NLWJC- Kagan

Counsel - Box 005 - Folder 003

Amtrak liability provisions

LIABILITY PROVISIONS IN THE HOUSE AND SENATE AMTRAK BILLS

H.R. 1788 - "The Amtrak Reform and Privatization Act of 1995"

- In any tort claim arising from or in connection with rail passenger transportation services (*e.g.*, Amtrak services, commuter services, subway trains, and any other transportation of passengers by rail) or operations (*e.g.*, moving or fixing empty train cars on a track), the following liability limitations would apply: (1) punitive damages are capped at the greater of $250,000 or three-times economic damages, and (2) noneconomic damages are capped at $250,000.

- This broad language has the following implications: (1) as long as the claim stems "*from or in connection with*" rail passenger transportation services or operations, the liability limitations would be available to a wide range of defendants -- Amtrak, any freight company or other rail carrier, any high-speed railroad authority, any commuter authority, and/or any State; (2) covered claims include those filed by passengers or non-passengers (*e.g.*, persons struck on foot or in a car at a grade crossing or while walking along a track) for injuries/death stemming from grade-crossing accidents involving passenger trains, collisions between passenger and freight trains, sabotage, or any other accident involving a passenger, commuter or subway train; and (3) wealthier persons with high economic losses would be able to recover greater punitive damages than lower income persons.

- The bill also mandates that any indemnification agreement between Amtrak and another rail carrier shall be enforceable regardless of the "nature of the conduct giving rise to the damages or liability." Thus, even damages resulting from intentional acts or gross negligence of a freight operator would be subject to indemnification by Amtrak.

S. 1318 - "Amtrak and Local Rail Revitalization Act of 1995"

- Allows Amtrak, the Alaska railroad, or any private railroad car operator to contract with its passengers to limit punitive damages to the greater of $250,000 or two-times compensatory damages *if*: (1) the claim for punitive damages arises from or in connection with rail passenger transportation services or operations; (2) passengers are given adequate notice of the contractual limitation; and (3) passengers are given an opportunity to purchase supplemental insurance coverage when ticketed or at the point of departure.

- This bill has the following implications: (1) the punitive damages cap would apply with respect to claims made against Amtrak, any freight company or other rail carrier, any-high-speed rail authority, and/or any commuter authority; (2) only actual train passengers would be affected by the cap if they are injured/killed as the result of a collision at a grade-crossing, a collision with a freight train, sabotage, or any other conceivable accident that might occur while traveling by train; and (3) the cap would not apply to persons injured/killed while walking or driving over a grade-crossing or along a track.

TALKING POINTS IN OPPOSITION TO S. 1318'S SEVERE LIABILITY LIMITATIONS FOR RAIL PASSENGER TRANSPORTATION PROVIDERS

- Although not as highly publicized as airplane crashes, train accidents are occurring in alarming numbers every year. According the latest Federal Railroad Administration statistics, there were 19,455 total train accidents in 1994 resulting in 1,226 deaths and 16,812 injuries. Many of these train accidents involved the provision of rail passenger transportation services. Any legislative effort to cap punitive damages or noneconomic damages could exacerbate the situation by restricting the ability of our legal system to ensure safety conscious conduct by rail passenger transportation providers and to fairly compensate accident victims.

- In the month of February 1996 alone, there have been five major railroad accidents resulting in numerous fatalities and injuries. For example, eleven people died on February 16th when a MARC train smashed into an Amtrak train only miles from the U.S. Capitol. Given this rash of disturbing accidents, it is simply nonsensical that legislation is being considered in the Senate that would severely limit the liability of grossly negligent or reckless railroads.

- Forcing Amtrak and other rail passengers to sign a contract waiving their rights to recover full noneconomic or punitive damages is patently unfair to the millions of working class Americans who rely on rail transportation. Because rail transportation is often the only economically viable commuter and travel option for these citizens, they will have no choice but to submit to draconian contract provisions that severely limit their ability to hold Amtrak and other providers responsible for negligent conduct. In addition, it is quite possible that such a "contract of adhesion" would not even by legally enforceable.

