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95-71 AUTHORIZATION FOR THE NATIONAL TRANSPORTATION SAFETY BOARD

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BEFORE THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

S. 2616

TO AMEND THE INDEPENDENT SAFETY BOARD ACT OF 1974, AS AMENDED, TO AUTHORIZE ADDITIONAL APPROPRIATIONS

MARCH 20, 1978

Serial No. 95-71

Printed for the use of the
Committee on Commerce, Science, and Transportation



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1978

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AUTHORIZATION FOR THE NATIONAL TRANSPORTATION SAFETY BOARD

MONDAY, MARCH 20, 1978

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met at 9:40 a.m. in room 235, Russell Senate Office Building, Hon. Howard W. Cannon (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

Today's hearing is to consider the authorization for the National Transportation Safety Board for fiscal years 1979 and 1980.

Pursuant to the Independent Safety Board Act of 1974, the Board is subject to authorization for its operating appropriations. On March 1, 1978, I introduced S. 2616, which contains an authorization for the Board of \$15.42 million for fiscal year 1979, and \$16.35 million for fiscal year 1980.

[The bill follows:]

[S. 2616 95th Con., 1st sess.]

S. 2616

A BILL To amend the Independent Safety Board Act of 1974, as amended, to authorize additional appropriations

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Independent Safety Board Act Amendment of 1978".

SEC. 2. Section 309 of the Independent Safety Board Act of 1974 (49 U.S.C. 1907) is amended by adding at the end thereof the following: "There are authorized to be appropriated for the purposes of this Act not to exceed \$15,420,000 for the fiscal year ending September 30, 1979, and \$16,350,000 for the fiscal year ending September 30, 1980, such sums to remain available until expended."

The CHAIRMAN. Appearing before the committee today will be chairman designate Jim King and his staff, to discuss the authorization request.

I understand you have a prepared statement that you may wish to read.

Mr. KING. I do, Mr. Chairman.

STATEMENT OF JAMES B. KING, CHAIRMAN DESIGNATE; ACCOMPANIED BY JOSEPH P. MINTON, ACTING MANAGING DIRECTOR; FRITZ L. PULS, GENERAL COUNSEL; GERARD M. BRUGGINK, DEPUTY DIRECTOR, BUREAU OF ACCIDENT INVESTIGATION; S. WALTER SWEET, DEPUTY DIRECTOR, BUREAU OF TECHNOLOGY; BARRY M. SWEEDLER, DEPUTY DIRECTOR, BUREAU OF PLANS AND PROGRAMS; B. MICHAEL LEVINS, DIRECTOR, BUREAU OF ADMINISTRATION; AND DENNIS W. BOYD, COMPTROLLER

Mr. KING. Before I begin my statement, I would like to introduce the members of the staff here with me today. On my immediate right is Joseph Minton, our acting managing director, and on his right is Fritz Puls, our general counsel. On my left is Dennis Boyd, our comptroller. Also with me today in the front row on my right are: Gerard Bruggink from the Bureau of Accident Investigation, Walter Sweet from the Bureau of Technology; and on my left are: Barry Sweedler from the Bureau of Plans and Programs, and B. Michael Levins from the Bureau of Administration.

My colleagues and I appreciate this opportunity to meet with you and discuss the fiscal year 1979-80 authorization request, which was developed to improve our efforts in carrying out the provisions of the Independent Safety Board Act. Through this hearing, we will gain further insight into the views of this committee on the design of Board programs to promote transportation safety.

Two years ago, in testimony before this committee, former Chairman Todd outlined his plans for a major reorganization of the Safety Board. Because of its impact on the Safety Board's programs, I would like to take a few minutes this morning to bring you up to date on the reorganization as it is operating today.

I believe the reorganization was an important step toward carrying out the major responsibilities of the Independent Safety Board Act, which are:

1. The investigation and determination of probable cause of transportation accidents;
2. The conduct of special studies and special investigations on matters pertaining to transportation safety;
3. The review and evaluation of the operations and performance of other agencies involved in transportation with regard to their safety impact;
4. The formulation of safety recommendations to prevent accidents and reduce the resulting deaths and injuries; and
5. The review on appeal of decisions of the Secretary of Transportation pursuant to the Federal Aviation Act and of the Commandant of the Coast Guard with regard to certificates and licenses.

