

Before the United States  
Sentencing Commission

Hearing on the  
Proposed Amendments to the Sentencing Guidelines

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Testimony of

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Mr. Chairman and members of the United States Sentencing Commission, my name is Peter Pantuso and I am the President and CEO of the American Bus Association. First, I want to thank you for giving me and the association I lead the opportunity to testify concerning the proposed amendments to the Federal sentencing guidelines. In the time I have today I would like to accomplish two goals. First, I want to give you an overview of the American Bus Association, the private bus industry and what makes our interest in the sentencing guidelines especially critical. Second, I want to address two issues within the proposed guidelines from the perspective of the private over-the-road bus industry and the 650 million passengers we transport every year.

American Bus Association

The American Bus Association is the primary trade association representing the private over-the-road bus industry. The ABA has 3800 members engaged in all manner of transportation, travel and tour services. While the name "American Bus Association" may connote only bus transportation, our reach is much broader. ABA serves as the voice of almost 1,000 bus and tour operators. ABA represents thousands of tourist attractions such as theaters, restaurants, the Empire State Building and the Smithsonian Museums here in Washington, D.C. ABA also represents Convention and Visitors Bureaus (CVBs) as well as bus manufacturers and companies that service the private bus industry.

As I mentioned, the private bus industry transports approximately 650 million passengers a year; a total that compares favorably with the number of passengers carried by the nation's airlines. Moreover, ABA members link some 4000 bus terminals, airports and rail stations in the United States. ABA members are engaged in providing all types of transportation services; charter and tour, sightseeing, commuter and airport shuttles services among them. Given the "reach" of the transportation the industry provides, it is clear that security is the industry's top priority.

Indeed since the attacks on 9/11 and the enactment of the Patriot Act the private bus industry has been heavily engaged in securing its passengers, facilities and personnel. With \$50 million appropriated by Congress since Fiscal Year 2002, the private bus industry has taken steps to ensure increased protection of our assets. Private bus operators have purchased cell phones for drivers, engaged Global Positioning Satellite (GPS) systems, installed cameras in maintenance facilities and staging areas, developed and installed shields to protect drivers and begun passenger screening at some terminals.

Our interest in security is more than academic. Each of ABA's 800 bus operator members is very aware that it is their motorcoaches that bring families to the Nation's Capitol; students to the Grand Canyon and senior citizens to Las Vegas every year. The plain fact is a motorcoach may be used as a vehicle borne improvised explosive device with devastating effect. Thus, the ABA and the private bus industry take the possible hijacking of one of our vehicles very seriously.

#### Post 9/11 Motorcoach Incidents

Since 9/11 ABA motorcoach operators have endured several incidents in which persons have, or have attempted to hijack motorcoaches while the coaches were in operation and carrying passengers. One of the most horrifying was the takeover of a Greyhound Bus in Tennessee, one month after the 9/11 terrorist attack, an incident that resulted in the motorcoach driver having his throat slit by the assailant and the wreck of the bus on a busy highway resulting in six deaths. On a Minnesota highway in 2005 a woman held a knife to the throat of the driver of her Jefferson Lines bus. The attacker was one of ten people on the bus and three people were injured battling the hijacker before she was taken into custody. Also that year a Wisconsin man was arrested after he grabbed the steering wheel of the intercity bus he was on causing it to careen into oncoming traffic and collide with a passenger car in Black Hawk Valley, Iowa. Three people were injured in the attack including a 1 year old girl in the car.

#### The Patriot Act Improvement and Reauthorization Act of 2005

The Congress shared our concern with bus transportation security when it passed the Patriot Act ("The Patriot Act"). Among other provisions the Act amended Section 1993 of Title 18 of the United States Code. In pertinent part Subsection (a) prescribes:

"Whoever willfully (1) wrecks, derails, sets fire to, or disables a mass transportation vehicle or ferry (5) interferes with, disables, or incapacitates any dispatcher, driver,

captain, or person while they are employed in dispatching, operating, or maintaining a mass vehicle or ferry, with intent to endanger the safety of any passenger or employee of the mass transportation provider, or with a reckless disregard for the safety of human life; shall be fined under this title or imprisoned not more than twenty years, or both, if such act is committed, on against, or affecting a mass transportation provider engaged in or affecting interstate or foreign commerce, or if in the course of committing such act, the person travels or communicates across a State line in order to commit such act, or transports materials across a State line in aid of the commission of such act.”

In aid of determining which transportation operations are included within section 1993, Congress provided that the Patriot Act definition of “mass transportation” had the meaning given to that term in section 5302(a)(7) of Title 49 United States Code, except that the term “shall include schoolbus, charter and sightseeing transportation.” Congress needed to add these bus transportation modes to the term, “mass transportation” because they were specifically excluded from the section 5307 (a)(7) definition, which was “transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or sightseeing transportation.” There was no need for Congress to add intercity bus service to the section 5307(a)(7) mass transportation definition since it was not specifically excluded by section 5307(a)(7) and clearly is transportation by a conveyance that provides regular and continuing general...transportation to the public.”

