



**U.S. SENATE COMMITTEE ON
COMMERCE, SCIENCE & TRANSPORTATION**
Senator Maria Cantwell, Chair

U.S. Senator Maria Cantwell

**Senate Commerce, Science, and Transportation Committee
Nominations Hearing**

April 10, 2024

Opening Statement
[VIDEO](#)

Senator Cantwell: This morning, we're holding a hearing on the nominations of two individuals the Committee knows well, but it's important that we get them into their continued roles.

I am pleased to welcome Jennifer Homendy, the Chair of the National Transportation Safety Board, who has been re-nominated for a five-year term, and Patrick Fuchs who has been re-nominated for a five-year term on the Surface Transportation Board.

Chair Homendy has guided the NTSB through some of the most high-profile transportation accidents this nation has seen in recent memory, including the East Palestine derailment, the Alaska Airlines door plug accident, and now the Francis Scott Key Bridge collapse, which claimed six lives and closed the Port of Baltimore, causing significant disruptions to our national freight network. I'm so sorry for the loss of lives that occurred at the bridge. It's a constant reminder of who's built our nation -- the hardworking men and women who take these risks and do this job. We mourn their loss and give our prayers to their families.

She has led investigations with independence and integrity to discover the factors that are so important to not have history repeat itself while continuing to support the structure at the NTSB.

Under her leadership, the agency has eliminated a backlog of 442 overdue investigative reports and worked to ensure the agency has the resources needed to adapt to emerging technologies.

The Committee has -- one example -- marked up our FAA bill, including robust NTSB recommendations. That's how I believe the system is supposed to work. The NTSB, clearly a watchdog, is doing the hard, hard, hard investigative work reminding us what else needs to be improved upon in the system.

The Senate FAA bill requires the FAA to finalize the 25-hour cockpit recording rule. That is clear as it can be from you, Chair Homendy, the necessary recordings that help you in your investigation. As we know, the cockpit recording in the Alaska Airlines accident was overwritten, complicating your investigation. We are working hard with our House colleagues to reach an agreement and send the FAA bill to the President's desk.

I also want to focus on the collapse of the Francis Scott Key Bridge. I commend the brave members of the United States Coast Guard and first responders who quickly conducted search and rescue efforts.

Thanks to President Biden and the Army Corps of engineers tirelessly working to reopen the Port of Baltimore.

The Department of Transportation has already made \$60 million available to the state to aid in the rebuilding efforts – but we know much more is needed.

We stand ready to assist the people of Maryland and our important trade and transportation infrastructure that our economy counts on...and look forward to hearing any updates on that investigation this morning.

Mr. Fuchs, a former Commerce Committee staffer for Senator Thune, so it's great to have you back before the Committee. Being out there, I wonder if you remember all the questions you wrote for members before. We should dig some up. But thank you so much for your continued work through the board on the COVID-19 pandemic, which saw historic issues related to rail service.

Following the East Palestine derailment, the Committee found that from 2017 to 2021, the Class I railroads infrastructure investments were cut by 25 percent and employees were cut by 22 percent while accidents increased 14 percent.

I am concerned about how we guarantee safety for the future and as a state and an economy that is very pacific focused, a lot more volume is mid-west products, all just throughput for our state. So we want the rail to work and work effectively and with resiliency.

I look forward to hearing from you about how we do that.

First Q&A
VIDEO

Senator Cantwell: Chair Homendy, on Monday, March 26, an 89,000-thousand-ton vessel lost power near New York's Verrazano-Narrows Bridge, thankfully guided by tugs to continue on his journey safely. Just another reminder that these are not one-off incidents. In 1981, the Sunshine Skyway Bridge in Tampa, Florida, collapsed and 35 people were killed. In my state, the Lewis and Clark Bridge is an example of a bridge with just the wooden barriers to protect from a boat strike, but they have deteriorated. I want to hear from you what other updates you might have for us on this particular incident, what we can do to safeguard vulnerable bridges in the United States, and what is the status of the 1981 recommendations the Coast Guard made after those incidents to try and strengthen the bridges? I'm just going to put a lot on your plate, but you are here for re-nomination, so I guess it's another test. But as the chief safety steward for our nation, we need aggressive advocacy as well as it relates to safety fixes.

