal thrust of H.R. 10295, the establishment of a Commission on Security and Safety of Cargo.

For the above-stated reasons, the Carriers participating in this Statement, respectfully submit that this Committee should strike Section 11 of H.R. 10295 and, if the Commission on Security and Safety of Cargo should be established, it should rely on currently-available sources of data to avoid (a) an undue burden on international maritime carriers and (b) an accidental intrusion into a highly sensitive area of foreign relations.

May 23, 1972

APPENDIX A

COMMON CARRIER STEAMSHIP LINES PARTICIPATING IN STATEMENT

American Export Isbrandtsen Lines, Inc.
 American President Lines, Ltd.
 Alcoa Steamship Company, Inc.
 Argentine Lines (Empresa Lineas Maritimas Argentinas (E.L.M.A.))
 Atlantic Lines, Ltd.
 Azta Shipping Co.
 Barber Lines, A/S
 Blue Sea Line
 Booth/Lamport Joint Service (Booth Steamship Company, Limited, Lamport & Holt Line, Limited)
 Caribbean Trailer Express Limited
 Chilean Line (Compania Sud-Americana de Vapores)
 CIA. Agropecuaria y Maritime Santa Rosa Ltd.
 Colombiana Internacional de Vapores, Ltda.
 Cunard-Brocklebank Ltd.
 Delta Line (Delta Steamship Lines, Inc.)
 P. N. Djakarta Lloyd
 Empresa de Navegaoa Alianca S/A

Empresa de Navegacao Unidas S.A.
 L. Figueiredo Navegacao S.A.
 Flota Mercante Grancolombiana, S.A.
 Georgia Steamship Corporation
 Gulf & South American Steamship Co., Inc.
 Hapag/Lloyd AG (Hapag/Lloyd Magellan Service)
 High Seas Company Limited
 Holland Pan-American Line (Van Nievelt, Goudriaan & Co.'s Stoomvaart Maatschappij N.V.)
 Honduran Line (The) (Empresa Hondurena de Vapores, S.A.)
 Ivaran Lines (A/S Ivarans Rederi)
 Japan Line, Ltd.
 Kawasaki Kisen Kaisha, Ltd.
 Koninklijke Nedlloyd NV
 Linea Amazonica S.A.
 Lloyd Basileiro (Companhia de Navegacao Loide Brasileiro)
 Lumber Carriers Ltd.
 Lykes Bros. Steamship Co., Inc.
 Mamenic Line (Marina Mercante Nicargaguene, S.A.)
 Maritime Company of the Philippines
 Mitsui O.S.K. Lines, Ltd.
 A. P. Moller-Maersk Line
 Moore-McCormack Lines, Incorporated
 Naviera Amazonica Peruana S.A.
 Netumar Line (Companhia de Navegacao Maritima Netumar)
 Nippon Yusen Kaisha
 Nopal Lines (The Northern Pan-American Line Aktieselskab)
 Pan American Mail Line, Inc.
 Peruvian State Line (Compania Peruana de Vapores)
 Prudential-Grace Lines, Inc.
 Royal Netherlands Steamship Company (Koninklijke Nederlandsche Stoomboot Maatschappij N.V.)
 Scindia Steam Navigation Co., Ltd.
 Sea-Land Joint Service (Sea-Land Service, Inc., Gulf-Puerto Rico Lines, Inc.)
 Shipping Corporation of Inda Ltd. (The)
 South African Marine Corp.
 States Marine Lines
 Thai Mercantile Marine Limited
 United Fruit Company
 United Philippine Lines, Inc.
 United States Lines, Inc.
 Uruguayan Line (Montemar S.A. Comercial y Maritima)
 Venezuelan Line (Compania Anonima Venezolana de Navegacion)
 Yamashita-Shinnihon Steamship Co., Ltd.)

STATEMENT OF CHARLES J. MORAN, CHAIRMAN, NORTH ATLANTIC BALTIC FREIGHT CONFERENCE; NORTH ATLANTIC CONTINENTAL FREIGHT CONFERENCE; NORTH ATLANTIC FRENCH ATLANTIC FREIGHT CONFERENCE; AND NORTH ATLANTIC UNITED KINGDOM FREIGHT CONFERENCE

My name is Charles J. Moran. I am Chairman of four steamship freight conferences serving the eastbound trades from U.S. North Atlantic ports to the United Kingdom and northern Europe. These conferences are associations of common carriers by water organized pursuant to agreements approved by the Federal Maritime Commission under Section 15 of the Shipping Act, 1916. A list of the conferences and their respective member lines is attached.

This statement is submitted with respect to H.R. 10295 which would establish a new "Commission on Security and Safety of Cargo". Section 2(a) of the proposed Bill indicates that this Commission is being created to study and report on the causes of theft and pilferage of cargo in interstate and foreign international commerce and to promote the development of new techniques to "enhance the safety and security of cargo transportation".

