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## **BART: The Enron of Public Transit The Need for CSR in U.S. Public Transportation**

By NICOLE MIRKAZEMI\*

### **I. INTRODUCTION**

“It’s like working in a prison without guards.” “There are safety issues that I was not trained to handle.” “. . . [W]e do have safety issues on BART.”<sup>1</sup>

In recent years, the concept of corporate social responsibility (“CSR”) has become popular in corporate America as businesses have accepted the idea that they maintain an obligation to the surrounding community that goes beyond their fiduciary duty to shareholders.<sup>2</sup> Major retailers are committing to CSR as the key driver for their success. For example, Walmart adapted to CSR standards, those which ensure social responsibility is upheld in an organization’s mission and vision statements, by investing in programs to help their workers advance careers in retail, funding training for farmers at the supplier level, holding suppliers to a set of sustainability standards, working to eliminate unethical labor practices and human trafficking at the supplier level, and collaborating with experts and suppliers to

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1. NBC Bay Area Investigative Unit, BART Derailed - Chapter 6: Tunnel Vision (2019), <https://www.nbcbayarea.com/news/local/bart-derailed-the-good-the-weird-the-dangerous-digital-original-investigation/2142287/>; Patricia Williams, Board of Directors Minutes of the 1,852nd Meeting, (2019), <https://www.bart.gov/sites/default/files/docs/minutes/11-21-19%20Minutes.pdf>.

2. In some ways, this is an updated version of an earlier embrace by businesses of “social contract theory,” a concept that held that to overcome hardships, man entered into a contract with society to live in peace and harmony and obey the law. For businesses, this meant that they had an obligation to serve society and contribute more than mere products or services. See Association of Corporate Citizenship Professionals, *Corporate Social Responsibility: A Brief History* ACCP (2019), [https://www.accp.org/ACCP/ACCP/About\\_the\\_Field/Blogs/Blog\\_Pages/Corporate-Social-Responsibility-Brief-History.aspx](https://www.accp.org/ACCP/ACCP/About_the_Field/Blogs/Blog_Pages/Corporate-Social-Responsibility-Brief-History.aspx). This same impetus motivates CSR.

address risks pertaining to social issues in supply chains.<sup>3</sup> Similarly, Nike<sup>4</sup> submitted to third-party audits for its supplier factories.<sup>5</sup>

In this Note, I consider whether public transportation organizations in the United States should also embrace CSR standards. My inquiry focuses on a case study of the massive Bay Area Rapid Transit system (“BART”), the backbone of transportation for the San Francisco Bay Area, with 48 stations, 122 miles of track, and 800 rail cars comprising its system.<sup>6</sup> Part II examines the defining components of CSR, what it entails, and how it is generally applied. Part III introduces BART, providing key background information on the system and how it works. Part IV investigates whether BART should invest in CSR and compares BART to a for-profit corporation. Part V examines CSR best practices. Part VI articulates arguments against CSR for public transportation agencies like BART. Part VII offers a proposal on how to improve BART by making a CSR plan. Finally, Part VIII analyzes and suggests that such a proposal would be feasible for an entity like BART.

To commit to a better BART through the incorporation of CSR best practices, BART’s plan must focus on restructuring, promoting, and advancing the safety of its stakeholders, the transparency throughout its system, and the establishment of a more sustainable system.

## II. CORPORATE SOCIAL RESPONSIBILITY

In this Section, I first outline what CSR is to a corporation and the motivation behind engaging in it. Next, I discuss how businesses

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3. Kate Patrick Macri, *Walmart’s improved social responsibility efforts begin with supply chain*, SUPPLYCHAINDIVE (Apr. 25, 2018), <https://www.supplychaindive.com/news/walmart-corporate-social-responsibility-efforts/521961/>.

4. Nike’s poor working conditions in Vietnam spurred rising protests from Georgetown University students who demanded the retail giant comply with the university’s codes of conduct for labor conditions. Non-compliant supplier codes of conduct, insufficient audits, and hidden workforce abuse branded Nike anti-CSR. See Edwin Lopez, *Students demand Georgetown University cut Nike contract amid reports of supply chain abuses*, SUPPLYCHAINDIVE (Dec. 9, 2016), <https://www.supplychaindive.com/news/Nike-Georgetown-supply-chain-abuse-contract-student-protest/432071/>.

5. Macri, *supra* note 3.

6. Bart.gov, *BART: The Bay Area’s Transportation Backbone* (2020), [https://www.bart.gov/sites/default/files/docs/BARTFacts2020\\_Final\\_0.pdf](https://www.bart.gov/sites/default/files/docs/BARTFacts2020_Final_0.pdf).

utilize CSR. Then, I examine what types of organizations CSR has historically applied to.

CSR is the integration of ethical and moral decision-making into the business model of an organization.<sup>7</sup> It is about “how companies manage their business processes to produce an overall positive impact on society.”<sup>8</sup> When done correctly, CSR is about the core business, not just add-ons like philanthropy.<sup>9</sup> It helps companies be more conscious of the impact they are having on all aspects of society (economic, social, and environmental).<sup>10</sup> The different dimensions of social responsibility include economic, legal, ethical, and discretionary.<sup>11</sup> The legal and economic responsibilities are required while the ethical duties are socially expected.<sup>12</sup>

A business’s motivation for social responsibility may come from a principle of legitimacy (i.e. a desire to maintain credibility), an organizational sense of public responsibility, and/or the choice of individual managers using their personal responsibility preferences.<sup>13</sup> The work of Howard R. Bowen, the father of CSR, and discussions on CSR tend to stem from the belief that businesses are vital centers of power and decision making and that their actions touch the lives of citizens.<sup>14</sup> Business executives have acknowledged they feel responsible for the consequences of their own actions outside of profit-and-loss statements.<sup>15</sup>

CSR is used to create a deeper connection between corporations and the surrounding society. By embracing CSR standards, a corporation is able to, in theory, forge a stronger bond between the employees of a company and the company, boost morale, and provide for a sense of connectivity to the world.<sup>16</sup> CSR represents a means of anticipating and reflecting societal concerns to minimize the

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7. James Chen, *Corporate Social Responsibility (CSR)*, INVESTOPEDIA (Nov. 27 2019), <https://www.investopedia.com/terms/c/corp-social-responsibility.asp>.

8. Mallen Baker, *Definitions of corporate social responsibility – What is CSR?*, MALLEN BAKER (2004), <http://mallenbaker.net/article/clear-reflection/definitions-of-corporate-social-responsibility-what-is-csr>.

9. *Id.*

10. Chen, *supra* note 7.

11. Dima Jamali, *A Stakeholder Approach to Corporate Social Responsibility: A Fresh Perspective into Theory and Practice*, 82 JOURNAL OF BUSINESS ETHICS 213, 214 (2008).

12. *Id.* at 215.

13. *Id.* at 216.

14. Archie B. Carroll, *Corporate social responsibility*, 38 BUSINESS AND SOCIETY 268, 269 (1999).

15. *Id.* at 270.

16. Chen, *supra* note 7.

imposition of sanctions on the company.<sup>17</sup> CSR has often been characterized as an effort to move corporations away from a strict focus on earning profits for shareholders and “more in the direction of providing value for society as a whole.”<sup>18</sup> The rise in heightened CSR standards may be attributed to a growing public disenchantment with traditional business practices and a desire for them to do better.

Historically, CSR standards are embraced by for-profit businesses with an attitude that the corporate world should be responsible for its own adverse effects.<sup>19</sup> In acting socially responsible, such for-profit corporations should adopt self-regulations that minimize their negative impact on the environment, their employees, their customers, and the community.<sup>20</sup> An improved reputation, an increased production efficiency, and increased sales are just a few of the benefits corporations adopting CSR best practices come to bare.<sup>21</sup> Given these advantages, it comes as no surprise that corporations have taken on CSR as a key component of their business models.<sup>22</sup> More recently, CSR has broadened to include regulatory mandates that impose an obligation on businesses to “pursue, monitor, investigate, disclose, mitigate, or otherwise address CSR-related concerns and objectives” that they are deemed responsible for.<sup>23</sup>

### III. BAY AREA RAPID TRANSIT

Despite the increased presence of CSR in top companies around the world, there is a noticeable absence of it in an industry that affects our everyday lives. In this Section, I discuss the historical context of BART and detail the system’s current statistics and financial status. I

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17. WPSU Media, *Arguments for CSR: Rational Argument*, THE ARTHUR W. PAGE CENTER (2019), <https://pagecentertraining.psu.edu/public-relations-ethics/corporate-social-responsibility/lesson-1-what-is-csr-two-opposing-views/arguments-for-csr-rational-argument/>.

18. GEOFFREY MILLER, *THE LAW OF GOVERNANCE, RISK MANAGEMENT, AND COMPLIANCE* 499 (2 ed. 2017).

19. Darin Leedy, *Corporate Social Responsibility and Nonprofit Organizations*, ECONOMIC THESES 1, 2 (2009).

20. *Id.*

21. *Id.*

22. *Id.* at 3.

23. Stephen Kim Park, *Social Responsibility Regulation and its Challenges to Corporate Compliance*, 14 BROOK J. CORP. FIN. & COM. L. 39, 40. (2019); See Ramon Mullerat & Daniel Brennan, *Corporate social responsibility: the corporate governance of the 21st century* 152 (2 ed. 2011) (exploring whether CSR should be mandatory or voluntary for businesses).

then examine what entity currently holds BART accountable. Further, I look at BART's current status as a public transportation entity.

Commuting is a routine practice that millions of people embark on daily.<sup>24</sup> Rarely do we stop and think about the poor behavior surrounding and directly linked to our means of transportation. Instead, we are likely on autopilot,<sup>25</sup> going through the motions and normalizing what we see and how we feel. Since September 11, 1972, BART provides commuters with a quick means of travel around the Bay. BART has now grown to bare 50 stations, 579 fare gates, more than 800 train cars, and only 6 major maintenance facilities.<sup>26</sup> As of 2019, BART plans to continue rebuilding the system, improve cleanliness and safety, and implement an additional maintenance facility in Hayward.<sup>27</sup>

Public transit companies are regulated to ensure they are operating in conjunction with the law. The California Public Utilities Commission ("CPUC") regulates BART and is part of the authority behind the penalties for violating BART's Code of Conduct. In the California Public Utilities Code, individuals are prohibited from interfering with transit property or vehicles, or from violating any conditions established by the transit district.<sup>28</sup>

BART, with ever-increasing costs, has recently faced public backlash; the original cost of the BART system was roughly \$1.6 million from various funding sources.<sup>29</sup> Since then, BART instituted around 10 extension programs, which have ranged in costs from \$100 million to nearly \$2.5 billion.<sup>30</sup> Recently, BART has come under fire from riders and received a high number of complaints about safety,

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24. Hervé Corvellec & Tom O'Dell, *Demanding hosts and ungrateful guests – the everyday drama of public transportation in three acts and academic prose*, 18 *CULTURE AND ORGANIZATION* 231, 237 (2012).