When you were last year, we asked you about whether you were getting the information on the Alaska accident, and whether you had received that information. You've since updated the Committee on that. But any further updates on the challenges you faced getting information?

One of the things that has transpired since you were here, is that the ODA expert panel came out with their analysis that there was a disconnect between senior management and those down the line on what the safety culture actually is. What can NTSB do to further examine the state of the safety culture to make recommendations to us as we continue to move through the challenges of making sure that aviation safety, the FAA, and oversight is done correctly? Sorry to throw a lot at you, but that is why you are re-nominated for a second term.

Ms. Homendy: Thank you. I will start with the update on Baltimore.

We have conducted a number of interviews, we have interviewed the pilots, and if you don't mind, I'd like to consult my notes to make sure I stick with the facts. We have conducted interviews with the pilots, the second officer who was the man on watch at the time, the master on the bridge, chief engineer, the third assistant engineer, the helmsman, the boatswain, the chief watch officer, the second officer, the second officer who conducted predeparture checks, the second assistant engineer, the electrician, the oiler, and three Coast Guard watch standards at the command center, and received tugboat operator statements, and we're continuing to conduct interviews.

Most people don't realize, we are actually still on scene. Our investigative team is on the vessel as we speak. We downloaded the VDR, voyage data recorder, on scene and then we removed the VDR in order to download the past 30 days in our lab to learn from that.

We formalized parties to the investigation. I'm pleased to say that Grace Ocean and Synergy have become parties to our investigation as well as the U.S. Coast Guard, Maryland Transportation Authority, and the Association of Maryland Pilots.

We have had the manufacturer of equipment in the engine room to look closely at the electrical power system. We are continuing to look at that. We have asked for additional assistance from the manufacturer who returned from overseas this week with experts to look at the circuit breakers.

In addition to that, our Office of Highway Safety Team is really focused on pier protection, looking at the original bridge design and how it would be built today under today's standards.

I expect, regardless of some erroneous press report from Bloomberg, that our preliminary report will not be out until the first week of May. We are still on scene collecting information.

We have a lot of work ahead. There is a lot we have learned, but I will say, we have issued recommendations going back to 1979, really 1976, but 1979 and 1981 to the U.S. Coast Guard, to look at the type of vessels and shipping and waterways across the United States, volume of traffic, and pier protection.

The U.S. Coast guard at the time stated they didn't have the authority to do that, so it was never done. They did do a review of the types of pier protection out there, but not on specific areas.

So with that, I can answer additional questions on that. I am sure there are a number of areas that you want to delve into. But we still have a lot of work to do still on this investigation. And I'm happy to provide any more information on that.

Senator Cantwell: Maybe if I get a second round, but if you could address the aviation issue.

Ms. Homendy: Ya, so we are in Renton this week. We are back in Renton. We are doing interviews of Boeing and the Federal Aviation Administration this week. The records don't exist that what we are looking for, but that is, what we would call, an escape from normal process. We are looking at other instances where a door plug was opened and closed, to make sure those records are available. We are looking at how this happened.

What I will say is, Boeing has been a party to many of our investigations. They play a key role here. I don't think there is anyone from Boeing from Dave Calhoun down that doesn't want to know what happened here. They want to know and they want to fix it. And we are there to help.

But we are also there to look at what more can be done, what the safety culture is, what the safety management system is -- it is relatively new -- how that can be improved, and their quality management system. We do have a lot of work to do.

