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**PREPARED STATEMENT OF TESTIMONY
BEFORE THE
COMMITTEE ON HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES**

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Good morning, Mister Chairman, Congressman King, and Members of the Committee. I am honored to have this opportunity to represent the New York City Police Department this morning before your Committee.

For the record, my name is Richard A. Falkenrath. I am the Deputy Commissioner for Counterterrorism in the New York City Police Department. Prior to joining the NYPD, I was the Stephen and Barbara Friedman Fellow at the Brookings Institution. From 2001 until 2004, I served on the White House staff, first as Director for Proliferation Strategy on the National Security Council staff; then as Special Assistant to the President and Senior Director for Policy and Plans within the Office of Homeland Security; and finally, as Deputy Assistant to the President and Deputy Homeland Security Advisor. Before government service, I was an Assistant Professor of Public Policy at the John F. Kennedy School of Government, Harvard University.

I commend the Committee for addressing the critical subject of mass transit security so early in the 110th Congress. This subject is one of the foremost counterterrorism concerns of the New York City Police Department.

At your request, I am pleased to provide my views on your Committee's draft "Rail and Public Transportation Security Act of 2007." In certain respects, this testimony builds upon the testimony I provided to the Senate Committee on Homeland Security and Government Affairs on September 12, 2006.

I. New York City's Rail and Public Transportation Systems

New York City has the largest, busiest, most complex rail and mass transit system in the Western Hemisphere. No U.S. city is as intensely reliant on mass transit as is New York City. For this reason among others, the threat to mass transit in New York is real and New Yorkers feel the terrorist threat to mass transit systems more powerfully than most Americans.

There are seven separate passenger rail systems in the New York area:

Transit System	Daily Ridership
Staten Island Rapid Transit	12,800
Amtrak	60,000
Metro-North Railroad	125,000
Port Authority Trans-Hudson (PATH)	230,000
Long Island Rail Road	282,000
New Jersey Transit	857,000
NYC Subway	5,000,000
Total	6,566,800

The New York City subway is the largest mass transit system in the nation by far, with 840 miles of track and 468 stations. Indeed, New York City has only 35 fewer stations than all of the other subway stations in the country combined. The average weekday subway rider count was 5.08 million in September 2006. By contrast, the average daily load on U.S. passenger aircraft is approximately two million – nationwide.

New York City's transit systems rely on a complex network of underground tunnels, including 22 underwater rail tunnels (three under the Hudson River and 19 under the East and Harlem Rivers), in addition to the two vehicular tunnels under the Hudson, one under the East River and one under New York Harbor. Many of these tunnels are old; several are less structurally robust than we would like.

There are 468 subway stations in New York City; most were built before 1930, only half of which have been renovated over the last twenty years. Four of the busiest are:

Station	Daily Passenger Load
Grand Central Terminal	737,097
Penn Station	594,000
Times Square Subway Station	585,315
Union Square Subway Station	304,292

Two major mass transit hubs are also being constructed in Lower Manhattan at the Fulton Street Station and under the reconstructed World Trade Center.

Each day, an estimated 2.4 million people ride New York City buses, which operate 207 routes daily covering 12,581 bus stops. Tens of thousands of passengers from New Jersey Transit buses, the Metropolitan Suburban Bus Authority and other systems serving outlying areas make their way into the City and then transfer to MTA buses or the subway.

Finally, an estimated 70,000 people, spread over 110 trips per day, ride the Staten Island Ferry, which is operated by New York City's Department of Transportation. A single ferry can carry as many as 6,000 passengers. In addition, there are a number of privately operated ferries such as the New York Waterway, which makes more than 1,600 trips per day carrying up to 31,000 passengers around the Port of New York and New Jersey. The Circle Line and NY Fast Ferry make 42 and 56 trips per day, respectively, carrying thousands of passengers. Water taxis make hundreds of trips per day between 14 pick-up and drop-off locations around New York and New Jersey.

II. The Terrorist Threat to New York City's Mass Transit Systems

New York's extraordinary network of mass transit systems is the City's lifeblood. It is also, in most threat assessments, including my own, the single most likely target of another terrorist attack in New York.