25. *Id.*

26. Bart.gov, *System Facts* (2019), <https://www.bart.gov/about/history/facts>; Bart.gov, *BART: The Bay Area's Transportation Backbone* (2020), [https://www.bart.gov/sites/default/files/docs/BARTFacts2020\\_Final\\_0.pdf](https://www.bart.gov/sites/default/files/docs/BARTFacts2020_Final_0.pdf).

27. Bart.gov, *Projects and Plans* (2021), <https://www.bart.gov/about/projects>.

28. CAL. PUB. UTIL. CODE §99170(a); see Adam Brinklow, *California fines BART record \$1.3 million for worker deaths*, *CURBED SF* (2018), <https://sf.curbed.com/2018/10/12/17968696/bart-fined-deaths-2013-california> (in 2018, the CPUC slapped BART with the largest fine ever imposed on a public agency for safety violations after a 2013 incident where two BART workers were killed).

29. Such funding sources include a 1962 General Obligation Bond Referendum, the California Toll Bridge Authority, proceeds of sales tax revenue, earnings from temporary investments, the Transit Development, and federal capital grants. See *System Facts supra* note 26.

30. *Id.*

cleanliness, and the repeated nuisance of a BART delay; the number of such complaints has continued to increase.<sup>31</sup> Since 2014, violent crimes on BART have more than doubled.<sup>32</sup> Due to a lack of transparency in the system, one rider established a website outlining crime statistics for the public.<sup>33</sup> A problem truly exists when riders are pushed to take the lead on solving organizational issues that BART should be working to repair through its compliance with CSR standards.

#### IV. MAKING THE CASE: BART'S COMPLIANCE WITH CSR BEST PRACTICES

BART employees and riders are unified in their desire for a more transparent, clean, safe system. With a lack of legal violations, public backlash seems to be the only driving force for a better system. With ridership dropping daily and safety as a top concern among those still choosing to ride, the status quo is no longer effective. Public transportation organizations in the United States, like BART, should be held to the same CSR standards as for-profit corporations. In this Section, I first argue that BART can improve its operations by embracing CSR standards. I then examine and compare BART's structure to that of a corporation. Next, I analyze how other transportation entities are behaving in terms of CSR.

BART has a major stake in being socially responsible as ridership is failing<sup>34</sup> and BART is being hit with more lawsuits amidst a general increase in crime, homelessness, filth, fare evasion, and a perception

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31. See Bart PD, *SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT AB 716 REPORT FOR 2013* (2014), [https://www.bart.gov/sites/default/files/docs/Annual%20AB%20716%20Report%20-%202013\\_0.pdf](https://www.bart.gov/sites/default/files/docs/Annual%20AB%20716%20Report%20-%202013_0.pdf); see also Otis R. Taylor Jr., *A BART train, a homeless man in distress, and a feeling of powerlessness*, SF CHRONICLE (2019), <https://www.sfchronicle.com/bayarea/otisrtaylorjr/article/For-BART-commuters-grim-reality-of-homelessness-13582770.php> (detailing BART's lack of cleanliness and homeless problem and labeling BART as a "dumping ground on wheels for transients").

32. Rachel Swan, *Violent crime on BART more than doubles in four years*, SF CHRONICLE (2019), <https://www.sfchronicle.com/crime/article/Violent-crime-on-BART-doubles-in-four-years-14039170.php>.

33. See Ben Firedland, *About, BART Crimes* (2020), <https://www.bartcrimes.com/about/>.

34. Toni McAllister, *BART Crime Spikes As Ridership Falls: Grand Jury Report*, PATCH (2019), <https://patch.com/california/pleasanton/bart-crime-spikes-ridership-falls-alameda-county-grand-jury>.

that the system is not safe.<sup>35</sup> Even though the system has grown, adding several stations, the lack of attention to safety and health concerns are proving to be more of a deciding factor for riders.<sup>36</sup> Uber and Lyft are like the sirens in Greek mythology, luring in an increasing number of riders from public transit<sup>37</sup> with a promise of a safe, clean environment free of homeless people. In fact, that appears to be Uber and Lyft's very goal: "[w]e believe we can . . . replace personal vehicle ownership and usage and public transportation one case at a time . . ."<sup>38</sup> Transportation Network Companies ("TNCs") like Uber and Lyft are threatening BART's ridership and low ridership could lead to "less infrastructure in transit, higher fares, and a decline in quality."<sup>39</sup> BART is also being slammed with more lawsuits as it fails to keep its riders safe.<sup>40</sup> A commitment to CSR could avoid these legal issues, as it would focus more on the safety of the rider and the environment around it.

BART's organizational structure and operations are very similar, if not identical to that of a corporation. BART has a board of directors,<sup>41</sup> an executive team<sup>42</sup> with multiple departments operating under them, a code of conduct for employees and customers, and

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35. *Id.*

36. This should give BART cause for concern. When BART first opened, it was a fast, easy way for people living in the East Bay to get to the city. However, today, those same people have more options.

37. Mike Moffitt, *What science says Uber and Lyft are doing to San Francisco*, SF GATE (2019), <https://www.sfgate.com/tech/article/Uber-Lyft-San-Francisco-pros-cons-ride-hailing-13841277.php>.

38. *Id.*

39. *Id.*; see Adam Brinklow, SFMTA: Residents prefer ride-hailing companies to buses and bikes, CURBED SF (2017), <https://sf.curbed.com/2017/10/19/16503326/sfmta-transit-survey-2017-uber-lyft> ("many residents have eschewed public transit or bikes in favor of the newfangled car services").

40. See Erin Baldassari, *Lawyer: 'It's a free for all' for criminals on BART*, THE MERCURY NEWS (2018), <https://www.google.com/amp/s/www.mercurynews.com/2018/07/30/lawyer-its-a-free-for-all-for-criminals-on-bart/amp/> (in 16 months, BART was slammed with at least five lawsuits because of its failure to keep riders safe. "The word is out, [a]ny would be criminal knows, it's a free for all on BART to rob people, kill people, to assault people. What's next?"); See also Bay City News, *Attorney to announce suit against BART for alleged racial profiling against man detained fro eating sandwich*, ABC7 NEWS (2019), <https://abc7news.com/pleasant-hill-bart-station-sandwich-steve-foster/5696246/> (BART was sued as its police officer was racially profiled a rider).

41. SF Bay Area Rapid Transit District, *San Francisco Bay Area Rapid Transit District Adopted Budget Fiscal Year 2019* 70 (2018), <https://www.bart.gov/sites/default/files/docs/FY19%20Adopted%20Budget.pdf>.

42. *Id.*

various workplace policies.<sup>43</sup> In corporations, there is a board of directors overseeing the organization,<sup>44</sup> executives in the form of a c-suite,<sup>45</sup> a code of conduct for employees, and corporate policies.<sup>46</sup> BART issues annual reports detailing how it is progressing towards its goals and also issues advisories to its riders on any issues it is experiencing.<sup>47</sup> Similarly, corporations issue annual reports to shareholders to disclose any important information on the state of the company, its operations, new plans, etc.<sup>48</sup> and release letters to shareholders that provide an overview of the operations of the corporation and issues affecting it throughout the year.<sup>49</sup>

BART can largely benefit from implementing CSR practices by the strengthening of its public image, an increase in ridership, and happier employees. Consumers gravitate to companies that are socially responsible.<sup>50</sup> Moreover, organizations that train and treat their employees right are fostering a positive environment.

43. BART.gov, Customer Code of Conduct (2013), <https://www.bart.gov/sites/default/files/docs/08-08-13%20Customer%20CofC.pdf>; BART.gov, Employee Code of Conduct (2013), <https://www.bart.gov/sites/default/files/docs/08-08-13%20Employee%20CofC.pdf>; BART.gov, Equal Employment Opportunity (2011), <https://www.bart.gov/sites/default/files/docs/EEOPolicy.pdf>; BART.gov, Environmental Justice Policy (2012), [https://www.bart.gov/sites/default/files/docs/EJ\\_Policy\\_6\\_14\\_12\\_FINAL.pdf](https://www.bart.gov/sites/default/files/docs/EJ_Policy_6_14_12_FINAL.pdf); BART.gov, Prevention of Sexual Harassment in the Workplace (2009), <https://www.bart.gov/sites/default/files/docs/BART's%20Prevention%20of%20Sexual%20Harassment%20in%20the%20Workplace%20Policy.pdf>; BART.gov, Agendas for Board and Committee Meetings 13 (2009), <https://www.bart.gov/sites/default/files/docs/agendas/12-3-09%2520agenda%2520packet.PDF>; BART.gov, Whistleblower Policy (2013), [https://www.bart.gov/sites/default/files/docs/Whistleblower%20Policy.8.8.13.Final\\_0.pdf](https://www.bart.gov/sites/default/files/docs/Whistleblower%20Policy.8.8.13.Final_0.pdf).

44. Mullerat & Brennan, *supra* note 23, at 31-52.

45. *Id.* at 121-53.

46. Matt Gasior, *Corporate Policies and Procedures: Why your company needs written policies and procedures*, POWERDMS (2019), <https://www.powerdms.com/blog/corporate-policies-procedures/>; see Melissa Gonzalez Boyce, *7 Policies to Update in Your 2019 Employee Handbook*, SHRM (2019), <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/7-policies-to-update-in-your-2019-employee-handbook.aspx>.

47. BART.gov, *Reports* (2018), <https://www.bart.gov/about/reports>; BART.gov, *Alerts and Advisories* (2020), <https://www.bart.gov/schedules/advisories>.

48. SEC, *Annual Report*, U.S. Securities and Exchange Commission (2020), <https://www.sec.gov/fast-answers/answers-annrephtm.html>.

49. Will Kenton, *Shareholder Letter*, INVESTOPEDIA (2018), <https://www.investopedia.com/terms/s/shareholder-letter.asp>.