- Supporters of the contract waiver provision argue that such language is analogous to the contractual liability limitations governing international air travel. However, (1) the international air travel liability waiver stems from a treaty that was negotiated in consideration of numerous foreign liability laws; (2) unlike wealthier Americans and businesses that have numerous travel options and voluntarily choose the luxury of international air travel, most middle-class Americans have no financially viable option other than to commute and travel by rail; and (3) a contract waiver in the context of rail passenger transportation would negatively affect a much larger number of Americans than does the international air contract waiver.

- The threat of a punitive damage award plays a vital role in promoting passenger safety by strengthening the safety incentives for rail passenger transportation providers. If this incentive is eliminated or restricted, providers would have less motivation to install and maintain safety devices, observe speed limits, ensure full visibility at grade crossings, or properly train and supervise employees. Given the current cost-cutting climate at Amtrak and elsewhere, the threat of a large punitive damage award is needed now more than ever to prevent rail passenger transportation providers from placing profits ahead of safety.

OPPOSE H.R. 1788'S UNFAIR AND DISCRIMINATORY LIABILITY LIMITATIONS

- Although not as highly publicized as airplane crashes, train accidents are occurring in alarming numbers every year. According the latest Federal Railroad Administration statistics, there were 19,455 train accidents in the United States in 1994 resulting in 1,226 deaths and 16,812 injuries. Many of these train accidents involved the provision of rail passenger transportation services. Enactment of H.R. 1788's severe liability limitations would only exacerbate the situation without resulting in any significant cost savings. Rather than attempting to limit the liability of negligent railroads, Congress should be focusing on the critical need for improved rail safety in the United States.

- The threat of a punitive damages award plays a vital role in promoting passenger safety by strengthening the safety incentives for rail passenger transportation providers. If this incentive is eliminated or restricted as envisioned by H.R. 1788, providers would have less motivation to install and maintain safety devices, observe speed limits, ensure full visibility at grade crossings, or properly train and supervise employees. Given the current cost-cutting climate at Amtrak and elsewhere, the threat of a large punitive damage award is needed now more than ever to prevent railroads from placing profits ahead of safety.

- By basing the punitive damages cap on an amount equal to the greater of $250,000 or three times "economic" damages, H.R. 1788 blatantly discriminates against women, minorities, the young, the elderly and others who may not have large economic losses. Suppose an executive with a $500,000 salary is severely injured in a train accident due to Amtrak's reckless conduct. This executive could then recover up to $1.5 million in punitive damages. A housewife with no salary who is similarly injured in the same accident could only recover up to $250,000 in punitive damages -- $1.25 million less than the executive.

- The noneconomic damages cap in this bill would: (1) unfairly impact the most seriously injured accident victims; (2) create an arbitrary and inflexible limit on recovery regardless of the circumstances of each case (*i.e.*, loss of eyesight is worth a maximum of $250,000 and so is loss of eyesight combined with loss of hearing); and (3) discriminate against women, the young, the elderly, and others who may not have large economic losses.

- Several courts (including the court in the notorious 1987 Chase, Maryland train crash that killed 16 people and injured 175) have refused to uphold private indemnification agreements that would completely immunize a railroad from liability even in the event of gross negligence or recklessness. Incredibly, however, a provision in H.R. 1788 would sanction such indemnification agreements that completely shield certain railroads from liability in cases involving gross negligence or recklessness. Sanctioning indemnification agreements that force Amtrak to pay for the gross negligence or recklessness of another rail operator is not only contrary to public policy, but it also runs directly counter to the ostensible goal of H.R. 1788 (*i.e.*, improving the financial status of Amtrak).

- The freight railroads should be allowed to contract for reasonable protections, but not for complete immunity that is against public policy and that could jeopardize safety. Why should Amtrak have to pay for the reckless conduct of a freight railroad?