To carry out these responsibilities, the former Bureaus of Aviation Safety and Surface Transportation were replaced with three functional Bureaus: The Bureaus of Accident Investigation, Technology, and Plans and Programs. In addition, a Bureau of Administration was established to provide unified direction and coordination of the administrative support functions of the Safety Board. The appeals responsibility, which is performed by the Office of Administrative Law Judges, was not changed by the reorganization.

Approximately half of the Board's resources are directly involved in the investigation of accidents, and are located within the Bureau of Accident Investigation. This Bureau conducts accident investigations in all modes, both from Washington and the field, prepares public accident reports, and manages the development and followup of the Board's safety recommendations.

The staff of the Bureau of Accident Investigation has many years of operating experience in the various transportation modes, which when combined with the Board's accident investigation expertise, makes the Board uniquely qualified to gather and analyze all the information related to transportation accidents.

In addition, since this Bureau conducts investigations in all modes, safety techniques proven useful in one mode can be applied to other modes. Most of the resources of the Bureau of Accident Investigation are located in 12 geographically dispersed field offices.

In terms of size, the second major organizational unit is the Bureau of Technology. This Bureau provides technical advice and services, conducts research into accident causation, and carries out analytical studies and tests in support of all aspects of the Board's programs.

This bureau expands the Board's technical efforts, which were previously concentrated in the aviation mode, to all modes, which allows the Board to keep abreast of changes in transportation brought about by technological innovations.

In addition, the staff of this Bureau directs, supervises, and monitors the efforts of other Government agencies and industrial technicians who assist the Board in our accident investigation efforts, thereby maximizing the use of Board resources.

The third major functional Bureau is the Bureau of Plans and Programs. This Bureau designs and monitors the Board's accident prevention and safety promotion programs, conducts special studies and training programs, and evaluates the efforts of other governmental agencies involved in transportation safety.

The staff of this Bureau have broad backgrounds in transportation, which provides the Board with the capability to: Address safety problems and issues as they relate to overall transportation safety rather than specific accident occurrences, broaden the identification and definition of safety problems, develop and analyze alternative strategies for achieving safety improvements, expand accident prevention efforts, and increase the awareness of safety issues in the surface transportation community to the level which prevails in aviation.

As a member of the Board, I have excluded myself from the internal operation and management of the Board's programs; however, from what I have seen, the current organization of the Board provides an effective structure for executing our programs.

The reorganization firmly established the Board's intermodal concept to promote the exchange of safety ideas among the modes and maximize the use of Board resources. In addition, it significantly increased the Board's oversight capabilities by allocating resources to this important activity, thereby assuring our consideration of safety concerns beyond those of a single accident.

Although some refinements may be required, I do not plan to make a major change in the Safety Board's current organization.

Since becoming a member of the Board, I have been impressed not only with the professionalism and expertise of the staff, but also with the impact of the Board on transportation safety. In spite of the small size of the Safety Board and our lack of regulatory authority, many improvements in transportation safety have been accomplished through the Board's efforts.

Although we may not be able to directly correlate improvements in accident and injury rates with Board actions, I do believe that the Safety Board's reputation among members of the transportation community is a measure of its success. This is evidenced by the high percentage of recommendations which are accepted and implemented by other Government agencies and the transportation industry.

During 11 years of operation, the Board has issued 2,800 recommendations, of which an average of 84 percent have been accepted. Acceptance has ranged from 81 percent in railroad safety to 92 percent in marine safety.

An 84 percent rate of acceptance is particularly noteworthy because our recommendations do not have the force of law, often reflect unfavorably upon the agency to which they are issued, require considerable effort to develop corrective action, and may be initially unprofitable to a particular transportation industry.

With respect to specific recent transportation safety achievements of the Board, I would like to mention three which I feel are most significant:

First, the issuance of three recommendations on March 9 dealing with the most recent major transportation safety problem—railroad derailments involving the transportation of hazardous materials. The Board's investigation of several recent derailments disclosed that a contributing factor in these accidents was the breaking of certain railroad car wheels due to overheating.

The Board has recommended that the Federal Railroad Administration use its emergency powers to prohibit the use of railroad cars equipped with such wheels from carrying hazardous materials, and to prohibit the placing of cars with these wheels on trains moving hazardous materials.