I will say, you asked about one of the tools we could use -- we don't know if we are going to yet. It is too early to tell. But one tool we could use is safety culture survey. We just issued a survey, with the help of Norfolk Southern, to their entire workforce, almost 20,000 employees. It is an anonymous survey to learn about safety culture. The leadership at Norfolk Southern also wants to know. We are getting a great response. And we could do that here.

Senator Cantwell: And why wouldn't you?

Ms. Homendy: I don't want to get ahead of our investigators. They are still collecting information. That is something that they need to pursue.

Senator Cantwell: And on this case, you're saying in this case records don't exist, but you have other records that show when plugs were opened and closed? There are other instances where that kind of repair was documented?

Ms. Homendy: There are other instances where that work would occur. We still have to review all those instances to see if that was documented.

Senator Cantwell: Ok, so you don't know whether those were documented yet or not?

Ms. Homendy: Not yet. But we do have the information.

Second Q&A

VIDEO

Senator Cantwell: If I could go to you, Mr. Fuchs on a couple of issues in your area.

The Port of Vancouver is stuck in a contract with BNSF that doesn't expire, which allows them to control the access to the port exchange for managing the railroad and maintenance. So, the port has been trying to recruit new customers, and it's invested a lot of money into trying to build that capacity. However, the port has accused BNSF of charging exorbitant fees to Union Pacific customers who need to use the track into the port, and deterring would-be customers.

So, what are the issues that you think you could look at here to make sure that there's a collaborative process in increasing exports?

The other question I have for you deals with just our data on our system, and the network and disruptions. Obviously we look a lot to compare with Canada, they have real-time information about the location of trains in their freight network. What is STB doing to improve its data on freight rail networking, and including the collaboration of real time information.

Mr. Fuchs: Thank you for the question, Chair Cantwell.

I'll start with Vancouver. It's an important and ongoing issue. Rail access is critical to economic growth. I've engaged with your terrific staff and the carriers on this matter. And I'm aware that it's an outstanding proceeding with a private arbitration panel, being a contract dispute. But I sincerely appreciate the outcome here will be extraordinarily impactful to the Port of Vancouver. I want to engage with the port, and I'd welcome the opportunity to continue to engage with your team, the carriers, and the port as appropriate to see if the board can play a constructive role.

As it pertains to supply chain visibility. This is another crucial area for the rail system. If shippers have good information about their freight, they can plan their businesses accordingly and reduce negative effects when disruption occurs. The board has been focused on transparency as a way to address some of these rail service problems.

We expanded our service metrics to include for the first time on a temporary basis measures of trip plan compliance, which is like on time performance, as well as first-last mile service, and we have a proposal pending to make those permanent. We enhanced our employment data to take a more detailed look at carriers' efforts to increase their crew base, because that was a major precursor to the rail service problems that we saw. We acquired service recovery plans with targets for both crew and service. We mandated certain invoices for demurrage have additional detail. We expanded our waybill sample collection.

You know, transparency has been the hallmark of the board in recent years. When I assess the state of the industry, in terms of shipper visibility, much more is needed. But I would certainly welcome the opportunity to partner to increase supply chain visibility, and I'm committed, if confirmed, to continue in the board's efforts on that front.

Senator Cantwell: You're talking so fast, like you have to brief a member. And guess what? No other members are here right now.

So why don't you take a second and elaborate on that point? Because I want to hear what you think. And you know, do you have capacity to do innovative things, too? Can you guys say like, hey, why don't we try blockchain technology that would help? You know, without specifying what

content is, elaborate on a system that would give us even more accuracy. Would love to hear your recommendations.

Mr. Fuchs: Absolutely. So, within the rail network, the carriers generally operate a system called AEI readers. They're basically scanners along the network. But there's space in between the scanners, so you don't have continuous, real time visibility, sometimes, in between the scanners. Now, they have PTC with GPS, and some carriers are imputing some of that GPS data to the consist. However, when the freight cars are not attached to the train, you might not have that coverage as well, for example, if they're in a siding, or in a yard.

