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## NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

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### NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

#### Public Hearing

Tuesday, January 27, 2004

Hart Senate Office Building  
Washington, DC

CHAired BY: THOMAS H. KEAN

#### PANEL I:

JANE F. GARVEY, FORMER ADMINISTRATOR, FEDERAL  
AVIATION ADMINISTRATION;

CATHAL L. "IRISH" FLYNN, FORMER ASSOCIATE  
ADMINISTRATOR OF CIVIL AVIATION SECURITY, FEDERAL  
AVIATION ADMINISTRATION;

CLAUDIO MANNO, ASSISTANT ADMINISTRATOR FOR  
INTELLIGENCE, TRANSPORTATION SECURITY  
ADMINISTRATION;

#### PANEL II:

EDMOND L. SOLIDAY, FORMER VICE PRESIDENT OF SAFETY,  
QUALITY ASSURANCE, AND SECURITY, UNITED AIRLINES;

ANDREW P. STUDDERT, FORMER CHIEF OPERATING OFFICER,  
UNITED AIRLINES;

GERARD J. ARPEY, CHIEF EXECUTIVE OFFICER, AMERICAN  
AIRLINES;

TIMOTHY J. AHERN, VICE PRESIDENT - DFW HUB, AND  
FORMER VICE PRESIDENT OF SAFETY, SECURITY, AND  
ENVIRONMENTAL, AMERICAN AIRLINES;

#### PANEL III:

NYDIA GONZALEZ, MANAGER, SOUTHEAST RESERVATION  
CENTER, AMERICAN AIRLINES;

#### PANEL IV:

JAMES M. LOY, DEPUTY SECRETARY, DEPARTMENT OF  
HOMELAND SECURITY

MR. THOMAS H. KEAN: I'd like to call the hearing to order.  
First I would like to enter into the record a statement on  
aviation security by Carol Ashley. Ms. Ashley is a member of  
the Family Steering Committee and if there's no objection, so  
ordered.

#### Current News

The Commission has  
released its final report.  
[more]

The Chair and Vice Chair  
have released a statement  
regarding the  
Commission's closing.  
[more]

The Commission closed  
August 21, 2004. [more]

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Philip D. Zelikow  
*Executive Director*

Chris Kojm  
*Deputy Executive Director*

Daniel Marcus  
*General Counsel*

Yesterday we heard testimony about how the 9/11 terrorists were able to circumvent the border controls the United States had in place at the time. Today, we will look at what confronted them in the final stage of their mission of mass murder: the American civil aviation security system as it existed in early September 2001.

Both yesterday and today we looked at the system's vulnerabilities. We will start by examining two of the most important components of that system, the Federal Aviation Administration that regulated it and the airlines which had the responsibility of implementing some of its key elements. Our witnesses will be expected to shed some light not only on the systematic issues but on specifics of the 9/11 hijackings themselves.

After these panels, we'll hear about one of the real heroes of Flight 11, Flight 11 attendant Betty Ong, from who's work on that day reflects well on her professionalism -- from another, rather, who's work on that day reflects well on her professionalism and her humanity, Ms. Nydia Gonzales. We will conclude with testimony from Admiral James Loy, deputy secretary of the Department of Homeland Security and formerly head of the Transportation Security Administration as well as commandant of the Coast Guard. We will focus on one key question with Admiral Loy, how do we, or should we, determine our priorities for homeland security, especially in the transportation sector.

In order to provide commissioners and the listening public with context for the testimony we are about to receive, we will once again begin by hearing from the 9/11 Commission staff and what it has learned to date relevant to today's proceedings. I would caution our listeners to bear in mind that this statement is still a work in progress. It addresses the various civil aviation defense layers and how the hijackers beat them in gaining entry to the aircraft.

The Commission staff will present a second staff statement immediately preceding Ms. Gonzales' testimony. That statement will take up the story of the four hijacked flights. It too is a preliminary report, making public what our staff has learned to the present time. I want to caution our audience, especially the families and friends of the victims of 9/11, that today we will be presenting a number of the harrowing facts, sights, and sounds of that particular day.

On another note, today's session will not focus on the situational awareness of air traffic control system and the Department of Defense including NORAD. The Commission will deal with that important topic in another public hearing, this spring. I would like to call on Mr. Zelikow, executive director of the Commission, Mr. John Raidt and Mr. William Johnstone, who will present the statement of the Commission staff.

MR. PHILIP D. ZELIKOW: Thank you, Mr. Chairman.

Members of the Commission, working with you, your staff has developed initial findings on how the individuals who carried out the 9/11 attacks defeated the civil aviation security system of the United States. We continue our investigation into the status of civil aviation security today and for the future. These findings and judgments may help your conduct of today's public hearing and will inform the development of your recommendations.

The findings and judgments we report today are the results of the work so far. We remain ready to revise our understanding of these topics as our work continues. This staff statement represents the collective effort of the staff team on aviation

and transportation security. Our staff was able to build upon investigative work that has been conducted by various agencies, including the Federal Bureau of Investigation.

The Department of Homeland Security's Transportation Security Administration is fully cooperating with our investigators, as are the relevant airlines and the Federal Aviation Administration.

I'd now like to turn to John Raidt to continue.

MR. JOHN RAIDT: Thank you, Philip.

Mr. Chairman and members of the Commission, before September 11th, 2001 the aviation security system had been enjoying a period of relative peace. No U.S. flagged aircraft had been bombed or hijacked in over a decade. Domestic hijacking in particular seemed like a thing of the past, something that could only happen to foreign airlines that were less well protected. The public's own threat assessment before September 11th was sanguine about commercial aviation safety and security.

In a Fox News opinion dynamic survey conducted at the end of the 1990s, 78 percent cited poor maintenance as a greater threat to airline safety than terrorism. The demand for airline service was strong and was beginning to exceed the capacity of the system. Heeding constituents calls for improved air service and increased capacity, Congress focused its legislative and oversight attention on measures to address these problems including a passenger bill of rights to ensure a more efficient and convenient passenger experience.

The leadership of the Federal Aviation Administration, FAA, also focused on safety, customer service, capacity and economic issues. The agency's security agenda was focused on efforts to implement a three-year-old congressional mandate to deploy explosive detection equipment at all major airports and complete a nearly five-year-old rule-making effort to improve checkpoint screening. This staff statement will not address certain security performance issues leading up to 9/11 at the airports from which the hijackers' planes departed. Such work is still ongoing.

It should be noted that the airports themselves did not have operational or enforcement jurisdiction over checkpoint screening operations, passenger pre-screening and checkpoint screening, based on regulations from the FAA these were the responsibility of the air carriers. Nevertheless, airport authorities do play a key role in the overall civil aviation security system.

Before September 11th, federal law required the FAA to set and enforce aviation security policies and regulations that would quote, "Protect passengers and property on an aircraft operating an air transportation or intrastate air transportation against an act of criminal violence or aircraft piracy." This layered system, one that recognized that no single security measure was flawless or impenetrable, was designed to provide a greater number of opportunities to foil those intending to do such violence.

The civil aviation security system in place on September 11th was composed of seven layers of defense including: Intelligence, passenger pre-screening, airport access control, passenger checkpoint screening, passenger check baggage screening, cargo screening and onboard security. The civil aviation security system in place on September 11th no longer exists. We will document serious shortcomings in that system's design and implementation that made the 9/11 hijackings possible.

We want to make clear that our findings of specific vulnerabilities and shortcomings do not necessarily apply to the current system. Two of the layers of defense, checked baggage screening and cargo screening are not relevant to the 9/11 plot, they are not addressed in this statement. A third layer, airport access control is still under investigation and also will not be addressed in detail here.

Compelling evidence, including video tape of hijackers entering through checkpoint screening stations, suggest that the hijackers gained access to the aircraft on September 11th through passenger checkpoints. What we do know is that the hijackers successfully evaded or defeated the remaining four layers of the security system. We approached the question of how the aviation security system failed on September 11th by starting from the perspective of the enemy, asking: What did al Qaeda have to do to complete its mission?

Sometime during the late 1990s the al Qaeda leadership made the decision to hijack large commercial multi-engine aircraft and use them as a devastating weapon, as opposed to hijacking a commercial aircraft for use as a bargaining tool. To carry out that decision required unique skill sets. Among them, terrorists trained as pilots with specialized skill and confidence to successfully fly a large multi-engine aircraft already airborne into selected targets; tactics, techniques and procedures to successfully conduct in-flight hijacking; and three, operatives willing to die.

To our knowledge, 9/11 was the first time in history that terrorists actually piloted a commercial jetliner in a terrorist operation. This was new. This could not happen overnight and would require long term planning and sequenced operational training. The terrorists had to determine the tactics and techniques needed to succeed and hijack an aircraft within the United States. The vulnerabilities of the U.S. domestic commercial aviation security system were well advertised through numerous unclassified reports from agencies such as the General Accounting Office and the Department of Transportation's inspector general. The news media had publicized those findings.

The al Qaeda leadership recognized the need for more specific information though. Its agents observed the system first hand and conducted surveillance flights both internationally and within the United States. Over time, this information allowed them to revise and refine their operational plan. By the spring of 2001, the September 11 operation had combined intent with capabilities to present a real and present threat to the civil aviation system. As long as operational security was maintained the plan had a high probability of success in conducting multiple near simultaneous attacks on New York City and Washington, DC.

Let us turn now to a more specific look at the security system in place on September 11th, related to anti-hijacking. We'll begin with intelligence. The first layer of defense in aviation security was intelligence. While the FAA was not a member of the U.S. Intelligence Committee per se, the agency maintained a civil aviation intelligence division that operated 24 hours per day. The intelligence watch was the collection point for a flow of threat related information from federal agencies, particularly the FBI, CIA and State Department.

FAA intelligence personnel were assigned as liaisons to work within these three agencies to facilitate the flow of aviation related information to the FAA and to promote inter-departmental cooperation. The FAA did not assign liaisons to either the National Security Agency or the Defense

Intelligence Agency but maintained intelligence requirements with those agencies.

Intelligence data received by the FAA went into preparing intelligence case files. These files tracked and assessed the significance of aviation security incidents, threats and emerging issues. The FAA's analysis of this data informed its security policies, including the issuance of FAA information circulars, security directives and emergency amendments to the industry. Such security directives and emergency amendments are how the FAA ordered air carriers and/or airports to undertake certain extraordinary security measures that were needed immediately above the established base line.

While the staff has not completed its review and analysis as to what the FAA knew about the threat posed by al Qaeda to civil aviation, including the potential use of aircraft as weapons, we can say the following. First, no documentary evidence reviewed by the Commission or testimony we have received to this point has revealed that any level of the FAA possessed any credible and specific intelligence indicating that Usama bin Laden, al Qaeda, al Qaeda affiliates or any other group were actually plotting to hijack commercial planes in the United States and use them as weapons of mass destruction.

Second, the threat posed by Usama bin Laden, al Qaeda and al Qaeda affiliates, including their interest in civil aviation, was well known to key civil aviation security officials. The potential threat of Middle Eastern terrorist groups to civil aviation security was acknowledged in many different official FAA documents. The FAA possessed information claiming that associates with Usama bin Laden in the 1990s were interested in hijackings and the use of an aircraft as a weapon.

Third, the potential for terrorist suicide hijacking in the United States was officially considered by the FAA's Office of Civil Aviation Security, dating back to at least March 1998. However, in a presentation the agency made to air carriers and airports in 2000 and early 2001, the FAA discounted that threat because, quote, "Fortunately we have no indication that any group is currently thinking in that direction." It wasn't until well after the 9/11 attacks that the FAA learned of the Phoenix EC. This was an internal FBI memo written in July of 2001 by an FBI agent in the Phoenix field office suggesting steps that should be taken by the Bureau to look more closely at civil aviation education schools around the country and the use of such programs by individuals who may be affiliated with terrorist organizations.

Fourth, the FAA was aware prior to September 11th, 2001 of the arrest of Zacarias Moussaoui in Minnesota, a man arrested by the INS in August of 2001, following reports of suspicious behavior in flight school and the determination that he had overstayed his visa waiver period. Several key issues remain regarding what the FAA knew about Moussaoui, when they knew it, and how they responded to the information supplied by the FBI, which we are continuing to pursue.

Fifth, the FAA did react to the heightened security threat identified by the intelligence community during the summer of 2001, including issuing alerts to air carriers about the potential for terrorist acts against civil aviation. In July 2001, the FAA alerted the aviation community to reports of possible near-term terrorist operations, particular in the Arabian Peninsula and/or Israel. The FAA informed the airports and air carriers that it had no credible evidence of specific plans to attack U.S. civil aviation.

The agency said that some of the currently active groups were

known to plan and train for hijackings, and had the capability to construct sophisticated improvised explosive devices concealed inside luggage and consumer products. The FAA encouraged all U.S. carriers to exercise prudence and demonstrate a high degree of alertness. Although civil aviation security officials testified that the FAA felt blind when it came to assessing the domestic threat, because of the lack of intelligence on what was going on in the American homeland as opposed to overseas, FAA security analysts did perceive an increasing terrorist threat to the U.S. civil aviation system at home.

FAA documents including agency accounts published in the Federal Register on July 17th, 2001 expressed the FAA's understanding that terrorist groups were active in the United States and maintained an historic interest in targeting aviation, including hijacking. While the agency was engaged in an effort to pass important new regulations to improve checkpoint screener performance, implement anti-sabotage measures and conduct ongoing assessments of the system, no major increases in anti-hijacking security measures were implemented in response to the heightened threat levels in the spring and summer of 2001, other than general warnings to the industry to be more vigilant and cautious.

Sixth, the civil aviation security system in the United States during the summer of 2001 stood as it had for quite some time, at an intermediate aviation security alert level, tantamount to a permanent code yellow. This level and its corresponding security measures was required when "information indicates that a terrorist group or other hostile entity with a known capability of attacking civil aviation is likely to carry out attacks against U.S. targets, or civil disturbances with a direct impact on civil aviation have begun or are imminent." Without actionable intelligence information to uncover and interdict a terrorist plot in the planning stages or prior to the perpetrator gaining access to the aircraft in the lead-up to September 11, 2001, it was up to the other layers of aviation security to counter the threat.

We conclude this section with a final observation. The last major terrorist attack on a U.S. flagged airliner had been with smuggled explosives in 1988 in the case of Pan Am 103. The famous Bojinka plot, broken up in Manila in 1995, had principally been a plot to smuggle explosives on airliners. The Commission on Aviation Safety and Security, created by President Clinton in 1996, named the Gore Commission for its chairman, the Vice President, had focused overwhelmingly on the danger of explosives on aircraft. Historically, explosives on aircraft had taken a heavy death toll, hijackings had not. So despite continued foreign hijackings leading up to 9/11, the U.S. aviation security system worried most about explosives.

After intelligence the next level is pre-screening. If intelligence fails to interdict the terrorist threat, passenger pre-screening is the next layer of defense. Passenger pre-screening encompasses measures applied prior to the passenger's arrival at the security checkpoint. Pre-screening starts with the ticketing process and generally concluded with passenger check-in at the airport ticket counter. The hijackers purchased their tickets for the 9/11 flights in a short period of time at the end of August 2001, using credit cards, debit cards or cash.

The ticket record provided the FAA and the air carrier with passenger information for the pre-screening process.

The first major pre-screening element in place on 9/11 was the FAA listing of individuals known to pose a threat to commercial aviation. Based on information provided by the intelligence community, the FAA required air carriers to

prohibited listed individuals from boarding aircraft, or in designated cases, to assure that the passenger received enhanced screening before boarding. None of the names of the 9/11 hijackers were identified by the FAA to the airlines in order to bar them from flying or subject them to extra security measures. In fact, the number of individuals subject to such security instructions issued by the FAA was less than 20 people, compared to the tens of thousands of names identified in the State Department's TIPOFF watchlist, which the Commission discussed yesterday.

The second component of pre-screening was a program to identify those passengers on each flight who may pose a threat to aviation. In 1998, the FAA required air carriers to implement an FAA-approved computer assisted passenger pre-screening program known as CAPPS, designed to identify the pool of passengers most likely in need of additional security scrutiny. The program employed customized FAA approved criteria derived from a limited set of information about each ticketed passengers in order to identify selectees.

FAA rules require that the air carrier only screen each selectee's checked baggage for explosives using various approved methods. However, under the system in place on 9/11, selectees, those who were regarded as a risk to the aircraft, were not required to undergo any additional screening of their person or carry-on baggage at the checkpoint. The consequences of selection reflected FAA's view that non-suicide bombing was the most substantial risk to domestic aircraft.

Since the system in place on 9/11 confined the consequences of selection to the screening of checked bags for explosives, the application of CAPPSS did not provide any defense against the weapons and tactics employed by the 9/11 hijackers. On American Airlines Flight 11, CAPPSS chose three of the five hijackers as selectees. Since Waleed al Shehri checked no bags, his selection had no consequences. Waleed al Shehri and Satam al Suqami had their checked bags scanned for explosives before they were loaded onto the plane. None of the Flight 175 hijackers were selected by CAPPSS.

All five of the American Airlines Flight 77 hijackers were selected for security scrutiny. Hani Hanjour, Khalid al Mihdhar and Majed Moqed were chosen via the CAPPSS criteria, while Nawaf al Hazmi and Salem al Hazmi were made selectees because they provided inadequate identification information. Their bags were held until it was confirmed that they had boarded the aircraft. Thus for hijacker selectees Hani Hanjour, Nawaf al Hazmi and Khalid al Mihdhar, who checked no bags on September 11th, there were no consequences for their selection by the CAPPSS system.

For Salem al Hazmi, who checked two bags, and Majed Moqed who checked one bag, the sole consequence was that their baggage was held until after their boarding on Flight 77 was confirmed. Ahmad al Haznawi was the sole CAPPSS selectee among the Flight 93 hijackers. He checked his bag, was screened for explosives, and then loaded the plane.

I'd now like to turn it over to my colleague, Bill Johnstone.

MR. BILL JOHNSTONE: Next we come to checkpoint screening. With respect to checkpoint screening, federal rules required the air carriers to conduct screening to prevent or deter the carriage aboard airplanes of any explosive, incendiary, or a deadly or dangerous weapon on or about each individual's person or accessible property, and the carriage of any explosive or incendiary in checked baggage.

Passenger checkpoint screening is the most obvious element of aviation security. At the checkpoint, metal detectors were calibrated to detect guns and large knives. Government-certified X-ray machines capable of imaging the shapes of items, possessing a particular level of acuity were used to screen carry-on items. In most instances, these screening operations were conducted by security companies under contract with the responsible air carrier.

As of 2001, any confidence that checkpoint screening was operating effectively was belied by numerous publicized studies by the General Accounting Office, the Department of Transportation, the Office of the Inspector General. Over the previous 20 years, they had documented repeatedly serious chronic weaknesses in the systems deployed to screen passengers and baggage for weapons and bombs. Shortcomings with the screening process had also been identified internally by the FAA's own assessment process.

Despite these documented shortcomings of the screening system, the fact that neither a hijacking nor a bombing had occurred domestically in over a decade was perceived by many within the system as confirmation that it was working. This explains in part the view of one Transportation Security official who testified to the Commission that the agency thought that it had won the battle against hijacking. In fact, the Commission received testimony that one of the primary reasons that the CAPPs consequences were restricted was because officials thought that checkpoint screening was working.

The evolution of checkpoint screening illustrates many of the systemic problems that faced the civil aviation security system in place on 9/11. The executive and legislative branches of government and the civil aviation industry were highly reactive on aviation security matters. Most of the aviation security systems features had developed in response to specific incidents rather than anticipation. Civil aviation security was primarily accomplished through a slow and cumbersome rule-making process, a reflection of the agency's conflicting missions of both regulating and promoting the industry.

A number of FAA witnesses told the Commission that this rule-making process was the bane of civil aviation security. For example, the FAA had attempted to set up a requirement that it would certify screening contractors. The FAA re-authorization of 1996, in fact, had directed the FAA to take such action. The 1997 Gore Commission endorsed it but the process of implementing screener certification had still not been completed by September 11th, 2001.

Those are systemic observations, but to analyze the 9/11 attack, we had to focus on which items were prohibited and which were allowed to be carried into the cabin of an aircraft as of that date. FAA guidelines were used to determine what objects should not be allowed into the cabin of an aircraft. And I stress again that this is the system that was in place on 9/11, not the system that is in place today. Included in the listing of items not allowed into the cabin of an aircraft were knives with blades four inches long or longer and/or knives considered illegal by local law as well as tear gas, mace and similar chemicals.

These guidelines, developed by FAA, were to be used by screeners to make a reasonable determination of what items in the possession of a person should be considered a deadly or dangerous weapon. The FAA in implementing it told the air carriers that common sense should prevail. Hence the



standards that constituted a deadly or dangerous weapon were somewhat vague. Other than for guns, large knives, explosives and incendiaries, determining what was allowable was up to the common sense of the carriers and their screening contractors.

To write out what common sense meant to them, the air carriers developed, through their trade associations, a checkpoint operations guide. This document was approved by the FAA. The edition of the guide in place on September 11th, 2001, for example, classified box cutters as restricted items which were those that were not to be permitted in the passenger cabin of an aircraft. In those cases, the checkpoint supervisor was required to be notified if a box cutter as an item in that category was encountered by a screener.

Passengers would be given the option of having the box cutter or similar items transported as checked baggage. Mace, pepper spray and tear gas were categorized in the operations guide as hazardous materials and passengers were not allowed to take items in this category onto an airplane without the express permission of the airline. On the other hand, pocket utility knives which were defined as those with less than a 4-inch blade were expressly allowed onto the aircraft.