In 2005, the USA Patriot Improvement and Reauthorization Act consolidated 18 U.S.C. 1992 and 1993 and replaced the term “public transportation” (added by the SAFETEA-LU Act) with “mass transportation. In SAFETEA-LU, 119 Stat. 1144, Public Law 109-59 (Aug. 2005), 49 U.S.C. 5302 (d) (7) Congress replaced the term “mass transportation” with “public transportation” and defined “public transportation” as:

“Transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter or intercity bus transportation or intercity passenger rail transportation...” 49 U.S.C. 5302(e)(10).

Thus on its face, the definition of “mass transportation” as the Sentencing Commission points out, is broader than that of “public transportation for the purpose of applying the sentencing guidelines to criminal inference with transportation operations. ABA and its members are in favor of the broadest application of these sentencing guidelines to transportation operations.

#### Applicability of the Sentencing Guidelines

Responding directly to the question raised in paragraph 4 on page 35 of the draft Guidelines, ABA believes that the Guidelines should use the definition of “mass transportation” and that the Guidelines should make clear that the term “mass transportation” includes intercity bus service.

First, if the Commission used the term, “public transportation”, rather than “mass transportation”, that action would have the effect of excluding school bus, charter, and sightseeing services when Congress explicitly included them in the Patriot Act reauthorization.

Second, the Patriot Act reauthorization definition of “mass transportation” includes “transportation by a conveyance that provides regular and continuing general or special transportation to the public”. There is no doubt that what intercity bus and rail operations provide is “regular and continuing ... transportation to the public.” That is true whether it is Greyhound intercity service between Washington and New York City or Jefferson Lines service between Minneapolis, Minnesota and Des Moines, Iowa. Thus, since intercity bus service is not specifically excluded from the definition of “mass transportation”, Congress clearly meant to include these operations within the sphere of the sentencing guidelines. In the formulation of the Patriot Act, Congress used the broadest definition of transportation operations available to it, that of “mass transportation” (which does not exclude intercity bus operations) and supplemented it with the operations excluded from that definition “school bus, charter and sightseeing” operations. Obviously, Congress’s intent was to cover all transportation operations.

Third, there is no evidence Congress meant to exclude any transportation operation from the applicability of these guidelines. The Patriot Act is quite comprehensive in the list of conveyances, personnel, and equipment meant to be covered by the Act’s prohibitions. A motorcoach in intercity service is identical to a motorcoach engaged in a charter operation.

Finally, there is no logic in excluding intercity bus operations from the operation of the sentencing guidelines. To hold to that view requires one to believe that Congress chose to provide Patriot Act protection to a charter bus operator traveling to Washington, D.C. with 54 passengers and leave unprotected an intercity bus traveling with 54 passengers to the same destination. For all of the above reasons ABA and its members believe that the use of the term “mass transportation” in the sentencing guidelines would apply these guidelines to intercity bus and rail transportation operations.

However, if the Commission is unsure of the correctness of ABA’s analysis, the association urges you to ask the Congress for clarifying language to explicitly close any “gap” in the guidelines applicability. Indeed, if the Commission believes this step necessary, ABA can assure you of our strong support for any such effort. As I stated earlier, no organization takes more seriously the security of bus passengers, personnel and facilities.

#### Federal Focus on Intercity Bus Incidents

My final task is to impress upon the Commission the importance of a federal focus on intercity bus incidents. In two of the three hijacking incidents I describe above the criminal was prosecuted under local law. The Greyhound incident resulted in the death of the assailant in the bus wreck. In the other cases, the county prosecutor, without

any help, cooperation or coordination from federal law enforcement, took the case to trial, pled down the charges and got a conviction. One could describe each as a “successful prosecution.” But the amount of jail time to the criminal is not the issue.

What is at issue is the focus of the federal law authorities on what is a federal crime involving a specific mode of transportation. I think it is fair to assume that a similar hijacking incident on a commercial airliner would be handled as a federal crime by federal authorities. In that case, more attention would be paid to the crime and its consequences. The focus would be placed on that crime as a possible terrorist act.

With such a focus there would be increased attention by the media and the public, attention that could deter additional, similar acts. With added focus federal law enforcement agencies gain the ability to gather information about the crime, the participants and to determine whether a particular crime fits into a pattern of terrorist activity. Finally, with more attention the nation strengthens the notion that the transportation system is one system, with one legal regime for all modes of transportation.

The American Bus Association and its 3800 members support the United States Sentencing Commission and its purpose to establish fair and appropriate sentencing policies and practices for the courts. The ABA would like to work with you to ensure that such policies apply to intercity bus operations as well as air, rail and maritime operations.

Thank you.

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