AN APPLICATION OF THE LIABILITY PROVISIONS IN H.R. 1788 TO THE RECENT MARC/AMTRAK ACCIDENT IN SILVER SPRING

Only days ago, a MARC train operated by CSX smashed into an Amtrak train in Silver Spring on tracks owned and operated by CSX, resulting in eleven deaths and numerous injuries. Preliminary investigations reveal that excessive speed by the MARC train, faulty placement of safety signals by CSX, design flaws in emergency exits, and engineer negligence may have been contributing factors. Despite these strong indications of negligence on the part of CSX, Amtrak, and/or MARC, the victims of this tragic accident and their families would be unable to recover fair compensation or hold all negligent parties accountable had the draconian liability provisions of H.R. 1788 been in effect at the time of this crash.

Specifically, the liability provisions of H.R. 1788 would have:

- Completely immunized CSX from any liability for the accident -- regardless of the egregiousness of CSX's actions. Thus, even if it is discovered that CSX was the sole cause of the crash due to its gross negligence or recklessness in the operation of the MARC train or the tracks, CSX would be fully indemnified by Amtrak (or perhaps by MARC) for any and all damages. Such a result is not only contrary to public policy, but it also runs directly counter to the ostensible goal of H.R. 1788 (*i.e.*, improving the financial status of Amtrak).

- Severely limited the ability of victims and their families to assess appropriate punitive damages against CSX, Amtrak, and/or MARC should it be discovered that any or all of these entities was grossly negligent or reckless. For example, if it turns out that CSX was grossly negligent or reckless in the operation of the MARC train or the tracks, H.R. 1788's punitive damages cap per claimant would blindly limit each victim's family from recovering any punitive damages in excess of $250,000 or three-times economic damages.

- Severely limited the ability of victims and their families to recover fair and adequate compensation for noneconomic losses, such as loss of a spouse or child. For example, H.R. 1788 would mandate that such noneconomic loss is worth a maximum of $250,000 per claimant, regardless of the underlying circumstances of the case. It is simply unjust to place such an arbitrary cap on the loss of a loved one.

- To further illustrate the inequity of the arbitrary $250,000 noneconomic damages cap in H.R. 1788, consider that a majority of the fatalities in the MARC/Amtrak accident were caused by the resulting fire, not the impact of the crash. Thus, if 17-year old Carlos Byrd of Baltimore had been severely burned or disfigured by the crash (rather than killed) and then lived to the age of 75, he would have received only $4,310 a year in compensation under H.R. 1788 despite enduring such constant pain or disfigurement.

The PRESIDING OFFICER. The Chair advises the Senator from Louisiana that the minority has 19 minutes 54 seconds remaining.

Mr. BREAUX. I thank the Chair.

AMTRAK REAUTHORIZATION

Mr. BREAUX. Mr. President, I take this time to comment on legislation that has been reported out of the Senate Commerce Committee reauthorizing the Amtrak rail system in this country and also instituting not just a reauthorization but as well an effort to try to bring about major reforms to the Amtrak passenger rail system in this country.

Let me say that the committee worked long and hard. The distinguished Presiding Officer is a member of the Senate Commerce Committee that worked on that legislation. It is apparent that I have expressed some public concerns about bringing this piece of legislation to the floor of the Senate under a unanimous consent arrangement to be handled in the Senate without the possibility of any amendments—indeed, without any discussion, just bring it up under a unanimous-consent procedure and then pass it and send it on to the other body, over to the House side. I have objected to that procedure because I think this, indeed, is a subject that needs to be discussed and debated in this Chamber.

Let me start by first saying that I very strongly support the concept of and the need for Amtrak reauthorization. The passenger rail system provides incredible economic assistance and transportation to industries and individuals in this country. Indeed, our entire rail system in this country is second to no other country. We can be proud of what Amtrak has brought in terms of passenger service to this country, as well as the freight and private carriers, and the good economic possibilities that they make happen every day by having this national transportation system of railroads in our country. All our industries and our businesses and our individual lives are touched every day by having such a fine rail system. I think by and large the various private companies do an outstanding job in maintaining their level of providing these services as well as doing their best to provide quality services in a safe manner so that everybody who uses the rail system can be assured of their safety.

The concern that I have—a concern we need to have this Senate body debate and discuss—is making sure that we do not do anything in this legislation to lessen the requirements of these private companies and, indeed, our public Amtrak system in the standards of safety that they must provide to the American public.