The checkpoint operations guide provided no further guidance on how to distinguish between box cutters and pocket utility knives. One of the checkpoint supervisors working at Logan International Airport on September 11th, 2001 recalled that it was her understanding as of that day that while box cutters were not permitted to pass through the checkpoint without the removal of the blade, any knife with a blade of less than four inches was permitted to pass through security.

In practice, we believe the FAA's approach of admonishing air carriers to use common sense about what items should not be allowed on an aircraft or also approving the air carriers' checkpoint operation guidelines that define the industry's common sense, in practice, created an environment where both parties could deny responsibility for making choices that were in the tenor of the times likely to be hard and most likely unpopular.

What happened at the checkpoints on 9/11 under these guidelines? Of the checkpoints used to screen the passengers on Flights 11, 77, 93 and 175 on September 11th, only Washington Dulles International Airport had videotaping equipment in place. Therefore, the most specific information that exists about the processing of the 9/11 hijackers is information about American Airlines Flight 77, which crashed into the Pentagon. The staff has reviewed those videotapes as well as testing results for all of the checkpoints in question and have reviewed scores of interviews with checkpoint screeners and supervisors who might have processed the 9/11 hijackers on that day and reviewed FAA and FBI evaluations of all available information about the 9/11 screening. From what we have seen to date, there is no reason to believe that the screening on 9/11 was fundamentally different at any of the relevant airports.

We turn again to the perspective of the enemy. The plan required all of the hijackers to successfully board the besieged aircraft -- I'm sorry, the assigned aircraft. If several of their number failed to board, their operational plan would fall apart or their operational security might be breached. To have this kind of confidence that had they developed a plan they felt would work anywhere they were screened regardless of the quality of the individual screener. We believe they developed such a plan and practiced in the months before the attacks, including in test flights to be sure their tactics would work. In

other words, we believe the hijackers did not count on a sloppy screener. All 19 hijackers were able to pass successfully through checkpoint screening to board their flights. They were 19 for 19, 100 percent. They counted on beating a weak system.

Turning to the specifics of Flight 77 checkpoint screening, at 7:18 a.m. Eastern Daylight Time on the morning of September 11th, 2001, Majed Moqed and Khalid al Mihdhar entered one of the security screening checkpoints at Dulles International Airport. They placed their carry-on bags on the X-ray machine belt and proceeded through the first magnetometer. Both set off the alarm and were subsequently directed to a second magnetometer at Dulles. While al Mihdhar did not alarm the second magnetometer and was permitted through the checkpoint, Moqed failed once more and was then subjected to a personal screening with a metal detection hand wand. He passed this inspection and then was permitted to pass through the checkpoint.

At 7:35 a.m. that morning, Hani Hanjour, believed to be the pilot of the 727, placed two carry-on bags on the X-ray belt at the checkpoint and proceeded without alarm through the magnetometer. He picked up his carry-on bags and passed through the checkpoint. One minute later, Nawaf and Salem al Hazmi entered the same checkpoint. Salem al Hazmi successfully cleared the magnetometer and was permitted through the checkpoint. Nawaf al Hazmi set off the alarms for both the first and second magnetometers and he then also was hand-wanded before being passed. In addition, his shoulder strap carry-on bag was swiped by an explosive trace detector and then passed and he too was admitted through the checkpoint.

Our best working hypothesis is that a number of the hijackers were carrying -- permissible under the regulations in place at the time -- permissible utility knives or pocket knives. One example of such a utility knife is displayed by Mr. Brinkley here, this so-called Leatherman item. We know that at least two knives like this were actually purchased by the hijackers and have not been found in the belongings the hijackers left behind. We are passing this around now. Please be careful, the blade is open. It locks into position. It is very sharp.

According to the guidelines as we understand them that existed on 9/11, if such a knife were discovered in the possession of an individual who alarmed either the walk through metal detector or the hand wand, the item would be returned to the owner and permitted to be carried on the aircraft. Once the hijackers were able to get through the checkpoints and board the plane, the last layer of defense was on board security. That layer was comprised of two main elements on 9/11, the presence of law enforcement on the flights and the so called Common Strategy for responding to in-flight security emergencies, including hijacking, which had been devised by the FAA in consultation with industry and law enforcement officials.

However, on the day of September 11th, 2001, after the hijackers boarded, they faced no remaining significant security obstacles. The Federal Air Marshal program was almost exclusively directed as of that date to international flights. Cockpit doors were not hardened and gaining access to the cockpit was not a particularly difficult challenge. Flight crews were trained not to attempt to thwart or fight the hijackers. The object was to get the plane to land safely. Crews were trained in fact to dissuade passengers from taking precipitous or heroic actions against hijackers. We'll have more to say about the Common Strategy in the staff statement that will come later today.

Philip.

MR. ZELIKOW: In conclusion, from all of the evidence the staff has reviewed to date, we have come to the conclusion that, on September 11, 2001, would-be hijackers of domestic flights of

U.S. civil aviation faced these challenges: avoiding prior notice by the U.S. intelligence and law enforcement communities; carrying items that could be used as weapons that were either permissible or not detectable by the screening systems in place; and understanding and taking advantage of the in-flight hijacking protocol of the Common Strategy.

A review of publicly available literature and/or the use of test runs would likely have improved the odds of achieving those tasks. The no fly list offered an opportunity to stop the hijackers, but the FAA had not been provided any of their names, even though two of them were already watchlisted in TIPOFF. The pre-screening process was effectively irrelevant to them. The on-board security efforts like the Federal Air Marshal program had eroded to the vanishing point.

So the hijackers really had to beat just one layer of security, the security checkpoint process. Plotters who were determined, highly motivated individuals, who escaped notice on no-fly lists, who studied publicly available vulnerabilities of the aviation security system, who used items with a metal content less than a handgun and most likely permissible, and who knew how to exploit training received by aircraft personnel to be non-confrontational were likely to be successful in hijacking a domestic U.S. aircraft.

MR. KEAN: Thank you very much.

I'd now like our first panel please to take their seats. For our first panel, our first witness will be Ms. Jane Garvey. Ms. Garvey was administrator of the Federal Aviation Administration on September 11th, 2001. She first assumed that post in 1997. Ms. Garvey previously testified before this commission last May and we certainly appreciate the fact she has come back to join us again.

Following Ms. Garvey will be Rear Admiral Cathal "Irish" Flynn. Admiral Flynn served as head of the FAA Security Division from 1993 through the end of 2000. His successor in that position, Lieutenant Mike Canavan also testified at our May 2003 hearings. Welcome to Admiral Flynn.

Finally, we'll hear from the former head of FAA's Intelligence Division, Claudio Manno. Mr. Manno was in that capacity on 9/11 and he currently has a similar role at the Transportation Security Administration where he is deputy to the associate administrator for Intelligence. Thank you, Mr. Manno, for taking time away from your important current duties to be with us today.

Would you please stand and raise your right hand? Do you swear or affirm to tell the truth, the whole truth and nothing but the truth? Thank you very much.

(Witnesses sworn.)

Ms. Garvey.

MS. JANE F. GARVEY: Thank you, Mr. Chairman and members of the Commission.

Good morning. I have submitted to the Commission for inclusion in the record a written testimony supplementing my previous testimony on May 22nd, 2003. I hope my

participation here will contribute to the recommendation which, in the Chairman's words, will assist the Commission in doing everything it can to make the American people safer. Before I begin, I would like to acknowledge the many families and the friends of those who were killed or injured on September 11th. Their suffering is unimaginable and perhaps more than any other single group of Americans, they have a vested interest in the Commission accomplishing its mandate.

Let me address one area that has been the subject of both prior questioning and testimony by several witnesses, specifically the pre-September 11th relationship among the airlines, the airports and the Federal Aviation Administration. In 2001, it was these three entities that, by statute, shared responsibility for civil aviation security in the United States. Air carriers had primary responsibility for screening passengers and baggage and for applying security measures to everything that went into their planes. Airports were responsible for maintaining a secure ground environment and providing local law enforcement support. Government's role, the FAA's role, was regulatory.

Within the regulatory framework established by Congress, the FAA set security standards for 424 airports, for United States airlines worldwide, and for foreign air carriers flying to the United States from approximately 250 foreign airports. This division of responsibility among the airports, the airlines and the FAA was, in large measure, a reflection of the fact that the airports owned the land and were best able to provide local law enforcement. The airlines operated the aircraft and were in the best position to manage passenger and cargo, and government had the regulatory authority.

The priorities of the FAA were safety, security and the capacity of the air traffic control system. Specific targets, specific objectives were established in each area and progress towards those objectives was monitored continually. Given the dynamic nature of the aviation system, those objectives were also subject to ongoing evaluation and modification.

In the months preceding September 11th, while greater public attention was focused on aviation delays and the passenger bill of rights, internally the agency was very much focused on safety and security. On September 10th, 2001, aviation security in this country was on a peacetime footing. The FAA had worked hard to make changes in the aviation security baseline, changes supported by specific credible threat information and analysis. The Office of Civil Aviation Security, based on information received from the intelligence communities, had the primary responsibility of assessing the threat to civil aviation.

As this work was underway, daily evaluation of the system and assessment of incoming intelligence information led the FAA to issue security directives and information circulars to address developments and threats. Prior to September 11th, 2001, we had a security system based on certain assumptions. These included the fact that politically motivated hijackers would release passengers after landing at a safe haven, and that together with such hijackings, explosives presented the greatest threat to the system. The events of September 11th certainly challenged those assumptions. A system which had proven effective for the preceding 10 years could no longer be relied upon.

In the summer of 2001, while there was a growing concern regarding a domestic threat, the FAA did not have any credible or any specific information which indicated the type of attack we saw on September 11th was planned or even possible within the United States. The greater concern regarding a

threat was internationally.

Admiral Loy, deputy secretary of Homeland Security, in his testimony will describe a broad range of activities in which the Transportation Security Administration is engaged. It's building on many of the components of the aviation security system established by the FAA: CAPPs, the layered approach to security, intelligence assessments, testing, research and development, but perhaps most importantly, redirecting them to a changed threat.

The world has changed in its entirety since September 11th. We are a nation at war, a war which has crossed our borders and entered our cities. Americans have long known that eternal vigilance is the price of liberty. Now we know that in the age of uncertainty, it is the price of mobility.

Thank you, and I'd be happy to answer any of your questions, Mr. Chairman.

MR. KEAN: Thank you very much.

Mr. Flynn.

MR. CATHAL L. "IRISH" FLYNN: Mr. Chairman, members of the Commission, I -- and the staff -- have had a long interview, and I have submitted a written statement. I don't have a verbal statement to make now, but if you don't mind, there are three or four items in the statement that I just heard from the staff that I think might be worthwhile for me to comment on.

The paragraph that said before, September 11th, 2001, the aviation system had been enjoying a period of relative peace. That isn't quite so. We'd had a very serious threat against aviation in the Pacific. We had numerous indications of -- and actual hard intelligence to which we reacted and imposed additional measures at stations overseas -- with regard to several vectors of attack. And, of course, even though TWA 800 turned out not to be a bomb, it was a -- there was a considerable period where that was a major concern.

So to the extent that that paragraph might indicate that we had been lulled into any sense of complacency, that is certainly not the case for FAA and FAA security. Then the paragraph at the end said that -- at the end of the first page talks about our efforts to complete a five-year process to bring in a rule for -- it was actually the rule to certify screening companies. And it does give the impression that that rule-making was the only thing that we were doing, and that's far from the case. Rule-making was important but it's far from the only thing that we were doing.

With regard to rings and layers, I think it's a mistake to look upon the set of rings that begin at the airport as being the only rings that apply to protecting the aircraft and all who fly on them, and indeed to protecting people in the airport. It is important that there be interaction between those rings and the further outer rings or layers of our national security system. And one of the items of that from a strategic sense is to make the defense of any of our installations, and in the case of civil aviation to make the aircraft and the people -- to have defenses there that will require the attackers to do extraordinary things that would then come to the attention of the intelligence and law enforcement authority in the outer layers.

Then there's a further statement that we were reactive. Well, we haven't had a bomb in cargo and we haven't had an attack by surface-to-air missiles, and we have measures with regard to cargo and a program with regard to cargo and we're

working -- and indeed in the case of a specific threat overseas, work with the airlines and the nations concerned and with the National Security Council staff in order to put in and develop a range of things that we would do in certain circumstances. I hasten to say that a lot of those circumstances would have -- circumstance would have required cancellation of the flights. But it isn't that we had to wait for something to happen -- and indeed there are more difficult things to deal with to which we are paying attention, for example, the introduction of nerve agent gas onto an aircraft.

With regard to CAPPs, I hope that there will be questions about it because its role -- I think I would like to say some things about its function.

Thank you.

MR. KEAN: Mr. Manno.

MR. CLAUDIO MANNO: Chairman Kean, Vice Chairman Hamilton and commission members, I appreciate the opportunity to participate in your inquiry into the facts and circumstances surrounding the September 11th, 2001 terrorist attacks against the United States. My written statement addresses the questions posed in your letter of invitation and I would respectfully request that it be entered into the record. This morning I will summarize some of the key points about how the FAA Office of Intelligence received, assessed and disseminated intelligence prior to the fall of 2001 and also highlight some of the process improvements.

Before beginning, however, I would like to express my deepest sympathies to the families, friends and co-workers of those who perished on September 11th, 2001. As a tribute to them, a wreath hangs on the door of our intelligence watch as a silent reminder of the importance of our mission in keeping the nation's transportation infrastructure and its travelers secure.

On September 11th, 2001, I was a director of the Office of Intelligence, which was part of the Civil Aviation Security Organization of the FAA. The office was tasked with identification, analysis and dissemination of intelligence information focusing on terrorism and other threats to U.S. civil aviation. Although the magnitude of the events of September 11th, 2001 had not previously been seen, FAA's 24-hour intelligence watch had managed multiple crises prior to the tragic suicide hijackings. The expertise of our analysts and a well-established set of standard operating procedures enabled the office to quickly realign and provide extended round the clock coverage of the incident and its aftermath. This cadre of analysts, although small, worked feverishly to provide senior FAA and DOT decision makers with an immediate assessment of the events and possible additional near-term threats.

As a consumer of intelligence, FAA identified its information needs in detailed statements of intelligence interest to those agencies responsible for producing most of the intelligence on terrorism, namely CIA, the Department of State, FBI, NSA and the Defense Intelligence Agency. The newly created Terrorist Threat Integration Center now plays a role in that effort. FAA received a daily stream of threat reporting and finished intelligence from these agencies and identified on average 100 to 200 classified reports each day that merited closer review.

To enhance access to relevant intelligence reporting, FAA assigned liaison officers to CIA, FBI and State Department. Their primary duties were to identify and pursue information

regarding actual or potential threats to civil aviation. Occasionally, they would review information that provided insight about a terrorist threat or incident, but may not have been disseminated to the FAA. In these cases, the liaison officers requested release of the information and would educate the agencies as to why such information was of importance to the FAA. In some cases, they were successful in getting release for FAA. In other situations, due to the sensitivity of sources and methods, the information was not approved for release.

When analysts working in the 24-hour intelligence watch identified current or future threats to aviation, a preliminary evaluation of its validity was made in coordination with the originator and other relevant agencies. FAA intelligence analysts examined the plausibility of the information based on their expertise regarding the known intent and capability of the alleged hijackers, the method of attack, as well as a characterization of the reliability of the source made by the agency supplying the information. The characterization of the source is a significant factor as decision-makers depend on threat assessments based on credible information from reliable sources.

Once a report was identified as an actual or potential threat, FAA analysts opened an intelligence case file, an ICF, to isolate and follow up on the threat to its logical conclusion, adding any new information to either validate or discount the threat. And there were several hundred of these ICFs that were opened at any one time and that we were working on. FAA analysts prepared threat assessments based on analyses of these reports and coordinated these assessments with FBI and CIA to ensure factual accuracy and analytic logic.

Intelligence is only useful, however, if it reaches the operators and policymakers in an actionable format and timely manner. Prior to September 11th, 2001, FAA intelligence analysts worked closely with specialists in the offices of civil aviation security operations and aviation policy who view the intelligence information against the vulnerability of the target in an attempt to establish the level of risk of a successful attack. These offices promulgated security countermeasures to reduce the level of risk as appropriate. This threat and risk assessment process was applied to both current and strategic threats and was used to determine the long-term baseline aviation security posture for a region or a country.

Potential aviation threat information was communicated to those that needed it at the operational level primarily through the preparation and issuance of information circulars which alerted recipients to possible threats and security directives which required air carriers and airports to implement specific security measures to counter a threat. Regulated entities, such as the air carriers and airports, received the notices directly from FAA while airport law enforcement elements had access to them through the Airport Law Enforcement Agencies Network. When declassification of information was not possible, the 24-hour intelligence watch verbally alerted cleared aviation security representatives to threats or events that were of a potential interest through secure telephone calls.

Now that I have explained how the FAA received and processed threat information prior to the events of 2001, I would like to highlight intelligence support that the FAA Office of Intelligence provided to the transportation industry stakeholders and other government agencies as it transitioned to TSA. Prior to September 11th, the FAA had published security directives that required air carriers not to transport certain individuals that were known or suspected threats to

aviation security. Immediately following September 11th, the FAA began to administer a watchlist for the FBI as part of the investigation of the hijackings. By the end of 2001, the FAA had assumed responsibility for this watchlist which now includes individuals known to pose, or suspected of posing, a threat to aviation or national security. This mechanism enables the notification of law enforcement and the application of defensive measures.

We also stood up a new division with analysts whose primary duty was to provide support to the Federal Air Marshal Service. Also, the Aviation and Transportation Security Act of November 2001 tasked TSA to receive, assess and distribute intelligence information related to transportation security. Thus, the new Transportation Security Intelligence Service became responsible for assessing threats to all modes of transportation: aviation, maritime and land, and now provides threat warning products to stakeholders in all modes of transportation.

As a result of the steps taken to improve operations in the aftermath of September 11th, 2001 attacks, the TSIS, the successor to the FAA's Office of Intelligence now enjoys increased access to intelligence and law enforcement information which has undoubtedly had a positive impact on the security of

U.S. transportation assets both in the homeland and abroad. More information is being shared among more agencies than ever before thus improving situational awareness of potential threats to U.S. transportation assets in the U.S. and abroad.

I would like to provide briefly some additional granularity on some of the beneficial developments and a word or two regarding the areas that we are continuing to seek improvement. Regarding intelligence from the FBI, prior to September 11th, 2001, FAA did not receive a daily flow of raw reports and finished intelligence from the FBI. The Bureau did not consider itself an intelligence production agency, perhaps because of the statutory restrictions on the dissemination of information it collected in its investigative role.

Recently, however, the flow of reporting from FBI has significantly increased. The USA PATRIOT Act of 2001 amended previous laws that had prevented the FBI from sharing grand jury and Foreign Intelligence Surveillance Act information, FISA information. The creation of the National Joint Terrorism Task Force, the NJTTF, has also expanded the flow of information from the FBI. TSIS has assigned a full-time liaison officer to the NJTTF in recognition of the value of tapping into the information reported up from local JTFs throughout the country. TSIS's NJTTF's representatives also provide operational information that supports FBI operations and investigations.

Regarding information sharing and coordination among agencies, TSIS receives a copy of the daily matrix that highlights current critical threats to U.S. interests. Agencies also more frequently coordinate finished intelligence products and CIA, TTIC and FBI more routinely solicit input and comment from TSA on threat assessments. To build on a new spirit of sharing and coordination, TSIS has assigned liaison officers to TTIC and to NSA.

The consolidation of TSA, Customs and Immigration within the Department of Homeland Security has also led to enhanced information sharing and coordination of not only intelligence but operations as well. TSIS has also contributed to the stand-up of the TSC, which as you know, was created to provide information on known or suspected terrorists from



various U.S. government databases to federal screening operations, border patrol and state and local law enforcement. Two TSIS intelligence analysts provide direct support to the TSC leadership on matters regarding the TSA Watchlist program.

The intelligence and law enforcement communities have always provided TSA with reporting regarding specific threats and since late 2001, there has been a sizeable increase in the volume of intelligence reporting being disseminated to TSA. Nevertheless, more information about terrorist infrastructures both in the United States and abroad would assist TSIS intelligence analysts in forecasting potential threats in areas where U.S. transportation assets are located or provide service. Such information would allow TSIS to provide better situational awareness to TSA executives, field operators and industry stakeholders.

Despite some remaining obstacles, the intelligence and law enforcement communities have made great strides in information sharing and coordination since the tragic events of September 11th, 2001. TSIS will continue to review our analytic skill sets and dissemination mechanisms, improving them where possible and will remain focused on providing TSA and DHS executives, operators and industry stakeholders with an accurate assessment of current and future threats to the U.S. infrastructure.

Chairman Kean, Vice Chairman Hamilton and members of the Commission, I recognize the importance of your task on behalf of the American people and appreciate the opportunity to participate in these proceedings. I would be happy to address any questions that you may have for me.

Thank you.

MR. KEAN: Thank you very much, sir.

As we start the questioning, I might remind people that yesterday and today we are looking at the system's vulnerabilities as they existed on 9/11. We are not talking about present vulnerabilities. We've got to communicate our views about those vulnerabilities perhaps in our public report or certainly through the appropriate channels.

The questioning will be lead by Senator Gorton.

MR. SLADE GORTON: First, for Ms. Garvey and for Mr. Manno, knowing that you're fully aware of your oath, our first question is, to your knowledge, did the FAA possess any information regarding a terrorist plot to hijack aircraft and to use them as weapons and targets in the United States, or any other plot that resembled such an operation prior to 9/11?