50. See Elina Tang, *Why Marketers Should Care About Consumer Perception of Corporate Social Responsibility*, ADWEEK (2019), <https://www.adweek.com/brand->

Accordingly, BART should follow the lead of other transit companies and adopt CSR strategies. For example, the airline industry has adopted corporate social responsibility practices including environmental and social programs, with the three largest airline alliances reporting this.<sup>51</sup> The airline industry has focused on employee wellbeing, diversity, community wellbeing, economic prosperity, and the environment.<sup>52</sup> CSR best practices have even incentivized the aviation industry to commit to more environmentally friendly practices.<sup>53</sup> A research study on the effects of CSR procedures on the corporate image of companies in the aviation industry found that CSR strategies significantly influence the company's image; those who have heard of the adoption of such policies and programs are more likely to fly with the socially responsible company, even if the price is significantly higher.<sup>54</sup>

Companies that promote CSR have seen benefits ranging from increased employee satisfaction, an improved public image, increased customer loyalty, and even increased creativity.<sup>55</sup> For example, 75% of employees working for organizations that they see "paying enough attention to environmental protection and sustainable development exhibit high levels of commitment."<sup>56</sup> An organization's reputation for social responsibility ranks third among the top drivers for employee engagement.<sup>57</sup> Companies have also seen increased innovation because without CSR goals, their researching teams may not have discovered innovative new products.<sup>58</sup> Companies who have gone sustainable with CSR saw a

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marketing/why-marketers-should-care-about-consumer-perception-of-corporate-social-responsibility/.

51. See Allan Cowper-Smith & Danuta de Grosbois, *The adoption of corporate social responsibility practices in the airline industry*, 19 J. OF SUSTAINABLE TOURISM 59-77 (2011).

52. *Id.* at 68.

53. Peter Fitzgerald & René David-Cooper, *Corporate Social Responsibility in the Aviation Industry*, SUSTAINABLE DEVELOPMENT, INTERNATIONAL AVIATION, AND TREATY IMPLEMENTATION 312-343 (2018).

54. Carole Serhan, Palmera Abboud & Rebecca Shahoud, *Corporate Social Responsibility Practices in the Aviation Industry*, 5 INT'L J. OF RES. IN BUS. STUD. & MGMT. 1, 13 (2018).

55. Katie Russell, *Why CSR: Four Benefits of Corporate Social Responsibility*, FRONETICS (2018), <https://www.fronetics.com/csr-four-benefits-corporate-social-responsibility/>.

56. Patrizia Gazzola & Piero Mella, *Can CSR Influence Employees Satisfaction?*, 1 ANNALS OF FACULTY OF ECONOMICS 485, 488 (2016).

57. *Id.*

58. James Epstein-Reeves, *Six Reasons Companies Should Embrace CSR*, FORBES (2012), <https://www.forbes.com/sites/csr/2012/02/21/six-reasons-companies-should-embrace-csr/#71e3be083495>.

major cut in costs. For example, General Mills saw a major reduction in its energy savings by implementing CSR.<sup>59</sup> Pepsi and Coke embraced CSR for brand differentiation, McDonald's utilized CSR for the benefit of long-term growth, and companies like Sara Lee or Solo Cup Company saw the benefit of increased employee engagement through their enactment of CSR.<sup>60</sup>

The Regional Transport Consortium of Madrid ("CRTM") has similarly acknowledged the importance in adopting CSR policies by aligning itself with "the new social model that requires a satisfying experience of the public transport customer in his daily mobility" and associating with what it perceives as best values: transparency, knowledge, leadership, community, social values, and safety.<sup>61</sup> The CRTM has noted that its goal is that the "undisputed protagonist in Madrid Transport System [be] the user because [CRTM] bring[s] people together."<sup>62</sup> The CRTM, with a commitment to CSR, asserts that they are devoted to human, social, educational, and environmental values.<sup>63</sup>

## V. CSR BEST PRACTICES

In this Section, I lay out CSR best practices, approaches, and advice that current executives recommend.

Given the move towards utilizing CSR strategies, policies, and programs in transportation-related industries, it is instructive to lay out CSR best practices. In 1992, Starbucks was known for its "keen sense" of CSR, achieving a majority of its CSR milestones early on.<sup>64</sup> Its milestones include attaining 99% of ethically produced coffee, establishing a network of farmers globally, providing millions of hours in community service, and establishing a college program for its employees.<sup>65</sup>

To help make CSR digestible for companies looking to engage in it, the International Organization for Standardization ("ISO")

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59. *Id.*

60. *Id.*

61. EMTA Authorities, *The importance of Corporate Social Responsibility for Transportation Authorities: the case of the Regional Transport Consortium of Madrid*, EMTA (2014), <https://www.emta.com/spip.php?article934>.

62. *Id.*

63. *Id.*

64. James Chen, *Corporate Social Responsibility (CSR)*, INVESTOPEDIA (2020), <https://www.investopedia.com/terms/c/corp-social-responsibility.asp>.

65. *Id.*

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released guidance and voluntary standards on CSR.<sup>66</sup> Organizations who follow the ISO 26000 guidance will benefit with a competitive advantage, better reputation, ability to attract and retain workers, maintenance of good employee morale, and a network of healthy relationships with companies, the government, and the community.<sup>67</sup> ISO 26000 moves for a holistic approach to CSR with a focus on six core subjects: community involvement & development, human rights, consumer issues, labor practices, fair operating practices, and the environment.<sup>68</sup>

Executives from corporations have offered advice on the best CSR strategies to implement in their respective companies. Garratt Hasenstab, Director of Sustainability at the Verdigris Group, contends that operating with CSR strategies in mind saves the company money and sets a good example for other organizations to step up when it comes to social responsibility.<sup>69</sup> Fifty-one of the fifty-nine executives interviewed all reported that they have happier employees after instituting CSR strategies and forty-five attracted better employees because of their newly established CSR programs.<sup>70</sup>

## VI. THE CASE AGAINST CSR

Although organizations have seen considerable benefits in CSR, it is necessary to explore some of the obstacles to implementing CSR practices in an organization like BART. Once identified, we can mitigate any effects these drawbacks may have. In this Section, I lay out three arguments against implementing CSR in public transportation organizations.

First, implementing CSR strategies may not reap the usual benefits because, unlike a corporation, BART is not accountable to shareholders and is thus characterized by a lack of social concern. As such, BART and other public organizations may be less progressive and stakeholder oriented. Although the organizational structure may be identical, BART has a different level of governance from

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66. *Id.*

67. ISO, 26000 Guidance on Social Responsibility, ISO 26000, GUIDANCE ON SOCIAL RESPONSIBILITY 5 (2018).

68. *Id.* at 9.

69. Devin Thorpe, *Why CSR? The Benefits of Corporate Social Responsibility Will Move You to Act*, FORBES (2013), <https://www.forbes.com/sites/devinthorpe/2013/05/18/why-csr-the-benefits-of-corporate-social-responsibility-will-move-you-to-act/#4358eb9665a3>.

70. *Id.*

corporations with a board of directors completely unaccountable to any shareholder group.<sup>71</sup> Debora Allen, one of BART's board of directors, claims that "there is not a strong enough will of the board" to make any changes to the system.<sup>72</sup> It seems BART's board is more influenced by economic factors as opposed to social concerns.<sup>73</sup> In a world of pro-social shareholders, this may be problematic.

Second, even if BART's board is replaced<sup>74</sup> with a team of individuals focused on being "prosocial," employees may not desire a system where they are held accountable. Employees may be disincentivized from properly or fully integrating CSR policies into BART. Research indicates that people generally fear change and favor the status quo, even if the change puts them in a place that is bigger and better.<sup>75</sup> The further down you go in a hierarchy of an organization, the more resistant the employees tend to be to change.<sup>76</sup> It is not just that individuals tend to fear change, it goes further than that. People, on an unconscious level, genuinely believe that the particular way they have been engaging in an activity for a long period of time, "must be a good way to do things."<sup>77</sup> The longer an

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71. In a normal corporation, the board of directors work in the best interest of the shareholders because they are elected by them. Because shareholders care about more than just money (they care about being "prosocial"), the board of directors have to take environmental and social factors into account when making decisions. See Oliver Hart & Luigi Zingales, *Serving Shareholders Doesn't Mean Putting Profit Above All Else*, HARV. BUS. REV. (2017), <https://hbr.org/2017/10/serving-shareholders-doesnt-mean-putting-profit-above-all-else>.

72. NBC Bay Area Investigative Unit, *supra* note 1.

73. Several BART directors do not see a need in hiring more police officers. Disturbingly and rather unsurprisingly, one director, Janice Li, called for *disarming* the entire police force for BART. See NBC Bay Area Investigative Unit, *supra* note 1.

74. In a corporation, shareholders are investing money in their respective company and are therefore more likely to vote for and against certain directors. With BART's board of directors, elections occur every four years during normal election cycles. In elections, research shows that American voters tend to remain politically uninformed, so if voters don't even apprise themselves of information on the leaders of our nation, what makes us so sure that they will do so for BART's board of directors? See Alex Fang, *Candidates run for AC Transit, BART boards of directors*, THE DAILY CALIFORNIAN (2016), <https://www.dailycal.org/2016/10/11/candidates-run-ac-transit-bart-boards-directors/>. See also See ILYA SOMIN, *DEMOCRACY AND POLITICAL IGNORANCE* (2 ed. 2016).

75. Mark Murphy, *New Data Shows that Leaders Overestimate How Much Their Employees Want to Change*, FORBES (2016), <https://www.forbes.com/sites/markmurphy/2016/02/19/new-data-shows-that-leaders-overestimate-how-much-their-employees-want-to-change/#3fc863c162f6>.

76. *Id.*

77. Heidi Grant Halvorson, *Explained: Why We Don't Like Change: Recent research shows that people have a very reliable and tangible preference for things that have been around longer*, HUFFPOST (2012), [https://www.huffpost.com/entry/why-we-dont-like-change\\_b\\_1072702](https://www.huffpost.com/entry/why-we-dont-like-change_b_1072702).

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individual has been doing something a certain way, the better they believe that way to be than any alternative.<sup>78</sup>

Third, assuming both the board of directors and employees are on board for the implementation of CSR, CSR strategies may be seen as a way to avoid criticism and not help BART's overall image. When a company has a good, solid reputation, the implementation of CSR strategies is often seen as based on intrinsic value with good intentions and effort.<sup>79</sup> However, when an organization has a bad reputation, implementation of CSR is seen as a way to avoid any criticism and to institute damage control to the business and its profits.<sup>80</sup> Prosocial behavior would then be seen through an unfavorable lens of ulterior motives.<sup>81</sup> This limitation could be mitigated by BART listening to its customer-base and hearing out their concerns, not just checking off boxes.

## VII. PROPOSAL: DESIGNING A BETTER BART

For BART to improve, maintain, and commit to a better BART, the organization must address safety, transparency, and sustainability concerns. In this Section, I outline the CSR proposal that BART and other transportation agencies should adopt to substantially improve their image, relationship with customers, and level of efficiency. The proposed compliance plan consists of seven phases or components. In each component, I first detail out BART's CSR violations and then I discuss the proposed plan of action to prevent further breaches.