We are aware of approximately 250 terrorist attacks on rail targets between 1998 and 2006. Most of these attacks have involved the use of improvised explosive devices against a passenger rail car. For example:

- In March 2004, a synchronized bomb attack occurred during the morning rush hour on Madrid's commuter train system, killing 191 and injuring over two thousand. Ten bombs detonated aboard four trains that passed through one of Madrid's main transit hubs.
- On the morning of July 7, 2005, terrorists targeted London's commuter system through a series of coordinated attacks. Three underground trains and one bus were targeted. The attacks killed 52 commuters and injured close to one thousand.
- On July 11, 2006, a series of seven bomb blasts took place over a period of 11 minutes on the Suburban Railway in Mumbai, which like New York is a financial hub. More than two hundred people lost their lives and over 700 were injured in the attacks.

Mass transit systems present several distinguishing characteristics that combine to make them attractive targets for our terrorist enemies. Mass transit systems are inherently open systems and thus, easy to enter. They are densely packed with people at predictable times, and an attack against mass transit can have severe economic impact.

The threat to New York City's transit system is not just theoretical; it is real. There have been 22 bomb threats and 31 intelligence leads related to subway attack plots this year. The NYPD Transit Bureau responds to approximately 300 suspicious package calls per month.

In August 2004, shortly before the Republican National Convention, Shahawar Matin Siraj and James Elshafay were arrested by the NYPD for planning a bomb attack on the Herald Square subway station in Manhattan, not far from where the convention was to be held. During the spring and summer of 2004, these two individuals began to demonstrate increasing determination to attack the United States, transit systems in particular. Believing that an individual who was actually an undercover police officer would provide them with explosives, Siraj and Elshafay conducted pre-operational surveillance at the Herald Square station. In the spring of 2006, Elshafay pled guilty, cooperated with the prosecution and testified against Siraj. Siraj was found guilty of conspiring to attack the Herald Square subway. On January 8, 2007, Siraj was sentenced to 30 years in prison and on March 2, 2007, Elshafay was sentenced to five years.

III. Counterterrorism Operations in New York City's Mass Transit System

Responsibility for the direct protection of mass transit systems falls to local law enforcement agencies and to the transit authorities that own and operate the systems. Many transit authorities maintain their own independent police forces or employ private security guards. Thus, multiple local, state, and private security forces are often involved in the direct protection of mass transit hubs.

At Grand Central Station, for example, the Metropolitan Transit Authority (MTA) Police Department provides security on the main concourse for Metro North, while the New York City Police Department secures the perimeter of the station and the subway lines and tracks. MTA Police and NYPD Transit Bureau police officers are at times supported by a detachment of New York State National Guard troops on state active duty. During periods of heightened alert, New York State troopers may be assigned to patrol and ride commuter trains.

At Penn Station, MTA Police provide security for the Long Island Rail Road, where they may be supplemented by New York State troopers during periods of heightened alert.

Amtrak Police patrol Amtrak lines with support from the NYPD, and New Jersey Transit Police provide security for New Jersey Transit lines. NYPD Transit Bureau officers remain responsible for securing the subway. The New York State National Guard also provides additional support at Penn Station from time to time.

Of all the agencies involved in the security of New York City's transit system, the NYPD Transit Bureau has the largest area of responsibility and provides the greatest commitment of personnel. Nearly 2,700 officers are assigned to the NYPD Transit Bureau, which secures and polices the New York City subway system. Crime rates in the New York subway today are extremely low by national standards and are lower than the Citywide average crime rates. The NYPD's commitment of law enforcement personnel to the subway is a reflection of both our attack on conventional crime and our assessment of the terrorist threat to the system.

One way to measure the risk of terrorist attack is to look at which jurisdictions are willing to put up their own resources, rather than wait for federal funding. As you know, New York City has been spending hundreds of millions of its tax revenue dollars to fund counterterrorism activities.

The NYPD Transit Bureau plays a central part in counterterrorism operations in this high threat environment. The nature of the transit system, with its confined spaces, heavy mechanical equipment, and dense concentration of passengers, demands that these officers be prepared to act decisively with minimal supervision under the most extreme and dangerous conditions. Due to the sheer size of the system, the NYPD cannot cover all stations and all trains at all times. Therefore, the NYPD has developed a number of innovative counterterrorism tactics and techniques for use in the mass transit system. These techniques include:

- Container Inspection and Explosives Trace Detection Program The NYPD routinely conducts more than 300 explosive screening deployments per week throughout the subway and the Staten Island Ferry; the number of deployments

is increased during periods of heightened threat or concern. These screening operations consist of either a physical inspection of bags, briefcases, and other containers being carried into the subway, or an external swab of these containers for explosives residue using explosives trace detection equipment. The U.S. Court of Appeals recently reaffirmed the legality of these operations, after which the practice was adopted by the Massachusetts State Police.