MS. GARVEY: Commissioner, in my knowledge, from my perspective, we had no knowledge of that.

MR. GORTON: Mr. Manno?

MR. MANNO: No specific knowledge. Certainly not in the way that the events were carried out on 9/11.

MR. GORTON: Ms. Garvey, as you know, we had a long relationship between 1997 and the year 2000 when I was chairman of the Senate Subcommittee on Aviation and you headed the FAA. There were a significant number of hearings during that period of time. Would you characterize those hearings as primarily related to competitive issues to airport capacity, you know, slots and landing slots and rights and the like to aircraft safety from the point of view of the rules that you adopted with respect to aircraft safety, and to the extent

that they dealt with security exclusively or almost exclusively on the subject of explosives on aircraft?

MS. GARVEY: Commissioner, I think that's a fair characterization. I would add one caveat, and that is the economic issues really was the domain of the Department of Transportation. But certainly capacity, explosives, safety issues, those were FAA and certainly had a number of hearings.

MR. GORTON: Demands for a passengers' bill of rights, for example.

MS. GARVEY: That's correct. That, of course, would have been more DOT as well.

MR. GORTON: And those subjects were also the primary subjects of the Gore Commission, whose recommendations set many of the boundaries for concerns during the years at least that I was there, up until the year 2000. Is that not correct?

MS. GARVEY: I would agree with that assessment, Commissioner, yes.

MR. GORTON: Is it fair to say with respect to security issues as well as to -- security issues. Is it fair to say that there were more pressures on the Federal Aviation Administration to relax security measures during that period than there were to strengthen them?

MS. GARVEY: I'm not sure I would fully characterize it that way. If you're asking me, was I aware that industry or others, for example, had concerns about some of the security measures, absolutely. We certainly -

MR. GORTON: That's exactly my question.

MS. GARVEY: We certainly heard it through the rule-making process. We certainly heard it in public meetings that were held. You know, I do want to go back, though, to a point I made in my opening statement, and that is while the public and certainly Congress as well was very focused on the capacity issues, which were very real at the time in 2000 and 2001, we still had a security office with very experienced, very well-trained professionals who were focused on those issues as well.

MR. GORTON: But outside pressures on you and your office were primarily focused on those other subjects, were they not?

MS. GARVEY: That is correct, Commissioner.

MR. GORTON: One example of these security matters, you saw the knife that was circulated during the course of your testimony, which now at least we all can draw a breath at how lethal it was. Can you say why it was that a knife of that size and potency was universally considered to be something which could regularly be carried onto aircraft? Was there a great deal of pressure, for example, that anyone should be able to take a Swiss Army knife with him or with her on an aircraft? Were any of the rules -- were any of the suggestions in this five-year rule-making that had not been completed directed at weapons of that nature?

MS. GARVEY: I don't remember that discussion when I was the administrator. I can give you a little bit of perspective, at least from my perspective. As you indicated, that policy was in place on 9/11. It was a policy that had been in place, that is prohibiting knives larger than 4 inches. It is a policy that it's my understanding had been in my place since the 1970s.

But, again, if you go back to 9/11 and you think about the atmosphere in an airport, there were -- knives were very commonplace. Knives were used as part of the meal service in the airlines. If you were to stop at a security -- or a souvenir shop, even beyond the secure area, it is possible that you could purchase, say, a pocketknife and so forth. And from the security intelligence experts, from the law enforcement people, the greater threats -- as has been indicated even by the staff report, the greater threats were from larger, more lethal weapons and from explosives.

Clearly with the benefit of hindsight, as you pointed out, we have a different view. I do think it is important to remind ourselves, as the staff statement reminded us, that we are and were dealing with an incredibly intelligent, well-trained, disciplined terrorists who may have used any other number of common household items as a lethal weapon as well. MR. GORTON: And who just flat out beat us. MS. GARVEY: That's right, Commissioner. MR. GORTON: At our May hearing, you testified, and I quote,

that, "Perhaps the greatest lesson of September 11th is that the terrorist threat is just as real here at home as it is for our embassies in East Africa, a Naval destroyer in Yemen or the Marine barracks in Beirut," end quote. At least in retrospect, should not that have been the lesson of the 1993 World Trade Center bombing?

MS. GARVEY: You know, I think with the clarity of hindsight you can look at a number of those facts and come to those conclusions. And again, I do want to go back to a point that has been made earlier. There was a growing domestic concern and I think that was reflected in some of the intelligence circulars, some of the SDs that the FAA issued. So there was a growing concern. But I think the greatest thrust, the greater concern was still international. Should we have learned more from the World Trade Center? Boy, again, I think with the clarity of hindsight there, there are certainly questions there.

MR. GORTON: With respect to intelligence, and Mr. Manno can comment on this question as well, explain to us how it was that you had a no-fly directive that applied to only 20 or so people, while there was a terrorist -- a TIPOFF list that included hundreds or thousands of people? Were you, Ms. Garvey, aware that there was such a TIPOFF list?

Mr. Manno, did your section have that list available to it? Did it even know that it existed? And if you did know that it existed and had it available, why weren't those names on a no-fly list?

MR. MANNO: I think I can answer that by explaining the way that the process worked. As I indicated earlier, the way that we received intelligence or information from the intelligence community was by identifying our statement of intelligence needs. Based on that, the intelligence community provided us information that was relevant to aviation security. So based on the information we received, our analysts reviewed it and in the case where there was specific and credible information that people were actually targeting, making plans to target civil aviation, if we had identifying data, they were put on a security directive which directed the air carriers not to transport these people.

MR. GORTON: All right, but neither of you have answered my question. You know, let's break it down and ask it again. Were either of you aware of the existence of the TIPOFF roster?

MR. MANNO: Yes.

MR. GORTON: Were you, Ms. Garvey?

MS. GARVEY: I may have been aware. I can't tell you with certainty that I was aware pre-9/11 that the list -

MR. GORTON: Well, were the names on that list then available to you and not requested? Or available to you and discarded as not important?

MS. GARVEY: Commissioner, if I could -- I'll give you my perspective and then turn it over to Mr. Manno. But from my perspective, the names that I saw, and we'd see them in the security directive, they would be included in the security directive. From my perspective, those names were the names that the intelligence community believed had some implication with aviation. So, for example, while other intelligence agencies may have had other names, those names pre-9/11 if they did not have a specific aviation -

MR. GORTON: I -- you know, I fully understand that, but my question still is were those names not supplied to you, and I guess this is for Mr. Manno, or were they supplied to you and discarded as not having a relationship with aircraft?

MR. MANNO: TIPOFF at that time included about 61,000 names. We had access to TIPOFF, but the way that it worked is if you had a name, you had to have a name, you could then go against TIPOFF and do a search and it would provide you information. But the way that the system worked at the time, unless we received the intelligence reporting that identified to us names of interest and then to go into TIPOFF and search against that, it was not -- it was simply not used that way. So TIPOFF was there, TIPOFF was available, TIPOFF was 61,000 names that included information not only of, you know, terrorists involved in all sorts of things and others -

MR. LEHMAN: It was perfectly all right to have them fly because they were terrorists in other things, there was no reason to put them on your watchlist, right? I mean, I don't understand the logic of this.

MR. MANNO: Well, the way that the process worked with the security directive is names were identified to an airline who then bumped those up against their reservation list to determine if somebody was actually going to fly.

MR. GORTON: Yeah, that's right, but you only had 20 names that fell into that category and there were thousands of names on a TIPOFF list, all of whom were suspected terrorists. And so I gather the decision at some place or another was that a suspected terrorist who had not specifically been linked to aircraft was okay to fly?

MR. MANNO: The names -- including the 20 names were names that were specifically identified to us in intelligence reporting. The process was for the intelligence reporting to indicate to us those that we ought to be concerned about.

MR. GORTON: And you made no further inquiry beyond that? You didn't ask for a list of suspected terrorists?

MR. MANNO: You mean through TIPOFF?

MR. GORTON: Yes.

MR. MANNO: No, we did not go to the State Department and ask them to give us all 61,000 names so that they could be put on the watchlist. For one thing, the airlines would not have been able to handle such a list.

MR. GORTON: Well, they weren't given the opportunity, were they?

MR. MANNO: Well, we know that today, sir, because today we are managing a similar list which is of about 3,500 names which requires the carriers to check against a reservation system, and they're struggling just even with those.

MR. JOHN F. LEHMAN: But they sure had no trouble handling their frequent flyer lists -- I mean that's ridiculous. Your whole testimony is -- it talks about process. You described to us -- it sounded like an indoctrination course for your new employees describing the process. What about common sense?

Didn't anybody ever -- did you ever step back and say, now look, my job is not to wait until the intelligence community gives me finished product, but to look at this and say, does it pass the commonsense test? Does it pass the commonsense test to let young Arabs on with four-inch blades? Didn't any of you -- leadership is about not taking the process which you hide behind, but about saying this is not sufficient. Of course they can handle thousands of questionable people. Of course a young Arab should not be allowed on airplanes with four-inch blades, yet none of you applied common sense.

MR. GORTON: Secretary Lehman just said that's right, you know. Every time I fly, every time I make a reservation I get a frequent flyer credit. The airline has no difficulty in doing that for me, to check my name against its list every time. I can't see how it has a problem with 3,000 or 60,000 suspected terrorists. But let's leave -- you know, you answered my first question I think accurately, that as of 9/11 you did not anticipate or expect, you did not imagine the kind of hijacking that actually took place with suicide and the killing of many people in mind. Let's accept that.

But certainly with respect to all of the hijackings that have ever taken place before, you were anticipating and were working against the kind of hijacking that went to Havana or that asked for the release of prisoners and, you know, or the like. And yet you never, either of you and I guess this would apply to Admiral Flynn as well, decided to have an expanded no-fly list of suspected terrorists, is that correct?

MR. MANNO: The list at that time was based on specific and credible information that we had.

MR. GORTON: Other two? Any answer beyond that?

MR. FLYNN: I regret to say that I was unaware of the TIPOFF list and was unaware of it until yesterday.

MR. GORTON: Now, one other thing. Are you saying you, who are current today, that there are only 3,500 people on a no-fly list today?

MR. MANNO: There's actually two lists. A selectee and a no-fly list, and actually the number is greater than that.

MR. GORTON: What is the relationship between the FAA at the present time and the TIPOFF program?

MR. MANNO: The -- well, as you know TIPOFF has now been rolled into the TSC process -

MR. GORTON: Okay, and?

MR. MANNO: So the way that the system works is that we obtain information from that list and people are put on the no-fly list based again on indications that they pose a threat to aviation.

MR. GORTON: But merely being a suspected terrorist doesn't get you on that list?

MR. MANNO: Pardon, sir?

MR. GORTON: Merely being a suspected terrorist doesn't get you on that no-fly list?

MR. MANNO: It can, it depends what group you're associated with and what other information there is.

MR. GORTON: Wow, I find that to be an incredible answer.

MR. MANNO: As an example, there is a lot of information that came out of the war on Afghanistan when the camps were discovered there, lists and things like that and those names, because of their ties to al Qaeda, are put on our no-fly list.

MR. GORTON: Well, I must say I would strongly suggest that when the intelligence agencies of the United States have a name that they expect or suspect to be a terrorist, that that name ought to be on the no-fly list. And I think, in my view at least, that's a no-brainer.

Back to you, Ms. Garvey. Does the FAA or did the FAA have any kind of supervision over flight training schools? Obviously to license a pilot requires a certain degree of education, but is there any monitoring of the schools at which young men and women receive that flight training?

MS. GARVEY: Commissioner, for the flight schools there are standards and requirements that a flight school would have to attain in order to get an FAA certificate, and depending on the level of training they are providing, those certificates would vary.

MR. GORTON: But that certificate just goes to the school? That just says you do a competent job.

MS. GARVEY: That's exactly right, Commissioner, that's exactly right.

MR. GORTON: But there's no connection -- the school doesn't have to report the names of the people who are taking the training or the degree of training that they've received to you to check against any kind of license application?

MS. GARVEY: Pre-9/11 there was no vetting of the individual students who signed up in the schools.

MR. GORTON: Is there now?

MS. GARVEY: Yes there is, Commissioner. Post-9/11 there

- and as part of a legislation even before that as an emergency action, there is vetting of the student and an actual verification that the school must receive and submit to the FAA from the country, from the student's country.

MR. GORTON: Ms. Garvey, as the administrator, how much of your time did you spend on security matters? How often were you briefed, for example, by people like the Admiral or Mr. Manno? How did you get performance ratings of civil aviation security policies through the airlines and the airports and the like? What share of your time did it take and what was your function in connection with it?

MS. GARVEY: Let me divide it, if I could, Commissioner, into two parts. One is how did I receive the sort of security information, and number two is how did we monitor sort of the day to day progress being made by security and I'll start with the second part. Security, like safety and efficiency, was responsible for establishing goals and objectives, and in this case it centered very much as has been indicated around

some of the rule-making, some of the explosive detection machines and so forth. That monitoring and oversight of that really occurred as part of management board meetings that were held on Monday and Friday.

As to the security information, how did I receive it and so forth? As Mr. Manno indicated, there were on any given day there could be as high as 200 intelligence faxes received by the Intelligence Office. I would certainly not receive every one of those but anything that the Intelligence Office deemed important would come up to my office. If there was a particular urgency around an issue or something that the associate administrator was particularly concerned about that I would receive that briefing in person, or if I was not in the office at the time I would receive it perhaps later in the day by the -- from perhaps the deputy secretary. So I would receive security briefings either through a written document that would come directly to my office or through an oral direct briefing from the associate administrator.

MR. GORTON: The staff reported on the checkpoint operations guide that was developed by the air carriers and approved by you as the head of the FAA. To your knowledge was there any airline that ever was restless or objected that that operations guide was too lax and wanted or imposed itself a more stringent regulations on incoming -- on passengers?

MS. GARVEY: I'm not aware of that, Commissioner.

MR. GORTON: Finally, I think it's someone else's turn here, but the 9/11 families submitted what I consider to be a very important question to us to which I'd like your answer. How is it that when you went through your various proceedings dealing with violations of federal law on the part of airlines and imposed fines that in fact, on average, the fines were reduced to 10 cents on the dollar? Why is it that when you go through an entire system and say a fine ought to be so many thousands of dollars that that just isn't the end of it?

MS. GARVEY: Well, if I could, Commissioner, I'll answer and certainly if other panel members want to contribute to this. First of all, I'd like to check the number. I'd heard that before and I've not had an opportunity -- I'm not sure that number is correct. But I'd like to check it and I can certainly tell you that from the FAA's perspective, from my perspective, the civil penalties that we imposed were not as effective as we wanted them to be. We went back repeatedly to get those fines raised and they were raised incrementally.

I think we were far more effective when it was levied against individuals then when it was levied against a company. Frankly, I think sometimes we found the best way to -- or sort of the best -- the more effective way was to publicize that and we did that. But there's also the due process. The inspector or the special agent who first brings the action forward submits that and there is also, of course, the due process where the lawyers from -- for either the individual or the lawyers for the airline goes through the process with the FAA and a determination is made. I don't know if its 10 cents on the dollar. It was never as high as we liked.

MR. GORTON: Well, that's a lot of due process to go to 10 cents on a dollar, and I guess we would appreciate it if you have the ability to do so, since you question whether or not that figure is accurate, to the extent of your ability to answer that question more precisely in writing later, we would very much appreciate it. I think I do have some more questions, but the red light has been on for some time and it's Congressman Roemer's turn in this connection.

MR. KEAN: Okay, we'll come back to you.

Congressman Roemer?

MR. TIMOTHY J. ROEMER: Thank you, Mr. Chairman.

I want to thank the panel and thank Senator Gorton for starting a very thorough round, a very fair round of questions. I want to start with just the larger policy question and the security system that we had in place on September 11, 2001. It just seems to me from a common sense point of view that in medicine, when a doctor looks at a patient, they just don't look at one disease. If there's a low probability but high consequence possibility for that patient, we're going to look at a host of different scenarios.

The military does the same thing. There may be a low probability but a high consequence attack. We get ready for it. Sports, the Superbowl coming up, there may be a low probability that the first play's going to be the bomb down the field, but there's a defense set up for it. In our aviation security system, leading up to and on September 11, 2001, it seems to me there's only one system in place, even though the clues and the threats are flowing in through this entire decade. Let me briefly bring up some of the overall policy clues and objectives.

In January '95 a Philippine National Police raid turns up materials in Manila where there is a proposed plot, among other things, to possibly crash an airplane into CIA headquarters. In 1998, August, the intelligence community obtains information that a group of unidentified Arabs plans to fly an explosive laden plane into a foreign country -- from a foreign country into the World Trade Center. September 1998 the intelligence community obtains information that Usama bin Laden's next operation could involve flying aircraft loaded with explosives into a U.S. airport.

November '98 the intelligence community obtains information that a Turkish Islamic extremist group has planned a suicide attack, in part involving a plane and crashing that with explosives into Ataturk's tomb. The list, March 1999, August 2001, goes on. With respect to what we're doing here at home to protect our passengers and our planes, here's the information that we have at the FAA. Here's the internal document, developed in the summer of 2000, delivered in 2001 prior to 9/11 and here's a quote from this document that's warning about terrorist hijackings.

"A domestic hijacking would likely result in a greater number of American hostages but would be operationally more difficult to accomplish. We don't rule it out." And it continues, "If, however, the intent of the hijackers is not to exchange hostages for prisoners but to commit suicide in a spectacular explosion, a domestic hijacking would probably be preferable," unquote. Directly to the point of 9/11.

And then finally published in July 17, 2001, the Federal Register, quote, "Terrorism can occur anytime, anywhere in the United States. Members of foreign terrorist groups, representatives from state sponsors of terrorism and radical fundamentalist elements from many nations are present in the United States. Thus an increasing threat to civil aviation from both foreign sources and potential domestic ones exist and needs to be prevented and countered." Needs to be prevented and countered. So my question is, with all this evidence coming in

- it's not a specific date, granted, but the dots are connected and they're large and they're looming and they're big. Why



doesn't this result in a change in terrorism policy at our airports to try to expand the list of things that we're going to try to go after beyond the possibility of explosive devices on airplanes?

Mr. Flynn, can you take the first crack at that?

MR. FLYNN: Yeah, if I had to do it again, I would get up over the fierce amount of activity that was going on with regard to commissions, with regard to acquisition, certification of equipment, R&D programs, human factors, inspections, modifications of rules, additions to rules, working with the intelligence community, working with the NSC, to ask ourselves, indeed to ask myself: How will they attack us again? I mean, those things were there and it isn't that we disregarded them. It isn't that I disregarded them. I didn't see -- there were contra-indications on a number of them.

For example, the Manila one was perpetrated by people who went to very considerable extent not to be suicidal in the way that they conducted their attack. The French one, you didn't mention it, but I spoke to the French inspector of police from the headquarters of the French police who came over to brief people in Washington, including me, about it. And I said, well, what about this business of going after the Eiffel Tower. And again, there were disconnects. How were they going to do that? How were they going to coerce pilots to do that? And she said, furthermore, rather than them wanting to kill everybody on board, there's a strong indication that Stockholm syndrome was going on at Marseille where the aircraft was.

Then with regard to the other things of how do you bring about taking an airliner and turning it into a missile? How would you coerce the pilot to fly into a building that's got people into it rather than in extremis, put it into a field or a woods or into the -- in the case of the CIA, into the Potomac? How would you do that? And the notion of a fully-fledged member of al Qaeda being a pilot, at the same time with the intention of pulling people out of the cockpit and taking over, did not occur to me. Now, my point, when I go back to it, why didn't I spend more time? Why didn't I get more people around the table and say, how would they do this? And come up with a plan, that's my regret.

MR. ROEMER: Mr. Flynn, you mentioned that we didn't develop policy and the big picture connecting the dots to change policy to proactively go after what terrorists might do given the threats that were out there - MR. FLYNN: I didn't mention that, I may not have said it - MR. ROEMER: You said you regret that we did not - MR. FLYNN: We didn't deal with that particular scenario.

That isn't to say that we didn't look at a host of other things.

MR. ROEMER: Well, let's talk about -- did you push with Mrs. Garvey, other people, the administrator, did you push for a policy change? Did you try to get meetings with other policy makers to address this growing concern that's mentioned in the FAA, Federal Register, that's mentioned in your slide presentation that you're presenting to people as you're traveling across the country in 2000 and 2001?

MR. FLYNN: Well, I think that -- it's more than a footnote that that particular presentation, 2001, I was no longer in FAA. But the -

MR. ROEMER: Leading up to that point.

MR. FLYNN: Yeah, that's my -- it's a funny thing. In that same time, the head of anti-terrorism for the FBI and I came to this building, into the secure place of the Committee on

Intelligence and in it these staff -- there may be some people from that staff who happen to be coincidentally members of your staff -- the staff asked what are the indications or what are the threats to aviation? And John O'Neill said there are none. Now, that seemed to me to -- because there was particular indication of something going on in an airport, I wrote him a note. John, how about the -- and he looked at the note, still didn't say anything, didn't change what he had said. And we came out of the meeting and I said, what about the -- that specific thing, and he said there's nothing to it.

We're also being told that those groups that are there were -- they're essentially connected with Hezbollah or fundraisers rather than actual terrorist people plotting terrorism, and we're -- was told because pushed on it frequently, "Don't worry about it, we're not going to give you raw intelligence, we're not going to give you processed intelligence. If there is a threat to aviation, we will tell you."

MR. ROEMER: And this is who?

MR. FLYNN: Robert Blitzer.

MR. ROEMER: With respect to -

MR. FLYNN: No.

MR. ROEMER: Acting on -

MR. FLYNN: No, no.