CSR is not a mere safety plan to serve as a liability safeguard; it is a *commitment to do better, provide better, and be better*. Every company should be pursuing it as a critical *component* of their ethos, values, and overall purpose<sup>82</sup> because, under the social contract theory, businesses owe certain obligations to the community they serve and

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78. *Id.*

79. KyuJin Shim & Sung-Un Yang, *The effect of bad reputation: The occurrence of crisis, corporate social responsibility, and perceptions of hypocrisy and attitudes toward a company*, 42 PUB. REL. REV. 68, 73 (2016).

80. *Id.*

81. *Id.*

82. Dan Pontefract, *Stop Confusing CSR With Purpose*, FORBES (2017), <https://www.forbes.com/sites/danpontefract/2017/11/18/stop-confusing-csr-with-purpose/#2ce614413190>.

to the world at large.<sup>83</sup> CSR is not a substitute for an organization's purpose.<sup>84</sup> Businesses are expected to fulfill their social contract obligations by obeying the law, being a good neighbor, and giving back to the community.<sup>85</sup> CSR can best be explained through the triple bottom line approach, where there is a focus on the 3Ps: profit, people, and planet.<sup>86</sup> With BART's lack in prioritizing riders, focused merely on finances, BART must fulfill its obligation to its community and adopt CSR practices.

The below plan runs on the core principles of safety and transparency. To be socially responsible to its community, employees, and the public at large, BART must address safety throughout the system from fare gates to employee working conditions to clean platforms, and transparency in communication through mobile apps, social media, and records.

## A. DON'T LET THEM SLIP THROUGH THE CRACKS

### i. *Fare Evasion*

BART must improve its fare gates to prevent fare evasion as it is tied to higher costs and higher crime. Whether they are confidently jumping the gates or attaching themselves to the coattails of the riders in front of them, individuals are constantly evading payment of fares. With a camera set-up at one BART station, 90 people were seen evading the fare gates in just over 90 minutes.<sup>87</sup> With fare evasion costing the system over \$15 million each year, BART's board saw a need to act.<sup>88</sup> Since then, BART decided to test out a different style of fare gate (commonly referred to as the new double barrier fare gate)

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83. *Types of Corporate Social Responsibility Programs and Career Options*, VILLANOVA UNIVERSITY (2020), <https://www.villanovau.com/resources/public-administration/types-corporate-social-responsibility-programs/>.

84. Pontefract, *supra* note 82.

85. *Types of Corporate Social Responsibility Programs and Career Options*, *supra* note 82.

86. Paulina Ksiezak & Barbara Fischbach, *Triple Bottom Line: The Pillars of CSR*, 4 J. OF CORP. RESP. & LEADERSHIP 95, 96 (2018).

87. Alix Martichoux, *How bad is BART fare evasion? We saw 90 people in 92 minutes slip through the gates*, SFGATE (2019), <https://www.sfgate.com/local/article/How-bad-is-BART-fare-evasion-We-saw-90-people-in-13186006.php>.

88. At its September 2019 meeting, BART's board unanimously voted to adopt a new swing style of fare gate that is taller and flush to the ground with an estimated cost of \$150 million. See *Bart.gov, Fare Evasion Prevention* (2019), <https://www.bart.gov/about/projects/fare-evasion>.

at the Richmond BART station.<sup>89</sup> One of the critical issues with the design is the impact it has on disabled or injured riders. Disabled riders and those with strollers have voiced their fear that the new gates may slam shut on them.<sup>90</sup>

This is not just an economic concern for BART; many riders are adamant that fare evaders are those committing crimes on BART. When asked how John Lee Cowell was able to get back on BART after fatally stabbing Nia Wilson at BART's MacArthur station, it was noted that the suspect was indeed a fare evader.<sup>91</sup> One station agent even insisted that she would not go near a fare evader because of the danger they pose.<sup>92</sup> Another station agent, Jacob Lilja, asserted that "enforcement of fare evasion will lead to reduction of other crimes in the system because the people who are doing crimes on the trains aren't paying for their ride in general."<sup>93</sup> Lilja went on that the system needs affordable fares for those in the working class or we will face a system that penalizes people for their poverty.<sup>94</sup>

Creating an indestructible fare gate will not solve a systemic problem. BART should look to the root of the problem. Why are people evading the fare gates?<sup>95</sup> Data from a public records request emphasizes the unjust distribution of fare evasion citations to race-specific riders. From July 2018 to July 2019, 46.4% of total citations were to African American riders, 17.8% to white riders, 15% to Hispanic riders, 3.8% to Asian/Pacific Islander riders, and 8.8% to unidentified or unknown riders.<sup>96</sup>

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89. Curious about how these gates work, a news team visited the Richmond BART station. In just 10 minutes, the team saw seven people sneak through the very gates designed to prevent fare evasion. See Leslie Brinkley, *Fare evasion continues on BART even with new gates*, ABC7 NEWS (2019), <https://abc7news.com/5364655/>.

90. *Id.*

91. Patrick May, *As BART fare evaders run rampant, critics on social media have plenty to say*, THE MERCURY NEWS (2019), <https://www.mercurynews.com/2019/06/27/as-bart-fare-evaders-run-rampant-critics-on-social-media-have-plenty-to-say/>.

92. *Id.*

93. Amy Hollyfield, *Stabbing becomes focus of public comment at BART Board meeting*, ABC7 NEWS (2019), <https://abc7news.com/5711588/>.

94. *Id.*

95. Debora Allen, *Tackling fare evasion crucial to making BART better*, THE PIONEER (2019), <http://pioneerpublishers.com/PPublishers/tackling-fare-evasion-crucial-to-making-bart-better/> (panhandlers and drug users are a separate issue that needs to be addressed, although it should be noted that they regularly do not pay.)

96. Data from BART public records request.

Aside from the new fare evasion enforcement program BART implemented at all fare gates in San Francisco stations,<sup>97</sup> the proposal here is two-fold. First, BART should implement a fare gate that does not injure disabled riders but still prevents *easy* fare evasion. Second, BART should initiate and/or expand a social program for low-income riders. In 2019, BART approved a pilot program for a 20% discount for low income riders.<sup>98</sup> Despite the surface appearance of BART instituting a positive-CSR-related-program, BART, at the same meeting, raised fares across the board.<sup>99</sup> The United States offers programs like SNAP (Supplemental Nutrition Assistance Program) and Lifeline Assistance (“Obamaphone”) to provide low income individuals with food, free cell phones, and service,<sup>100</sup> yet when it comes to a means of transportation to work, BART’s solution is to give a discount *and* raise all fares at the same time. I propose that BART institute a similar program where individuals who qualify are given x amount of rides a month. Studies show that support for low-income individuals reduces poverty, provides access to affordable health care, promotes work, and improves long-term outcomes.<sup>101</sup>

## ii. Platform Screen Doors

Recently, BART has seen a spike in preventable fatalities on its trackways. From November 2009 to August 2019, there were 72 collisions related to suicides on the BART trackways. Of those

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97. *Id.* (Police officers issue criminal tickets to fare evaders with the goal of eliminating the bad behavior when many do not pay the fines. This has led to a less (although not significant) presence of homeless and criminals on BART).

98. Joe Fitzgerald Rodriguez, *BART board approves low-income riders discount and raises fares for everyone else*, SF EXAMINER (2019), <https://www.sfexaminer.com/the-city/bart-board-approves-low-income-riders-discount-and-raises-fares-for-everyone-else/>.

99. *Id.*

100. *Supplemental Nutrition Assistance Program (SNAP)*, (2020), <https://www.benefits.gov/benefit/361> (SNAP is the largest federal nutrition assistance program and households must meet certain bank balance limits to be eligible for it); *Obamaphone Providers*, OBAMA PHONE (2019), <https://www.obamaphone.com/obamaphone-providers> (free phones and service are provided to individuals who qualify. You qualify if you participate in SNAP, Medicaid, SSI, Section 8 Assistance, and Veterans benefits).

101. Arloc Sherman, Danilo Trisi, & Sharon Parrott, *Various Supports for Low-Income Families Reduce Poverty and Have Long-Term Positive Effects On Families and Children*, CENTER ON BUDGET AND POLICY PRIORITIES (2013), <https://www.cbpp.org/research/various-supports-for-low-income-families-reduce-poverty-and-have-long-term-positive-effects>.

attempts, 48 people died.<sup>102</sup> These numbers only account for suicides on BART tracks, not accidental deaths. In November of 2019, a BART employee saved a rider who fell into the path of an oncoming BART train in an overcrowded station.<sup>103</sup> BART employee O'Conner pulled the rider to safety within seconds of the train hitting him.<sup>104</sup> Not all riders are so lucky. Not all deaths happening on the tracks are intentional though they can be prevented.<sup>105</sup> Many riders have also been injured on the BART tracks, leading to major legal costs to the system<sup>106</sup> that could have been prevented with CSR strategies.

Platform Screen Doors ("PSDs") at train and subway stations are utilized to separate the platform from the train and promote rider safety. Prevention experts for BART have called for PSDs like the ones placed in the San Francisco International Airport AirTrans system's shuttle.<sup>107</sup> BART visited the idea of a pilot program for PSDs at one of its stations, but put that on hold with no expected time to revisit it.<sup>108</sup>

"Please stand behind the yellow safety strip;"<sup>109</sup> an announcement containing less than ten words and a yellow strip of paint is like telling children in the 1950s to duck and cover in the event of a Soviet nuclear attack:<sup>110</sup> it is simply used to wash BART's hands of any guilt, blame, or liability. This is BART's idea of preventing further suicides and accidental deaths on its trackways. Currently 29 different countries across five continents have PSDs in their transit systems.<sup>111</sup> In one case study, after installing PSDs on the transit

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102. Ida Mojadad, *BART Slowly but Surely Marches Toward Better Suicide Prevention*, SFWEEKLY (2020), <https://www.sfwweekly.com/news/bart-suicide-prevention/>.

103. Sam Richards, *BART employee pulls man from path of train*, SF EXAMINER (2019), <https://www.sfexaminer.com/news/bart-employee-pulls-man-from-path-of-train/>.

104. *Id.*

105. Mojadad, *supra* note 102.

106. See Angela Ruggiero, *Man files lawsuit against BART after being hit by speeding train*, EAST BAY TIMES (2019), <https://www.eastbaytimes.com/2019/06/07/man-files-lawsuit-against-bart-after-being-hit-by-speeding-train/> (Michael Seymore Jr., was waiting for his usual BART train when he fell 10 feet onto the gateless tracks. He was run over, severely injured, trapped under the train for hours. He has since received 17 surgeries, amputating one leg, with millions of dollars in medical bills. He sued the system and the day he filed suit, another person was struck by a train at Embarcadero station).