So there are ongoing efforts in the industry to try to provide GPS location specific data. There's a coalition called Rail Pulse that has class one carrier, shortline carriers, rail suppliers, that are trying to attach GPS units, but also other real time safety information.

And to your point, Chair Cantwell, what you can see, you can start to see the seeds of this data, that if the carriers can get more visibility on location specific, they can leverage machine learning to optimize network plans and create capacity just by the use of technology.

So I do think that there are some exciting developments going on in the industry right now, but we're not there yet.

Now, you also asked what the Board can do. We have reasonable rates, services, and practices authority. Our reasonable practices authority really governs, mostly, competitive relationships between carriers and shippers.

I will say that a lot of, one of the complex challenges is a lot of these rail cars are owned by shippers. And I think that there's a little bit of a collective action problem where the marginal benefit for a shipper for AEI reader to GPS may not be sufficient to justify the ROI in some cases. But perhaps if everybody was equipped, there would be some additional benefits from that.

It is not clear that the Board is the proper entity to help oversee that. The Department of Transportation has used its grant making authority actually to initiate Rail Pulse. There was a grant application from carriers in the Commonwealth of Pennsylvania to make that happen. And it's possible that the Department of Transportation, through its convening and conveying function, as well as its grant making authority, may be best situated to address this issue.

Senator Cantwell: Are you saying that we should think about the, you know, the basis of the transportation of the cars and diversifying the ownership of that? Is that something to think about how that would speed up the delivery?

Mr. Fuchs: I think that the ownership of cars is because of complex operational characteristics. Say for example, a chemical car. Chemical cars are almost exclusively owned or controlled by rail shippers, because they're specialized products, and you can't really pool those across the network. I think that they're-

Senator Cantwell: But the tray underneath, is that, some people have suggested, change that that part of the system.

Mr. Fuchs: Oh, as in what hauls particular containers?

Senator Cantwell: Yes.

Mr. Fuchs: So, those are typically managed by an entity called TTX. And there is extensive pooling that exists in that area. Those are, I would say on the intermodal side, those are exempt commodities, they're highly competitive, they have, compared to some of the other manifest shippers, they have an excellent service performance on a relative basis. So the carriers have active communication with those particular shippers.

I think the car ownership is difficult, because it's not if the, even if the carriers wanted to equip all their cars, there's costs for shippers in equipping their cars. That's what makes it really complicated. And then the other element is, the rail network is extraordinarily heterogeneous. There are massive differences in people's demand and time sensitivities.

So a company like UPS or FedEx, you know, they need to know where their freight is immediately. And it's not to say there's not visibility for some of the smaller shippers with bulk commodities. But it's just less important for them, and therefore they have a lower willingness to pay. And so therefore, they might not be wild about equipping their rail cars. So it's the ownership characteristics and the heterogeneity of demand that really makes it challenging to have a one size fits all solution for the industry.

Senator Cantwell: Well appreciate your focus on the efficiency of making sure that we continue to make technology improvements. One of those issues, in [the last quarter of] 2023, the Amtrak Cascade Route was on time just 67% of the time. So, part of your responsibility is ensuring that Amtrak trains do not face undue delays from freight trains. So, are you committed to working with us and making sure we improve the Amtrak on time experience?

Mr. Fuchs: Absolutely, Chair Cantwell. The Board's passenger rail authorities are an important part of what we do. They're mostly codified in Section 24308 of our code. And in fact, on on-time performance, under subsection F, we have a case right now, pending. So, I'm limited in what I can say because it's an ongoing investigation.

But I will say, generally, Congress has empowered the board to conduct investigations of on time performance, and to look at instances in which carriers failed to provide preference, and then we have a damages authority to try and ameliorate the problem. It is one of the tools that Congress has given us, and we are currently in the middle of a case on that very issue.

Senator Cantwell: Thank you.