We all have witnessed this month a set of accidents around this country that I think are very disturbing, to say the least. Look at the headlines that have appeared in newspapers just in the month of February. February 2, 1996: "Two Killed, 20 Hurt in California Train Derailment." On February 10, this year: "Three Die in New Jersey Transit Commuter Train Wreck." February 16, again, this month, the third such incident: "Brake Failure Causes Yet Another Train Wreck—9 Workers Injured, FBI Called In To Probe." And, of course, one that we are very familiar with in this area, on February 17: "MARC-Amtrak Trains Collide Killing 12." And then the fifth such accident, on February 22: "Colorado Train Derails, 2 Killed, Acid Spills."

Mr. President, I say to all of our colleague who may be listening and to the American public that these five major train accidents that occurred in a 1-month period are disturbing to me, disturbing to my colleagues and, I think, indeed disturbing to the American public. They want to know that the trains they ride on, the trains that carry the goods and services of this Nation are safe, they can be counted on and that they are dependable.

Again, I will point out that I have a great deal of respect for all of these private companies. They are attempting to do a good job. The concern I have right now and the reason I objected to bringing the Amtrak reauthorization legislation to this body without the ability of any discussion, under a unanimous consent agreement that prevents any ability to offer amendments to that legislation, is because I think there is a real possibility that some would like to further restrict individuals' rights to be compensated when rail accidents occur. When you have five in 1 month, Mr. President, I think we need to look at how these railroads are operating, how we can help them do a better job, and, yes, at the same time make sure that people who are injured by accidents where negligence was the cause of that accident are adequately compensated, and, yes, even to the point of providing punitive damages when gross negligence occurs and is the proven cause of that particular accident.

Now, the reason I bring up these concerns to the Senate today is because of the provisions that are in the bill that has already passed the House of Representatives and what they attempt to do to the American public in the area of safety and the ability to be compensated. Two things leap out that I am very concerned about, and some of these features are in the Senate bill.

First, there is a cap on punitive damages in the House-passed bill. In other words, if a railroad is found to be grossly negligent, almost to the point of saying: "We don't care what happens. If you get hit, we will pay the damages; we don't care." And I am not saying anybody fits in that category. It is very rare that punitive damages are awarded. But when they are awarded, it is to say to the defendant who has been grossly negligent, "We are going to penalize you so you don't do it again. Do not think it is easier to pay the damages than to fix the problem."

The House bill puts a cap on the punitive damages that can be awarded instead of letting a jury or a judge determine, after seeing the facts, what it should be. The Senate bill has a similar provision that puts a cap on punitive damages as well; in other words, restricting how much someone can be penalized by a judge and a jury for causing an accident where gross negligence has been proven beyond a doubt.

That I think is simply wrong. We should not be moving in that direction. We should allow punitive damages to be assessed on those rare occasions when they need to be, as a form of saying to a corporation or an individual, "Do not do that again. If you do, you are going to be severely penalized." That is an incentive to do a better job. That is an incentive to make things safer. That is an incentive to do more inspections and to make sure things work the way the American public has come to depend on their working.

The second thing I am concerned about is that there is a cap in the House-passed bill on the Amtrak reauthorization on limiting how much a person can recover for pain and suffering in an injury from a rail accident. How do we in Congress, sitting in Washington, DC, where we have not been out to interview a family or not heard testimony of those who have lost a member of their family or been disfigured or lost the ability to have any income in the future because of the injuries, how do we in Washington pick a number and say this is the maximum amount they can receive for pain and suffering as a result of the negligence of someone that has injured them?

How can we in Washington, who have never seen the injured people, never heard their testimony in a trial, never viewed that testimony firsthand, pick a number and say this is a fair number in every case that ever happens in America? How many of us in this body or the other body have interviewed any of the people injured in five train wrecks all over the country just this month?

How can we say that *x* amount of money is a cap that can never be exceeded? That is not a function of the U.S. Senate. Those numbers and those amounts for pain and suffering, when someone is severely injured, can best be decided, I think, by juries and by courts and by judges who, in a public forum, have listened to the witnesses, seen their injuries, heard expert testimony about how bad they are injured. Maybe for the rest of their lives they are going to suffer those same injuries. Let them decide what is an adequate amount for compensation.