The second significant achievement was the review of, and a call for comprehensive analysis and public hearings on, proposed Federal standards for repair and rebuilding of roads not in the Interstate Highway System which, if implemented, would have increased hazards and accidents. Primarily because of the Board's efforts, the Federal Highway Administration dropped the proposed change.

The third achievement of significance has been the Board's continued emphasis on reducing the hazards of weather through the recent issuance of seven recommendations dealing with improving the identification and dissemination of hazardous weather information to pilots.

Other areas where the Board has been active recently are: Recommending improvements, which are being implemented, to the Alyeska Pipeline Service Co. for the safe operation of the Alaska pipeline; continuing our vigorous efforts to improve marine safety by recommending better emergency steering and secondary steering capacity, and more efficient use of radar and collision avoidance systems; and

completing an oversight evaluation of the National Highway Traffic Safety Administration's National Accident Sampling System (NASS), which we believe will significantly increase its effectiveness.

In the Safety Board's fiscal year 1977-78 authorization hearings 2 years ago, Chairman Todd discussed an authorization request submitted by a previous chairman. I am now in a similar position today. Chairman Todd's approach was to significantly reduce the size of the increase previously requested and concentrate his efforts on reorganizing the Board to make more effective use of available resources. My response will be to increase the operational effectiveness of the current organization to better carry out our responsibilities within the available resources.

As Chairman, I intend to look carefully at the Board's present and projected manpower and funding to identify savings whenever possible. This philosophy extends to the fiscal year 1979-80 authorization request which would authorize appropriations of \$15,420,000 in fiscal year 1979 and \$16,350,000 in fiscal year 1980.

The fiscal year 1979 level does not provide for any new programs or the expansion of current programs. However, the fiscal year 1980 level is based on expanding the Board's current efforts in the following areas: Evaluation of field accident reports, reductions of injuries and deaths in accidents, technical support of mass transit and railroad investigations, laboratory support for surface investigations, recommendation followup, and surface accident investigation training.

From the detailed justifications prepared by the staff, I do not feel that all of these programs agree with my ideas on the program direction of the Board. However, I do believe that the total dollar amounts and the positions requested in the fiscal year 1980 request are reasonable in view of the Board's responsibilities, and therefore support the dollar and position levels submitted in the authorization request.

I will be taking a closer look at the Board's program and resource requirements through an intensive discussion with the top professionals of the Board to determine their ideas on program objectives. These discussions, closely following our congressional hearings this week, will provide me with a broad perspective on the views of the agencies and individuals important to the successful accomplishment of the Board's mission.

Although I have not yet developed my own definitive program objectives for all aspects of the Board's work, as I indicated in my confirmation hearing last week, I have identified areas which I will emphasize and problems which must be addressed.

Since becoming a member, I have been concerned about several program- and management-related problems which must be addressed in the near future. Accordingly, my first priority as Chairman will be to expand the use of the Board's oversight authority, emphasizing strategies to bring about necessary change.

This oversight effort will be accomplished primarily through three activities:

The conduct of special studies and safety evaluations. These studies and evaluations build upon the Board's accident investigation experience. For example, we recently approved a special studies on "Human

Error' in Air Carrier Accidents and Incidents," and the "Effectiveness of the NHTSA Safety Defect/Recall Program."

By using our oversight authority in this manner, we can recommend improvements in both local and national safety programs. An example of the potential impact of this program is our evaluation of NHTSA's NASS program. If our recommendations are accepted, the Board will be instrumental in improving a single program which has a higher projected funding level than the entire fiscal year 1980 authorization request of the Safety Board.

An increase in the number of public hearings. Hearings should not be held only in connection with catastrophic accidents, but should be used whenever the Board has identified a safety problem. These hearings can be a means of energizing the public, local officials, and the industry, to develop and implement solutions to problems without relying on new Federal regulations.

As you are aware, Mr. Chairman, the Board is convening such a hearing April 4-6 to examine the effects of railroad derailments involving the carriage of hazardous materials, and to evaluate proposals for elimination of the problems. I hope to see increased Board member participation in these hearings.

Increasing our review of proposed rulemakings on areas affecting transportation safety. Through this effort we can identify potential safety problems and expand accident prevention activities.

Other areas which I will be reviewing as chairman are:

Placing greater emphasis on our surface transportation activities. I believe we can do this without requesting additional resources in the surface modes by expanding the Board's intermodal capacities. I intend to insure that the staff is provided training in transportation modes and technical specialties beyond their current field.