The members of my Conferences consider that enactment of this legislation in its present form would be largely an exercise in futility. To the extent that "security" of cargo is being imperiled by criminal activity, this is and must remain a matter for the law enforcement officials. Title 18, U.S. Code, Section 659 already makes it a Federal crime to steal goods moving in interstate or foreign commerce. This statute has been given a broad interpretation by the courts, and the Federal Bureau of Investigation has long played an active part

in investigating suspected violations, regardless of the "mode of transportation" involved. The very fact that these crimes can be committed at any stage of the transport makes it all the more important that counter-measures be centralized in a single Government agency. We therefore consider that the F.B.I., which is most familiar on a day-to-day basis with the techniques and methods employed by the criminals, is already fully qualified to investigate and recommend future action in this field.

We further consider that the \$2 million, proposed to be authorized for the new Commission, should be used to supplement the F.B.I.'s budget rather than to create a whole new layer of federal bureaucracy. Certainly, the F.B.I. should have no difficulty in enlisting the cooperation of carriers, freight forwarders and insurance underwriters who are the parties who ultimately bear a large proportion of the losses.

The fact that, for largely historical reasons, the regulation of particular types of carriers has been delegated to different Federal agencies, such as the ICC, the CAB and the FMC, is no reason to give them jurisdiction to make rules relating to "security" as provided in Sections 10 and 11 of the Bill. In fact, the very emphasis in Section 2(a) on the "multi-jurisdictional" nature of the thefts dictates that the counter-attack should not be fragmented by individual agency rule-making.

A second important flaw in the Bill is its treatment of the words "safety" and "security" as though they were synonymous. While the two terms do overlap to some degree, the concept "safety of cargo" is far broader and involves many larger considerations than "security against criminal activity". Section 7(7) of the Bill would charge the proposed Commission with "development of a system of comprehensive, continuous and uniform loss and damage reporting by the different modes of transportation". Cargo can be lost or damaged due to an almost infinite variety of circumstances which are not connected with any "criminal activity" of the kind referred to in Section 2 of the Bill. For example, ocean shipments can be overheated, frozen, water-soaked, washed overboard or damaged by insects, fire, mishandling by stevedores, improper packing, collisions, strandings and a thousand other causes having no relation whatever to the essential purpose of this Bill. To intermingle "security against criminal activity" with "safety" can only water down efforts to analyze and curb the former.

Moreover, "safety" would not be within the competence of the staff of the proposed Commission who, under Section 5(b) of the Bill, are to be persons "having expertise determined to be pertinent to the conduct of a systematic operations research study of the problem of cargo theft". By the same token, such individuals would scarcely be qualified to evaluate existing limitations on "carrier liability limits for losses incurred" during transportation, as provided in Section 7(8). The legal rationale of limitation of liability provisions is an extremely complex subject involving the interplay between international conventions and domestic legislation. This subject is plainly within the sphere of the Department of Transportation whose facilities should be more than adequate for any studies which may be thought necessary.

In summary, it is the view of the members of these conferences that H.R. 10295 should be modified (a) to limit its scope to security against criminal activities, as opposed to cargo "safety" in general and (b) to authorize the Federal Bureau of Investigation, rather than the proposed new Commission, to undertake a thorough study of all aspects of criminal activity resulting in loss and damage to goods moving in commerce for the purpose of recommending measures to be taken to combat that activity.

In such form the Bill would make a substantial and practical contribution to remedying a situation which is of serious concern to all shippers and carriers in our foreign and domestic commerce.

It is respectfully requested that a copy of this statement be included in the record of the hearings.

CONFERENCE MEMBERSHIP

North Atlantic Baltic Freight Conference (F.M.C. Agreement No. 7670) : American Export Isbrandtsen Lines; Atlantic Container Line, Ltd.; Dart Containerline Company Limited; Hapag-Lloyd Aktiengesellschaft; Norwegian America Line; Sea-Land Service, Inc.; and Seatrain Lines, Inc.

North Atlantic Continental Freight Conference (F.M.C. Agreement No. 9214) : American Export Isbrandtsen Lines; Atlantic Container Line, Ltd.; Dart Containerline Company Limited; Hapag-Lloyd Aktiengesellschaft; Sea-Land Service, Inc.; Seatrain Lines, Inc.; and United States Lines.

North Atlantic United Kingdom Freight Conference (F.M.C. Agreement No. 7770) : American Export Isbrandtsen Lines; Atlantic Container Line, Ltd.; Dart

Containerline Company Limited; Hapag-Lloyd Aktiengesellschaft; Sea-Land Service, Inc.; Seatrain Lines, Inc.; and United States Lines.

North Atlantic United Kingdom Freight Conference (F.M.C. Agreement No. 7100); American Export Isbrandtsen Lines; Atlantic Container Line, Ltd.; Dart Containerline Company Limited; Furness Warren Lines; Hapag-Lloyd Aktiengesellschaft; New England Express Line, N.V.; Sea-Land Service, Inc.; Seatrain Lines, Inc.; and United States Lines.