The third concern that I have, which is probably the biggest concern, is something that I just do not understand and, quite frankly, I think was a terrible mistake on the part of the other body when they passed this legislation. It is called indemnification. I will just read it and then I will attempt to try to explain it, because we write

laws sometimes that nobody can ever understand unless they put it in English. Sometimes I think we write in foreign languages.

The House bill says:

INDEMNIFICATION OBLIGATIONS—

This is in title IV of the House-passed bill. It says:

Obligations of any party, however arising, including obligations arising under leases or contracts or pursuant to orders of an administrative agency, to indemnify against damages or liability for personal injury, death, or damage to property described in subsection (a), incurred after the date of the enactment of Amtrak Reform and Privatization Act of 1995, shall be enforceable, notwithstanding any other statutory or common law or public policy, or the nature of the conduct giving rise to the damages or liability.

If you read that the first time, your eyes glaze over. Certainly mine do. And I say, "What did he say?" It sounds convoluted and like it was written by a lawyer. Yes, it probably was.

What that section that is in the House-passed bill simply says—and one of my biggest fears is that the Senate may agree to it in a conference—it says as simply as I can put it, if a private railroad that owns the track and owns the signals and has not kept them up, has completely ignored conditions or put in the wrong signals or has their own train that is running on their own tracks, when the engineer is grossly negligent, who is maybe intoxicated or under the influence of drugs, is running their train, that if all those things occur, and it runs into an Amtrak train and, heaven forbid, kills passengers on that Amtrak train, that this section specifically says that the private railroads can have an indemnification agreement that absolves them of any responsibility, absolves them of any liability no matter how negligent they were, and they can shift that liability to Amtrak and say that the American taxpayer, who happens to fund Amtrak, is going to have to pay for the damages, pay for pain and suffering, pay for the damages to the community, the damages that are caused by that wreck, even though it was completely and totally the fault of the private railroad.

I suggest to my colleagues that it is not good public policy to allow a private industry to shift the responsibility and the liability for their negligence, no matter how bad it is, their gross negligence, to shift that responsibility to somebody else—in this case the American taxpayer—that it is not right. It is not good public policy. In fact, it is very bad public policy.

Under that section of the House-passed bill, when we go to conference, if it were somehow to be incorporated into the final package and passed into law, every private railroad would say, "Look, I have much less of an incentive to do the right thing because if we have an accident that involves an Amtrak train," which many of these that I just cited have, "I'm not going to be responsible."

I just think it makes no sense whatsoever from the standpoint of any standard of public policy to say that we should allow indemnification agreements to allow someone to shift their responsibility, even when they are grossly negligent, to some other party and say, "You take it. You take my responsibility. You take my responsibility for the pain, for the damages that my negligence caused," and particularly in this case when it is the Federal taxpayer, because we in this authorization are funding Amtrak.

When we fund Amtrak, the taxpayers are paying for Amtrak. So why should the taxpayer be paying for the gross negligence of some private industry when it is their fault that the accident occurred? I think we have to look at this very carefully. We have to reject it if it comes back. It is not part of the Senate bill, but it is part of the House-passed bill, along with the caps on punitive damages, along with the caps on pain and suffering.

If there ever was a time when we should be more careful about protecting the rights of injured people and more careful about ensuring mechanisms in our laws that provide incentives and inducements for both public bodies and public railroads and private railroads to do a better job, now is the time.

I cannot imagine someone standing up on the floor at this critical time and suggesting that what we ought to do is make it harder and more difficult for people who are injured in rail accidents to be justly compensated. I cannot imagine anybody at this critical time coming to the floor of the House or the Senate and suggesting that private railroads should be able to shirk their legal responsibility for gross negligence, if and when it occurs, onto the backs of the American taxpayer instead of standing up and saying, "Yes, we were responsible. Yes, we have to pay. Yes, we are going to correct this problem."