107. *Id.*

108. *Id.*

109. BART automated announcement, Safety Tips (2020).

110. Sarah Pruitt, *How 'Duck and Cover' Drills Channeled America's Cold War Anxiety*, HISTORY (Mar. 26, 2019), <https://www.history.com/news/duck-cover-drills-cold-war-arms-race>.

111. Adamo Bazani, *Portas de Plataforma em toda a linha 5 Lilás serão entregues até 2020*, diz Pelissioni, DIÁRIO DO TRANSPORTE (August 31, 2018), <https://diariodotransporte.com.br/2018/08/31/portas-de-plataforma-em-toda-a-linha-5-lilas-serao-entregues-ate-2020-diz-pelissioni/>.

system, deaths by suicide and accidental falls fell by 75%.<sup>112</sup> These physical barriers work. BART must revisit its pilot program and invest, not just in a barrier, but in saving the lives of its riders.

## B. WE NEED BACK-UP

To be socially responsible, BART police must serve by ensuring the community feels safe through an increase in officers and more extensive training. In this Section, I first outline the limited police presence currently in the system. I then analyze the different ways BART could increase its police officers' presence and/or safety measures throughout the system. Next, I discuss the need for more extensive police training. I break the discussion down into de-escalation training and implicit bias training.

BART's Police Chief Ed Alvarez has bluntly acknowledged that his police force of 170 officers is not nearly enough to efficiently

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5-lilas-serao-entregues-ate-2020-diz-pelissioni/; Alice Gordenker, *Platform doors*, THE JAPAN TIMES (January 17, 2012), <https://www.japantimes.co.jp/news/2012/01/17/reference/platform-doors/#.XfkOAS2ZPfZ>; *All RRTS stations to have platform screen doors*, THE TIMES OF INDIA (August 11, 2019, 12:40 PM), <https://timesofindia.indiatimes.com/city/delhi/all-rrts-stations-to-have-platform-screen-doors/articleshow/70627928.cms>; Chen Ziqi, *Beijing's subway lines are all equipped with platform screen doors*, CHINAPLUS (September 11, 2017, 4:39 PM), <http://chinaplus.cri.cn/mychina/expats-guide/31/20170911/25852.html>; David Briginshaw, *Santiago opens new metro line*, INTERNATIONAL RAILWAY JOURNAL (November 2, 2017), <https://www.railjournal.com/passenger/metros/santiago-opens-new-metro-line/>; Gilgen Door Systems, *Gilgen opens doors in Toulouse Metro stations*, MASS TRANSIT NETWORK (March 15, 2017, 2:33 PM), <https://masstransit.network/mass-transit-news/gilgen-door-systems/toulouse-metro>; Kenneth Chan, *SkyTrain station platform screen doors are unfeasible, says TransLink*, DAILY HIVE (August 23, 2018, 5:51 PM), <https://dailyhive.com/vancouver/translink-skytrain-station-platform-screen-doors-feasibility>; *Licitan nuevo señalamiento para la línea D*, ENELSUBTE (June 22, 2016), <http://enelsubte.com/noticias/licitan-nuevo-senalamiento-para-la-linea-d/>; NSW Government, *Sydney Metro Train Stations*, Sydney Metro (last visited February 28, 2021, 1:16 PM), <https://www.sydneymetro.info/stations>; Metrobits.org, *Platform Screen Doors*, METROBITS.ORG (August 3, 2019), <http://mic-ro.com/metro/platform-screen-doors.html>; The Local, *Munich plans platform screen doors on U-Bahn amid security debates*, THE LOCAL (2019), <https://www.thelocal.de/20190805/munich-plans-platform-screen-doors-on-u-bahn-amid-station-security-debates>; Yonah Freemark, *The case of the missing platform doors* The Transport Politic (26 September, 2017), <https://www.thetransportpolitic.com/2017/09/26/the-case-of-the-missing-platform-doors/>.

112. Kenneth Chan, *SkyTrain station platform screen doors are unfeasible, says TransLink*, DAILY HIVE (2018), <https://dailyhive.com/vancouver/translink-skytrain-station-platform-screen-doors-feasibility>.

protect riders.<sup>113</sup> He claims that it is simply not feasible to have officers at every station. When asked what would really make a difference, the Police Chief quickly responded with the matter of fact but highly unrealistic answer: 1,000 *additional* officers.<sup>114</sup>

BART's current actions are not enough to show a commitment to being socially responsible and may even have negative implications for the system. Given the low number of BART police for such a large transit system, BART instituted an ambassador program where unarmed, uniformed personnel are placed on trains throughout the system to address riders' concerns about safety and security.<sup>115</sup> At first glance, this program appears like an excellent way to supplement the lack of BART police on trains and platforms. However, these ambassadors are in uniform, making them easily identifiable targets, yet they lack any means of protecting themselves and are instead armed with a radio to call for help. This does not resolve the issue of BART police's lag in response times. BART police would still be responding to calls, arguably more calls now that we are directing more individuals to contact them. Further, observe and report patrol personnel, or individuals hired for security reasons, do not have the same impact on crime deterrence as police officers.<sup>116</sup> The mere presence of personnel specifically told not to engage in physical interventions against wrongdoers is not enough to deter crime.<sup>117</sup>

Despite the alternatives we see in other systems, BART ultimately needs to increase the number of police officers in its

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113. NBC Bay Area Investigative Unit, *BART Derailed - Chapter 3: End of the Line*, NBC (2019), <https://www.nbcbayarea.com/news/local/bart-derailed-the-good-the-weird-the-dangerous-digital-original-investigation/2142287/>.

114. *Id.*

115. Bart.gov, *New ambassador program deployed on trains*, BART.GOV (Feb. 10, 2020), <https://www.bart.gov/news/articles/2020/news20200210-0>. ("The unarmed ambassadors are recruited from BART's community service officers, non-sworn personnel who perform police services. The program implemented ten ambassadors who walk trains in teams of two seven days a week starting after 2:00 p.m. and ending around midnight. They are equipped with radios to call BART police when they encounter an issue.")

116. See Marco Fabbri & Jonathan Klick, *The Ineffectiveness of 'Observe and Report' Patrols on Crime*, COLUM. L. SCH. WORKSHOPS (2018), [https://law-economic-studies.law.columbia.edu/sites/default/files/content/docs/2018\\_10\\_08\\_le\\_workshop\\_paper\\_j\\_klick\\_ineffectiveness\\_of\\_observe\\_and\\_report.pdf](https://law-economic-studies.law.columbia.edu/sites/default/files/content/docs/2018_10_08_le_workshop_paper_j_klick_ineffectiveness_of_observe_and_report.pdf) ("In the Fall of 2013, a neighborhood in Oakland, CA mounted a campaign to provide observe and report security patrols to augment the publicly provided policing in the area. While the initial effect of the additional security was a drop in crime, it quickly evaporated, calling into question the value of security forces that do not have the ability to apprehend criminals directly.")

117. *Id.* at 14.

system. In Europe, after the Thalys attack in 2015 where an attacker shot at passengers in the high-speed train from Amsterdam to Paris, France implemented security checkpoints similar to metal detectors at airports.<sup>118</sup> There is a critical difference with these trains as opposed to BART; the trains in France are long-distance trains that, similar to airports, request passengers arrive 20 minutes early.<sup>119</sup> This is simply unrealistic for BART. Similarly, in Germany, the main rail operator found a closed system to be unrealistic because of the tight connections and passenger mobility.<sup>120</sup> Instead, they instituted 3,700 security personnel and 5,000 police present on trains and at every train station to guard against any threats to rail riders.<sup>121</sup> BART can continue to try to cut corners to avoid major costs to the system, but it will inevitably lead to headache, unnecessary costs, and the same conclusion: BART needs more *trained* police presence.

Currently, our country is long overdue in acknowledging the presence of systemic racial injustice and police brutality. The concern should not be the number of police deployed, but the quality in training of such officers. An increase in the number of police officers must be accompanied by an increase in their training. Further, BART officer training needs to be addressed to better serve the community. In November of 2019, a man was waiting for his train, eating a breakfast sandwich before work. The situation quickly escalated and led to the rider arrested for eating a sandwich.<sup>122</sup> After a public upset over the incident, BART issued an apology and the rider left the community with hope that the incident will refocus BART's attention on things that actually matter like individuals doing drugs, hopping BART gates, and committing dangerous crimes.<sup>123</sup>

BART must restructure its training programs to include more extensive mental illness de-escalation tactics to show its commitment to being socially responsible. As of September 2019, San Francisco had a count of 4,000 homeless people both addicted and mentally

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118. Wolfgang Dick, *A year after the Thalys attack, how has European train security changed?*, DEUTSCHE WELLE (Aug. 20, 2016), <https://www.dw.com/en/a-year-after-the-thalys-attack-how-has-european-train-security-changed/a-19489053>.

119. *Id.*

120. *Id.*

121. *Id.*

122. Theresa Waldrop & Cheri Mossburg, *Police detain man eating a sandwich on a San Francisco train platform*, CNN (2019), <https://www.cnn.com/2019/11/11/us/bart-san-francisco-man-detained-sandwich/index.html>.

123. *Id.*

ill.<sup>124</sup> With BART riders constantly encountering homeless addicts, it is essential for BART police to know how to deescalate these situations without harm. Officers around the country are being trained on how to resolve escalating situations involving mental illness. Absent mental illness-specific training, confrontations can escalate quickly, putting everyone involved in danger.<sup>125</sup> Studies have indicated that those with a mental illness are 16 times more likely to be killed by a police officer than any other suspect.<sup>126</sup> To combat these alarming statistics, BART should implement a mandatory CIT (Crisis Intervention Team) program where mental health professionals educate officers using hands-on courses (i.e. role-play) on how to properly resolve an issue involving mental illness in BART's system. Some of the approved tactics include maintaining enough distance for the person in crisis to vent and using a mirroring tactic to "validate the person's feelings."<sup>127</sup> CIT training has also been shown to not only improve officer attitude on mental illness, but has also shown a major reduction in risk of injury to the officer and the individual in crisis.<sup>128</sup>

BART officers must also be exposed to more extensive implicit bias training to improve its organization with riders as its priority. Rather than deny having any biases, officers should break their unconscious habits. In a social psychology study, individuals received habit-breaking interventions for 12-weeks.<sup>129</sup> The results are instructive, showing a dramatic reduction in implicit race bias. Those who implemented the strategies reported the greatest reductions. The study led to an increase in personal awareness of bias and a desire for change.<sup>130</sup> The human mind is conditioned to certain looks and physical appearances with research indicating that it only takes 7 seconds for an individual to form an opinion about another solely

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124. Dominic Fracassa & Trisha Thadani, *SF counts 4,000 homeless, addicted and mentally ill, but timeline for help still unclear*, SF CHRONICLE (2019), <https://www.sfchronicle.com/bayarea/article/SF-counts-4-000-homeless-addicted-and-mentally-14412061.php>.