MR. ROEMER: Okay.

MR. FLYNN: At the same time, there was an element of common sense in this. You have 1993, the World Trade Center, you have these groups that may or may not be associated with al Qaeda because nobody knew what al Qaeda was. Nobody knew, and to this day I'm not sure how much people understand the full motivations, capabilities, connections, et cetera of the al Qaeda organization.

MR. ROEMER: Mr. Flynn, I just read an example as far back as September 1998 that the intelligence community obtained an information specific to Usama bin Laden that his next operation could involve flying aircraft loaded with explosives into a U.S. airport.

MR. FLYNN: I don't recall that. I mean, that's such a startling thing -

MR. ROEMER: Well, we can talk about your liaisons to the FBI and to the CIA and to the National Security Council, the point is -- go ahead, sir.

MR. FLYNN: Let me get back on my train of thought, is that despite saying there are no indications of it happening, the commonsense of it is that it could happen, that where there are terrorists one of their likely targets will be aviation.

MR. ROEMER: Let's talk about that being a likely target. There is a TIPOFF list at the State Department that you don't know about until yesterday, that you don't know about that exists prior to September 11. Mr. Manno, this list has approximately 61,000 names of people around the world that are prevented from flying, that are picked out by the State Department at that point and they're picked out because they're dangerous and they shouldn't be on airplanes, 61,000 names.

Your list, according to what you just said, or what our staff has told me, is 12 people. So there's a difference of 60,988 names, a difference of 60,988 names between what's been accumulated at the State Department as dangerous people,

shouldn't be flying, and what you have with your 12 people. Now, I can't understand why there are not more efforts in liaison activities to reach out to State Department and start to bring some of those names over and prevent those people from flying.

MR. MANNO: Well, again the process at the time was to include in the security directive names of people where there was specific and credible information that they posed a threat. Part of that process required, because a lot of times the information was classified, that it be declassified because the information circulars in the security directives were not classified documents that went out to the industry. And it was simply very difficult to get clearance from the community in cases where there wasn't a direct connection to civil aviation for them to get the release information. We had to justify that in each case. Now, did we do it? Did we go in and say we want all 61,000 of these names? No, that was not -- we didn't do that. We focused on the information, again, that was specific to aviation at the time.

MR. ROEMER: Let's talk about the pre-screening program, affirm that. The CAPPs program, Mr. Flynn, the pre-screening program, the computer assisted passenger pre-screening program, picked out nine of the 19 hijackers, terrorists, on September the 11th. It didn't do anything to -- what did it do to try to prevent and use common sense and provide a higher standard of keeping these people off the plane? The CAPPs system was designed with -- you know, factoring algorithms and weights and other things to say these people are a significant or a heightened threat to U.S. aircraft. Yet all nine that were picked out made it through the system. Why is that?

MR. FLYNN: The CAPPs system and you -- I commend to you for reading the report of the White House Commission on Aviation Safety and Security, was intended to ration or to allocate the measures for checked baggage on flights within the United States. That commission, who took their responsibilities I'm sure just as seriously as all of you do, and included in it the DCI and the director of the FBI, looked at CAPPs and said what we ought to do with regards checked baggage in the United States, is to use CAPPs as the process for determining the checked baggage process. With regard to the checkpoint you don't need it because it is a 100 percent application.

I remind you with regard to explosive detection systems, they cost \$1 million a piece. Their installation costs vary from on up -- the installation can result in the total cost of -- multiply three times the cost of the equipment for installation. The recommendation of that commission was have a capital budget of \$100 million a year. A very low estimate of the number of checked baggage EDS that you would need in the United States is 1,000. Of that \$100 million a considerable amount was to be used for other things, checkpoint equipment for example. So one would have a budget on average of \$50 million a year for EDS. So we're looking at a 20-year program in order to install that equipment at best, so you needed to have some way of narrowing its application and that's what CAPPs was for.

MR. ROEMER: How did it narrow the application for anybody -- outside of intending to use explosive devices? How did it go at somebody that might hijack a plane? Especially given that these hijackers on September 11th may have had four-inch knives on them, walked through security, been detected with the knives and probably handed the knives back? Why did CAPPs pick these people out, allow them through and probably even allow them through with knives?

MR. FLYNN: It would have required the security measures for their checked baggage.

MR. ROEMER: Nothing else? Other than -- see, they could have had a knife on them, made the CAPPS weight and rhythm standard, been picked out as somebody with a substantially higher security risk, and still be handed back a four-inch knife to get on a plane?

MR. FLYNN: The checkpoint would not have even been aware of it. It was a process -

MR. ROEMER: Why would we not try to anticipate that given all the information coming in -

MR. FLYNN: There was no information in it -

MR. ROEMER: There's no information that I just went through, Mr. Flynn, about people that might be interested in hijacking planes or using planes as weapons?

MR. FLYNN: Oh, sure, in CAPPS the information is drawn from the passenger name record, has to do with behavior that is indicative of and then contra-indications of the behavior that indicates that you're not involved in any acts of crime towards the aircraft. Again -

MR. ROEMER: Excuse me? Can you repeat that?

MR. FLYNN: Well, there are two things in it. There are positives and negatives in CAPPS.

MR. ROEMER: Well, we don't need to get into the giving potential terrorist information as to why they're picked out.

MR. FLYNN: But doesn't lead to any identification of people as terrorists.

MR. ROEMER: Let me ask you about your relationship with some of the other security intelligence agencies that you're supposedly working with leading up to September 11th.

MR. FLYNN: Yeah, I'd like to but let me deal with your previous point -

MR. ROEMER: I've only got a couple of minutes left, Mr. Flynn, and I want to get Mr. Manno in here as well, too. Your relationship with the FBI.

MR. FLYNN: Yes.

MR. ROEMER: You and Mr. Manno have both indicated that - I think one of Mr. Manno's quotes is, quote, "You guys can tell us, the FBI, you can tell us what's happening on a street in Kabul but you can't tell us what's going on in Atlanta." I think your comment is you know more about what is happening in Beirut than what may be happening in Detroit. Why isn't the FBI able to pass on more actionable information, more helpful information? Why aren't you querying them more when all this more general information is coming in about terrorism and a U.S. presence of these terrorists and the threat to domestic airlines? Why aren't we seeing a better relationship and more information exchanged here? Why is there this so-called blind spot?

MR. FLYNN: The FBI has to do with protection of information in investigations and protection of grand jury information and various other things. But the point is that while I admire the people of the FBI and personally have excellent relations with them, we're friends and everything. That it was -- and I did insist and I got to the point where I decided that I was running

the risk of making them angry and thought I'd better back off and ask Mr. Manno's predecessor, Mr. McDonald, to keep on the pressure because I was clearly irritating them by saying we need to know more, there's got to be more.

MR. ROEMER: So you kept querying the FBI to get more, to get more, to do more and they did not? MR. FLYNN: Well, they probably did but they just weren't - you know - MR. ROEMER: Did they pass it on to you? MR. FLYNN: Didn't pass it on to me. MR. ROEMER: You were not getting the adequate cooperation

from the FBI for actionable intelligence about threats in the United States, is that correct?

MR. FLYNN: Yeah, and then when it turned out to it and other people asked them, it turned out that there wasn't an awful lot other than the United States being used as an R&R base for terrorists.

MR. ROEMER: Mr. Manno, how would you characterize your relationship with the FBI?

MR. FLYNN: Well, we clearly got a lot more information from elements of the government that collected it overseas. Domestically we had a lot less information and we recognized that. That was one of the reasons why we started discussions with FBI and in 1996 actually assigned somebody to be our liaison over there and to try to place them in the right place in the FBI where we would get the most benefit.

As you know, it's a very big bureaucracy, very compartmented, and so our person over there basically had to make the rounds to try to get, you know, to get information. But I always had to do -- I mean the approach of the FBI at that time, it was an investigative agency. Everything was approached as an investigation and I think their view was if there was credible and specific information of interest to you we will provide it to you, and I think that they did.

They also cooperated with us. For example, earlier you had mentioned these two threats about crashing an airplane into the World Trade Center and another one about crashing a plane into an airport in the United States which we had factored those two things in some of the assessments that we had written about that potential threat. Well, the FBI actually ran those two threats to ground and discredited them.

MR. ROEMER: Did they share the files, the paperwork, the information with you?

MR. MANNO: They told us that it was not credible.

MR. ROEMER: Did they share the information, the paperwork and the background documents with you?

MR. MANNO: No. I don't think so beyond that, beyond telling us that there was nothing to -

MR. ROEMER: They verbally told you, "Here was what we found and we dismissed it?" They didn't exchange any kind of paperwork with you?

MR. MANNO: No because again they had assessed it as not credible.

MR. ROEMER: So you're saying the FBI, there was a blind spot there that you did not get as much information on the domestic situation in Atlanta as you might have been getting on Kabul. The TIPOFF program, you were not getting the names from the TIPOFF program in the State Department.

There was a gap of about, you know, 60,988 names. Where were you getting your actual intelligence?

MR. MANNO: We did get some from the FBI. We got a lot of it from CIA. We also had a liaison officer assigned to the Counterterrorism Center at CIA and another one at the State Department in the threat analysis shop. So there was a lot of State Department reporting, a lot of CIA reporting, some FBI information, but not a daily from the FBI, not a daily flow as to what was going on in the United States in regards to their investigations. If they came across something specific, something that they assessed to be specific and credible in their investigations and we were fairly confident that they would provide that to us either directly or through our liaison officer. But we don't know what we don't know.

MR. ROEMER: Why didn't you have a liaison to NSA or to DIA?

MR. MANNO: At that time, we were a very small staff. In fact, our total shop was about 24 analysts and it was a matter of resources. Subsequent to that, of course, we now have a liaison officer at NSA, at TTIC and other places, some of which didn't even exist back then. But in trying to decide where we would assign people, again limited resources, it's where we thought we would get the most information, where it was most valuable. We did have a customer service representative from NSA that visited our office and couriered information to us. So there was a relationship with NSA. We just did not have someone there at that time.

MR. ROEMER: Mr. Chairman, thank you.

MR. KEAN: Senator Kerrey.

MR. BOB KERREY: Commissioner Garvey, I'd like to ask you a couple of questions. You had your first five-year term, I believe -

MS. GARVEY: That's correct, Commissioner.

MR. KERREY: So you were appointed in '97 and you served all the way to 2002.

MS. GARVEY: That is correct.

MR. KERREY: During that five-year period, did you ever get any complaints about the airlines?

MS. GARVEY: Complaints about the airlines or complaints from the airlines, I'm sorry?

MR. KERREY: I presume you got complaints from the airlines but did you ever get any complaints from passengers about the airlines?

MS. GARVEY: The passenger complaints would go into the Department of Transportation into the chief counsel's office. We didn't specifically get complaints in that way.

MR. KERREY: Are you alert to any complaints about excessive applications of Title 49 of the U.S. Code, the section 44902 that gives the airlines the authority -- and their language is to refuse to transport a passenger or property which carriage is or might be inimical to safety?

MS. GARVEY: We might have gotten some complaints. In fact, I'm sure we did in the Safety Office regarding -- from passengers about perhaps being mistreated or not treated correctly, at least in their view.

MR. KERREY: That's not the same thing as -

MS. GARVEY: No, no. I'm not recalling any and I'm sorry.

MR. KERREY: I'd just like to know because one of the things that I keep hearing is, gee, we don't want to put anybody on the list because we'd be harassing people and I've -

MS. GARVEY: Well, I see what you're saying.

MR. KERREY: I've stood in lots of security lines and heard lots of complaints but I've never heard that somebody has been removed from the airlines that was unsafe. I've heard a lot more complaints about people who have been prevented from getting on airlines than just because of the -- what I consider at the moment to be largely reactive as security measure but that's another point.

The no-fly list has been referenced a couple of times. Are you familiar with the no-fly list?

MS. GARVEY: Yes, absolutely, Commissioner and you know, again from my perspective and I know there has been a number of questions on this, but from the administrator's perspective, the no-fly list, as Mr. Manno indicated, was created based on information we received from others with a specific aviation -

MR. KERREY: You got Security Directive 95 of 02H, updated April 24th, 2000. Six people who are associates of Ramzi Yousef, including Khalid Shaikh Mohammed that are on the list. That's six. I presume the airlines have no difficulty handling six.

Mr. Manno, you wouldn't defend the airlines if they complained about trying to keep six people off? It may be difficult for all I know. I don't know. Is it harder than it looks?

MR. MANNO: No, not with a list that small.

MR. KERREY: What was the judgment that was made in April 2000 to put these six on the list? On what basis was Khalid Shaikh Mohammed, Ibrahim, all these guys -- there was six people on the list and then there's six more that come on the list on August 28, '01. They're also added on the list and, by the way, they all -- every single one are associated with some Islamic extremist group.

And I really think part of the problem that we're having today is we continue to tread lightly on this fact. And we keep calling them all terrorists, you know, as if there's a worldwide network of terrorists of all different stripes, of all different genders, all different kinds. I mean, the only one that makes the list -- there's actually a couple of people lower down the list that appear on there that may not be associated with this Islamic extremist effort -- are people who are associated with some Islamist extremist network. Is that your understanding of it? Is that how they made the list? I mean, they're making the list because -

MR. MANNO: The way that those individuals made the list is that it came out of the investigation being conducted by the FBI and by the Philippine authority.

MR. KERREY: So did the FBI recommend they be put on the list?

MR. MANNO: We received information that actually had originated in a cooperative effort between FBI and CIA. So we receive intelligence reporting that these individuals were tied to -

MR. KERREY: You receive intelligence reporting from CIA and

FBI?

MR. MANNO: Yes, sir.

MR. KERREY: Saying that these six should be on the list? Did you -

MR. MANNO: No, sir. That they were associated with Ramzi Yousef who, as you well know, had been involved in the Bojinka plot and that they were in some way tied to that plot. So we had a concern, a specific concern about these individuals, not knowing what else they might have been up to and therefore -

MR. KERREY: Did you consider putting other people on the list at the time that might have some association with Ramzi Yousef?

MR. MANNO: These were the names that came to us in the intelligence reporting. Again it was tied back to the specific plot.

MR. KERREY: You're confusing me, Mr. Manno. At one point you're saying you're making the decision. Now it's somebody else that's making the decision. You're making the decision who to put on the list and I'm asking you, did you consider putting other people on the list beside these six?

MR. MANNO: As far as I know, at that time, those were the only names that we had tied to that plot.

MR. KERREY: Did you put out an inquiry as to whether or not there might be some additional names that should be put on the list?

MR. MANNO: Absolutely. It's part of our standard -

MR. KERREY: Who did you put the inquiry to?

MR. MANNO: With CIA.

MR. KERREY: Do you remember the response?

MR. MANNO: No, sir.

MR. KERREY: You now remember you presume that they didn't respond?

MR. MANNO: Part of the process for us, whenever we open one of the intelligence case files that I mentioned earlier, is to follow up on that and to continue to ask questions for additional information. So it's just part of the process. It's not something that was done only in this case. It's done in all cases where -

MR. KERREY: I just score the point that a number of other commissioners have made. Given the specificity of U.S. Code 49, what it requires the airlines to do, it seems to me, particularly with what was going on at the time, that some effort would have been made to make -- to produce a larger list than that. And again, I score the point, to call them terrorists as opposed to saying this is a part of a worldwide network of Islamic extremists, I think, makes it exceptionally difficult to do what you need to do, which is to identify those who are extremists and keep them on the no-fly list and keep them watchlisted as opposed to having a sort of a broad blanket screen that might produce harassment of people who just look like they might be Muslim extremists. I think there is a paradox here. Not saying what it actually is, you end up harassing people who may not actually be terrorists. But that's a longer point.



Let me ask you, Mr. Manno. You were the deputy -- was it Pat McDonald who was your predecessor?

MR. MANNO: Yes.

MR. KERREY: Were you present when he did the CD-ROM briefing on April 2000?

MR. MANNO: When it was produced, yes.

MR. KERREY: Were you present in April 2000 when he presented it?

Administrator Garvey, were you present when this -

MS. GARVEY: No, I was not.

MR. KERREY: Have you seen the details of it?

MS. GARVEY: I have not. It has only been reported to me.

MR. KERREY: When was it reported to you?

MS. GARVEY: Post-9/11.

MR. KERREY: Have you seen it, Mr. Manno?

MR. MANNO: The CD-ROM was actually produced in about 700 copies and disseminated to the aviation industry, airports, FAA field offices. So it was actually quite widespread.

MR. KERREY: I have here the rebuttal that you all have sent up for Eleanor Hill's statements that she made to the Joint Inquiry. She was, I think, the staff director for the Joint Inquiry. Things that she said about the FAA, didn't do this, didn't do this, didn't do this, and your rebuttals are basically, we didn't know, we didn't get the intel, nobody told us, right down the list. The CIA didn't tell us, FBI didn't tell us.

And I've got to say just honestly, if it had been two or three of them, I would have been on your side, but when it accumulates like 15 or 20 of them, at some point you say, geez, why didn't you push back and ask? I mean, I just tell you, my reaction to your rebuttals does not bring glory to the agency. It's quite the opposite. It causes me to say, I don't understand how there could be so many situations where you simply say, they didn't tell us.

This, by the way, is not they didn't tell us. You go through the 29 slides I think we've got here, 29 slides. Mr. Manno -

MR. MANNO: Yes, sir, I'm familiar with it.

MR. KERREY: -- you've gone through them?

MR. MANNO: Pardon?

MR. KERREY: You've gone through the slides?

MR. MANNO: Yes, sir.

MR. KERREY: Well, this is your own agency making an assessment of Islamic extremist and the dangers and the threat that they pose to the United States of America. It's not terrorists again. I hope I don't offend too much some of my Muslim friends who think that I'm being nasty in this regard. But there's nobody on this list except UBL and people that are associated with UBL or other Islamic extremist groups. I mean, that's basically what this is a presentation of. I mean, Hezbollah's identified as a threat, but you're talking about UBL all the way through this thing. You're talking about Usama bin Laden and al Qaeda and the threat that they present to the

United States of America.

MR. MANNO: Well, historically the groups that have targeted aviation have been Islamic extremists, yes.

MR. KERREY: Historically?

MR. MANNO: Hezbollah. Pardon, sir?

MR. KERREY: Historically?

MR. MANNO: Historically. Going back to Hezbollah, for example, is one of the other groups.

MR. KERREY: Give me historically. What are you talking about historically? Last 10 years?

MR. MANNO: Since 1985, with the hijacking of TWA 847 by Hezbollah.

MR. KERREY: Did any change occur in 1998?

MR. MANNO: No.

MR. KERREY: So you're saying that basically you've got a -I mean, are you saying that there's no increase and concern about the danger to the United States from Islamic extremists in 1998?

MR. MANNO: No. There was. And we wrote several assessments, sent out information circulars and -

MR. KERREY: But if you -- let me just pull up one of these slides. I think it was the one that Commissioner Roemer quoted from. I've got to get the exact -- no, I've got it right here unfortunately. It's slide 24. When the conclusion is -- and I guess, Irish, I'm asking you on this one, which is when the conclusion is reached in slide 24, that fortunately we have no indication any group is currently thinking in that direction. That's the statement that's made. And there's a lot in that statement. We have no indication that any group is currently thinking in that direction.

I mean, the first question I would ask is, so, do I need an indication that somebody is thinking in that direction? I mean, take the Ressam plot. We've got the details of the Ressam plot not ahead of time. We didn't have the Ressam plot prior to arresting Ressam in Seattle, did we? I mean, even the threat to LAX. We didn't knock that threat down as a consequence of security at LAX. We didn't discover the details of the plot. So when you say, Administrator Garvey, we had -- your language is we had no credible and specific intelligence indicator that UBL and all the rest of them were actually plotting to hijack commercial planes, I'd say do you have to have a specific plot? Do you need a memo from them saying, this is what we're going to do? And the answer's no.

And so when you say, we have no indication any group is currently thinking in that direction, I wondered, did you -- was there a conversation? Is that challenged internally? I don't know what the process is. Do you have a conversation with anybody from the National Security Council? How do you get that double-checked, because as it turns out, it wasn't true?

MR. MANNO: That was an analytical judgment. There was no specific and credible information that al Qaeda or anybody else -

MR. KERREY: No, no. Believe me, I know it's an analytical judgment. I recognize it as an analytical judgment. The question is, was Jim or Mary or Dick sitting there saying their analytical judgment was completely different. And, in fact,

looking at some of the previous slides, some of the previous slides state just the opposite, seem to indicate just the opposite. I mean, the possibility of a suicide bombing attack was mentioned in one of the previous slides. I mean, I do this

- I mean, it's not like I don't have internal contradictions that I don't need my wife or somebody else to point out, but did anybody else disagree at that presentation? Did anybody internal to FAA security disagree with that conclusion?

MR. MANNO: No. But, again, the hijacking threat was not discounted. But in the grand scheme of things, looking at the variety of threats that we were looking at, it was considered less of a threat at the time than -

MR. KERREY: Okay. So it's less of a threat. You say it's a low probability. That's not very comforting to passengers to hear that if it's a low probability, don't do anything with it. I mean, God, how high probability is it I'm going to do any damage with my fingernail clippers on an airplane, but you take those every damn time I get on the plane. So you've got a low probability for hijacking and therefore we're not going to put much energy into it. Is that what you're saying?

MR. FLYNN: May I -

MR. KERREY: Yes, sir.

MR. FLYNN: We were working hard on the anti-hijacking. And the improvement of the pre-board screening was an important aspect of it. I did not see, and as I said earlier, should have worked at it harder to see how is it that they'd bring it about.