NEW ORLEANS STEAMSHIP ASSOCIATION,
New Orleans, La., November 4, 1971.

Re: H.R. 5080 and Senate Bill 942.

HON. HARLEY O. STAGGERS,
Chairman, House Interstate and Foreign Commerce Committee, Rayburn House
Office Building, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: The New Orleans Steamship Association, comprising 50 steamship owners, agents and other interests serving the Port of New Orleans and the U.S. Gulf, most urgently requests your consideration of its views on the captioned legislation, Section 10(b) of H.R. 5080 and Section 11 of S. 942 empowering the Federal Maritime Commission to require periodic reports "listing and evaluating all cargo damaged, lost, missing, or presumed stolen".

This proposed legislation, unfortunately, did not receive the attention required of the carriers serving our foreign commerce and effectively reached its present stage without their full consideration or the expression of their views on it. We believe that it empowers the Federal Maritime Commission to require reports which it will not be able to obtain from the foreign flag carriers in those trades since the information simply will not be readily available and it cannot be anticipated that those parties will expend the funds necessary to produce information which will be so useless and irrelevant. Further, the proposal is one which will impose a substantial cost burden on our foreign trade which necessarily would be reflected in our freight rates.

The futility of the proposal stems simply from the fact that such periodic reports do not genuinely tend to prevent or mitigate the losses through theft or pilferage which can only be controlled by prompt and effective action taken at the time of the discovery of the loss. At the present time in the Port of New Orleans our carriers are taking the steps necessary to minimize such losses. We are attaching hereto a copy of the Missing Cargo Report Form used by the ocean carriers in this port. As reflected by the form, in all cases of suspected theft, pilferage or robbery the carrier immediately notifies, by telephone with a confirmatory written report, the following authorities:

1. The Harbor Police employed by the Board of Commissioners of the Port of New Orleans (Dock Board) as the local law enforcement agency having jurisdiction over the public wharves in the Port of New Orleans.
2. The U.S. Customs Service as the Federal agency having immediate concern with losses of imported goods prior to their entry through Customs.
3. The Federal Bureau of Investigation as the Federal law enforcement agency having jurisdiction over thefts in our interstate and foreign commerce.
4. The New Orleans Private Patrol Service, a private detective agency hired by the carriers, which has augmented with very good effect the efforts of the local and Federal law enforcement agencies having jurisdiction as outlined above.
5. The New Orleans Steamship Association as a coordinating body for all such activities.

The foregoing demonstrates an effective and useful procedure to minimize, to the extent possible, cargo losses through theft, pilferage or robbery. The carriers, acting in their own self interest, do not require legislative mandates to implement any such useful procedures. The statistical reporting which will result from the passage of the bills in question will not aid the carriers in their efforts to minimize such losses and will represent nothing more than a waste of the funds of the government as well as of the carriers themselves.

Accordingly, we urge that Section 10(b) of H.R. 5080 and Section 11 of S. 942 be deleted. If you feel that more testimony is required, we request that hearings be conducted on this portion of the legislation in order that interested groups may acquaint the Committee with the facts which we believe have been omitted from the record to date in connection with these two bills.

Yours very truly,

S. GIALLANZA,
Vice President.

MISSING CARGO REPORT

NAME OF COMPANY _____

Report No. _____

(OBTAIN NO. FROM HARBOR PATROL)

WHARF AND SECTION NO. _____

WHARF PHONE NO. _____

SHIP AND VOY NO. _____

MFST NO. _____

B/L NO. _____

DATE ARRIVED _____

DESCRIPTION OF MISSING CARGO

(SHOW QUANTITY, NUMBERS, BRAND NAME, COLOR, MARKS, ETC.)

THE ABOVE REPRESENTS A COMPLETE SHIPMENT
PART LOT OF A TOTAL OF _____ PACKAGES

REMARKS: _____

RECEIVING CLERK _____

FOREMAN _____

WHARF SEC. WHERE STORED _____

DATE SHORTAGE DETECTED _____

SHIPPER _____

CONSIGNEE _____

FORWARDER _____

NAME OF WATCHMAN ON DUTY _____

CONNECTING CARRIER _____

CAR, TRUCK OR BARGE NO. ETC. _____

I CERTIFY THAT I HAVE NOTIFIED THE FOLLOWING PERSONS OF THE ABOVE DESCRIBED SHORTAGE:

		DATE	AT	TIME	P.M.
MR.	OF U. S. CUSTOMS AT 527-6327 or 2748 ON		AT		P.M.
MR.	OF F. B. I. AT 522-4671 ON		AT		P.M.
MR.	OF HARBOR PATROL AT 522-2551, EXT. 222 ON		AT		P.M.
MR.	OF N. O. PRIVATE PATROL AT 525-7111 ON		AT		P.M.