I believe we can make increased use of our aviation expertise in the conduct of surface accident investigations without degrading our performance in aviation. In addition, I would like to see the increased use of the expertise available in the surface transportation community during the conduct of our major accident investigations, as is currently the policy in aviation;

Increasing the primacy of the Board in surface accident investigations similar to that which exists in aviation. The joint USCG/NTSB regulations for the investigation of marine accidents is one example of my concern in this area because it may reduce the Board's effectiveness in carrying out its mandate;

Coordinating the huge amount of accident data which is available within the Board, other governmental agencies, and the transportation industry, to improve the identification of safety problems and assure solutions based on broader data;

Identifying ways of improving the responsiveness of the agencies and industries to which we issue recommendations, to insure that safety improvements are acted upon as rapidly as possible; and

Examining means for decreasing the time between an accident and the distribution of the final Board report to the public.

In conclusion, I want to state that I welcome and encourage the views of this committee with respect to the programs and direction of the Board. Mr. Chairman, we will be pleased to respond to any questions you may have.

The CHAIRMAN. Well, thank you, Mr. King, for a fine statement.

At your nomination hearing last week, and again this morning in your statement, you testified that if confirmed, you plan to increase the number of public hearings fourfold, from the current 4 or 5 per year to 16 or 20 per year. You also testified as to the Board's need to improve the mechanism for gathering and evaluating accident data.

Are these new priorities reflected in the Board's authorization request for fiscal year 1979 and 1980; and if not, how do you propose to achieve those goals without additional funding?

Mr. KING. I think one of the things as I see it, Mr. Chairman—and I will yield to Mr. Boyd, who is our Comptroller—the moneys are allocated on an as-needed basis. As we look down the road at the various accidents we will need to respond to, we have a contingency plan because we can't plan for all of them. The basic requirement on the costs of the hearings would be travel.

If there are many hearings, we are not talking about large numbers of people. We are talking about 1-day hearings where we can clearly dramatize a regional problem or a very serious local problem that has regional or national implications. That is what I would see. Let me yield to Mr. Boyd.

Mr. BOYD. Senator, one thing that is rather simple about our budget, is that it is based primarily on salaries and benefits for our personnel. The programs that Mr. King is talking about are people related and don't require large amounts of money in additional areas.

The CHAIRMAN. So what you are saying is that you can handle that within your staff resources; and basically, if you have any added cost, it would be in relation to the transportation and perhaps cost of reporters?

Mr. KING. That's correct, Senator. That's how we see it.

The CHAIRMAN. In recent years there's been a debate about earmarking NTSB funds for educational purposes. Have any funds been requested in your budget to conduct educational programs to promote safety and accident prevention, as opposed to funds for training courses and seminars on accident investigation techniques?

Mr. BOYD. No, sir, all funds in that area are limited to the training of our own personnel.

The CHAIRMAN. Do you have any comment on that? Do you feel it isn't necessary? What is your reaction?

Mr. KING. My immediate reaction is that for education I think the arrangements that have been made through the DOT Transportation Safety Institute in Oklahoma has been a major resource. I used the facility there several times myself to see what it would be like.

I think we are using many of the existing Government resources. We are back to allocation of time more than actual cash.

At this time, I think we are going to be doing a review of whole training areas and talking about maintaining various people at whatever the state of the art is in the particular mode in which they are specializing. In some areas, especially in our field offices, we will be broadening where personnel have a specialty, where they might have a general sort of knowledge.

For example, Senator, if we had someone who could very quickly go to a pipeline accident, have a quick look at it, and be able to exercise independent judgment to call us and say, "I don't think this requires a go team"; or if it does, "It is beyond my capacity."

We would then have that independent person on the scene to make the judgment. The costs involved are the person's time and travel.

The CHAIRMAN. Well, under former Board Chairman Todd, a program was initiated to put more personnel in field work on accident prevention. Does the present budget request reflect that policy?

Mr. KING. I think it does. Two-thirds of our accident investigation staff is located in the field, Senator. The question that arises—and that's the one I will be reviewing—is, how are those personnel being used, not only for accident investigation, but accident prevention? Are they speaking out? Are they going to the groups and the organizations and individuals who will impact transportation safety? That may even include, in some cases, working with Government leaders at the State, county, and local levels.