- Transit Order Maintenance Sweeps (TOMS) The NYPD Transit Bureau routinely deploys teams of uniformed officers to conduct high visibility sweeps of trains for suspicious persons or packages.
- Critical Response Vehicle (CRV) deployments Every day, the NYPD conducts high visibility counterterrorism deployments of over 150 uniformed personnel to high risk areas in the City, frequently including mass transit facilities.
- Underwater tunnel operations The Special Operations Unit of the NYPD Transit Bureau patrols and inspects the underwater tunnels and ventilation facilities of the New York City subway every day, verifying that the alarm and access control devices at these sensitive locations are in working order. In addition, the NYPD Transit Bureau stations a police officer at the entrance of each of the subway's underwater tunnels on a 24/7 basis.
- Radiological detection Most NYPD Transit Bureau supervisors are deployed with advanced radiation sensors, and the Counterterrorism Bureau and Special Operations Division will from time to time conduct special radiological detection operations in the mass transit system.
- Canine deployments The NYPD Transit Bureau has an active canine program that is currently being expanded. More than a dozen canine units are currently in the program; the target strength of the program is 27 canine units. In addition to

detection capabilities, the dogs also serve as a deterrent to both crime and terrorism.

The MTA and Port Authority Police Departments also conduct explosive detection operations in the portions of New York City's mass transit system for which they are directly responsible. In addition, the MTA is engaged in a number of different chemical and biological weapons detection pilot projects in the major mass transit hubs, and is in the process of deploying an advanced CCTV, access control, and alarm system at its major stations.

The New York City Police Department has also been centrally involved in a regional, multi-agency effort to enhance the security of Amtrak's Northeast Corridor (NEC). The NEC Working Group includes representatives from law enforcement agencies with jurisdiction along the Amtrak line between Washington, DC and New York. Members include NYPD (Intelligence Division, Transit Bureau, Counterterrorism Bureau), Amtrak, NJ Transit, PATH, SEPTA (Southeast Philadelphia Transit Authority), Washington Metro, CSX (freight trains), Baltimore Transit, Delaware State Police, Maryland State Police, and other law enforcement agencies covering jurisdictions through which Amtrak trains travel. All members are on a group email list so that information can be disseminated in "real time." The Working Group meets quarterly and holds bi-monthly conference calls. The Working Group supports the NEC Executive Group, which includes the top executives of the agencies having a vested interest in the security of Amtrak and rail transportation.

As this brief summary should make clear, the NYPD and its partner agencies have made an enormous commitment of resources to the security of New York City's mass transit system. We have no illusions, however, about the vulnerability of the system to terrorist attack or to the terrorists' intent to attack. We have done a great deal, but much more remains to be done.

The federal government, on the other hand, has done very little to improve the security of New York City's mass transit system. This is understandable to a certain extent as the federal government has no significant operational presence in the mass transit system and no particular expertise as to its workings. The one thing the federal government has done since 9/11, of course, is make grants to the mass transit system operators. The recipients of these grants, of course, welcome them.

However, given the severity of the terrorist threat to the U.S. mass transit system and the overall level of U.S. expenditures on homeland security and the war on terror since the terrorist attacks of September 11, 2001, the federal government's financial commitment to mass transit security has been virtually zero. The disparity between the federal investment in aviation security and federal investment in mass transit security is a national embarrassment.

IV. Analysis of Draft "Rail and Public Transportation Security Act of 2007"

Before reviewing the specific provisions of the draft "Rail and Public Transportation Security Act of 2007," it is worth noting that the federal government has already been authorized by law to do virtually anything it wishes in the general area of transportation security. In particular, the Aviation and Transportation Security Act of 2001 (ATSA), as amended, declares that the Administrator of the Transportation Security Administration "shall be responsible for security in all modes of transportation" (Sec. 101).¹ In addition, under the terms of the ATSA, the TSA Administrator "is authorized to issue, rescind, and revise such regulations as are necessary to carry out the functions of the Administration." The ATSA also gives the TSA Administrator the power to issue these regulations immediately, exempting them from all other statutory and executive regulatory requirements and "without providing notice or an opportunity for comment." This is one of the most sweeping, unconditional conferrals of regulatory and other executive powers in the entire U.S. Code, and it builds upon a wide and

¹. The Homeland Security Act of 2002 superseded the Aviation and Transportation Act, vesting all powers and authorities assigned by the ATSA to the Secretary of Homeland Security.

diverse range of other powers previously conferred upon the U.S. Secretary of Transportation, the National Transportation Safety Board, the Surface Transportation Board, and other federal entities.