CONFIRMATION COPY TO:

MAIN OFFICE OF COMPANY _____

U.S. CUSTOMS, 423 CANAL ST. _____

F.B.I., 701 LOYOLA AVE. _____

HARBOR PATROL, 1 CANAL ST. _____

N.O. PRIVATE PATROL, PAN AMER. BLDG. _____

N.O. S/S ASSN., 219 CARONDELET ST. _____

NAME, TITLE AND DATE _____

FEDERAL LAW MAKES IT A CRIME TO FALSIFY, CONCEAL OR MISREPRESENT ANY MATERIAL FACT IN A REPORT LIKE THIS:
OR TO CONCEAL INFORMATION OF THEFT OF SUCH CARGO.

AMERICAN INSTITUTE OF MARINE UNDERWRITERS, AND
 INLAND MARINE UNDERWRITERS ASSOCIATION,
New York, N.Y., May 15, 1972.

HON. JOHN JARMAN,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN JARMAN: The following statement in support of H.R. 10295 is submitted on behalf of the American Institute of Marine Underwriters and the Inland Marine Underwriters Association.

The American Institute of Marine Underwriters is a national trade association representing over 110 insurance companies in the United States writing ocean marine insurance. The Inland Marine Underwriters Association is a national trade association representing 136 insurance companies writing inland marine insurance.

In this context, ocean and inland marine insurance includes all phases of transportation insurance. These organizations appreciate an opportunity to comment on H.R. 10295, a bill to establish a Commission on Security and Safety of Cargo.

The interest of the transport insurance industry in losses to goods in U.S. domestic and international commerce is substantial. For over 150 years, American insurance companies have played a vital role in the development of our domestic and international trade by securing industry against losses in transit that could be ruinous. It has made it possible for industry to ship its millions—and now billions—of dollars in goods to wherever it was needed, secure in the knowledge that they would be made whole should these shipments be damaged or totally lost. Until recent years, the principal causes of loss to these goods in transit were represented by storms, fires, collisions, floods and other acts of God and man that produced destruction of a largely fortuitous nature. The last decade, however, has seen an ever increasing and relentless rise in thefts, hijackings and other related crime losses. Today crime losses rank number one in dollar value of all causes of loss suffered by goods in transit, outranking such traditional causes as ship sinkings, storms, vehicle collisions, fire and the various types of handling damages.

Insurers are increasingly aware of the fact that the millions of dollars they pay to industry annually for the reimbursement of crime losses automatically enriches the non productive and predatory criminal element of society. Insurers will, of course, continue to do their utmost to provide industry with the protection it needs against these losses to goods in transit. At the same time it is recognized that there is a difference in the effect on our national welfare between reimbursing industry for goods damaged or lost in specie due to fortuitous happenings as opposed to reimbursement for goods that have been diverted into illegal channels.

While it is true that insurers as well as carriers spend more time and money each year in loss prevention efforts—and will continue to so do—the fact remains that the rising tide of crime losses has not been stemmed and the cost of protection continues to rise. Hence the American Institute of Marine Underwriters and the Inland Marine Underwriters Association endorse and support HR. 10295 and pledge their full cooperation throughout the life of the proposed Commission.

For your convenience, copies of this communication are being forwarded to the members of the Committee.

Respectfully yours,

CARL E. McDOWELL,
Executive Vice President,
American Institute of Marine Underwriters and
General Manager, Inland Marine Underwriters Association.

ASSOCIATION OF AMERICAN RAILROADS,
Washington, D.C., May 16, 1972.

HON. JOHN JARMAN,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Public hearings have been announced for May 17, 1972, on bills to create a Commission on Security and Safety of Cargo (S. 942, H.R. 5080, H.R. 9622 and H.R. 10295). We support these bills in principle.

Problems of the security and safety of cargo affect the carriers and users of all modes of transportation. Railroads and their shippers have experienced increases in cargo theft and pilferage, despite expanded prevention efforts. We believe the studies, reports and other actions called for by these bills will help substantially in the development of programs to improve cargo security.

I shall appreciate it if this letter may be made a part of the Subcommittee's hearing record.

Sincerely,

STEPHEN AILES,
President and Chief Executive Officer.

WATERFRONT COMMISSION OF NEW YORK HARBOR,
New York, N.Y., May 17, 1972.

Hon. JOHN JARMAN,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN JARMAN: The Waterfront Commission of New York Harbor wishes to set forth its full and complete support for H.R. 10295 and S. 942, which establish a Federal Commission on Security and Safety of Cargo for the improvement of cargo security in all modes of transportation throughout the country and which are now pending in your Committee. We also wish to advise you that both Governor Nelson A. Rockefeller of the State of New York and Governor William T. Cahill of the State of New Jersey have already supported this legislation in statements before Congress.