The CHAIRMAN. In Mr. Driver's testimony at his nomination hearing, he spoke of the need for greater emphasis in other areas of transportation to bring those modes up to a level commensurate with the high standards the Board has achieved in aviation accident investigations. His testimony was to the effect that with finite resources, greater emphasis on new areas must mean a shift of resources away from aviation; yet in your statement this morning you said that you would be able to place greater emphasis on surface transportation without additional funding, and without degrading your performance in aviation.

Can you reconcile those views, the two conflicting statements?

Mr. KING. Yes; I think I can, Senator. My attitude and my philosophy is that we can still continue to maintain a high level in aviation, which I think is where an enormous amount of our skill is located. The question of expanding into other modes is a question of what you are going to do in those modes.

We cannot view it as attempting to investigate all surface accidents, because highway is clearly one that would overwhelm an agency of our size, unless we are coming in for substantial new resources. What we can do is have access to other safety programs and start to exercise the oversight we talked about.

For example, if we can coordinate accident data, Senator, we can have an enormous resource that we can review intelligently and make decisions so that our accident investigation work follows some clear profiles and we can get some in-depth knowledge. Then we can speak to the issue in broader terms. It is a question of strategy in this sense.

At this moment, I don't see where one must trade off from the other, Senator. We have the personnel. It is a question of how they are being used and what our strategies are in their utilization. Again, I am back to the personnel.

The CHAIRMAN. You said that the increase in fiscal year 1980 was in part due to expanding the Board's efforts in six areas. You referred to the detailed justification prepared by your staff. You also said that while these programs, positions, and dollar amounts requested are reasonable, in view of the Board's responsibilities, and that while you supported the new positions and dollar levels submitted, that these programs do not agree with your ideas on the program direction of the Board.

To what extent do the Board members participate in formulating these program directives, and what, if any, consensus was reached

among the members about the Board's policy directions in the next 2 years?

Mr. KING. The Board approved the list that I read. I indicated quite frankly, Senator, that I haven't seen all the details, and how all of these fit precisely as they are described, Senator.

I feel comforted by the fact that they are addressing some areas that need addressing. For example, the evaluation of field accident reports is a broad area, and could include people that would interpret data, or be highly skilled in relation to organizing the programs.

That might be an area they would be utilized, and be most meaningful to the accident investigation side, so that could be the direction I take.

In general, there is nothing I am saying that isn't in basic harmony with the Board's vote. First of all, the Board did vote to support the terms I mentioned. What I am saying is there might be some fine tuning and adjustments necessary. I would go back to the Board and get their consent before we went forward; but I did want to indicate at this time, trying to be as candid as I can with the committee, that there may be some fine tuning. This would certainly be an area where some of it is available.

The CHAIRMAN. In other words, you are saying as long as you didn't prepare this budget, you don't want to get yourself locked into a firm position there?

Mr. KING. Exactly, Senator, until I know the facts of life where I am. The professional staff has done more than a good job of convincing me that these additional positions, as written, could be utilized; but if the additional things I talked about were built in, they feel all it will do is change job descriptions. They could be fully used in other categories.

The CHAIRMAN. Under the Independent Safety Board Act of 1974, the Board is required to submit its budget request simultaneously to the Congress and the OMB. With respect to this budget request before us now, has the OMB reviewed the request and commented on it?

Mr. BOYD. Yes, Senator, they have reviewed it; but they haven't had any comments.

The CHAIRMAN. I see. You don't know whether they will in fact approve what you have submitted or have critical comments on it?

Mr. BOYD. No. My understanding is that because we do submit it simultaneously, that they are waiting for the views of the Congress first.

The CHAIRMAN. I see.

The FRA published a notice of termination of rulemaking relating to railroad occupational safety and health standards. They stated that with respect to railroad occupational health standards, it should not attempt to regulate at this time in an area already covered by regulations issued by the Department of Labor.

As an independent agency charged with recommending and critiquing, do you see any dangers in this divided jurisdiction between FRA and OSHA?

Mr. KING. On this I would like to yield to my accident investigation staff.

The CHAIRMAN. I would also like to know whether it is possible that some important standards or safety requirements will be unmet because of this dual jurisdiction.