125. *Policing the Mentally Ill*, PowerDMS (2019), <https://www.powerdms.com/blog/policing-the-mentally-ill-tactics-best-practices/>.

126. *Id.*

127. *Id.*

128. *Id.*

129. Patricia G. Devine, Patrick S. Forscher, Anthony J. Austin, & William T.L. Cox, *Long-term reduction in implicit race bias: A prejudice habit-breaking intervention*, 48 J. EXP. SOC. PSYCHOL. 1267 (2012).

130. *Id.*

based on their physical appearance.<sup>131</sup> Such enhanced training for BART police could help combat racial biases the system sees as equality is an essential part of being socially responsible. This should not be a one-time training session either but should be revisited at least three times a year. Further, to hold officers accountable for their actions, BART must incorporate and utilize the recently formulated “National Police Misconduct Registry.”<sup>132</sup>

Rather than approving cosmetic updates to its system, BART should prioritize safety first for its riders. BART has prioritized hiring fare inspectors,<sup>133</sup> building canopies at entrances,<sup>134</sup> repairing escalators,<sup>135</sup> creating an ambassador program, and expanding pay areas<sup>136</sup> over safety. How is BART finding cash under its cushions to fund all of these projects, yet it is unimaginable to find funding to hire and train additional police officers? Is the issue a lack of funding or simply a lack of prioritization of safety? Safety is a major concern in

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131. See Mamac Oglivy & Mather, *Cocoa-Cola: Dark Iftar “NO LABELS,”* SHORTY AWARDS, <https://shortyawards.com/8th/coke-ramadan-dark-iftar-no-labels> (In 2015, Coca-Cola released a campaign to combat implicit biases. The campaign removed participants sight by inviting social media influencers to participate in a traditional Ramadan Iftar with the lights completely off. This diverse group of people took turns talking about their interests and who they are. At the end of the event, the lights came on and participants gasped with the expected form of each individual not matching up with reality).

132. Caitlin Oprysko, *Trump signs executive order incentivizing police reforms*, POLITICO (2020), <https://www.politico.com/news/2020/06/16/trump-signs-police-reform-executive-order-322524> (Trump signed an executive order that establishes a shared database that would record and track instances of excessive force and criminal convictions of law enforcement).

133. See NBC Bay Area Investigative Unit, *BART Derailed - Chapter 5: Full Steam Ahead*, NBC (2019), <https://www.nbcbayarea.com/news/local/bart-derailed-the-good-the-weird-the-dangerous-digital-original-investigation/2142287/> (BART currently has 11 paid fare inspectors that hope to prevent fare evasion for a system of 48 stations spanning three counties).

134. Bart.gov, *BART to build canopies over San Francisco Market Street entrances*, BART.GOV (Jan. 23, 2020), <https://www.bart.gov/news/articles/2020/news20200123-0> (“In January of 2020, BART passed a plan to build 19 canopies over BART entrances along Market street, a heavily trafficked tourist hot spot, with construction to begin in spring 2020. The budget for the plan is \$64 million with funding coming from Measure RR funds, SF Prop A, and State Prop 1A. The canopies include a real-time digital display of arrival times, a retractable gate, security cameras, and LED lighting.”)

135. Bart.gov, *BART to make largest investment in escalators in decades*, BART.GOV (Mar. 14, 2019), <https://www.bart.gov/news/articles/2019/news20190314-0> (“In March 2019, BART approved a plan to renovate 41 escalators throughout the downtown SF area. The cost for this project rings up to \$96.5 million.”).

136. Bart.gov, *BART to launch ambassador program on trains in February*, BART.GOV (2020), <https://www.bart.gov/news/articles/2020/news20200109> (BART is using \$690,000 of its budget for the 6-month pilot ambassador program and an additional \$810,000 to expand the paid area at Coliseum Station.)

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BART and not just safety with regard to the homeless, mentally unstable, or drug users, but also to those initiating bomb threats.<sup>137</sup> With CSR as a priority, the effectiveness of BART's strategy depends entirely on being proactive rather than reactive. Waiting for a disaster to strike and then picking up the pieces is the exact reaction that will help tear down whatever is left of BART's public image.<sup>138</sup> BART claims it has a lack of funding to hire more officers, yet it seems to have no trouble getting funding for its cosmetic projects. Rather than requesting Measure RR funds and proposition funding, BART should be applying for funding to hire and train more officers.

### C. IT SHOULD BE LIKE A WALK IN THE PARK

To improve safety on BART, reporting crimes should be quick, easy, without complication, and completely user friendly. In this Section, I outline the issues with the current apps BART has in place. I then propose what BART's app should look like to ease reporting for riders.

BART officially offers three different apps for different purposes. The official BART app is called "BART (Official)" and has the sole purpose of trip planning, displaying departure times, advisories, and other alerts. The second app is the BART Watch app. This app allows riders to notify BART police of any illegal activity occurring on or near BART. The third and final app that BART officially released is the BART to Airport app. This app displays discounted mobile tickets for group airport travel.<sup>139</sup> The operational aspect of these apps is anything but user friendly. There are two issues with BART's three

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137. Sophie Haigney, *19th Street BART station in Oakland reopens after bomb threat*, SF GATE (May 19, 2018 2:53 PM), <https://www.sfgate.com/crime/article/Bomb-threat-shuts-down-19th-Street-BART-station-12928259.php> (a BART station was closed after BART police received a telephoned bomb threat); Harry Harris, *Police: Man arrested in bomb threat that closed SFO BART station*, THE MERCURY NEWS (Mar. 13, 2018, 10:53 AM), <https://www.mercurynews.com/2018/03/13/police-man-arrested-in-bomb-threat-that-closed-sfo-bart-station/> (BART police arrested a man who made a bomb threat using his cell phone while on board a BART train); Eve Batey, *Suspicious Package Disrupts Muni and BART Service, Briefly Closes Market Street at Powell*, SFIST (Aug. 30, 2017), [https://sfist.com/2017/08/30/suspicious\\_package\\_disrupts\\_bart\\_se/](https://sfist.com/2017/08/30/suspicious_package_disrupts_bart_se/); Eve Batey, *Bart's summer of bomb threats continues with West Oakland scare Tuesday night*, SFIST (Aug. 6, 2014), [https://sfist.com/2014/08/06/barts\\_summer\\_of\\_bomb\\_threats\\_contin/](https://sfist.com/2014/08/06/barts_summer_of_bomb_threats_contin/) (BART had a "wild month of bomb scares" with another scare by a caller telling police that an AC Transit bus was parked underneath the BART tracks with explosives).

138. See Shim & Yang, *supra* note 79.

139. Bart.gov, *BART Apps*, BART.GOV (last visited February 28, 2021, 12:43 PM), <https://www.bart.gov/guide/apps>.

apps. First, the quantity of apps is unnecessary and overcomplicates their intended use. Second, the BART Watch app is not user friendly.

With the mass number of BART-related apps on the market for riders to download, BART should compile all of the services in its three apps into one single BART (Official) app to increase the likelihood of its riders using the app to report crimes, as opposed to refraining from acting at all. The bystander effect is the theory that the mere presence of others has the effect of inhibiting an individual's willingness to help another in need. According to researchers, before a bystander helps another, he or she goes through a five-step decision-making process.<sup>140</sup> With BART's three apps, we add more steps to this process, assuming that the right behavior is to report the incident to BART police. A separate issue with this process is the diffusion of responsibility. As the number of bystanders increases, the personal responsibility an individual feels decreases. As such, the tendency to help significantly declines.<sup>141</sup> This should give BART a major cause for concern as its trains are packed with riders daily. To increase the likelihood of reporting dangerous incidents, BART should make the reporting process simplified and easy to complete.

BART must simplify its reporting app to increase crime reporting and efficient use of resources in its system.<sup>142</sup> BART should have four classes that a rider can choose from: Class 1 – cleanliness concerns, Class 2 – possible escalating situation, Class 3 – violent situation, and Class 4 – emergency. The first class would signal to BART that custodians are needed rather than BART police, and would help implement efficient use of resources as police would not be taken

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140. Robert D. Blagg, *Bystander effect*, ENCYCLOPEDIA BRITANNICA (last visited February 28, 2021, 12:52 PM), <https://www.britannica.com/topic/bystander-effect> (First the bystander notices that something is wrong. Then, the bystander defines the situation as an emergency or a situation requiring assistance. Next, the bystander must decide whether he or she is personally responsible to act. After that, the bystander must choose how he or she plans on helping. Finally, the bystander must implement that plan.)

141. *Id.*

142. See *The Self Evident App*, WITNESS CONFIDENT (last visited Mar. 9, 2021, 10:40 AM), <https://witnessconfident.org> (England & Wales' *Self Evident* app is free, convenient, and effective for individuals to engage with police. There are three sections to the reporting portion of the app: Capture, Describe, Report. The Capture section allows users to video, take photos, or audio record an incident straight from the app. The Describe section allows users to leave commentary on what happened. The Report section allows users to file a report, contact police, or request hate crime support. Each section of the app is identified with photos, making it easier for diverse users identify each area); See also *New Technologies Allow Users to Call, Click or Text Crime Reports*, ALARM.ORG (last visited Mar. 9, 2021, 10:40 PM), <https://alarm.org/new-technologies-allow-users-to-call-click-or-text-crime-reports/> (users prefer reporting crimes via text).

from a possible violent situation to clean up a mess on a train. The second class refers to arguments or non-violent situations. The third class includes yelling, arguing, domestic abuse, or theft. The fourth and final class is given top priority for BART police and includes an injured individual, weapons on scene, and a present conflict. This would signal that BART police and EMT are likely required immediately.

#### D. TAKE FIVE AND STAY ALIVE

The World Business Council for Sustainable Development defines CSR as the continuing commitment to behave in an ethical manner while improving quality of life of the workforce, their families, the local community, and society at large.<sup>143</sup> In this section, the dangers BART employees face on a daily basis are outlined; the scope of this paper is limited to employees that are seen as hands-on workers, such as station agents, track workers, and train operators. I then discuss what BART recommends and even mandates its employees do when in a dangerous situation. Next, I detail what training already exists for employees of BART, proposing what changes should be made. Finally, I discuss the public's reaction to BART's violations of CSR as compared to the public's reaction to other industries.