That is the issue, as simply as I can possibly state it, that we are going to be facing when this legislation comes to the floor. That is the reason that I have said time and again, do not bring this to the floor under a unanimous-consent agreement. Do not tie the hands of Members of Congress in our ability to talk about this. Do not prevent us from being able to offer amendments to correct these problems so that we do not make a very serious mistake with this legislation when it comes to the floor.

We should have the opportunity to improve it, to correct it, to amend it. And if we can work out that type of structure, I am looking forward to the debate with my colleagues in the Senate and, ultimately, hopefully, in a conference with the House.

Mr. President, I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, we are in morning business; is that correct?

The PRESIDING OFFICER. That is correct.

POPULISM

Mr. DORGAN. There is an old axiom in politics, when your adversaries are having a healthy feud, never walk across the street and get involved in it. I will not do that this morning. I am tempted to. However, I wanted to discuss, at least a bit, the issue of populism. I will not discuss so much the details of the feud that is going on in the Republican Party and in the primaries, but I do want to talk about the issue of populism.

What propelled me to do that today was Time magazine. There is a picture of Pat Buchanan in a hard hat and work shirt, and Lamar Alexander peeking over his shoulder in his plaid shirt, and then Bob DOLE and Steve Forbes behind them.

It says, "Grand Old Populists." So I am presuming, I guess, that GOP means "Grand Old Populists." I wanted to talk a little about this issue of populism. It is a fascinating concept to see these, as one of my colleagues in the Senate calls them, Grey Poupon-eating-, Jacuzzi-, country-club folks, wearing hard hats and work shirts and calling themselves populists.

Let us put all this in perspective. About 80 or 90 million years ago, the brontosaurus and triceratops and tyrannosaurus rex were running across southwestern North Dakota. They are digging some of them up, by the way. Then we skipped and fast forwarded, and it was about 5,000 years ago that we discovered there were people around, and about 2,000 years ago Jesus was alive. About 500 years ago Columbus was relatively lost and stumbled onto the southern part of this continent, and despite the fact that the folks who were living here greeted his boat, he was credited with discovering something or another.

And 200 years ago our country was born. Then 100 years ago we created planes, trains, and automobiles, roughly speaking. And 75 and 50 years ago it was the radio, then television. And 25 years ago we put a man on the Moon. Then 10 years ago the computer became something that you could have in your home and then later carry on your lap as you traveled. And now in the Republican Party "GOP" means "Grand Old Populists." And it is causing quite a stir, actually.

I noticed in this morning's paper one of the strategists, William Kristol, who speaks more often than most on politics from the conservative side, spoke of this issue.

He is speaking now about the turmoil that is going on in the Republican primaries. "William Kristol," according to the story this morning as a result of something he wrote recently—I guess this week—"sees no need for the Republican Establishment to succumb, in Pat Buchanan's phrase, to 'terminal panic.' A junior member of that Establishment, Kristol doesn't cower when

The New York Times March 2, 1996, page 18

No Caps on Damages for Railroads

The recent rash of train accidents makes this a most inappropriate time for Congress to set limits on the damages railroads must pay to victims of proven negligence. Yet the Senate will soon consider a bill that may include caps on punitive damages, and the House has already approved a measure capping both "pain and suffering" and punitive damage awards. Congress should eliminate these damages provisions before passing the broader Amtrak bill of which they are a part.

Private damage lawsuits give teeth to laws and regulations by compensating those injured by safety lapses and punishing organizations whose negligence caused an accident. How well the protective regulations work is the subject of Senate Commerce Committee hearings into several crashes and derailments, including collisions in New Jersey and Maryland that killed 14 passengers. Senators will also be investigating the effectiveness of agencies like the Federal Railroad Administration.

That makes it untimely to enact the House-passed caps on damages above compensation for medical expenses. The House would limit awards for pain and suffering, including such non-economic factors as disfigurement, to $250,000. It would also limit punitive damages, designed to punish gross negligence, to $250,000 or three times the proven economic damages, whichever is greater.

Those ceilings are similar to limits in "tort reform" legislation that has passed both chambers in different forms and has not been moved to a Senate-House conference. Lobbyists for corporations, insurers and other commercial concerns seek relief from litigation on the grounds that lawsuits stifle commerce and industrial progress.