Mr. BRUGGINK. The termination of rulemaking by FRA does concern us because, as it stands now, there is no one with clear responsibility for the occupational safety and health standards for railroad employees. We believe that the Administrators of OSHA and FRA should decide which organization should be responsible for these standards to assure workplace safety on the railroads. The Board sees no danger in the divided jurisdiction, as either FRA or OSHA could adequately administer all the standards or different parts of the standards. Our main concern, though, is that this jurisdictional dispute be resolved.

The CHAIRMAN. You stated recently there were certain immediate steps that could be taken to improve rail safety. These included additional shelf couplings and head shields at about \$150 per car and \$1,500 per car, respectively. While the FRA does not disagree that these would be helpful measures, it does disagree that conversion work can be accomplished by December of 1978 as you indicated.

Would you comment on that difference of opinion?

Mr. KING. Yes, Senator. First of all, the shelf coupler installation is a relatively simple task. We are hoping that at our hearing in April we can indicate that both shelf couplers and head shields can be done in the field.

One of the things, as I understand the FRA explanation, is they saw the process of the cars being pulled off the line and put into a shop, and there would be several items done on the car at that time.

We have taken the position that that's fine, but there are two things that will handle almost 9 out of 10 of the head punctures that we have. The vast majority of ruptures in the tank cars are caused by head punctures. Head shield and shelf couplers can be done more quickly. We think they should be done more quickly.

We would like to demonstrate at our hearing next month that these items can be installed within a reasonable time frame and that the technology is simple. It is a question of will. The question before us is: Does the FRA share our sense of urgency?

The CHAIRMAN. The Waverly, Tenn., tragedy was apparently caused by a broken wheel, perhaps due to overheating. Has the Board determined what kind of unforeseen pressures or temperatures might have produced a hairline fracture in the wheel?

Mr. KING. It is presently in the lab for analysis. It was a Southern high-carbon wheel. Senator, ordinary steel wheels on cars have about a 0.7- or 0.8-percent carbon content. These particular Southern wheels, which have not been produced since 1969, had about a 1.5-percent carbon content, which made it a high-carbon wheel.

Sometimes the airbrakes or manual hand brakes are locked on, creating a steady heat. Also, the application of the brakes on a descent down a long grade will create that type of heat.

You also get it on cars that carry coal, as a rule. The product in the hopper where is frozen in the winter. In order to empty it, the contents are thawed by heating the car. Those cars get very, very hot. Then the car is shuttled right off. That quick temperature change will lead to this crack. The crack doesn't occur just at the flange. It goes all the way through to the axle.

So we have moved ahead and asked the FRA to remove that type wheel. These wheels can be identified easily. In the molding process,

the name of the firm and the code number is cast right onto the wheel. They could do a quick visual look while they are walking the train.

The CHAIRMAN. Is our understanding correct that you intend to investigate the cause of the explosion, although it was separated in time from the derailment, and apparently didn't occur due to puncture?

Mr. KING. That's correct, Senator. At first blush it looks as if there was a scoring under the tank. The pressure relief valve is set for release at 300 pounds. The valve never started to release the product.

We have to check the valve to see if it was working. It seems the tank failed at less than 300 pounds. It seems to have broken along the line of the scoring. What we are doing is going back and looking at it from a metallurgical point of view.

The CHAIRMAN. Will the Board make any examination of the track, both behind and beyond the accident scene, for any significant distance?

Mr. KING. I believe that was part of the investigation. I will yield to Mr. Bruggink on that.

Mr. BRUGGINK. As part of the investigation, the track was inspected for a significant distance both behind and beyond the scene of the accident. It was determined that the track did meet the FRA standards for class III track, and evidence was found of a derailed wheel for about 5 miles preceding the accident location.

The CHAIRMAN. What action do you think the NTSB should take if the FRA declines to adopt the emergency railroad car wheel rule mentioned in your statement?

Mr. KING. My immediate assumption is that they will start to act. If they don't, I think what we will do is work out a series of strategies to demonstrate to the FRA that it is really in their best interests to look at this aggressively.

I believe the AAR had notified the various properties and members of this particular type of wheel problem and recommended that the wheels be pulled through normal maintenance.

As I said, Senator, the last wheel was cast in 1969; so they are really at the stage where the majority of these wheels have exhausted normal wheel life. They would be in the process of replacement anyway.