MR. KERREY: Well, let me -- can I -

MR. FLYNN: Sure.

MR. KERREY: I'll just make the declaratory, because I want to -

MR. FLYNN: And with regard to the thing you were reading, that happens to be after I left FAA. But the -MR. KERREY: In May of 2000?

MR. FLYNN: Was that in May of 2000?

MR. KERREY: May of 2000.

MR. FLYNN: No, no. That was before. That was when I was there.

MR. KERREY: I mean, I just tell you, I asked staff to give this to me and I just read it this morning and you can't blame the CIA and the FBI on that one. I mean, you've got enough information already internal to FAA that said you be -- it's not -- again, it's Usama bin Laden and Muslim extremists. I mean, there was one incident of a hijacking with the possibility of a suicide where they were actually saying they wanted Ramzi Yousef released. I mean, the whole story line as presented just by that single narrative from that presentation in May says we better be careful about hijacking. We better move the possibility even of a suicide hijacking up on our list.

And, by the way, the declaratory that I wanted to make to all of you is that I know it's a very sensitive document, but among the concerns that I had pre-9/11 and I've really got it still today, are the details of what's called the -- what do you call it, the Air Carrier Standard Security Program. Are you all familiar with the air carrier? Administrator Garvey, are you -

MS. GARVEY: Yes. Yes, sir.

MR. KERREY: I mean, that's basically -- you know, what do people do on the plane if they're facing a hijacker. And I think those procedures were wrong. On the morning of the 11th of September, I think those procedures made it almost impossible for these guys not to fail. They would need these -- the Leatherman knives that were being passed around. I think the procedures were flawed then and my concern is they may still be flawed. mean, are they reviewed?

I mean, Irish, as a special ops guy, do you look at these things and say, okay, now you've got four guys on an airplane, a relatively confined piece of real estate. And you've followed what Congress has done. My God, the pilots have guns now. You know, and my experience is people have become pilots because they don't know how to use guns, now they got guns. And, by the way, they're going to be shooting in the wrong direction as far as I'm concerned.

So, I mean, have we reviewed this? Was it on the list of things in May of 2000 as you're evaluating what you're going to do to carry out U.S. Code 49? Who are you going to deny on there? Who's going to be dangerous on there? Is that part of the evaluation that was going on? If so, why was it not changed? Yes, sir.

MR. FLYNN: With regard to keeping -- preventing of hijacking, the program for it was indeed to keep determined hijackers off. And the hijacking scenario that one had in mind was taking the aircraft, taking it on the ground, taking it on the air, but bringing it to ground and asking for the release of people, for example.

MR. KERREY: How many flights a day in the United States of America?

MR. FLYNN: Forty thousand.

MR. KERREY: Commercial flights.

MS. GARVEY: I was going to say 35,000 to 40,000.

MR. KERREY: One of -- I mean, I understand that I -- I've got obviously some sharp questions of all of you what was going on pre-9/11. I'm also very much aware what I was being told by Sandy Berger, George Tenet and others about bin Laden and I know that it was in a presidential directive written after 1998 and I said it before and I'll say it again. After the attack on Dar es Salaam in Nairobi -- and I say it with great respect, Administrator Garvey -- you said that after 9/11, there was a war, before 9/11, there was a war. There was a war before 9/11. It didn't start with 9/11. That was one of the military actions against us.

There was a war going on before that and I'm not blaming you for this because it seems to me at some point the President's national security advisor, whether it was President Clinton or President Bush or Burger or Rice, they got to drive this thing all the way down to the FAA or it's not going to work. You're the only -- with all kinds of other problems, whether it's CIA or the FBI simply saying, "We're not going to tell you what's going on." But at the time, in 1998, there was no question that bin Laden was public enemy number one and that he had declared on us and that, by the way, he was enormously sophisticated.

It was not like World Trade Center I where somebody was trying to get a refund on a Ryder truck. They were very sophisticated to be able to hit Dar es Salaam and Nairobi in the way that they did and it should have, I think, then driven all the way down to the FAA so that you modified and changed

the procedures on that airplane -- on those airplanes. I passionately believe that's the case.

MR. ROEMER: If I could just jump in -

MR. KERREY: You can take over.

MR. ROEMER: -- it wasn't just a one-trick pony. We did not have other mechanisms to go after things other than explosives. In testimony to Senator McCain's committee, Administrator Garvey, you said and I quote, "All of our security directives, all of our security recommendations in the past have been geared toward explosives. This was a whole new world for us."

MS. GARVEY: That is correct, sir. I mean, the assumptions were -- as you all have indicated, as the staff indicated in their report -- the assumptions were turned on its head and that's correct.

MR. ROEMER: Thank you, Mr. Chairman.

MR. KEAN: Commissioner Gorelick.

MS. JAMIE S. GORELICK: Thank you, Mr. Chairman.

These are questions for Admiral Flynn and Director Manno. You were both present, in your respective positions, in the run-up to the millennium. My first question for you is this, did you have procedures in place for enhancing the security measures at airports or otherwise when there would be a security alert? Did you have the ability to ratchet up the policies and procedures for security before people boarded aircraft?

MR. FLYNN: Yes.

MS. GORELICK: In the period just before the millennium, when the entire government was on alert about the possibility of a terrorist act in the United States, did you take any steps to increase security measures or enhance security measure in our airports or pre-boarding?

MR. FLYNN: We had and the entire baseline effort was directed towards that.

MS. GORELICK: I don't understand the answer. In the period

MR. FLYNN: I'm sorry. From the period of '96 through 2000, we were working all the time to improve the effectiveness of pre-board screenings?

MS. GORELICK: But you just said you had the capacity to ratchet up security measures -

MR. FLYNN: Yes.

MS. GORELICK: -- and I'm asking, in the period prior to the millennium when the entire government was on alert, did you put in place those enhanced measures?

MR. FLYNN: They were in place. We did not, that I recall, other than when Ressaam was caught -- then we did some additional specific information. But I don't recall SDs that we did in that period because we were strengthening the basic program to deal with that.

MS. GORELICK: So, just so I understand it, after Ressaam was caught and we knew that there was an attempt to infiltrate this country, that specifically airports were being targeted, did you or did you not take additional measures beyond the measures that had been in place before he was caught to

strengthen security in aviation?

MR. FLYNN: I don't recall putting on SDs at that time. recall very definitely that what we did with regards to Ressam is make everyone aware of what a bomb made with the materials that he had would look like and we did that even before I was aware that LAX was on his mind.

MS. GORELICK: So, in other words, your response was to disseminate specific information but not to do things like look at carry-ons, inspect carry-ons, which you weren't routinely doing or look for additional names to put on a no-fly list or anything else that might relate to aviation security.

MR. FLYNN: We were routinely and with increased emphasis looking at carry-ons.

MS. GORELICK: You were inspecting the insides of carry-ons or you were screening carry-ons?

MR. FLYNN: Both.

MS. GORELICK: On a routine basis, you were looking on the inside of carry-ons prior -

MR. FLYNN: We had a continuous opening and search routine. In effect, it was at random and then additionally, when there was any indication in an X-ray requiring that there was something dangerous that required opening, all electronic items and on a random basis additionally, there was trace explosive detection that had been done at that point.

MS. GORELICK: When someone set off a magnetometer, was their bag routinely opened? Their carry-on bag?

MR. FLYNN: No.

MS. GORELICK: When they set off a magnetometer twice, was their bag opened?

MR. FLYNN: Not unless there was some indication in the bag or if something dangerous was determined -- was taken off the person, then there had to be additional scrutiny of the bag. If there was cause to suspect this person.

MS. GORELICK: You answered my question a minute ago. asked you whether there were enhanced procedures that you could utilize when there was a specific security alert, you said yes. What were those procedures? What would you do when there was a security alert, when you were essentially going to orange from yellow, although we didn't have color coding at the time?

MR. FLYNN: One could require, for example, searches of vehicles at the front of the terminal. One could require the stopping of parking within a certain range of the terminal. We could require additional searches of people on the basis of some indication that would come to you that they would be naval aviators from Philadelphia or whatever.

MS. GORELICK: In the spring and summer of 2001 -- I guess this would be a question for Mr. Manno -- you were aware, were you not, of the heightened security warnings that were going out through the government?

MR. MANNO: We put out warnings during that timeframe as well for our customers.

MS. GORELICK: Did you consider, at that time, increasing the security measures in the way that Admiral Flynn has just described to meet this enhanced security threat?

MR. MANNO: It was not the role of the Office of Intelligence to direct security measures. Our role was to try, to the extent that we could, to identify the threats and then provide that information to the aviation policy and operations folks to determine whether or not measures should be increased. There were efforts that were made. Going back to the Ressam example, there was a mad effort to try to figure out what he was actually up to.

In fact, one of the things that was done was that our bomb explosives -- our explosives unit looked at what was actually seized and tried to figure out, okay, with these types of explosives, these types of timers, what sort of device could be constructed to target civil aviation. And then, based on that information, the possibility that having those components, what could be done. We sent out an information circular to sensitize screeners and the airlines to that potential threat.

MS. GORELICK: But you had in the -- turning back to the summer, spring and summer of 2001, we have heard testimony and we have ample evidence that across the intelligence community, literally hair was on fire through June through the summer and even going back a little bit before June but through the spring and the summer, a high, high state of alert --

MR. FLYNN: Let me try again. It started with the World Trade Center. It continued with Yousef's efforts out in the Pacific and it continued with the information that we've been talking about, the various interests of the UBL in attacking us. And in '96-'97 we hammered out an elevated baseline. We had been going back and forth with security directives with occasional spikes in security and then bringing them down. We said, no, we get it up to this level.

And our effort in those times of undetermined but probably higher threat, what's happening with the millennium? Well, we don't really know what's going to happen at the millennium, but something is going to happen. What you do in those -- what they did in those circumstances was to increase surveillance on all the inspection activities and to increase awareness in the form of putting out ICs and meetings with the security directors and meetings with the airlines and meetings with the airports to say, we need to be on our toes.

MS. GORELICK: So the additional measures -- you could and did take additional measures when there was a high level of security alert. Is that correct?

MR. FLYNN: No. The baseline was meant to deal with an elevated level of security.

MS. GORELICK: So you did not have additional -- I am terribly confused here. Now --

MR. FLYNN: I'm sorry.

MS. GORELICK: -- please excuse me. I asked you the question whether you had additional measures that you could take that you had. I understand you were -- you feel that you were operating from a high baseline.

MR. FLYNN: Right.

MS. GORELICK: I asked you did you have additional measures that you could take? And the measures could be anything from sending out directives, to engaging with airport security personnel, to engaging directly with the airlines, to changing the modalities like searching and getting additional names for the no-fly list. There's a panoply of things that you could do

above the baseline. I'm asking a pretty straight forward question. Did you have measures that you could use when there was a heightened period of alert, yes or no?

MR. FLYNN: Yes.

MS. GORELICK: In the period prior to the millennium, after Ressam was apprehended and it was clear in what is already public and certainly in what we know from classified briefings that the entire government was on alert, that there was tracking of people who meant to do harm in this country and that some of that harm was focused on our airlines and our aircraft, did you take additional measures at that time to secure the airlines?

MR. FLYNN: I did not impose, that I recall, additional specific measures.

MS. GORELICK: You did not?

MR. FLYNN: Not that I recall. I may be wrong about that.

MS. GORELICK: In the spring and summer of 2001 when, as our briefings and testimony to us have indicated, the hair of the intelligence community was on fire given the nature of the warnings that we were getting, not specific as to what would happen, but that something was about to happen, (a) were you aware of those warnings? And I guess you were gone by then, is that right, Admiral Flynn? So I'll put that question to Director Manno.

Were you aware of that state of affairs?

MR. MANNO: Yes. And, as I said, we also issued information circulars regarding those to -

MS. GORELICK: Did you advise or advocate any further steps than issuing the directives or security circulars that you issued?

MR. MANNO: Again, the role of intelligence is to provide the intelligence and not to direct or make specific security recommendations.

MS. GORELICK: I'm limited here because I don't have in front of me Admiral Flynn's successor, so I'll turn to Ms. Garvey.

Did you consider taking any additional security steps in the spring and summer of 2001 in response to the heightened security warnings?

MS. GARVEY: I know we put out additional security directives, and I'd have to go back and look and see specifically if there were additional measures that were included, and we can do that and provide that for the record. But you're absolutely right. We were aware of increased activity, had been briefed directly by Admiral Flynn's successor on the concern and that is reflected both in the security directives and in the information circulars.

If I also could, just to go back to Y2K for a moment or to the millennium, while -- and again I'll provide for the record or ask the FAA and TSA to provide for the record specifically if any directives went out or intelligence circulars went out at that time. I can tell you that there were any number of meetings across the Administration, across DOT that involved the FAA and the industry about concerns related both to safety and security. The Department of Transportation had a couple of tabletop exercises that I participated in, and the principal focus obviously was to make sure that we had the measures in place that we had, that we were doing everything we possibly



could.

MS. GORELICK: And this occurred in the run-up to the millennium. Is that correct?

MS. GARVEY: This occurred in the run up to the millennium.

MS. GORELICK: And was there analogous -- were there analogous meetings across the government at a very high level with industry tabletops, as you were describing, in the spring and summer of 2001?

MS. GARVEY: I can't say for certainty that there were. My understanding is that there were. I know that at the Department of Transportation we certainly were engaged in that, as well as the very direct communication on -- I don't want to say a daily basis, but certainly a weekly basis with members of the industry.

MS. GORELICK: But you were the administrator at both times. Correct?

MS. GARVEY: Yes, that's correct, Commissioner.

MS. GORELICK: Okay. And you remember doing what you just described in the run up to the millennium. Is that correct?

MS. GARVEY: That's correct.

MS. GORELICK: Do you have a similar specific recollection of your involvement in the spring and summer of 2001?

MS. GARVEY: No, I do not, Commissioner. No, no tabletop exercises. 2000 and 2001 what I remember more specifically would be the intelligence briefings I would get from my own internal intelligence people.

MS. GORELICK: Can you compare the intensity of your agency's response to the intelligence that you were getting in the end of 1999 with the intensity of your agency's response in the spring and summer of 2001?

MS. GARVEY: Well, certainly Y2K there was an intensity because it was a deadline that we knew was looming. It was a deadline that was there and it had enormous implications even from a safety perspective, or at least we were concerned that it might. I think the intensity that you describe was probably in the summer of 2000 and 2001, particularly 2001. Certainly I had a concern based on what I was hearing.

I think the great frustration -- and I understand the Commissioners' frustration with the statement credible and reliable, and I always -- I don't want to -- I understand the frustration with that phrase. But on the other hand, I think -- and I think to some degree the security people are feeling the same thing today. You want to do the right thing, but you want to have enough information so that you're acting appropriately. You're not either putting measures in place that are inappropriate, beyond or may not be dealing with the real threat at hand.

MS. GORELICK: Rather than rely then on your impressionistic recollections of what you did, I would request for the record that we receive from you and from your former colleagues at the FAA a detailed description of the actions that were taken at the end of 1999 and a detailed description of the actions that were taken in the spring and summer of 2001. Thank you.

MR. KEAN: Commissioner Ben-Veniste.

MR. RICHRD BEN-VENISTE: Well, I think I'll start by simply

observing from my own personal view that this war on terrorism may or may not be the right way to describe our efforts to combat a vicious, murderous gang which did and continues to mean us harm. I don't know whether elevating it to a war, in my own view, gives undue deference to these bloodthirsty individuals and their methods and motivations. But let me ask this question with respect to the important information that has been developed this morning by my colleagues.

We're looking at a situation, at least as of July of 2001, where the FAA itself has gone to the trouble of communicating a statement which is put in the Federal Register. So that means that there was prior planning and discussion until you get to the point of actually putting it in the Federal Register, and that says on July 17, 2001, "Terrorism can occur anytime and anywhere in the United States. Members of foreign terrorist groups, representatives from state sponsors of terrorism, and radical fundamentalist elements from many nations are present in the United States."

You recognize that. "The activities of some of these individuals and groups now include recruiting other persons for terrorist activities and training them to use weapons and make bombs." And then you conclude, "Thus, an increasing threat to civil aviation from both foreign sources and potential domestic ones exists and needs to be prevented and/or countered."

So that's the set as we move toward the 9/11 catastrophe. At the same time, as we have pointed out and as Commissioner Gorelick has just very eloquently pointed out, the point people in our intelligence community have received and are reacting very strongly to a great deal of intelligence information which is suggesting that some major event is about to happen. While the primary focus was on the possibility of striking U.S. interests overseas, they could not and did not rule out the potential for activity in the United States of a terrorist nature.

So, you send out directives, but the question is who receives the directives? What happens to the people on the line making the day-to-day decisions that will implement these security measures? That's what I find so hard to understand because nine of the hijackers are pulled out for secondary screening.

Now, Admiral Flynn, you said that additional attention would be paid to them if in fact they were found to be in possession of something dangerous. Now, we've seen this morning this Leatherman tool which contains blades of four inches and which has the ability to lock into place. And the heft of this device is extremely heavy and provides something other than a penknife and a lightweight handle for someone to grasp. It's extremely sharp, it's just under four inches and the fact that it locks into place is significant in terms of its utility as a weapon, I think you'll concede that.

So when we are on such high alert, when there are advisories, when there is a recognition that the potential for a domestic hijacking exists and may be carried out by fundamentalist elements who have been tracked and described and whose motivations have been categorized for years and years, and then an individual in the screening process, seeing a young Arab male carrying such a device, is not interviewed: What are you doing with this? Where are you going? Who are you? How long have you been here? The sort of common sense that we heard yesterday from an INS officer, Jose Melendez.

But that was not done not once, not twice, nine times as people set off magnetometers, which of course was the case we know with respect to at least some of the hijackers. I don't understand how you could have all of these directives and

taking additional security measures when the individuals who are conducting the security measures are not themselves told to be alert and specifically for the type of people who you know, on the basis of what you are saying yourselves, might be the ones to carry out such terrorist acts. Admiral Flynn?

MR. FLYNN: With regard to people, we were under very strict guidelines not to select people on the basis of ethnicity or national origin.

MR. BEN-VENISTE: But somebody of ethnicity who fits the description of what you yourself regard as the principal threat domestically to airline security, carrying a knife like this, does that not -- did that not at that time at least warrant the individual conducting that security measure to ask some questions?

MR. FLYNN: No.

MR. BEN-VENISTE: Well, when you say that an individual carrying something dangerous would in fact trigger a response, you would think, for the collection of at least more information, what more could you mean? That if he was carrying a hand grenade or an automatic weapon certainly such a person would be placed immediately under arrest. But isn't this a dangerous weapon?

MR. FLYNN: Yes, and there are other things that are dangerous. But the menace that's conveyed by them is less than the innocent reasons for having them in people's possession.

MR. BEN-VENISTE: But let me stop you there. When you say that the possession of a dangerous article would warrant further scrutiny, if it is a dangerous article that is prohibited, that's end of case. You're under arrest, good-bye, good luck, off the plane. So -

MR. FLYNN: Well, not necessarily. By the way, not necessarily.

MR. BEN-VENISTE: A gun?

MR. FLYNN: Well, a gun, yes. By the way -

MR. BEN-VENISTE: An explosive device?

MR. FLYNN: Well, to be accurate, guns did not necessarily end in arrest. Two thousand of them per year were taken away; the number of arrests was in the hundreds.

MR. BEN-VENISTE: So that if -

MR. FLYNN: If I -

MR. BEN-VENISTE: If a young Arab male on 9/11 was found to be in the possession of a handgun, you might suspect that that gun would be confiscated but the individual allowed to proceed on his way?

MR. FLYNN: Unlikely. I mean, there would be a police interview. The police would respond, and unlikely. But, for example, when congressmen carry pistols through screening checkpoints, it may or may not lead to their arrest.

MR. BEN-VENISTE: To the best of my knowledge none of these individuals were members of Congress.

MR. FLYNN: No. But, Commissioner -

MR. BEN-VENISTE: I'm trying to understand what seems to me to be a disconnect between your statement that an individual who is found in possession of something dangerous

and referred to secondary would be subjected to greater scrutiny. We have no information as to whether these individuals were in fact interviewed and the information seems to point to the fact that they were not.

MR. FLYNN: No, the secondary screening is the secondary search of them and their bags for objects. And in certain instances the -- in certain positive indications of explosives, for example, is there an indication that accounts for that? Interviews to that extent.

MR. BEN-VENISTE: Would you not agree that the human factor could well have played a role at these points of security, beginning to question somebody about just the basics of where you're going, what are you doing, what do you need this for, how long have you been here, and watch for indications of erratic behavior or anomalies in the answers?

Commissioner Garvey?

MS. GARVEY: Commissioner, as I listen to you and consider the situation as you have outlined it, it is discouraging and certainly heartbreaking to think that the security directives went out, the information circulars and perhaps, as you've indicated, the human element came into play. Certainly the testimony that you heard, that this commission heard yesterday, of the border guard and the real, I think, thoughtfulness and carefulness with which he approached his job, you would certainly hope that we could have had that same outcome on the aviation side. So I think you're right in saying that and I would agree.

MR. BEN-VENISTE: Thank you. With respect to, Mr. Manno, your statement that, in a sense, the classification of information, the security sensitive information, was a bar to the dissemination of the information to you and your colleagues is, again, very troubling to us. The idea that we spend all the time and effort and treasure to acquire information that may be useful, and yet that information is not provided to the individuals -- or was not then provided to the individuals and agencies who would be in a position to utilize that information is extremely distressing.