The Waterfront Commission is a bi-state agency of New York and New Jersey created in 1953 to eliminate criminal and corrupt conditions then existing on the New York-New Jersey waterfront. In 1970, the States of New York and New Jersey, as a result of public disclosures that the air freight industry at their metropolitan airports was criminally dominated and controlled, enacted legislation extending the jurisdiction of the Waterfront Commission to the airports in the metropolitan New York-New Jersey area to deal with the problems of organized crime and thefts of air cargo at these airports. Since this extension of the Waterfront Commission's jurisdiction to the airports takes the form of an interstate compact between New York and New Jersey, resolutions are now pending in Congress to grant Congressional consent to this Compact.

The Waterfront Commission believes that the establishment of a Federal Commission, such as proposed in H.R. 10295 and S. 942, for the improvement of cargo security would be of inestimable aid to law enforcement authorities and agencies now dealing with this problem.

As amply documented by testimony before Congressional committees, a major obstacle confronting law enforcement in the area of cargo security is the lack of accurate figures concerning cargo thefts. The Waterfront Commission knows from its own first-hand experience that the figures reported by many companies in the shipping industry for thefts of ocean cargo on the New York-New Jersey waterfront are incomplete and inaccurate. For example, the Commission often recovers stolen cargo that has never been reported as stolen or even missing. In one investigation, the Commission recovered \$277,000 worth of cargo stolen from the piers of which only \$940 had been reported by industry as stolen.

In connection with the pending Airport Commission Compact, the Waterfront Commission has analyzed the airlines' reports of thefts at the New York-New Jersey metropolitan airports and the Commission has similarly found that the statistics furnished by the airlines are also incomplete and inaccurate for a variety of reasons. The air freight industry only reports those losses which they themselves classify as thefts. To illustrate this, analysis of insurance claims for air cargo losses at Kennedy International Airport for 1969 and 1970 showed that the ratio of classification of thefts to other classification of losses dropped drastically from about 68% in 1969 to about 22% in 1970 while conversely all classifications for losses other than theft rose from about 32% in 1969 to about 78% in 1970. This drastic shift in classifications by the air freight industry was coincidental with attempts by the airlines to prevent Congressional approval of the Airport Commission Compact by the States of New York and New Jersey

in 1970. Indeed, the Waterfront Commission found that numerous insurance claims actually classified as thefts were not reported at all by industry. In addition, the industry does not report at all thefts that occur on airport facilities outside the perimeter of the Port of New York Authority's airport premises. A recent survey showed that there were at least 90 such air cargo facilities outside the perimeter of that portion of Kennedy Airport leased and operated by the Port Authority.

Despite numerous investigations by state and federal bodies into airport losses, accurate and comprehensive figures for the losses at any particular airport are still not available anywhere. The extent of this problem is shown by the fact that claims for losses at Kennedy alone filed for the year 1971 with about 10% of the insurance carriers who insure air cargo amounted to \$3,341,058.03, which, if projected for 100% of the insurance carriers, amounted to about \$33,410,580.00. This figure of \$33,410,580.00 for insurance claims for all types of losses at Kennedy should be compared with the figure of about \$976,000 classified by the air freight industry as thefts at Kennedy in 1971.

Notwithstanding the total lack of accurate figures for airport thefts, one certain fact is that, despite the air freight industry's claim of reduced thefts, insurance costs are soaring because of increased losses, the insurance companies have found it necessary to impose increased deductibles on their policies for air freight at Kennedy Airport, and the airlines have actually attempted to boycott high value cargo at Kennedy Airport without any regard to the effect of such embargo on the economy of the States of New York and New Jersey.

In the light of this situation, it becomes obvious that there is an imperative need for the establishment of a governmental body with the authority to require and obtain accurate figures for thefts of cargo, to study the entire problem of cargo security in all modes of transportation throughout the country, to take remedial steps, and to make appropriate legislative recommendations in this area. H.R. 10295 and S. 942 meet this need and appropriately recognize both state and federal responsibility in this area.

Very truly yours,

WILLIAM P. SIRIGNANO,
Executive Director and General Counsel.

AMERICAN RETAIL FEDERATION
Washington, D.C., May 20, 1972.

Re H.R. 5080 Cargo Theft Commission.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Foreign and Interstate Commerce, House of Representatives, Congress of the United States, Washington, D.C.

DEAR CHAIRMAN STAGGERS: At the meeting of our Transportation Committee this month we were again faced with some problems because of the unavailability of accurate or comprehensive cargo loss statistics. In our opinion, this is one of the benefits that would ensue from the establishment of a Commission on Security and Safety of Cargo as proposed in the above bill.

We realize that there is seldom, if ever, a non-controversial bill but this must certainly come close to that ideal. We do not know of any serious opposition to the establishment of this temporary group to determine the extent of the nation's loss due to thefts in transportation and the best ways to seek corrections.

The Federation's committee again authorized me to indicate to you our support of H.R. 5080. I am aware that your committee has had, and will continue to have, a heavy work load in this session of the Congress. Despite this, we are all hopeful that you will find time to accord hearings—and to recommend the passage—of this important piece of legislation.

Respectfully,

CHARLES A. WASHER,
Transportation Counsel.

AIRPORT SECURITY COUNCIL,
Forest Hills, N.Y., May 24, 1972.