What we are doing is flagging it and saying: Look, if you have to use the wheels, for whatever reason, make sure they are not on the cars themselves that carry the product, and not made up as part of the train that carries hazardous materials, so that if you do have a derailment, it doesn't have to be a catastrophe.

Further, that is where we talk about the shelf couplers and the head shields, Senator; if those are on, we can stop about 85 percent of the head punctures just with those two items. Actually there would be more than that. The percentage goes up with both of those items on.

The CHAIRMAN. The FRA testified recently that the poor economic condition of the industry has promoted reliance on heavier equipment designed to carry almost twice as much as the conventional equipment of 30 years ago. They stated that larger and heavier cars produce greater forces on other equipment and track structures, and that maintenance and rehabilitation programs can't keep pace with the damage done by heavy axle loadings.

Within the framework of the Association of American Railroads, is there a method or a mechanism to make certain that individual carrier's practices, such as heavier and larger cars, are consistent with optimal safety practices?

Mr. KING. This is one of the ones that has haunted the railroads themselves as they get cross-shipments. I think from our point of view, our first concern is the area of catastrophic problems. That's why we focused on hazardous materials. If you move to your rolling stock, there are methods the industry is aware of where, with the maintenance of way, it is in fact provided.

For example, Senator, the various costs we are talking about in relation to the accidents that probably have given the greatest notoriety are actually paid for by the railroads, not the people who own the cars. The railroads pay for the cleanup, the legal costs. That runs into the tens of millions of dollars.

I think all the damages from hazardous materials accidents over the past 10 years were equal to the total budget for the maintenance of way for all the railroads in the United States for last year; so if the money had been available that they spent cleaning up after some of these things had been available for maintenance, they could have taken a long step.

So far as all aspects of this problem, I haven't seen a comprehensive study yet. I don't know if FRA is undertaking one. They will probably have to if they haven't already. I don't think we are prepared to move on it at this moment.

The CHAIRMAN. Has the Board ever recommended to the FRA or industry that an oversight committee should be established to insure consistency?

Mr. KING. I will yield to my experts on this. They are the historians.

They indicate to me that we have a negative answer on that. There really is no need for another oversight committee, as the role of the Safety Board is to provide that oversight. We would make recommendations whenever we see operating procedures or regulations that are inconsistent with safety practices.

The CHAIRMAN. Let me ask your General Counsel, who has the responsibility to issue a written report on the financial statement of the nominees indicating any potential conflicts of interest: The Department of Justice in its written report found a potential conflict in Mr. Driver's ownership of two shares of a mutual fund. Our committee staff found another possible conflict-of-interest problem created by Mr. Driver's ownership of 65 shares of an annuity fund.

While admittedly the dollar value of these two holdings is small, and an exemption under the code would probably be issued, why is it that your letter to the committee raised no questions as to Mr. Driver's financial holdings?

Mr. PULS. Senator, the basic reason is that I guess I follow one standard, and the Department of Justice follows another one which I didn't even know of. In reviewing these matters, I used the standard we apply to our own employees. One of the exceptions we make is with mutual fund stock in which transportation is determined to be a de minimus portion of the total holdings.

I think the total holdings were less than 8 percent of the total in the fund. He held, what, 1 over 129 thousandths of that fund. I con-

sidered that de minimus, and not to be a conflict, or one that would be a problem.

Now if the Department of Justice wants to rule that all mutual funds should either be exempted or excluded, I wouldn't have a problem with that. I think it is getting pretty de minimus myself. In this case, if he seeks an exemption, I am sure it would be granted by the new chairman.

The CHAIRMAN. I must say frankly I agree with your rationale on that.

Mr. PULS. The question, Senator, is: How far do you go? One fund has been questioned because it consists of municipal bonds. Well, that gives me a problem. Sure, the city of Chicago has outstanding bonds and they run an airport. The Federal Government has outstanding bonds and they run the FAA. You reach a point at what are you going to do. That's my view.

The CHAIRMAN. Thank you very much, gentlemen. I appreciate your being here with us this morning.

Mr. KING. Thank you, Senator.

The CHAIRMAN. That concludes the hearings for this morning.