Thus, strictly speaking, the executive branch is not deficient in any legal authority to act, directly or indirectly, in ways that it deems important for the security of the nation's rail or public transportation systems. My first observation about the draft Rail and Public Transportation Security Act of 2007, therefore, is that it confers no powers upon the federal executive branch that the executive branch does not already possess.

Reporting Requirements The draft Act would, however, impose upon the federal executive branch a variety of different reporting and procedural requirements related to rail and public transportation security. The draft Act would require the Secretary of Homeland Security to:

- publish a nationwide “modal plan” (also referred to as the “National Strategy for Rail and Public Transportation Security”);
- publish a “strategic information sharing plan”; and
- promulgate regulations that require state and local agencies and transit authorities to conduct vulnerability assessments and prepare and implement security plans for the various different transportation systems for which they are responsible.

From a legislative vantage point in Washington, these reporting requirements, taken in isolation, may seem appropriate, valuable, and not unduly burdensome. My vantage point has been from the executive branch, first in Washington and now in the field, so I take a different view.

Since the attacks of September 11, 2001, the field of homeland security has been gripped by a mania for plans, strategies, and other mandatory reports. I myself have been directly involved in drafting several such documents, such as the *National Strategy for Homeland Security* and the *National Response Plan*. In New York City, for instance, I personally am reviewing or contributing to about a dozen different homeland security plans, reports, or strategies mandated by the federal government, often as a condition for receiving federal grants. Most, if not all, of these documents are being written merely to fulfill federal requirements; they are of almost no value to operating agencies in the field; and they seem to be ignored by virtually everyone except the government contractors paid to verify that the reporting requirements have been met – who are, in fact, often employed by the same companies as the contractors retained to write the reports in the first place. For these reasons, I have become skeptical of the value of many of these “national” policy documents. Too often, they reflect only the watered-down consensus of mid-level working group participants who have no significant connection to policy and operational decision-making of the most important agencies.

In addition, I do not believe it is reasonable to expect the Secretary of Homeland Security, or anyone else for that matter, to produce a useful comprehensive national strategy for securing all U.S. transportation systems. The complexity of the mass transit system in New York City alone boggles the mind. An attempt to generalize about the security deficiencies of all transportation systems in all parts of the United States – and to make meaningful proposals about how to remedy these deficiencies – is a complete waste of time. Since joining the New York City Police Department, I have learned how little Washington-based officials – as I once was – know about the real-world, day-to-day activities of critical local agencies, transit authorities, and infrastructure operators. The sooner that the federal government, and the Department of Homeland Security in particular, realize that there are no “one-size-fits-all” solutions in homeland security, the better.

For these reasons, I would recommend that the federal reporting requirements contained in Sections 3 and 6 of the draft Act be pared back and the reporting mandate in Section 5 be stricken entirely.

Allocation of Grant Funds The draft Act would also authorize for appropriation substantial sums of money for various rail and public transportation security purposes, particularly grants to transit system operators. Specifically, the draft Act would authorize a total of \$4.387 billion for transit security over 2008-2011, as follows.

Purpose	Amount (in millions)	Percentage
Rail Security	\$600	14
Public Transport	\$3,360	76
Bus Security	\$87	2
Fire & Life Safety	\$140	3
<i>New York</i>	\$100	
<i>Boston</i>	\$20	
<i>Washington, DC</i>	\$20	
Security R&D	\$200	5
Total	\$4,387	100

I fully support the expansion of federal security grants to non-federal security providers. I would note that the sums contemplated in the draft Act are substantially higher than those proposed in the President's FY2008 Budget, the Congress's Budget resolutions, or prior year appropriations in this area. The authorization of an expense does no good if the funds are never actually appropriated.

However, I have three major concerns with the particularities of the draft Act's grant authorizing provisions.

First, the draft Act fails to fund the single most important item for the protection and security of our mass transit system: daily security operations. According to the terms of the draft Act, the transit grants may be used only for “overtime reimbursement for additional security personnel during periods of heightened security as determined by the Secretary.” This is unsound for a number of reasons. As I previously explained, the presence of well trained and proactive law enforcement personnel in the mass transit system is the most important defense against, and deterrent of, terrorist attacks on the system. These deployments should be continuous, not limited merely to the Secretary’s determinations of “heightened security.” New York City operates in a period of heightened security all the time, irrespective of whether a federal announcement about a threat condition has been made to the media. The limitation of funding to overtime costs essentially penalizes the security agencies in high risk areas that deploy security personnel into mass transit systems on a routine basis.