HON. JOHN JARMAN,
Chairman, Subcommittee on Transportation, and Aeronautics, Committee on
Interstate and Foreign Commerce, House of Representatives, Washington,
D.C.

DEAR CONGRESSMAN JARMAN: The Airport Security Council, representing forty-three international and domestic airlines, plus air freight forwarders and ground service people at the three airports of New York/New Jersey, long ago endorsed the proposed Federal Commission on Security and Safety of Cargo, embodied in H.R. 10295 and S. 942.

We fervently endorse the concept of accurate reporting of cargo lost and damaged while in transit. There is no question that studies based upon such data are needed to chart the future of the cargo and distribution systems of the nation.

Your Committee has been offered statements, however, from another source, which reflect unfairly and inaccurately upon the air freight industry. I refer to comments in the testimony of William P. Sirignano, Executive Director of the Waterfront Commission of New York Harbor, such as "the air freight industry only reports those losses which they themselves classify as thefts" and "... accurate and comprehensive figures for the losses at any particular airport are still not available..." and the like.

The fact is, Mr. Chairman, that the airlines at New York and Newark started, back in 1969, a pioneering program for systematic reporting and collection of data on air cargo lost to crime and other causes. Nothing like this has been accomplished, or even attempted, elsewhere, as far as we know. Nonetheless, the Executive Director of the Waterfront Commission presumes to find fault with this unique and progressive plan of the air freight industry.

Similar criticism of our forward-looking effort was proffered by the Waterfront Commission at hearings before a subcommittee of the House Committee on the Judiciary last fall. Like your Committee, the Judiciary group was told that "analysis of insurance claims" gave the lie to our figures. Further, the Judiciary subcommittee was told—as was your Committee—that not all thefts of cargo are reported to the police covering the three airports operated by the Port of New York Authority.

Only after the hearings of last fall were we able to determine the source of the "insurance" data cited in these allegations. The Waterfront Commission apparently relied upon data supplied by certain insurance underwriters in a form called the Multiple Ocean Marine Cargo Loss Reporting Form, a specimen of which is attached. As you can see, this insurance claims form has almost nothing in common with the criminal investigation that follows a theft report. It is instead a basic tool of insurance underwriters, for the initial reporting of claims, the validity of which has not yet been determined. The form is not corrected even when the basic report of loss may prove to be unfounded. To use data of this sort to measure the losses of the air freight industry is to fall into the proverbial comparison of apples with bananas.

We were told back in October 1971 that three of these insurance claims proved that the airlines responsible for lost cargo failed to report the thefts and that our whole reporting system was therefore faulty. Tracking down these three cases, we determined that one referred to a shipment which never reached our airports, in fact, never left its city of origin, Montreal, Canada; a second occurred at an airline terminal outside JFK Airport (and thus properly was not reported to the Port Authority Police); and the third happened shortly before the airline responsible joined our loss-reporting system. Thus the so-called 69% of claims filed as "not delivered", according to the Waterfront Commission, actually turned out to be 29%, compared to 21% in 1969. The essential integrity of the airlines' reports of losses remains unimpeached. It is the Waterfront Commission data here that lacks credibility.

Your Committee was told by the Waterfront Commission that "... claims for losses at Kennedy alone filed for the year 1971 with about 10% of the insurance

carriers who insure air cargo amounted to \$3,341,058 . . ." Then your Committee was treated to some legerdemain, by which this figure was multiplied by ten, to arrive at a wild surmise of over \$33,000,000 for total losses! This is simply irresponsible.

Comparing this projection with data on file with the Civil Aeronautics Board on domestic cargo claims paid by the airlines in 1971, for the entire nation, in the amount of \$11,000,000, gives you a basis for evaluating the deception in the statistical offering of the Waterfront Commission.

A computer study of the \$11,000,000 of claims paid, incidentally, reveals that approximately 70% of these claims may be tested. The test established that the ratio of claims paid to claims filed, slightly exceeded one dollar paid for every two dollars claimed.

Further gratuitous comment to your Committee by the spokesman of the Waterfront Commission alleges that the air freight industry ". . . does not report at all thefts that occur on airport facilities outside the perimeter of the Port of New York Authority's airport premises." This is inaccurate. The fact is that the airlines report thefts to the Airport Security Council and to the police departments and other law enforcement agencies (such as the FBI and U.S. Customs) covering the point where the crime occurs. Where the scene of a theft is outside the perimeter of the airports, the report naturally does not go to the police of the Port Authority.

Additionally, your Committee was told by the Waterfront Commission that ". . . there were at least 90 such air cargo facilities outside the perimeter of . . . Kennedy Airport . . .". To correct this figure, let me say that there are 33 terminals on Kennedy Airport, plus 23 others off the airport and elsewhere in the metropolis. These facilities under the Customs-airlines pilot program are approved by U.S. Customs for licensing, regularly inspected by Customs and continuously supervised by U.S. Customs staff manning the facilities.