[Whereupon, at 10 :20 a.m., the hearing was adjourned.]



will not be a hindrance, and not to be a conflict of interest would be a
[illegible]

You in the Department of Justice, which is the other
[illegible] I would have a great
[illegible] I think it is better to have a
[illegible] I would be glad to see an
[illegible]

The Commission I am sure will be glad to see you
[illegible]

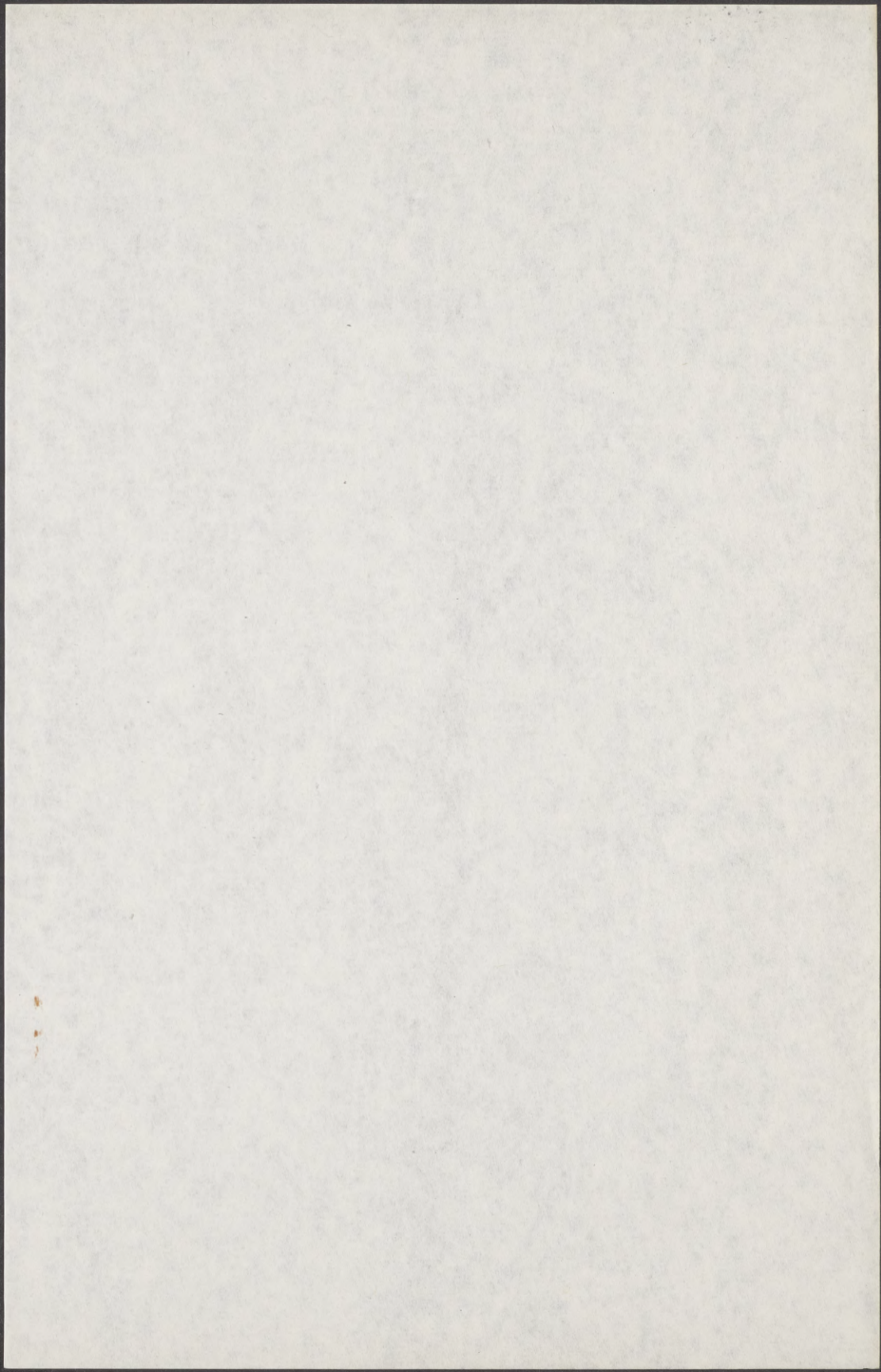
Mr. Tolson, I have just read your letter of the 17th
[illegible] I am sure you will be glad to see
[illegible] I am sure you will be glad to see
[illegible] I am sure you will be glad to see
[illegible]

Thank you very much, gentlemen. I appreciate
[illegible]

Very truly yours,
[illegible]

[illegible]





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