And I'll finish with making an observation about a point that, Admiral Flynn, you mentioned, and that is the restrictions on the FBI dissemination of material because it may be grand jury material. Now, this has always bugged me because I have quite a bit of personal experience with grand jury material and with the rule 6E of the Federal Rules that requires that such information be held confidential. The purpose for that rule is to assure the confidentiality of witness testimony and that individuals who are called before a grand jury can feel confident that their testimony will not, other than through the appropriate legal means, make its way into the public arena.

However, it seems to me the exception, in my experience -- and I feel pretty strongly about this -- that information is generated only by the grand jury when there is a grand jury investigation. In the normal course of events, the FBI has that information through interviews and is in possession of that information entirely apart from the grand jury process. And the utilization of such information which is acquired perhaps through dual means, once through investigation and secondarily through testimony in a grand jury, does not somehow then take that information out of the public realm simply because it has been repeated in a grand jury. That is, if the FBI has valuable information which it has uncovered in the course of an investigation, rule 6E does not somehow provide an amulet for the refusal to disseminate that information to

those who are entitled to get it. Do you have any comment on that, Admiral?

MR. FLYNN: Yes. Not being a lawyer, I am -- I probably put far too much emphasis on the protection of grand jury information as the reason for not giving us more detailed information.

MR. BEN-VENISTE: Well, we have heard that explanation from time-to-time and I felt that your reference to it perhaps entitled us to comment with respect to it.

Mr. Chairman, thank you.

MR. KEAN: Thank you, commissioner.

Commissioner Fielding and then our last questioner will be Senator Gorton.

MR. FRED F. FIELDING: I guess I will address this to the entire panel. We obviously have to draw our conclusions as to the adequacy of the baseline security, the adequacy of intelligence and the adequacy of intelligence that's been shared and how it was shared, and basically the adequacy of the FAA's actions, your performance. But when we're doing our total evaluation of all this, I want you to help us to be sure that we have reviewed all the elements that are extant. And in that regard, and I'm sure certainly dealing with pre-9/11 at this point, if you ever felt you needed to add to your baseline of security, did you have to deal with or was there reaction from either the airline industry or Congress or both? And I'd appreciate any comments you have.

MS. GARVEY: Commissioner, I'll begin and obviously other panel members will contribute as well. In the five years that I was there as commissioner from '97 to 2001, if the question is was there sort of direct lobbying either by the airlines or by Congress on any specific -- either safety or security, the answer would be no. But was I aware of great differences that, for example, the airlines may have had to an approach to an issue? Absolutely, and I knew that from the rule-making process and the public docket and the number of comments that we would get on rules.

I knew that from individual conversations with people within the industry. And certainly before my time I know that there had been attempts, for example on criminal background checks and legislation had been restrictive in that area to the FAA. So very much aware of the differences and conscious of them, but still I hope having the ability to listen to those respectfully but to make what we thought was the right decision.

I would like to go back, if I could, to the July 17 citing because it has been mentioned a couple of times on the rule-making for 107 and 108. And I mention this because this really is a good example; 107 and 108 really provided the framework for both the airports and the airlines to develop a security program and it reflected what we believed were new threats and so forth. It was a very important rule from the FAA's perspective. It had taken far too long, and part of that is I think probably somewhat legitimate because you have a public process, and we had many, many comments, all of which we felt we had to respond to.

And the comment that has been -- or the language -- and it's absolutely accurate and I remember it well because I was there. The language that refers to the domestic threat was put in, in part, because (a) we did recognize it. Doesn't mean we had specific -- any specific information, but we recognized it. And we were so eager to get that rule out we felt we needed

to put the best case forward. But certainly if you look at the history of 107 or 108, it is illustrative I think of the concerns that sometimes industry would raise and some may be legitimate, but it certainly slows down the process.

MR. FIELDING: Mr. Flynn?

MR. FLYNN: Specific interventions by the Congress, don't do this, or something -- a rider in an appropriation saying, we will not fund you if you do this, did not happen in my time. With regard to the air carriers and the airports requiring additional measures, I do not recall a specific one where we put forward a rule and they flat refused to do it. Rule-making was the process under which those things had to be brought into consideration and they -- and we were not the only arbiters of that. Other agencies, particularly the OMB, took into consideration the -- that which the agency wanted to do and that which took other matters into consideration.

MR. FIELDING: Mr. Manno?

MR. MANNO: I really can't comment on -- in terms of possible pressure from the Congress. But as far as the airlines, from an intelligence perspective, sometimes there was some skepticism about whether or not there really was a threat and was it really the way that we were telling it to them. But all in all, when we brought them in -- and as an example of that, in the mid '90s we invited in all the corporate security directors, airport directors and they got a classified briefing by CIA and FBI on the threat in the United States and went away believers that after 1994 things had changed, that terrorism had actually come to this country, it wasn't just something overseas. And I think that after that time there was a little bit more acceptance by the airlines that, you know, what we were telling them was right and it was the best assessment that we could provide them.

MR. FIELDING: Okay. But I gather from that then that your collective answer is that if we find fault in any way -- and I say "if" -- with the FAA, there is no other person that's going to take the blame for it? You're not going to say, I was forced to do it for this or for that or for some other reason? Thank you.

Thank you, Mr. Chairman.

MR. KEAN: Senator Gorton. And we're running a little close on time.

MR. GORTON: Not very long.

Ms. Garvey, one of the first and most dramatic physical security changes that you made after 9/11 was to -- not only to lock the doors to where the pilots are, but to see to it that they were secure and couldn't be broken down. Was that measure ever seriously considered before 9/11?

MS. GARVEY: The issue of the hardened doors, commissioner, is a good example where the agency and safety and intelligence experts manage risks. In the case of the hardened doors, the greater concern had always been historically that there was an issue of decompression. So in fact the agency had looked at the issue of hardened doors and it pre-dated me and I won't give the exact -- we can certainly provide it, the exact timeline but it had looked at it. But the overriding concern was decompression, which was the safety issue, and it was not at that time a door that dealt both with decompression and with security. At the same time, though, there was tremendous discussion and work going on between the FAA and the manufacturers to try to figure out could we do a door.

MR. GORTON: Well, to be perfectly candid with you, I find that a dubious explanation. Wasn't the reason that the overall policy with respect to hijacking was that you would cooperate and even -

MS. GARVEY: That was the -

MR. GORTON: -- if you had had a secure door, if they'd taken a flight attendant up to that door with a knife to her throat, you would have opened the door anyway? So isn't that really the reason?

MS. GARVEY: Well, that's a very good point and that was certainly part of it, that the whole -- and I think this was mentioned earlier, the strategy was negotiation so it wasn't -

MR. GORTON: So that it wouldn't have stopped the traditional form of hijacking. All right. Now, the rule on hardened doors took place while you were still administrator, did it not?

MS. GARVEY: Yes, it did.

MR. GORTON: What is today the rule with respect to such a hijacking? Let's assume that someone gets onboard with a knife, you know, they manage to get through security, they take a flight attendant, get up to the door and put a knife to her neck and say, open the door or I'm going to slit her throat. What is the present requirement of the pilots and the crew in the cockpit?

MS. GARVEY: Commissioner, I'm a little hesitant to answer that because it may be some security issue.

MR. KEAN: Yes, I think that's the area we'd planned not to get into, Senator.

MR. GORTON: All right. Okay, I will withdraw that question.

MS. GARVEY: Thank you.

MR. KEAN: Last quick question, Commissioner Lehman, and then we'll -

MR. LEHMAN: Thank you. I can only shake my head in disbelief at the naiveté of many of the statements that have been made here this morning.

And, Ms. Garvey, when you say you're unaware of any lobbying that the industry has done against these measures, I find that astounding because our record is very different. Our information is that there was very active airline lobbying against not only

- not only against specific rule-making but OMB, against the implementation and funding of certain safety measures they disagreed with, that they played a very significant part in the disappearance of the marshal program that was instituted during the Reagan administration, that they played a very significant role in the eroding of the locked cockpit doors and the single key, that they played a very significant role in the disbanding or at least diminution of the Red Teams which repeatedly showed that their security, their implementation of screening was a farce. Every Red Team got through nearly 100 percent of the measures and these reports were very embarrassing, led to fines.

The efforts that they made to see that there were no teeth allowed in FAA enforcement, that the fines were enforced at an average 10 percent. How can you sit there and say that the airlines were not lobbying? What are they paying these high priced lobbyists for, if not to do exactly that? I'm just amazed.

But I'd like to hear Admiral Flynn, who has a very significant reputation for not being a yes man and not being a pushover. He's a Navy Seal and he's accomplished a great deal inside of bureaucracy. What happened to the Red Teams? The records that we have show that a lot of these problems were identified 10 years ago by Red Teams and reports were sent. Now, earlier, Ms. Garvey, you said you never saw a direct Red Team report while you were in the job. What happened to them?

Admiral Flynn, could you respond both to the lobbying issue and the Red Team issue?

MR. FLYNN: Yeah. Doubtless, there was a lot of lobbying going on. I'm here to tell you the truth as I see it and I took the tenor of the question to be, do you know of an instance where you wanted to do something where the airlines fixed it so you couldn't? And I don't know. And, similarly, do you know one where the Congress fixed it so you couldn't? And I don't know of that either. That deals with the first.

With regard to the Red Team, the Red Team is an enormously valuable asset to the FAA and to aviation security in totality and they did a whole lot of great work and were an invaluable part of my organization. What happened to them? They were still in existence when I left and were still doing good work when I left, and the members of the Red Team were appreciated, promoted, rewarded, and I think that had it not been for them, a lot of the things that we implemented would not have been because we wouldn't have known with the specificity necessary to approach rule-making or really to understand the problem.

MS. GARVEY: Commissioner, if I could, just to be very clear, was I aware that lobbying was going on? Of course, and your statement in that regard is correct. I think the question was: Was I directly lobbied to do something that I didn't feel was appropriate? And I want to be clear that that was not the case. And in terms of the Red Team, Commissioner, Admiral Flynn is absolutely right. The Red Team made invaluable contributions, as did the I.G., as did the GAO, to changes in protocols, to changes in training. The purpose of the Red Team was to take us to the next level. And while I may not have received or read in detail a Red Team report, I was certainly briefed on it.

I think the IG's criticism of the FAA, and one which we agreed with, was that we as an agency and perhaps as a management team had not been giving the Red Team enough feedback as to the specific results of the work that they had done: What protocols had been changed, what training requirements had been changed. And to his credit, General Canavan and the deputy in the summer of 2001 held what I'm sure would have, but for 9/11, been the first in a series of debriefs, if you will, to the Red Team. That was a legitimate issue raised by the IG and one we took seriously. Thank you, sir.

MR. KEAN: Okay. Thank you all very much. We appreciate very much your attendance here and your helpfulness to our panel and the country. Thank you all very, very much.

I'd like members of the Commission -- we're going to have a very important meeting now and we'll convene again here at 1:00.

(Lunch recess.)

MR. KEAN: At this point we're going to reconvene the hearing. The events of 9/11 were a great tragedy for the nation, taking



the lives of nearly 3,000 innocent civilians and forever changing the lives, of course, of those who they left behind. The events of that day were also a catastrophe for the airlines. The planes were used in the attack and many of their employees perished, along with the passengers that they served. Air travel remains an absolutely vital part of American life and of our economy. The airline industry is a tough business with many operational challenges. It functions in a high-profile public environment in a dangerous world and has many responsibilities.

The first and foremost of these responsibilities is the safety and security of the passengers and the aircraft. Secure air travel is a matter of law. Air carriers are legally responsible for implementing specific security functions according to standards and procedures established and enforced by the federal government. Means by which the airlines are required to carry out their duties are detailed in an FAA approved Air Carrier Standard Security Program. The airlines were responsible for the safety of their passengers, and for implementing key aspects of the civil aviation security system. On September 11th, that system failed, and we are charged by statute to find out why.

Our next panel represents key executives representing United and American Airlines. From United Airlines we have Mr. Andy Studdert. Is that right?

MR. ANDREW P. STUDDERT: Studdert.

MR. KEAN: Studdert -- who is chief operating officer, and Mr. Ed Soliday, vice president of safety, quality assurance and security. With us from American Airlines are Gerard Arpey, who on 9/11 was the airline's executive vice president of operations, and Mr. Timothy Ahern, who served as the airline's vice president of safety, security and environmental affairs.

We thank you very much for taking the time to be with us today and to help us with our inquiry. And, Mr. Arpey, we'll begin with you.

MR. GERARD J. ARPEY: Good afternoon, Mr. Chairman, Mr. Vice Chairman and members of the Commission. My name is Gerard Arpey and I am president and chief executive officer of AMR Corporation and American Airlines.

MR. KEAN: Wait, wait. I'm sorry. Counsel reminds me what I didn't do is ask you to stand and raise your right hand.

(Witnesses sworn.)

Thank you very much.

Mr. Arpey, I apologize.

MR. ARPEY: Yes, sir. I am also a member of AMR's board of directors. I am joined here today by Tim Ahern, who is currently the vice president in charge of our Dallas-Fort Worth hub. On September 11th, 2001, Tim was the vice president of safety, security and environmental for American Airlines. In that capacity, he was responsible for American security department and reported directly to Robert Baker, now deceased, who was the Vice Chairman of the company at that time. Tim and I both thank the Commission for this opportunity to represent AMR and American Airlines.

September 11th was, without a doubt, the worst day in the long storied history of American Airlines, and one of the worst in the history of the United States. While the horror and shock of that day may have abated somewhat during the past two

and a half years, the sadness endures. Twenty-three members of the American Airlines family died that day, as well as 18 members of the United Airlines family. We continue to grieve their loss and our hearts continue to go out to their families and to the families of the passengers and individuals on the ground who were killed or injured that day. We also grieve with the families of the fire-fighters, police officers, rescue workers and military personnel who made the ultimate sacrifice to keep our country safe.

September 11th was a day of horror but it was also a day of heroes. Later today you will hear from one of our reservation specialists, Nydia Gonzalez, who will tell you about her telephone call with Betty Ong, an American Airlines flight attendant on Flight 11. The courage summoned by Betty, Nydia and so many others that day has both inspired us and strengthened our resolve to do whatever it takes to ensure that nothing like 9/11 ever happens again. We commend the work of the Commission and we have been assisting in your investigation. We have furnished the Commission with thousands of pages of documents, provided briefings to the Commission staff members about ground security and in-flight security training and procedures, and made numerous company employees available for interviews. American Airlines stands ready to further assist the Commission as it completes its investigation.

At American Airlines, the security of our passengers and crew is first and foremost in any decision we make. It is the foundation of our success and a core value of our airline. This commission has already heard a considerable amount of testimony about the roles of the government and industry in the aviation security system in the pre-9/11 environment. So I will not belabor the point here. Suffice to say that, at that time, the FAA set the security standards for U.S. airports, U.S. airlines and foreign carriers flying into the United States.

The FAA also ensured compliance with those standards and through its Office of Civil Aviation Security conducted aviation threat and risk analysis in collaboration with U.S. intelligence and law enforcement agencies. We, at American, along with other

U.S. carriers, were responsible for implementing the system that the FAA designed and enforced. Today we continue to rely on the FAA, the TSA and other U.S. government agencies for threat assessments and the formulation of industry security strategy as well as the design of countermeasures to meet those threats.

The civil aviation industry did not foresee the type of attacks that took place on September 11th. It is clear that the security system was not designed to deal with coordinated, suicidal hijack teams with the ability to use commercial aircraft as weapons of mass destruction.

On September 11th, 2001, I was the executive vice president of operations for American Airlines. In that role, I was responsible for American's worldwide flight operations in addition to having responsibility for several of our business units, including our cargo division and American Eagle Airlines, AMR's wholly-owned commuter carrier. Accordingly, I was directly involved in American's emergency response efforts and other operational decisions made at American Airlines as the terrible events of September 11th unfolded.

On September 11th, I arrived at my office at company headquarters in Fort Worth at about 7:15 a.m. Central Time. Because of another pressing business matter, at approximately

7:30 a.m. Central Time, I called our systems operation control center, also known as SOC to advise them that I would not be able to participate in our system-wide operations conference call, which is held at 7:45 a.m. each day. Joe Burdepelly, one of our SOC managers, answered the phone. Joe told me that he had just tried to page me because we had a possible hijacking on Flight 11, one of our transcontinental flights.

Flight 11 was a Boeing 767 that was scheduled to fly nonstop from Boston to Los Angeles and which had taken off from Logan Airport at about 7:00 a.m. Central Time. Joe told me that the SOC manager on duty, Craig Marquis was in contact with Betty Ong, one of our flight attendants on Flight 11. Betty Ong's courage and professionalism that day made her one of the first real heroes of September 11th and you will hear more about Betty later today. Betty's family is represented today by her brother, Harry Ong, and her sister, Cathy Ong-Herrera. We are proud that Betty was also a member of our family at American Airlines and we will always remember her.

Betty was located in the rear of the aircraft and she had called our Raleigh North Carolina Reservations Center. After the aircraft was hijacked, Nydia Gonzalez, an operations specialist, answered the call. She then called the company emergency line, which rings into the SOC in Fort Worth. Nydia was relaying information about Flight 11 from Betty Ong to our SOC manager on duty, Craig Marquis. As I said, you will meet Nydia this afternoon and learn about the important role she played that day. I understand that you will hear a portion of the telephone call between Betty and Nydia. I am sure you will be moved by Betty's remarkable poise and by how calm and reassuring Nydia was throughout this most difficult call.

From Betty we learned that two of our flight attendants had been stabbed, one of them with serious wounds, that two or three passengers were in the cockpit and that our pilots were not responding to intercom calls from the flight attendants. After talking with the SOC, I then called Don Carty, the president and chief executive officer of American Airlines at that time. He had not arrived at his office yet and I left a message for him to call me as soon as possible. I briefed my executive assistant of what I had just learnt and then I headed to our SOC facility located about a mile from our company headquarters.

I arrived at the SOC between approximately 7:35 and 7:40

a.m. Central Time. Our SOC managers told me that they were now treating Flight 11 as a confirmed hijacking. I was told that the flight deck was still not responding to calls by our flight attendants. Betty Ong had also told us that one of the passengers in first class had been stabbed, possibly fatally. We also were receiving information from the FAA that instead of heading west on its intended flight path, Flight 11 was headed south. Also our pilots were not responding to air traffic control or company radio calls and the aircraft transponder had been turned off.

In accordance with our emergency response plan, our SOC managers were activating American's command center which is a dedicated crisis response facility located on the floor above and overlooking our SOC floor. From the reports we were receiving, we believed that Flight 11 might be headed for the New York area, possibly to land at Kennedy or Newark Airport. Craig Marquis and Nydia Gonzalez maintained telephone contact with Betty Ong and we also attempted to monitor the progress of the flight via communications with the FAA and their traffic control officials.

In the command center, we focused on trying to gather as much information about Flight 11 as we could. As far as we knew, the rest of our airline was operating normally at this point. At approximately 7:48 Central Time, we learned that an aircraft had crashed into one of the towers of the World Trade Center. We furiously attempted to learn if that aircraft was Flight 11. As you may recall, some earlier media reports indicated that the plane that had struck the building may have been a smaller aircraft but we, nonetheless, feared the worst.

By this time, we had lost telephone contact with Betty Ong and the contact had not been reestablished. During this time, Don Carty called me in the command center and asked if our aircraft was the one that had hit the World Trade Center. I told him what information we had and I said I didn't know for sure if the airplane was ours. While trying to confirm whether the aircraft that had hit the World Trade Center was Flight 11, we learned from air traffic control officials that another one of our flights, Flight 77, was not responding to radio calls and not emitting a transponder signal, and that air traffic control could not determine its location.

Flight 77 had taken off from Dulles Airport at approximately 7:20 a.m. Central Time and was a Boeing 757 scheduled to fly to Los Angeles. Having learned this and while still trying to determine the fate of Flight 11, at approximately 8:00 a.m. Central Time, we issued an order to ground stop, all American and American Eagle flights in the northeast quarter of the United States that had not yet taken off. A few minutes later, at approximately 8:05 Central Time, we learned that United Airlines had lost communication with one of their aircraft.

Upon hearing this, we immediately made the decision to ground stop the entire American Airlines and American Eagle system. There would be no more American or American Eagle takeoffs until we could sort out everything that was happening.

Shortly thereafter, we learned that a second aircraft had hit the World Trade Center. At that time, we believed that the second aircraft to crash into the center may have been Flight 77. continued to confer with our SOC and other operational managers and we agreed that we ought to get every -- all of our aircraft on the deck immediately.

At this point, Don Carty arrived at the command center. I explained the situation to Don and without hesitation, he agreed that we should divert all airborne American and American Eagle flights to the nearest suitable airports. This occurred at about

8:15 a.m. Central Time. A short time later, we received word that the FAA had shut down the entire airspace over the United States to all traffic except military aircraft. We then received word in the command center that an aircraft had crashed into the Pentagon. It was not until some time later that we learned that it was our Flight 77.

American employees spent the next several hours successfully landing the remainder of our flights and trying to learn as much as we could about Flights 11 and 77. By about 10:50 a.m. Central Time, the remainder of American's domestic aircraft were accounted for and on the ground. Of course, it took longer to land our international and trans-Pacific flights. Many of our international flights returned to their points of departure while other American aircraft landed in Canada and various airports around the world.

For the remainder of the day, our employees worked to

respond to the monumental logistical challenges that arose from the decision to shut down the entire U.S. civil aviation system. Our efforts in the command center also focused on providing assistance to the FBI and other law enforcement officials who were investigating the attacks. Our next scheduled flights did not take place until several days after September 11th, and we did not have a full flight schedule for several more days. Our command center remained open 24 hours a day for the next two weeks, until September 24th.