Testimony offered by the Airport Security Council clearly demonstrates that statistics are faithfully recorded for all airlines' losses at the New York/New Jersey metropolitan airports both on- and off-airport. The testimony that resulted in the production of data relating to on-airport losses by airlines was based on the fact that the states of New York and New Jersey were seeking to prove that airport crime was a problem of such dimensions that the jurisdiction of the Waterfront Commission should be extended to airport operations. Since off-airport data was irrelevant to this matter, it was not offered in testimony.

It should be noted that 79.2% of all the cases prosecuted concerning airport cargo crime in the New York/New Jersey metropolitan area in the period 1968 through 1972 to date were prosecuted in Federal Court and investigated by Federal agencies. These cases had interstate and international ramifications requiring investigative activity beyond the environs of the New York/New Jersey metropolitan area. Therefore, as a matter of basic economics and sound law enforcement judgment, the cases were properly handled by the Federal authorities, who had no need for additional assistance of the type that might be offered by the Waterfront Commission of New York Harbor. The remaining 20.8% of the prosecutions occurred in State Court, where the effective presence of the New York City Police Department, the Port Authority Police Department and officers of the Queens County District Attorney's office were more than satisfactory to fulfill the needs of the investigations involved.

The whole truth of this matter, Mr. Chairman, is that the airlines at New York and Newark not only support the concept of reporting losses of cargo, but they actually do the job. To the best of our ability, we report all thefts promptly, accurately, in writing, to the appropriate law enforcement agency at each airport. The values we report for merchandise lost or stolen are determined from invoice value, derived by field investigation. As an example of what a systematic loss-reporting plan can accomplish, I enclose a summary of our figures for the years 1969 through 1971.

I urge that your Committee report H.R. 10295 favorably, in order that we may gain the important benefits to be derived from the proposed Commission on Security and Safety of Cargo. If I can offer any further data of value to the Committee, I will be glad to do so.

Very truly yours,

JOSEPH A. SULLIVAN,
Executive Director.

Enclosure.

MULTIPLE OCEAN MARINE CARGO LOSS REPORTING FORM

In accordance with your request we are supplying you with the following details of a cargo loss recently reported to us:

* refers specifically to airborne loss
 % refers specifically to waterborne loss

* Type of Claim: Property Registered Mail
 (check one) Liability

* Air Carrier(s) Involved: _____

%* Probable Cause of Loss: _____

%* Voyage: _____

%* Name of Transshipment Ports: _____

%* Probable Place of Loss: _____

%* Amount of Loss: \$ _____

%* Commodity and Number of Pkgs: _____

% Name of Vessel: _____

% Arrival Date: _____ B/L Number: _____

% Cargo Marks & Numbers: _____

% Consignee's Name & Address: _____

Other Remarks: _____

Sent To:

- Amer. Inst. of Mar. Undrs,
 99 John St., New York City 10038
- Security Bureau, Inc.
 67 Broad St., New York City 10004
- Waterfront Commission
 15 Park Row, New York City 10038
- Chicago Seaport Commission
 Rm. 307, Navy Pier, Chicago 60611
- _____

 (Name of Insurer)

 (Reporting Source)

 (File or Reference Number)

 (Date of Report)

AIRPORT SECURITY COUNCIL, FOREST HILLS, NEW YORK

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NEW YORK, N.Y., February 9, 1972.—Cargo thefts at the metropolitan airports were cut to a five-year low in 1971, according to Joseph A. Sullivan, Executive Director of the Airport Security Council.

"Despite the fact that the volume of air cargo shipments almost doubled since 1966," Sullivan said, "the air cargo industry's self-protection program reduced losses from theft nearly 18% below 1966 levels. Thirteen cents of every thousand dollars in air cargo value went to thieves in 1966 (1966 figures are the lowest for the period 1966-1970) while only 6 cents went that way last year," he said.

The number and value of thefts against air cargo shipments moving through the airports were reduced in 1970, and further still in 1971, following 1969, the 'peak' year for airport cargo crime.

Results for the year just ended show \$722,000 worth of air cargo stolen from the three airports in 311 thefts—a reduction of 80.5 percent in value and 49.8 percent in the number of thefts, as compared to 1969. The dollar value of losses is based on actual value of cargo stolen, as determined by investigation.

	1969	1970	1971	Percent change 1969-71
Number of thefts: 1				
Kennedy.....	545	384	243	-55.4
La Guardia.....	28	17	38	+35.7
Newark.....	46	50	30	-34.8
Total.....	619	451	311	-49.8
Value of thefts: 1				
Kennedy.....	\$3,387,317	\$1,445,386	\$568,341	-83.2
La Guardia.....	83,066	30,906	142,728	+71.8
Newark.....	237,852	357,678	11,265	-95.3
Total.....	3,708,235	1,833,970	722,334	-80.5

1 Source: The Port of New York Authority; Superintendent of Police.

"Another indicator that the industry has crime under control at local airports is the decrease in the number of large thefts during the past few years," Sullivan said. "Thefts of \$20,000 or more constituted almost three-quarters of the total value of stolen goods in 1969, but we've cut thefts of this size down to the point where they contributed less than one-third of this year's total," he said.