But injured consumers also have rights that need protecting, including financial relief from the consequences of accidents involving faulty products. Those issues demand much more public debate than Congress has given them.

Amtrak needs Congressional reauthorization to help secure its future. The House measure contains a reasonable plan to phase out Federal subsidies by 2002, but Amtrak will then need alternative financing. The Senate is considering a permanent endowment for capital spending. Unfortunately, to move this bill, senators have agreed to sidetrack a meritorious proposal to give Amtrak an annual half-cent per gallon out of the Federal gas tax — a proposal vigorously resisted by highway and mass commuter transit interests.

It is of paramount importance to find a way to sustain Amtrak. Congress should focus on that question and drop the mischievous idea of capping civil liability. Americans need a rail system that is not only financially secure but safe.

The Washington Post
2/21/96

[From the Washington Post, Feb. 21, 1996]

Lessons From The Train Disaster

The horrifying details of death by fire and smoke—of people frantically seeking escape from a mangled commuter-train-turned-furnace Friday night—continue to prompt questions about rail safety policies in general and about what happened in Silver Spring specifically. Some answers must await the findings of investigators from the National Transportation Safety Board. But there are safety procedures, policies and equipment that have been the subjects of debate in the industry for years, and that haunt every autopsy of a train wreck:

Signals. What, if any, signals did engineer Richard Orr, aboard Maryland commuter train 286, notice or remember in the final miles before this train slammed into Amtrak's Capitol Limited? Before arriving in Kensington, he passed a signal that should have warned him to be prepared to stop. The signal system is considered highly reliable. But there is a more effective system that goes back to the 1920s: With it, even if the engineer fails to spot or continue to remember the warning signal, he sees a small light in his cab, and each time his train goes through a restrictive signal he hears a whistle. Should he fail to push a lever to acknowledge the signal and then slow down or stop, the train would do so automatically. Why isn't every train equipped with this?

They used to be—on any line that was to travel faster than 80 mph—under a 1947 Interstate Commerce Commission order. But over time, railroads were permitted on a case-by-case basis to remove the system, in part because the age of fast passenger trains was seen as ending. Besides, railroads argued that the systems were expensive and that the braking systems caused other safety problems for freight trains. Today's signal system for MARC, like those for most lines, does not provide automatic train control.

Although railroads today have a better safety record than at any time in history, this history includes earlier crashes—in Seabrook, Prince George's County, in 1978 and in Chase, Md., in 1987—that prompted the NTSB to recommend that all trains in the Northeast Corridor be equipped with automatic stopping devices. They now are.

Passenger Escape. Yesterday, federal regulators issued emergency regulations that, in addition to setting 30 mph limits on non-automatic control lines for trains between a station stop and the first signal, included a call for more visible exit signs on train cars. Visible, uncomplicated instructions for opening windows, doors and escape routes ought to be posted everywhere. How about instructions on the back of every seat?

Train Design. Though America's trains are among the sturdiest pieces of equipment moving on land or in the skies, there is the question of the Amtrak train's exposed diesel fuel tanks, which splashed the fuel that ignited the terrible fire. Newer models don't have this feature; the sooner the old models are gone the better.

"Push-Pull." The MARC train was being pushed by its locomotive, a common practice for quick back-and-forth runs. Passengers may feel safer with a locomotive in front of them, but there is no hard evidence that safety is compromised when it is pushing instead of pulling.

Another issue affects public confidence in railroad travel: Maryland transit officials issued conflicting, inaccurate and constantly-changing reports on the accident for hours Friday. At first they were telling television stations that no MARC passengers were involved; they gave out a telephone number that assured callers that no passengers on the train had been injured. This was occurring as televised scenes and witness accounts were indicating otherwise. Whatever MARC may have had as an emergency preparedness plan, it failed. Amtrak, on the other hand, seemed to be issuing as much information as it could.

More questions are sure to arise as the fact-finding continues. A safe transportation system of any kind requires more than the mere recitation of probability statistics. Public confidence must be taken into account not only by government regulators but also by the industry officials.