It was only weeks later, as we returned to some normal level of activity, that we were able to step back and try to comprehend the impact that these horrific events had on our country, our company and on our families. We continue to grieve for our brave employees, our passengers, and all of the families who were victims of these horrendous attacks.

As we continue to pursue our mission of providing safe, secure air travel to our passengers, the events of September 11th are a constant reminder of the need for vigilance and resolve.

All of us at American Airlines applaud this commission and the work it is doing to examine what happened on 9/11, what we can learn from it, and how we can apply the lessons of that day to make air travel in our country ever safer and more secure. This concludes my opening remarks. Thank you very much and we'll be happy to answer your questions at the appropriate point.

MR. KEAN: Thank you.

Mr. Studdert.

MR. ANDY STUDDERT: Mr. Chairman, distinguished panel members, I appreciate the opportunity to be here with you today. I'm very proud to be joined by Captain Ed Soliday, who is United's vice president of safety, security and quality assurance from 1991 through 2002.

The September 11th, 2001 terrorist attacks against the United States were first and foremost personal tragedies. My heart and the hearts of all of us at United go out to the victims and their families. This was also a profoundly personal loss for all of us at United, as I know it was for our colleagues at American. Eighteen of those who died that day were our coworkers, friends and family members, and 76 of them were our innocent passengers. All of us who were affected applaud and support the work of this commission. I know that United will do its part to clarify the events of September 11th and to help improve our nation's security system.

I would like to cover three main areas today. First, the roles of government and airlines in our security system and United's commitment to security. Second, a review of the events of 9/11 as we experienced them at United. And third, some brief recommendations that the Commission might consider.

Both the United States government and the aviation industry play vital roles in aviation security. As the Commission knows, the United States government has been and must be the central player in aviation security. The airlines in turn must work hard to implement government directives as quickly as possible and to provide the government our feedback on the practicalities and effectiveness of those measures. We at United strive to be a constructive, active and innovative participant in the system.

United's commitment to security is an integral part of the company's culture. The foundation of our work is anchored in the safety of those who put their trust when they choose to fly United. The central importance of safety and security is

reflected in our corporate structure and organization. United has a high level executive vice president of safety, security and quality assurance, with true independence from the operating units of the company. This VP has direct access to the chief executive officer, the head of operations, and very importantly, to United's board of directors.

Since its inception, this position has always been filled by a highly experienced senior captain. We take pride in the fact that our safety and security staff have been asked to serve on a broad spectrum of safety advisory boards -- security advisory boards. Fundamentally, United's approach is to be part of the security solution. With United's commitments to security as background, let me recount what happened at United, September 11th, 2001.

Started as a normal day -- by the way, all my times are in Eastern times, from a confusion standpoint, so I'll make it a point up front. We had more than 120 domestic planes and 27 international aircraft in the air and more than 40 flights waiting to take off. At 8:14, United Flight 175, Boston to Los Angeles, under the command of Captain Victor Saracini, was wheeled up. United Flight 93, Newark to San Francisco, under the command of Captain Jason Dahl, was wheeled up at 8:42.

Shortly before 9:00, I was having my usual morning meeting with Jim Goodwin, then United's CEO, when my secretary burst into the room with a report from our operations center that a plane had hit the World Trade Center. I immediately left Goodwin's office and ran to our operations center in our world headquarters. What follows is a timeline of the events that happened that day at United.

At around 8:50, a call came into our San Francisco maintenance center from a flight attendant on Flight 175 saying that the flight had been hijacked. This information was quickly relayed to our Chicago operations center. At approximately 9:00, a United dispatcher reported that he had lost contact with Flight 175. At 9:03, a second plane hit the World Trade Center. American reported that they believed it was another one of their aircraft. We later learned it was United Flight 175, with 60 people on board.

As detailed in our emergency response plan, our SOC managers activated our crisis center. This action triggered the mobilization of more than 3,000 United employees, who serve as or support our "Go" teams, which assist victims' families and the authorities. We contacted the local FBI. They responded immediately with a team who had been trained in the use of United's computer systems and had practiced emergency response with United on several occasions. Throughout the morning, we were in constant contact via hotlines with the government agencies and other airlines.

At 9:21, United dispatchers were told to advise their flights to secure cockpit doors. At 9:24, a United dispatcher sent a message to Flight 93 reading "Beware of cockpit intrusion. Two aircraft in New York hit Trade Center buildings." Flight 93 responded to this message at 9:26, requesting that the dispatcher confirm the message. Despite numerous attempts to reach it, that was the last time we heard from the cockpit of Flight 93. At approximately 9:30, after discussions with our operating managers, the decision was made to ground United's fleet. At 9:35, San Francisco maintenance center received another call from flight attendant on Flight 93 saying that the flight had been hijacked. Again, this information was passed quickly to our ops center.

At approximately 9:45, the order to ground the fleet went to all the aircraft in the air. And even before this, some of our

individual dispatchers had already started grounding flights under their control. Again at 9:45, we received a report that an aircraft had crashed into the Pentagon. We later learned that it was Flight 77, American. We tracked Flight 93's flight path on the large operations center -- operations monitor in our crisis center. At 10:00 the blip stopped. At around 10:00 we lost contact with United's Flights 641, 415 and 399. After persistent attempts, communications to these missing flights was reestablished.

At approximately 10:06, United Flight 93 crashed in Pennsylvania, killing all 41 on board. At 10:20, we received confirmation from the airport manager in Johnstown, Pennsylvania that Flight 93 had indeed crashed. Throughout that morning, we were dealing with a flood of information and issues. We were unable to establish contact with nearly a dozen flights. There were torrents of bomb reports, reports of two explosions at airports, reports of other threats and other hijackings. The threats fortunately turned out to be misunderstandings or hoaxes, and we eventually reached the flights. But nothing could be dismissed or ignored in the high uncertainty of the moment.

United's crisis center remained in operations 24 hours a day, seven days a week for nearly three weeks, until we returned to more or less a normal operation. During those days and beyond, United's people all around the country devoted their energies to assisting the victims' families and working with the FBI and other government agencies to assist in the investigation.

In the wake of these attacks and all that has transpired, the question rightly is: What changes should be made to enhance aviation security? First we must recognize that great progress has been made since September 11th, 2001, some of which can be seen, and much I know cannot be seen, and we commend the FAA, the TSA and other bodies for all their efforts. We believe that national aviation security system can and should evolve further. Most fundamentally, there needs to be a vision, a goal, for what the security system in this country should ultimately look like.

We believe there are several key aspects of that vision some of which we know are already underway. First, customer disruption should be kept to a minimum. The security system should be as transparent as possible to them. Second, the system should be fully integrated with the overall aviation structure in the country. It must be dynamic, flexible and unpredictable to our enemies and must improve continuously. The system must not depend on any single element. Its strength must come from a combination of integrated elements.

There must be full participation from, and communications among, all the different entities in aviation security. No one organization has a monopoly on good ideas. Lastly, the system should focus on a risk-based approach, in addition to today's threat based emphasis. Under a risk based approach, root cause analysis is used to identify the factors underlying multiple risks, and then they are cut off even if they don't pose an immediate threat.

Mr. Chairman, in closing I return to where I began, to the victims and their families. Let us work together to learn as much as possible about the events of September 11th. We must then apply those lessons to make our nation's security system continually better and stronger so that our enemies do not ever attack our country and its people through the aviation system. I thank the Commission again for all it's doing to advance this cause and Captain Soliday and I will welcome

any questions you may have.

Thank you.

MR. KEAN: Thank you very much.

Senator Kerrey?

MR. KERREY: Thank you, Mr. Chairman, and I apologize in the interest of time. We started late and there's a very important issue alluded to a moment ago that this commission will have an opportunity to participate in at 3:30, so I will try to go as quickly as I can and I'll have some additional questions, if you don't mind, that you could perhaps answer in writing.

First of all, I want to thank you for coming. You didn't have to and I suspect, especially in your case, Mr. Arpey, that your lawyers may have advised you not to, so I appreciate very much your coming here and trying to help us to get the full and complete accounting that we are tasked as a consequence of the legislation that created this commission.

It's also important to say that you weren't just selected by us because you can help us. From the standpoint of American and United as a company you suffered in a personal way but you also suffered in an economic way and you can help us, because you perhaps in America no companies -- no two companies have a greater sense of urgency to understand both what happened and what do we need today to make sure it doesn't happen again.

But you were selected by the conspirators, and one of the things -- and I'm going to try to make this point slightly different than I've made before. The people who perpetrated these acts on the 11th September, they don't feel remorse, they don't feel shame. They didn't target the pilot, they weren't going after somebody and then accidentally killed some additional people as a consequence. They were trying to kill as many as possible. It's a religious beginning. I don't believe all Muslims by any extent believe this. I don't see all Muslims this way at all, this is an extreme form of Islam. But it does -- it is a religious belief and it's not new, it didn't spring at us in 2001, although the risk grew considerably in 2001.

Usama bin Laden had began with a relationship actually with us in Afghanistan, but he declared in 1998 a fatwa and my guess is 19 participants responded to that fatwa and participated as a consequence. And I think it's very important to understand that because we continue to put this word terrorism over the top of this for some reason that's beyond my reach, and I think it makes it difficult for us both to understand the why and more importantly the what do we need to do.

And I would like to begin by asking you, perhaps if you, Mr. Arpey, first and you, Mr. Ahern, because you had some significant response in this area, what's your understanding of the law, of the 44902 section of U.S. Code Title 49. Seems to be very specific that you have the responsibility as well as the authority to refuse to transport people that you consider to be at risk to the passengers on the airline. I mean, do you believe you have under that law a responsibility to prevent or do you believe your responsibility is merely to deter?

MR. ARPEY: Maybe I could start and Tim could jump in. I think, Senator, the important thing to remember in both a pre-9/11 and even in a post-9/11 world is that the airlines are responsible for implementing the security procedures that are given to us by the federal government who have the ability to make the threat assessments, take all of this intelligence data, take that information, put it through whatever



intelligence sources are necessary and turn it into a security paradigm on which we can implement.

And in the pre-9/11 environment that's what we had done. And I think we were good stewards in the pre-9/11 environment in terms of doing what we were asked to do, but as I said in my introductory remarks, nobody anticipated that the type of threat that we encountered on the morning of September 11th.

MR. KERREY: Let me press that a bit because National Security Advisor Rice made a very famous statement in which she said nobody could have predicted this. I disagree with that. I mean I absolutely disagree with that. I mean you're talking and I presume that you've got safety precautions dealing with a plane that's fully loaded of 70,000 pounds of jet fuel that you consider it to be dangerous, all but itself as a consequence of having the flammable material on it. I presume that you've got procedures to deal with a pilot or two pilots that might wig out and I presume you've got procedures to screen your own pilots to make sure that something terrible doesn't happen.

And you may not have been able to say, oh my God, maybe suicide is going to be a part of this thing, but it -- even there, I must say given what was going on again and the Islamic extremist groups they were using suicide technology. I mean, they were using the technology of suicide to accomplish their objectives increasingly. So, I mean, even there I must say I have a difficult time with an argument, gee, nobody could have predicted this, because I think if we're thinking about you know, trying to prevent all instances like this, it seems to me that that would have been on the list.

MR. ARPEY: Well again, Senator, I'll just be candid with you. If you go back to the morning of 9/11, the entire security paradigm that was in place given to us by the FAA did not anticipate this type of threat.

MR. KERREY: You keep saying that it's the FAA that's telling you about it. I must tell you that the law doesn't mention the FAA. The law says, quote, "An air carrier may refuse to transport a passenger or property the carrier decides is or might be inimical to safety." End of quote. It doesn't mention the FAA at all. And it -- I mean, let me -- I presume that you're familiar with the list of prohibited passengers -

MR. ARPEY: Yes, sir.

MR. KERREY: And that you have to implement that?

MR. ARPEY: Yes.

MR. KERREY: And do you have any -- do you participate in that? Do you say, gee, the list is too small, the list is too big -- I mean, I'm down on talking about pre-911, there were -- wait a minute, we've been given a list of 15 people at least by

- at least on the surface it looks like 13 of them were in some way connected with Islamic extremism.

MR. ARPEY: Well, I think -- and Tim, jump in here -- but that list I think came out of the FAA's own threat assessment of what the industry should be trying to protect itself against, and they came up with that list and on the basis of that list we put in procedures to screen.

MR. KERREY: Any of you at the -- I think it was April or May 2000 briefing that the FAA security people did with airline officials? I don't -

MR. SOLIDAY: My staff was.

MR. KERREY: Were you there, Ed?

MR. SOLIDAY: No, I wasn't but my staff was.

MR. KERREY: And what did they report back to you? Have you seen that CD-ROM presentation?

MR. SOLIDAY: Yes. Yes, I have.

MR. KERREY: Did you see it prior to 9/11?

MR. SOLIDAY: Probably, I'm very familiar with it, yes. Could I build -

MR. KERREY: Sure.

MR. SOLIDAY: -- Senator Kerrey, on your question? The law that you talk about, quite frankly when you read it as you do, it would presume that the burden is upon the carrier. But if I could share some history with you, how that law has been applied to us is that when we have tried to deny boarding -- most recently after 9/11, 38 of our captains denied boarding to people they thought were a threat. Those people filed complaints with the DOT, we were sued, and we were asked not to do it again.

So the burden upon us was to only take those people off of the flight who we knew posed a threat and the only way we can know that they pose a threat is through those who identify them. Quite frankly, at United and I know at American, in the mid-'90s there were customers who assaulted our passengers. We created our own list of those people who committed violent acts on our airplanes to keep them off the airplane. We were reminded quite frequently that unless they posed an immediate threat we were disobeying the common carrier rules.

MR. KERREY: If you just take the first and -- in April of 2000, April 24, 2000, Security Directive 95 comes up. I presume you're familiar with this, if not I can show you the list as well, have you seen this list?

MR. SOLIDAY: Yes, I'm familiar with the list.

MR. KERREY: So you've got six guys on here -

MR. SOLIDAY: Right.

MR. KERREY: -- all of whom have some relationship with Ramzi Yousef.

MR. SOLIDAY: Right.

MR. KERREY: So you get the list, what do you do about that?

MR. SOLIDAY: There are a number of things we do with it, some of them I think I would prefer to discuss in a private session because those are part of the procedures today, but those lists were distributed not only to the field as a list, because six names is pretty easy to manage, I might -- you probably know already, Senator, that that list grew to over 1,800 within a week. Managing that becomes much more complex.

Those names are fairly easy. Many, many people have common names in, and what becomes very, very complex is if we have someone who's name -- to use a generic name is John Smith, and we have a list that says deny boarding to John Smith, and quite frankly, the Arab names are repeated

very, very frequently, then we may have 500 or 600 people with that name on any given day.

Now, we have to be able to, in a very short timeframe, identify which one is the one on the list. And so as the list grows, the handling of that -- you can do some of it with computer services, but much of it has to be done with hand phone lines and so forth. Now, there are contingencies in place at the present time that have helped that -

MR. KERREY: Why didn't we modify the -- what do you call the on-flight security procedures, the Common Strategy? Why didn't we modify that common strategy to accommodate the possibility that suicide could be something that the pilot -that a hijacker would select?

MR. SOLIDAY: Well, first of all, Senator Kerrey, the Common Strategy -- I'm glad you said modified because if you look at history the Common Strategy has saved a lot of lives. To react in a violent way in the past to many of the hijackers would have cost many, many lives. And so the Common Strategy as with regard to how it interfaced with government agencies did change over time. What we ask the folks on board to do --again I would say to you that while the emphasis -- in fact at a noted government hearing, after the Gore Commission, the Rand Corporation produced a witness that said these people are not suicidal. He happened to be an Israeli consultant.

So when we looked at the possibility of hijacking -- we at United practiced hijacking four times after 1999, various forms of hijacking to include an anthrax on the airplane. We practiced with the FBI, with other government agencies, to ascertain how we could react, but the idea that they would be able to train people to fly complex airliners and navigate them was something that none of us contemplated.

MR. KERREY: Why?

MR. SOLIDAY: I would assume that the type of training we give to pilots is very, very sophisticated. These were all glass cockpit airplanes -

MR. KERREY: No, but the why comes from you were training for the possibility of hijacking -

MR. SOLIDAY: Yes.

MR. KERREY: And, by the way, the procedures in this particular case would seem to be seriously flawed at the passenger screening level. We heard earlier, this commission has heard that if I'm carrying a blade that's smaller than four inches that I can -- and you know, I've been screened and it's fine and they give it back to me, pre-9/11. I mean it seems to be even there there's vulnerabilities that were rather substantial to be able to take a plane over, but given all the --again, even in this presentation that was done in 2000, but all the threat assessments that were being done in '98, '99, 2000, 2001, they had to include some discussion of suicide. As I mentioned -- the word I used earlier was suicide has become a technology. Suicide attacks have become a technology that increasingly is being used by, again, largely people that are motivated by religion against us.

MR. SOLIDAY: I think first of all that is a fact that today we are very, very aware after what's been happening in Israel that suicide is something that they will do. But the thought that they would be able to have the technical skill to fly an airplane, that level of education -- Senator Kerrey, in honesty with you, you are a trained spec ops person. You know as well as I, sir, that these people could have gotten on that airplane stark naked and done what they did.

MR. KERREY: Yes, they could have.

MR. SOLIDAY: So all of this discussion, you and I both know if we were taking knives away, they would have planned the spec op around those knives not being there.

MR. KERREY: This is why we'll send some written questions to you, because I've got serious questions about the current strategy on the airlines today. A lot of it, it seems to me, is reactive. A lot of, it seems to me, to be politically motivated more than it is by motivated by real security concerns, and I'd very much like -- I'll do it in writing to you because I'd very much like to get feedback from you all because I'd like very much for our -- part of our recommendations to be to say, quit being motivated by politics here.

Let's figure out what the right solution is and do it, whether it's the FAA's responsibility or your responsibility. These 19 guys who knocked us over just as easy as could be, they exploited every visible weakness. And you're exactly right, once they were on that plane their chances of failure were practically zero. And I think we've got -- you've got to help us, especially I think on the intel side, though it's -- I think it's unarguable if you look at the presentation that was done in May of 2000 by the FAA. The FAA can't just say as they've done, they've given us five or six pages of rebuttal to the Joint Committee saying we didn't know, we didn't know, we didn't know, we didn't know, we didn't know. It's like you know how many times can you say we didn't know before somebody says, Jesus, you should have?

It was your responsibility. You should have asked if you didn't know. You know, I didn't want to make the FBI mad, I didn't want to make the CIA mad. I mean, given all the things that were going on, again the background of '98, '99 and 2000, 2001, I mean I think you all can help us a lot, not just to understand what happened that day, which I'm sure makes you feel worse than it makes me in many ways. They were your employees. You were associated with them in a very active and upfront way. You've got to help us by being very frank. Not right now because this commission's got to -- a lot of the Commissioners ask questions, but you've got to in writing tell us what aren't we doing that we should be doing, that we're -- whether -- I don't know if it's a national identification card, if you think that's what it ought to be, tell us.

I don't have to worry about the National Rifle Association, I don't have to worry about civil libertarians, I only have to worry about what you tell me that should be done. And by the way, I'm a customer, and when this commission finishes this work today, I'm taking the train back to New York and no small measure because I find the security procedures not only to be a nuisance, but I think they're largely ineffective.

I mean, you're exactly right, buck naked I sit on that plane and I say, well, I hope they've got this thing figured out because -- well, first of all, they'd never let me on, that would really be obnoxious, let me on buck naked, but you -- yeah, you're not anxious to see that. I mean, I hope that you'll help us by being as honest as you possibly can and as frank and as detailed as you possibly can about what we aren't doing that we ought to be doing to prevent this in the future.

MR. SOLIDAY: Senator Kerrey, I would look forward to that. I think I agree with the things you have said and have participated at the National Academy and other places. I think it's very, very important that we focus on the future but we also recognize that these people were highly skilled military

professionals and the only way we stay ahead of them is to have an iterative process continuously that grows continuously and that we understand there is no one pill or no amount of blame that will solve the problem. We need to have a system that continuously improves itself.

MR. KERREY: The last thing I'll say is I hope that you --I'm asking you, don't call this terrorism. It is terrorism but it's coming from a relatively small group of Muslims who religiously believe in killing infidels. That's the pathway to heaven and everybody in this room is an infidel. And it's enormously important that we begin with that. Otherwise, we, in the first instance, are unable to identify what the risk is but, in the second instance, there is a tendency to have the wrong policies and procedures that make it very difficult for us to be very discriminating and to identify people who are genuinely a risk to us.

I'm through.

MR. LEE HAMILTON: The chair is in a rather astounding position here of not having any other commissioners who want to ask questions.

All right.

Mr. Lehman.

MR. LEHMAN: Thank you and I too applaud your willingness to come up here and be beat up a little bit and also to really give us your recommendations for the future. And again I would echo Senator Kerrey that we would very much like your continuing participation and recommendations. The record that has emerged from our staff's research is one in which the weight of the industry has been continuously against tightening up restrictions.

Now, you've articulated well the reasons why you didn't expect the threat that came, but it's like so many of the arguments we've heard earlier. It's not very persuasive that nobody told us, it's not our job to decide what the threat is. And, of course, quite apart from what the regulation that was cited stipulates, of course it's your job. I mean, I would be willing to bet, if I could overhear some of your conversations in a bar somewhere, that you're not full of praise and confidence for the government's brilliance in handling all of your tax issues and your inspection issues and what possible reason would you have to think that you don't have to participate in intelligence assessment, threat assessment?