Although three thefts of goods valued in excess of \$50,000 occurred during 1971, two of the cases were solved during the year, resulting in the arrest of 6 persons and the recovery of both shipments. The third case is still under active investigation, according to Sullivan.

LA GUARDIA

"The only sour note in the 1971 results is the increase in cargo thefts at LaGuardia Airport, the only one of the three airports where the value and number of thefts increased last year," said Sullivan.

The number of thefts at LaGuardia increased by almost 36% in 1971 over 1969 levels, from 28 in 1969 to 38 in 1971. The worth of goods stolen went from \$83,000 in 1969 to \$143,000 in 1971.

"The major theft at LaGuardia accounted for \$89,000 of the total," Sullivan said. "But even if that theft had not occurred, we'd still have a higher value of losses this past year than we did in 1970.

"Security measures at LaGuardia have been intensified" according to Sullivan, "and the Council has begun a year-long effort to bring LaGuardia results into line with improvements at the other airports."

ARRESTS

With a drop in the number of thefts, 1971 also showed a decrease in the number of arrests for thefts—39 compared to 78 in 1969. The 1971 arrest total was made up of 15 airline employees and 24 outsiders.

ARRESTS FOR CRIMES AGAINST AIRCARGO, JFK, LA GUARDIA, AND NEWARK, 1969, 1970, 1971

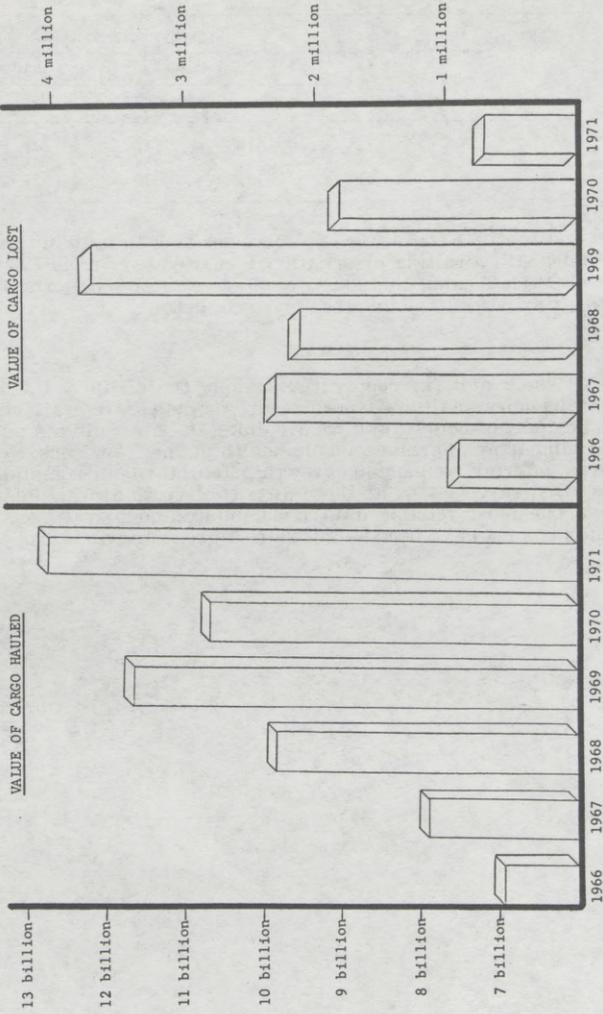
	By employment				
	Total arrests	Airline		Outsiders	
		Number	Percent	Number	Percent
1969.....	78	37	47	41	53
1970.....	73	28	38	45	62
1971.....	39	15	38	24	62

At the year's end for 1971 there were 60 cases relating to individuals arrested for air cargo crimes still awaiting prosecution, 9 carried over from 1969, 34 from 1970 and 17 from 1971. Among the 40,000 employees at the airports, there was never more than a tiny percentage involved in cargo thefts.

SUMMARY

Sullivan said, "The results of cooperation among the airlines, U.S. Customs, law enforcement agencies and the Airport Security Council are gratifying. There is still work to be done, of course, and we are doing it." Mr. Sullivan added, "Air transportation is important to the economic health of the New York/New Jersey metropolitan area, offering tremendous growth potential to our community. Critics have exaggerated cargo losses at these airports. We think this does damage to our industry. The most reliable data from public and private sectors show that, in fact, the airports have become a high-risk area for criminals."

VALUE OF CARGO HAULED VS. VALUE OF CARGO LOST
JFK; LGA; EWR; 1966 - 1971



Statistics Furnished By: Port of New York Authority, Superintendent of Police

Chart Prepared By:
Airport Security Council

(Whereupon, at 11:10 a.m., the subcommittee adjourned.)