BART's employees are subjected to violence, harassment, and unexpected conditions on a daily basis.<sup>144</sup> In 2013, two BART track workers were struck by an out-of-service BART train while performing track inspections.<sup>145</sup> In September of 2018, a BART station agent was sucker punched by a man who was harassing female riders at MacArthur station. The punch caused a 1½ inch laceration on the

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143. Corporate Social Responsibility Working Group, *Corporate Social Responsibility, WORLD BUS. COUNCIL FOR SUSTAINABLE DEV.* (2016), <https://growthorientedandsustainableentrepreneurship.files.wordpress.com/2016/07/csr-wbcsd-csr-primer.pdf>.

144. See Hollyfield, *supra* note 93 (Suzanne Gamble, one of BART's many station agents, voiced her concerns with the system at a board meeting. She asserted that "[t]here are safety issues that [she] was not trained to handle"). BART's employees are on the front lines of a humanity war to clean the skeletons out of BART's closet, to filter its sewers, to help those who can be helped and let go of those who can't.

145. Bart.gov, *2 workers fatally injured in BART accident*, BART.GOV (Oct. 23, 2013), <https://www.bart.gov/news/articles/2013/news20131019a>.

agent's face.<sup>146</sup> In October of 2019, a BART train operator's leg was crushed when it was caught between two cars.<sup>147</sup> These incidents aren't isolated but are those that local news stations decided to write about. There is no specific, fully encompassing, completely accurate number for the attacks that BART employees suffer on a daily basis because many of these attacks go unreported. From 2013 to 2017, 20 violent attacks were reported against BART train operators and 174 were reported against station agents.<sup>148</sup> Station agents have reported being "kicked, spat on, punched, held hostage, threatened with weapons, and pushed down stairwells."<sup>149</sup>

Many BART employees fear protecting themselves from these violent working conditions because of the way BART has communicated and handled previous employee self-defense issues. One station agent, Dana Reeves, was attacked by a drugged-up man who forced himself into her booth. She wanted to protect herself but didn't because she "didn't want to lose her job."<sup>150</sup> A former train operator agreed with Reeves, stating that management in BART has a tendency to attack the employee and "put them in the seat where they are the defendant."<sup>151</sup> BART released a statement asserting that safety is BART's top priority. BART wrote that if an employee feels unsafe, they are urged to "disengage, remain in a safe place, and contact BART Police." If none of these de-escalating tactics work and the threat is immediate, *then* the employee may defend themselves.<sup>152</sup> The terrifying part is how one BART veteran station agent explained that the norm is for one agent to be present in an entire station.<sup>153</sup>

The current training for BART employees includes the Transit Career Ladders Training Program, an innovative training program

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146. *BART Station Agent Assaulted At MacArthur Station*, KPIX CBS SF BAY AREA (Sept. 2, 2018 at 10:41 AM), <https://sanfrancisco.cbslocal.com/2018/09/02/bart-station-agent-assaulted-at-macarthur-station/>.

147. *BART operator injured in accident at Concord train yard*, KRON4 (Oct. 16, 2019 at 9:42 PM), <https://www.kron4.com/news/bay-area/bart-operator-injured-in-accident-at-concord-train-yard/>.

148. Candice Nguyen, *BART employees report being kicked, punched, spat on, held hostage*, KTVU (Feb. 19, 2018), <https://www.ktvu.com/news/bart-employees-report-being-kicked-punched-spat-on-held-hostage>.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. Bart.gov, *On the front line of customer service: Station Agents see it all*, BART.GOV (Nov. 28, 2017), <https://www.bart.gov/news/articles/2017/news20171128>.

for track workers, and certification requirements for station agents.<sup>154</sup> This is the kind of CSR related program BART should be implementing. Similarly, BART established a program where trainees spend 16 weeks at Cypress Mandela's training facility where they are taught discipline and life skills for job readiness. Then, they receive a 5-day training specific to track workers to help them apply for BART's track worker positions.<sup>155</sup>

BART's programs aren't the issue here; BART subjecting its workers to poor working conditions is the CSR violation requiring resolution. One station agent argued that there is no way to prepare yourself for the position but to instead develop necessary skills the longer you stay in it.<sup>156</sup> Rather than asking BART to implement better training for their employees, the best route towards a better BART is to do two things for its employees, specifically its station agents who interact with violent, drug-addicted, or homeless riders on a daily basis. First, BART must give all station agents self-defense training, not just rules similar to a game of hide and seek. Second, BART must implement body cameras for its station agents. This could serve as a deterrent for individuals desiring to attack these agents and it will help silence BART's liability concerns as these cameras will show whether the agents were indeed acting in self-defense.<sup>157</sup>

Recently, public backlash of CSR violations in the textile and food industries has increased, yet such backlash is not as evident in the transportation sector. In the fashion and textile industry, factory workers have reported physical assaults, verbal abuse, forced overtime, and unsanitary conditions.<sup>158</sup> In the food industry, factories are a mixture of bad wages, poor working conditions, fringe benefits,

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154. Bart.gov, *Transit Career Ladders Training Program*, BART.GOV (last visited March 9, 2021 at 11:54 AM), <https://www.bart.gov/about/jobs/training> (The Transit Career Ladders Training Program promotes transportation careers in low-income areas and helps support new transit entrants in the industry).

155. Melissa Jordan, *Innovative training program helps prepare trainees for jobs as BART track workers*, BART.GOV (Jan. 10, 2018), <https://www.bart.gov/news/articles/2017/news20170926>.

156. Bart.gov, *supra* note 153.

157. See *Body camera funds shouldn't go by the wayside*, KENOSHA NEWS (2020), [https://www.kenoshanews.com/opinion/editorial/body-camera-funds-shouldn-t-go-by-the-wayside/article\\_f06bf815-aa30-5510-863a-3fb77e519ee4.html](https://www.kenoshanews.com/opinion/editorial/body-camera-funds-shouldn-t-go-by-the-wayside/article_f06bf815-aa30-5510-863a-3fb77e519ee4.html) (body cameras have public safety benefits including increased safety, better evidence for any trials, and increased transparency for communities).

158. Jason Burke, *Bangladesh garment workers suffer poor conditions two years after reform vows*, THE GUARDIAN (2015), <https://www.theguardian.com/world/2015/apr/22/garment-workers-in-bangladesh-still-suffering-two-years-after-factory-collapse>.

health and safety issues, and mistreatment at work.<sup>159</sup> After poor working conditions are revealed in the food and textile industries, the American public outcries, protests, and requests better conditions.<sup>160</sup> Why is it that we will protest an entire brand because of poor working conditions in the food and fashion industries, yet when it comes to our means of transportation, we turn a blind eye? Is it because we come into direct contact with these people on a daily basis during our commutes? Is it too close to home? If BART refuses to better its working conditions, then perhaps it too needs a public campaign, a public protest, a public outcry for BART to do better.

### E. BART NEEDS WINDEX

Recently, BART asserted that it is “committed to transparency and clear communication.”<sup>161</sup> Vague advisories, snarky comments, and a clear lack of substance in its alerts and board minutes do not evidence that commitment.<sup>162</sup> In this Section, I first discuss the lack of transparency in the system. I then discuss BART’s Twitter accounts and board meeting minutes, examining whether BART utilizes them for transparency.

BART does not consistently nor unambiguously notify its riders of the reason behind its many delays.<sup>163</sup> As one BART rider put it,

159. Al Norman, *Rats In The Cellar: The American Food Industry’s Substandard Labor Conditions*, HUFFPOST (2017), [https://www.huffpost.com/entry/rats-in-the-cellar-the-am\\_b\\_13109510?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNvbS8&guce\\_referrer\\_sig=AQAAAjNcUlQDihatejVE0QUYRCt-kiSxLwKOailQRsfQF7ozkQOrLql2pQNfp4VfZOApII5\\_dZgAlhdHpDvOhyoQeaf5uwME9b1cU7G3ciL3-e2Sn5Dd6jGC-bxAN42rr1AxTNPZgVxtoj5HgI9BzRqzQvjz\\_aOkUzPk7UiAnp6ZID](https://www.huffpost.com/entry/rats-in-the-cellar-the-am_b_13109510?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNvbS8&guce_referrer_sig=AQAAAjNcUlQDihatejVE0QUYRCt-kiSxLwKOailQRsfQF7ozkQOrLql2pQNfp4VfZOApII5_dZgAlhdHpDvOhyoQeaf5uwME9b1cU7G3ciL3-e2Sn5Dd6jGC-bxAN42rr1AxTNPZgVxtoj5HgI9BzRqzQvjz_aOkUzPk7UiAnp6ZID).

160. See Daisy Buchanan, *The Zara workers’ protest shows why fast fashion should worry all of us*, THE GUARDIAN (2017), <https://www.theguardian.com/commentisfree/2017/nov/08/zara-workers-protest-fast-fashion-worry-all-of-us> (calling for better labor standards and discussing protests of poor working conditions).

161. @SFBART, TWITTER (Mar. 12, 2020, 9:27 PM), <https://twitter.com/SFBART/status/1238320740950085632>.

162. See NBC Bay Area Investigative Unit, *BART Derailed - Chapter 4: Blind Turn*, NBC (2019), <https://www.nbcbayarea.com/news/local/bart-derailed-the-good-the-weird-the-dangerous-digital-original-investigation/2142287/>.

163. BART has two Twitter accounts that it uses to communicate with riders. One, @SFBARTalert, is used to give riders vague notifications via an automated feed while the other, @SFBART, is the main BART account and is used to give more detailed information. Instead of using technology as a source of transparency, BART uses its accounts to give riders an ambiguous idea of what is going on or to talk down to or troll its riders. See @SFBART, TWITTER (Jan. 7, 2020, 11:13 AM),

“‘Recovering.’ Doesn’t feel like it. Your station announcements say one thing, your Operators say something else. Dangerously crowded platforms. I’m late again, another stellar commute from the gang that can’t shoot straight.”<sup>164</sup> Transparency is lacking so much in the system that one rider created a site dedicated to BART crime alerts so riders can be more aware of what is going on during their daily commutes.<sup>165</sup>

Outside of its social media accounts BART continues to deny the public the right to know what’s going on and thus lacks a commitment to transparency. As an example of its lack of transparency, look to the minutes from one of its more popular board meetings<sup>166</sup> where the content of the meeting is not reflected in the record. BART’s board meeting minutes limit content, only displaying a list of the names of those who spoke during public comment.<sup>167</sup> The rest of the records discuss who asked questions and what topics were discussed with a clear absence of any substance.<sup>168</sup> In its past, BART has even been called out for terminating employees who speak up about safety concerns.<sup>169</sup>

BART needs to commit to transparency by detailing out the issues in the system to its riders and by clearly communicating the issues the board hears at its meetings. BART’s automated twitter account should release more detailed programmed responses that

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<https://twitter.com/SFBART/status/1214626030943690757> (BART’s twitter account responded to a rider with the sarcastic comment, “Democratic process is a thing”); See also Kale Williams, *BART gets candid in Twitter exchange with angry riders*, SF CHRONICLE (Mar. 17, 2016 at 12:32 PM), <https://www.sfchronicle.com/bayarea/article/BART-gets-candid-in-Twitter-exchange-with-angry-6900683.php>.