If the Rail and Public Transportation Security Act of 2007 is enacted as currently drafted, most of the funds authorized by this Act would, if appropriated, end up being spent on equipment and various services provided by contractors, not the agencies that actually provide security on a day-to-day basis. This bias pervades virtually all homeland security grant programs. It is a reflection of the interests of government vendors, who sell more products, and federal auditors, whose jobs are simplified when grants can be connected to invoices. The federal government should rebalance its grant programs by shifting funds from equipment and contractor services toward operational security costs.

I recommend that the Committee revise the draft Act so that grants would be available to support ongoing security operations. Equipment and technological fixes are not the answer to mass transit security. The answer is people who can recognize threats and respond. The bill should allow grants to be used, subject to the approval of the Secretary of Homeland Security, to support not only the overtime expenses already in the bill, but also straight time and other ongoing personnel expenses of providing security to mass transit systems. This would be similar to the authority provided in the

Fiscal Year 2007 Urban Areas Security Initiative grants, where personnel expenses for counterterrorism and intelligence are allowable expenses.

Second, even for the limited personnel expenses permitted by the draft Act (mainly training), the draft Act fails to recognize that the agencies conducting security operations in the mass transit system may not be connected to the transit authorities that operate the systems. The draft Act's definition of a "transit worker" is far too narrow, as it fails to recognize the diverse protection schemes needed to secure a transit system, which frequently crosses city, county, and state lines. In New York City, for example, the MTA is primarily responsible for operating the subway system, but the NYPD is responsible for patrolling and policing the subway. The draft Act would cover security training for the MTA employees – such as subway train operators, conductors, booth clerks, cleaners, property protection agents, etc – working within the transit systems or on MTA property, but the Act would not support security training for police officers assigned to the NYPD Transit Bureau (or specialized units such as the Emergency Services Unit, the K-9 Unit, or others) who are deployed to patrol subway stations, conduct random bag checks, and provide general security within the transit system. City, county, and state police agencies along Amtrak's Northeast Corridor contribute to the protection of this vital inter-city rail line, but their personnel expenses would similarly be excluded from the grant program due to the narrow definition of "transit worker." The Act should reflect the nuanced organizational structures that operate and protect transit systems to ensure all relevant non-federal institutions and organizations are covered by the grants this Act seeks to provide.

The bill should not limit training to employees of the mass transit system. Any person who provides security to the mass transit system should be eligible for training. In addition, in order to train someone, another person must fulfill the trainee's duties. The overtime and backfill costs associated with training should also be eligible for reimbursement.

Third, the draft Act fails to direct the Secretary to distribute federal transit security grants solely on the basis of terrorist risk. The draft Act would give the Secretary freedom to allocate the transit security grants on the basis of considerations other than objective assessments of terrorist risk. New York City's experience has been that the Department of Homeland Security frequently fails to incorporate these objective assessments of terrorist risk into its grant allocation decisions even when it has the statutory discretion to do so. The 9/11 Commission and virtually all independent experts and officials agree that terrorist risk is the only legitimate basis for allocating homeland security funds across the nation. The 110th Congress has the opportunity to do what the 108th and 109th refused to do – incorporate terrorist risk fully into federal homeland security grant making processes.

Accordingly, the Committee should add to the draft Act a provision that directs the Secretary to allocate all grant funds authorized in the Act on the basis of objective assessments of terrorist risk, including the relative daily ridership of the mass transit systems.

V. Conclusion

I go to work every morning – frequently via mass transit – with the mindset that today will be the day that terrorists strike New York City again. The most likely scenario, I believe, is an attack in the subway system with multiple, near-simultaneous satchel bombs. The NYPD and our partner agencies have shouldered the responsibility for guarding against this horrific possibility. It is high time for the federal government to contribute in a significant way.

The Committee's draft "Rail and Public Transportation Security Act of 2007" is a step in the right direction, particularly in its authorization of grant funds at a level that begins to be commensurate with the true terrorist risk to our mass transit system. I urge the Committee to make the adjustments in the draft Act that I have identified in this

testimony, and I urge the Congress to not only pass the Act but also to appropriate funds at the levels it would authorize.