164. @LilacSundayBlog, TWITTER (Jan. 10, 2020, 5:29 PM), <https://twitter.com/LilacSundayBlog/status/1215809435437715457>.

165. Firedland, *supra* note 33.

166. At the BART board meeting on November 21<sup>st</sup> (right after the stabbing on one of BART’s trains), seven members of the public, including BART’s own employees, addressed the board, highlighting the lack of safety on the system. Above, I have utilized some of these employee statements from this board meeting, but these references didn’t come from BART’s board meeting minutes; they came from local news stations who were present at the meeting. *San Francisco Bay Area Rapid Transit District Board of Directors Minutes of the 1,852nd Meeting November 21, 2019* (2019), <https://www.bart.gov/sites/default/files/docs/minutes/11-21-19%20Minutes.pdf>.

167. Patricia Williams, *Board of Directors Minutes of the 1,852nd Meeting, San Francisco Bay Area Rapid Transit District* (2019), <https://www.bart.gov/sites/default/files/docs/minutes/11-21-19%20Minutes.pdf>.

168. *Id.*

169. See ROBERT ANDERSON, ROBERT PERRUCCI, DAN SCHENDEL, & LEON TRACHTMAN, *DIVIDED LOYALTIES: WHISTLE-BLOWING AT BART* (1980) (where three BART engineers were fired for insubordination after they were caught whistleblowing on BART management’s lack of responsiveness to safety concerns).

allow its riders to prepare for delays and protect themselves from danger on the platforms. BART's non-automated twitter account needs a wake-up call. Humor and candid responses are solid engagement tactics for companies that use it as a marketing ploy to attract millennials to their brands,<sup>170</sup> not for companies like BART that use it to cover up its own blunders and hide its lack of transparency. BART's twitter account should release detailed information on what is going on in the system. At its board meetings, the BART secretary should use the meeting notes for their intended purpose, to record the meeting.

## F. CLEAN-UP ON AISLE BART

BART is a "wild west lawless place"<sup>171</sup> with nudity, human and animal waste, used needles, drugs, chainsaws, knives, and hammers as regular passengers on its trains. In this Section, I discuss what the current process of cleaning a BART train entails. I then describe what a bacterial analysis of the area inside a BART train uncovers. Next, I discuss what sanitary measures BART put in place in response to the COVID-19 pandemic and propose what BART should do going forward.

Outside of an incident on BART, the normal cleaning schedule may leave riders with a bad taste in their mouths. A team of four BART employees sweep through 75 to 80 train cars every night. They pick up trash, sweep up small messes, and mop the floors.<sup>172</sup> Two of the filthiest cars are "detailed" which includes a scrub down from top to bottom, disinfectant sprayed on all handles and bars, gum

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170. See Brandon Cohen, *15 Fast Food Chains that Threw Major Shade on Twitter*, THE THINGS.COM (January 19, 2017), <https://www.thethings.com/15-fast-food-chains-that-threw-major-shade-on-twitter/> (Domino's Pizza tweets back to a customer who posted, "Cheating on dominoes with pizza hut" that they "want [his] stuff packed and out by the morning" and that they "though [he] was different").

171. NBC Bay Area Investigative Unit, *BART 'Derailed': The Good, the Weird and the Dangerous*, NBC (2019), <https://www.nbcbayarea.com/news/local/bart-derailed-the-good-the-weird-the-dangerous-digital-original-investigation/2142287/>; NBC Bay Area Investigative Unit, *BART Derailed - Chapter 1: All Aboard*, NBC (2019), <https://www.nbcbayarea.com/news/local/bart-derailed-the-good-the-weird-the-dangerous-digital-original-investigation/2142287/>.

172. Katie Wood, *How BART keeps its notoriously filthy cars clean(ish)*, SFGATE (October 4, 2018 at 10:14 AM), <https://www.sfgate.com/local/article/how-dirty-is-bart-cleaning-crew-train-cars-station-13276134.php>.

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removal, and steam-cleaning on tough spots. Each car is *supposed* to be cleaned every 60 to 90 days.<sup>173</sup>

BART seats have been known to contain traces of bacteria and other germs causing health concerns for riders that aren't seen in other transportation systems. A supervisor at San Francisco State University's biology lab analyzed the bacterial content found on a random BART seat. Fecal matter, skin-borne bacteria with tracks of MRSA, mold, and nine bacterial strains were found on the seat.<sup>174</sup>

With the recent COVID-19 pandemic in the Bay area, BART has initiated new sanitary practices that should have been established earlier to protect the health of its riders. In March of 2020, BART installed hand sanitizer dispensers at all 48 of its stations, initiated a plan to wipe down frequently touched surfaces, handrails, and bars with disinfectant, deployed employees in rubber boots to mop, spray, and wash BART stairwells, and asked riders about their creative solution of a personal hand strap.<sup>175</sup> In May of 2020, BART released a 15-step plan on how it will safely welcome back riders.<sup>176</sup> Each of these measures shows a dedication to cleanliness, but why did it take a pandemic for BART to act? Why didn't BART have hand sanitizer dispensers in its stations from the get-go? Why is BART just now wiping down frequently touched surfaces? BART needs to clean its train cars more frequently with or without a pandemic to establish a commitment to better safety and health practices.

## VIII. CONCLUSION

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173. *Id.*

174. Zusha Elinson, *On BART Trains, the Seats Are Taken (by Bacteria)*, N.Y. TIMES (March 5, 2011), <https://www.nytimes.com/2011/03/06/us/06bcseats.html> (One BART rider chooses to stand during her half-hour commute because the idea of sitting grossed her out. The cloth seats allow bacteria to flourish, even after alcohol wipes are used to clean them. In a comparison of BART's cushioned seats with the acrylic plastic seats used on the MUNI, the MUNI seats showed no bacteria after use of an alcohol wipe. As one rider put it, "your health is much more important than having your butt hurt for half an hour").

175. @SFBART, TWITTER, (Mar. 13, 2020, 11:46 AM), <https://twitter.com/SFBART/status/1238536836110147584>; @SFBART, TWITTER, (Mar. 11, 2020, 4:44 PM), <https://twitter.com/SFBART/status/1237887197048483842>; Eric Ting, *Here's what BART will do if a passenger has coronavirus*, SFGATE (March 5, 2020 at 8:53 AM), <https://www.sfgate.com/commute/article/BART-coronavirus-spread-measures-response-facts-15107797.php>; @SFBART, TWITTER, (Mar. 13, 2020, 2:00 PM), <https://twitter.com/SFBART/status/1238570630187905024>.

176. Bart.gov, *BART releases 15-step plan to welcome back riders as region reopens*, BART.GOV (Jan. 1, 2021), <https://www.bart.gov/news/articles/2020/news20200526>.

BART and other transportation agencies should institute CSR in their everyday business practices. Corporate Social Responsibility has the benefit of attracting customers, gaining loyalty, delivering value to a business, fostering innovation, and avoiding legal regulations and lawsuits. Like many organizations using it, BART has a major stake in utilizing CSR practices. BART's approval rating is plummeting as riders complain about crime and filth on the trains.<sup>177</sup> Rider satisfaction sank to a record low of 56%.<sup>178</sup> The plunge in its approval rating is accompanied by a major loss in millions of night and weekend riders.<sup>179</sup> BART needs riders to operate and should thus stop treating its commuters like commodities. Declining ridership has even put BART in a budget bind where the transportation agency may be looking at more fare hikes.<sup>180</sup> Instead of having the sole objective of finances, BART's board has a duty to its riders to maximize their welfare, not just the organization's budgetary concerns. BART's ridership in 2015 was 62.2 million and in 2019 sank to 52.7 million.<sup>181</sup> The reason? Riders just don't feel clean or safe when riding the system.<sup>182</sup> Commuters see systematic delays as one thing that is simply too disruptive to ignore.<sup>183</sup> Recently, the COVID-19 pandemic has BART ridership at 8% of its usual number.<sup>184</sup> TNCs like Uber and Lyft emerging across the United States and BART riders' trust in flux,<sup>185</sup> now is the time for BART to act, especially as riders are eager to help the system improve. Unlike corporations where shareholders may be unwilling to fund CSR practices, riders desire

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177. Rachel Swan, *BART's approval rating plummets as riders complain about filth and crime*, SF CHRONICLE (2019), <https://www.sfchronicle.com/bayarea/article/BART-s-approval-rating-plummets-as-riders-13550578.php>.

178. *Id.*

179. Cristina Rendon, *BART loses millions of night and weekend riders: report*, KTVU FOX 2 (2020), <https://www.ktvu.com/news/bart-loses-millions-of-night-and-weekend-riders-report>.

180. Rachel Swan, *Flagging ridership puts BART in budget bind, raises specter of more fare hikes*, SF CHRONICLE (May 9, 2019 at 9:02 PM), <https://www.sfchronicle.com/bayarea/article/Flagging-ridership-puts-BART-in-budget-bind-and-13833861.php>.

181. Rendon, *supra* note 179.

182. *Id.*

183. Corvellec & O'Dell, *supra* note 24 at 244.

184. @SFBART, TWITTER, (Mar. 28, 2020, 10:41 AM), <https://twitter.com/SFBART/status/1243956313387749376>.

185. Michael Cabanatuan, *BART's future on line: Can transit system gain voters' trust?* SF CHRONICLE (Oct. 13, 2016 at 2:29 PM), <https://www.sfchronicle.com/bayarea/article/BART-once-efficient-must-convince-voters-it-9968133.php>.

such action. Commuters are actually willing to fund improvements to their public transportation<sup>186</sup> because, in the modern era, commuters rely on public transit to get around.<sup>187</sup> To fulfill its obligations to its stakeholders and fully commit to CSR, BART must focus on implementing major improvements to safety, transparency, and sustainability.

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186. Jeffrey A. Joireman et al., *Structural Solutions to Social Dilemmas: A Field Study on Commuters' Willingness to Fund Improvements in Public Transit*, 31 J. APPL. SOC. PSYCHOL. 504-526 (2001).

187. Xucheng Li & John Preston, *Reassessing the financial and social costs of public transport*, 168 Proceedings of the Institution of Civil Engineers - Transport 356, 356 (2015).

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