The FAA was saying that it was perfectly all right for young Arabs to come on to your airplanes with 4-inch knives and, you know, the industry's attitude was, "Hey, it's not our business. The FAA says it's okay, it's got to be okay." What's been missing from a lot of the witnesses that we've had these last two days is an application at the leadership level of the common sense test to some of these things. The record that our staff has produced is one of the industry continuously eroding and blocking and defunding initiatives like the first air marshal initiative, the locked cockpit door initiative, the single key initiative and one of the things that we've heard constant complaints about from the immigration people is the industry's successful thwarting of their efforts to fix the "transit without waiver" loophole, which the industry has known has been used by terrorists, has been used heavily by smugglers and could be relatively easily fixed with the building of secure transit lounges and the kind of measures that most large countries in the world, if not all of them, have.

Yet, as I understand it, even today, the industry is whinging and whining because the President suspended this huge

loophole. I would like to hear how you, without, you don't necessarily have to respond to my indictment of the pre-9/11 era, but how do you see your roles going forward as an active challenger of the bureaucratic inertia that's inevitably part of many of these government regulatory initiatives? Why do we not have a single instance in our research of the industry saying, "We've got to tighten up in screening. We're only paying minimum wage and we have a 100 percent turnover of our people. We should be hiring higher quality people. Why are you letting 4-inch blades aboard our airplanes?"

We don't have any record of that and somehow, you guys have to change the whole paradigm of the way you approach these safety issues. You've got to be proactive and not a drag on the system which, historically, you have been, unless you can provide us evidence that challenges the overwhelming weight of evidence that we have so far.

MR. SOLIDAY: Commissioner Lehman, if I could begin the response and then maybe others would like to join me. I understand your frustration and I understand your comments. As you know, by my biography, I hold several major trophies for development of enhanced ground proximity warnings, FOQA systems, so forth, all of which happen to be on the aviation side. We are not mandated by the government.

Quite frankly, if you look at the record, we tested numerous things long before they were mandated. Immediately after TWA 800, we, as a company, talked with the FAA and said we are prepared to move forward with some security measures to ramp up because we don't know what caused this. The problem is -- and you can make light of it, if you like -- a citizen does not have the right to search and seize. There are privacy issues and, for example, as a company who was prepared to roll CAPPs out and did roll it out long before any other company, a visitor from the Justice Department who told me that if I had more than three people of the same ethnic origin in line for additional screening, our system would be shut down as discriminatory.

MR. LEHMAN: That is an important point.

MR. SOLIDAY: Tell me about common sense.

MR. LEHMAN: I agree with you totally. What I'm suggesting is that your childlike faith, in your earlier testimony, in the ability of the government to provide you threat warnings, you should be equally skeptical about. These are all good points. I think you're right.

MR. SOLIDAY: Again, I hope I did not come across as making excuses. We have a clear role. There are more people in the intelligence community in the United States than we have in our airline, or had in our airline.

MR. LEHMAN: That's the problem.

MR. SOLIDAY: Number two is that when we have an inkling, there is a limit to what we can do without the authority of government. No matter how cooperative we try to be, there are limits and quite frankly, a number -- we have the first CTX machine ever made on our property long before it was certified. We went out and looked at Quadropole, quite frankly used it, not in a certified way, because of the human factors issues that are in X-ray screening.

A number of us were advocating we needed research and development in systems that were red-light, green-light as opposed to interpretive. We went out and worked with the FAA to put those into practice. We couldn't use them as official systems because they were not approved systems. But we

used them in San Diego to demonstrate their effectiveness, but could not get funding for further research in those types of technologies.

So, again, all of us know that I don't think there's anybody at the table -- I know them all quite well -- that doesn't do a lot of self-examination, but I think it is a bit unfair that we did not go the extra mile.

MR. ARPEY: Commissioner Lehman, let me just add a follow-on to his point. You know, Ed, you're talking really CAPPs I in the pre-9/11 environment and I think coming back to what Senator Kerrey was saying earlier, some of this does defy common sense. In a post-9/11 environment, we had situations where our crew members were uncomfortable with passengers on board the airplane, they hauled them off the airplane and I think -- there was 10 or 11 of them -- and today we're being sued by the DOT over each one of those cases.

MR. LEHMAN: That's something we should definitely follow up on because if DOT is still pursuing that policy that we will get involved.

MR. STUDDERT: I think last month United was actually fined. We should follow up for you on that.

MR. LEHMAN: Is that right? Could you get us data? We'd be happy to take up your cause.

MR. ARPEY: You know, despite that kind of situation that does I think lack some common sense, we continue -- and I suspect United is the same way -- to advocate to our crew members, if anyone is on the airplane that makes you uncomfortable or in any way you think compromises safety, get them off the airplane. The captain is the in-flight security coordinator for every flight and is the final authority on everything. So despite some of the stuff that we deal with, we do make a lot of commonsense decisions and give our crew members a lot of commonsense advice and we tell them, you don't worry about lawsuits and that kind of stuff. We'll take care of that.

MR. STUDDERT: Yeah, we back them up on their decisions.

MR. LEHMAN: By the way, to follow up on that, we put a great deal of faith and have got a great deal of benefit in the Navy, for instance, out of Red Teams. And we just heard testimony this morning that there is a continuing emphasis -- although this might be a little controversial -- on using the Red Teams in FAA again. Do you get direct access to these Red Team reports? When they come through, when they send a team of Spec Ops type people through your security system and find big holes in it, do you hear about that directly or not?

MR. AHERN: There's a lot of data about the Red Teams. Initially we did not. Under General Canavan's leadership we did, in the summer of 2001 there was a review of the Red Team audits. I won't -- again, I can't speak of industry but I certainly can tell you that the audits that were conducted at American actually showed that we were quite effective, with one error in a particular city. There were three audits that I'm familiar with that we did receive in the summer of 2001 from the Red Team. But General Canavan invited all the security directors. My subordinate went to the session and they reviewed some of the Red Team audits and provided us data on airline-specific data.

MR. LEHMAN: But not since?

MR. AHERN: I don't know. Again, I changed jobs in 2002. I haven't seen any since 2002. I certainly can get the data from

our security folks.

MR. LEHMAN: Would you agree you ought to get them on a regular basis?

MR. AHERN: Absolutely. Absolutely.

MR. LEHMAN: That's good. We'd appreciate it if you'd give us the follow up data on that.

MR. SOLIDAY: Mr. Lehman, just a thought on the Red Teams. There is a difference between the Red Teams and the regulators who audit. The Red Teams are supposed to find vulnerabilities in the system. And while I'm not disagreeing with Mr. Ahern, there are things that they find that really do need to be kept -- we need to know the solution. But transmitting vulnerabilities to large volumes of people does not always serve the best interest.

MR. LEHMAN: How about just like the people at your table here?

MR. SOLIDAY: If we do that, there are 195 carriers in the United States. That would be two per carrier, that's 400 people. One of the great problems we've had with security is that almost any procedure we implement is leaked and it's vetted in the media. And quite frankly, in some of the discussion we have had there are things that we shouldn't know because they compromise the ability to gather the information. So I think -

MR. LEHMAN: But I think that's a tiny -

MR. SOLIDAY: -- that balance -

MR. LEHMAN: I understand your point, but I think it's largely inapplicable because many of the things that the hijackers found in their -- as they did their intel work and casing, their own Red Teaming, before they decided which airports to hit, so forth, had already been identified in Red Team reports and had not been passed on to you. Wouldn't you have rather known about those vulnerabilities directly, even if other people learned about them too, because the terrorists are going to find out about them anyway likely?

MR. SOLIDAY: I would want to know about the vulnerabilities and I would want the ability and the power to deal with them. But, again, there are some limits.

MR. LEHMAN: Could I get each of your airlines' views on how we solve this "transit without visa" issue?

MR. STUDDERT: Both Ed and I have left United in the last year, over a year ago, so it's hard for me to speak for the current situation. Ed might want to give you a general overview of what was going on in the past.

MR. LEHMAN: Well, now we'll get a better answer from both of you.

MR. SOLIDAY: I think there are -- I think the TSA acted appropriately. I don't work for United anymore so I would say that there are vulnerabilities. We have identified them. We did offer -- as I understand, United offered some alternatives. Building terminals takes time. When there is a threat you want to deal with it in some way in the short term and then some of the solutions I see are -- sound like wonderful ideas but they don't work for seven years. So -

MR. LEHMAN: Yes, but I would point out that the ATA's argument 28 years ago when this temporary "transit without visa" was put in -- Mr. Ahern?



MR. AHERN: Yeah, I'll just add a comment that in many of our locations we already have a situation where we can control the individual. That doesn't mean that we have in all our international gateways, and that's certainly an issue that we would have to address. But I think from an operational standpoint, the key to this process is making sure that as the individual comes into the country they stay in a separate area and they leave the country in a separate area as well, and we already have that in place in many of our larger cities. So I think that that's the number one thing that needs to get done and then again we'll work with the intelligence community to decide what else needs to get done.

MR. ARPEY: I think the key is you just -- you need to remain in control of the passengers throughout the journey.

MR. LEHMAN: Yeah, I -- and I mean in other countries they don't officially enter the country because there's a secure Customs/Immigration area, transit lounge, that they stay in. What has not worked is the airlines saying, trust us, we'll have somebody hold the person's hand for 24 hours while they go in and have dinner in Harlem. It doesn't work.

Thank you.

MR. KEAN: Congressman Roemer.

MR. ROEMER: Thank you, Mr. Chairman.

I'm interested -- Mr. Soliday, you're straight shooting with us. You don't work at United anymore and hopefully you can give us very candid and honest answers, as you've been doing here. You have said to our staff that you used to work pretty closely with Irish Flynn, who was before our commission a little bit earlier, and I think you've also said that you frequently talked with the FAA security, sometimes three or four times a day. I'm interested in what you conveyed back and forth. Did Mr. Flynn tell you about the specific instances? For instance, we have a host of different occasions when there were FAA individuals involved in intelligence briefings, that gathered information on specific threats to U.S. carriers, such as the Bojinka plot. We have FAA intelligence individuals that attended a number of meetings throughout '98 and '99 and 2000 where they also picked up this information, and in 2001. What kinds of information did Mr. Flynn pass on to you in these three or four conversations that you had per day?

MR. SOLIDAY: I certainly did not talk to the associate administrator three or four times a day. Our staff talked to the FAA principal security inspector three or four times a day. There were issues of interpretation, there were issues of things just in applying the system. You have seen the manuals, you have

MR. ROEMER: Was any of it informational intelligence oriented, either general terrorist threat or specific terrorist threat information? Or was this all on -

MR. SOLIDAY: No.

MR. ROEMER: -- implementing general -

MR. SOLIDAY: This was implementing -- if I were to talk to Associate Administrator Flynn, it would be about -- generally it would be about advanced technologies. He would ask me what our experience was with CTX implementation because he wanted to hear it firsthand.

MR. ROEMER: So there was no intelligence exchange ever between the two of you?

MR. SOLIDAY: I can think that -- any time we say ever/never, that's --MR. ROEMER: Rarely.

MR. SOLIDAY: I can think of one instance -

MR. ROEMER: Hardly ever.

MR. SOLIDAY: -- in particular that I came into Washington for a briefing, very similar to the -

MR. ROEMER: Did this concern you at all that you were not getting any kind of intelligence passed on, either in a general sense about a threat, an evolving threat that you might be reading about in the paper but not getting more specific information from the agency?

MR. SOLIDAY: I think things that I'm reading about in the paper, those were being briefed regularly. The issue I would -

MR. ROEMER: By who, though? That's what I'm trying to figure out. Who briefed -

MR. SOLIDAY: By the intel group from FAA, by -- like I say, on one occasion Irish Flynn didn't do the briefing, but the associate administrator was in the room to give emphasis to the importance. Again, what -- if I'm hearing your question correctly, and correct me if I'm wrong, it is one thing to get a briefing in which maybe 300 or 400 potential threats are listed, and another to have a prioritized briefing that says, these are the things. There is X amount of resource that can be devoted. So the discussion of threats out there is a part of every day conversation: every day between myself and my staff; every day between us and the FAA.

MR. ROEMER: Let me commend you. I think you also told our staff that post-9/11 you hired an Israeli firm to perform an outside audit of United's airport stations from the standpoint of risk. Can you give us information as to what kinds of things were recommended to you in ramping up security, and what obstacles you might have run into in order to implement those?

MR. SOLIDAY: Yes, we used them after the OSAF threat in the Pacific. Immediately when the threat became apparent to us, I had at that time an Israeli consultant and consulting firm through the time I left. We asked them to go out into the Pacific, look at our stations, look at them specifically. Those things that we corrected -- I believe we have records of what they were. I'm not certain we're not into some issues that should be in private as opposed to -- but that is true. Then in the 9/11 instance -- post-9/11, as I shared with the staff, I brought him in in the first flight that I could get him here, asked him to share with me additional things that we could do.

MR. ROEMER: Without being specific about what those are --I agree with you, maybe we can share that in writing or in a closed session -- would you have difficulties with the airline today implementing those or with the FAA?

MR. SOLIDAY: I would have difficulty with the government in general. His -- I can give you his high-level assessment. His exact words were, "You Americans are obsessed with the means. The only way you will stop them is by keeping them off the airplanes, and to do that you must do aggressive profiling." One carrier shared their data and you know the results of that.

MR. ROEMER: In your view, you also said to our staff, that today we have more consistent training of screeners but no significant improvement in technology and no apparent

improvement in performance. Do you stick by that? Do you modify that?

MR. SOLIDAY: The issue was -- when one talks about performance, the context of that conversation, as I recall it, was in regard to one particular element. One of the issues that has been alive since 1981, a number of studies, is the human factors of screeners' interaction with the technology. The popular view was that it was solely economic. That was reinforced by a number of government auditing agencies that if you just change the pay, then screening will get better. But, quite frankly, if you look at the National Academy of Science panel study in 1996, it said specifically there was very little evidence that pay would change anything. There were significant human factors issues.

The FAA applied a number of times for grants to do the kind of human factor studies that we did with pilots, being part of the crew resource management. I know I don't look like I'm old enough to have been part of the beginning, but I was. We spent millions in the government to understand why pilots error. We have just scratched the surface of understanding why screeners fail to detect.

I believe Mr. Lehman or one of the previous people who testified talked about probability of detection. So when I shared with them that not -- I think that it would be wrong to say that the overall security has not improved. It certainly has. But in certain areas if you look at the rate of detection, it is not significantly better than before. Now, we've added layers on both sides to take -- just like we do in an airplane. If we know a system has a 10 to the minus 9th probability of failure, then we say that is safe to fly. But if we have a 10 to the minus 7th, I'm required -- or the manufacturer is -- to build redundancy to get to 10 to the minus 9th.

One of the things that Senator Kerrey talked about was we've done a number of things that are emotional, instead of looking at a risk level that we are comfortable with. And if you look at security in a true risk assessment way, you start looking at the human factors. Why do people fail? It's not because they don't care. It's because there are failure modes in the technology and how the humans interface with that technology that we don't understand.

MR. ROEMER: I appreciate your very helpful answers. I know we're running out of time and I think Senator Kerrey has one final question.

MR. KEAN: Yes, Senator Kerrey for the final question.

MR. KERREY: Well, I'm going to try to be as brief as I can. I would very much like to provide you gentlemen with a number of documents. The one is the response of the FAA to a series of statements that are actually made by the Joint Committee. This is the FAA coming back and defending themselves against statements that were made by the Joint Committee that did their earlier evaluation.

And the reason I'd like to have you look at it is these are very precise intelligence assessments that are being made by various people in national security organizations, most generally coming out of the CIA. And it causes me -- as I read this and as I look at the PowerPoint presentation that was done in 2000, I look at this and say, had this information gotten to the people that were in charge of security, I think they would have immediately said suicide is a real possibility. So I mean I don't -- I honestly do not buy this idea that it's unimaginable. That what happened on 11 September was unimaginable. We should have been able to imagine it. We

should have been able to imagine it and defend it.

And I very much agree with you, Mr. Soliday, there's two big ways I think you get the job done. One is by preventing them from getting on the plane in the first place, and I think there's a couple of -- personally, I think there's a couple of relatively simple things that could have been done and still could be done that could eliminate all these long lines and all this harassment and all this difficulty getting on the airplane and making it difficult to fly and causing people to wonder what in the heck is going on.

There's a couple of relatively simple things that could be done prior to people getting on the airplane and I think, for political reasons, we don't want to do it. And I think the American people want you to tell us what are those simple things. And if the politicians are afraid -- the elected politicians are afraid, we need to give them some room and give them permission to do it because I mean I see a lot of the stuff being done. I mean, we heard Mr. Bonner yesterday in here talking about what he's doing to make his agency work. I've got to tell you it'll be four or five years before the INS and Customs start working together as a family. And in the meantime if you're relying on them to make certain that they screen these people out, you're relying on the wrong agency. You've got to figure it out on your own. You've got to figure out how to keep people off planes that are willing to die in the act of killing passengers and killing other people on the ground, because I think -- I personally feel that unless you provide us with that information, it's not likely to come from anybody else.

MR. KEAN: I want to thank you all very, very much. We appreciate your testimony and appreciate your help.

Okay, we're ready to recommence. We now come to our second staff statement and, together with Mr. Zelikow, I would like to recognize Sam Brinkley of our commission staff.

MR. PHILIP ZELIKOW: Mr. Chairman, members of the Commission, this statement continues our presentation of initial findings on how the individuals who carried out the 9/11 attacks defeated the civil aviation security system of the United States. We continue our investigation into the status of civil aviation security today and for the future. These findings and judgments may help your conduct of today's public hearing and will inform the development of your recommendations.

The findings and judgments we report today are the results of our work working with you so far. We remain ready to revise our understanding of these topics as our work continues. Our staff was able to build upon investigative work that has been conducted by various agencies, including the Federal Bureau of Investigation. The Department of Homeland Security's Transportation Security Administration is fully cooperating with our investigators, as are the relevant airlines and the Federal Aviation Administration.

We spoke earlier today about how the hijackers defeated all of the pre-boarding defense layers; the U.S. civil aviation security mounted on September 11, 2001. We will return now to the last line of defense: the Common Strategy in response to hijackings as implemented onboard the aircraft by the flight crew on the four flights.

Bill Johnstone will begin.

MR. WILLIAM JOHNSTONE: Thank you.

As you've heard earlier today, the anti-hijacking training for civil aviation aircraft crews in place on 9/11 was based on

previous experiences with domestic and international hijackings and other hostage situations. It was aimed at getting passengers, crew and hijackers safely landed, and it offered little guidance for confronting a suicide hijacking. Air carrier responsibilities for security and anti-hijacking training for flight crews were set forth in the Air Carrier Standard Security Program. In addition to specifying the number of hours of required security training, it provided an outline of in-flight hijacking tactics for both the cockpit and crews. Among other things, the outline advised air crews to refrain from trying to overpower or negotiate with hijackers, to land the aircraft as soon as possible, to communicate with authorities, and to try delaying tactics.

One of the FAA officials that we've spoken to, who was most involved with the Common Strategy in the period leading up to 9/11, described it as an approach dating back to the early 1980s which was developed in consultation with the industry and the FBI and based on the historical record of hijackings. The point of the strategy was to optimize actions taken by flight crew to resolve hijackings peacefully through systematic delay and, if necessary, accommodation of the hijackers. The record had shown that the longer a hijacking persisted, the more likely it was to have a peaceful resolution. The strategy operated on the fundamental assumptions that hijackers issue negotiable demands most often for asylum or the release of prisoners, and that suicide -- as we got a quote, "Suicide wasn't in the game plan of hijackers."

Thus, on September 11, 2001, Common Strategy, which was the last line of defense against these hijackers, offered no defense against the tactics employed by the hijackers of Flights 11, 77, 93 and 175.

Mr. Zelikow. I'm sorry, my mistake. The day of Tuesday, September 11, 2001, began for the U.S. civil aviation system as one marked by exceptionally fine weather across the country and the absence of any significant overnight problems in the system which required the attention of the workday shifts at the FAA and at the airlines as they took over across the country. We wish at this point again to advise the family members of victims who may be viewing this statement or listening to it that the details we will be recounting may be especially painful for you to hear. Please consider whether you wish to continue viewing, at least at this time.

Before we proceed with the details, we first wish to pay tribute to all of the brave men and women who were the source for most of what we know about what transpired on-board American Airlines Flight 11, United Airlines Flight 175, American Airlines Flight 77 and United Airlines Flight 93. In just a few short minutes we will be hearing about one of those heroes, flight attendant Betty Ong who perished on Flight 11, from another individual, American Airlines reservations manager, Nydia Gonzales. Ms. Gonzales spoke with Ms. Ong on that tragic morning and made sure that her voice was heard then and continues to be heard to this day.

There are many others who we wish to recognize, both passengers and crew, who were able to reach out to let their companies, their friends or their families know what had befallen them, and in so doing they enabled us to tell their story here today. Among them -- and this is not meant to be an exhaustive list -- also from Flight 11, Betty Ong's fellow flight attendant Madeline "Amy" Sweeney; from Flight 175, flight attendant Robert Fangman, passengers Peter Burton Hanson and Brian David Sweeney; from Flight 77, flight attendant Renee May and passenger Barbara Olson; from Flight 93, flight attendants CeeCee Lyles and Sandy Bradshaw, passengers Todd Beamer and Jeremy Glick.

There is every indication that all members of the flight crews did their duty on that day with dedication and professionalism.

Thank you.

MR. ZELIKOW: To continue the discussion of hijacker tactics and beyond, I want to turn the floor over to Sam Brinkley, but first mention that Sam's background for the Commission includes the fact that not only was he a battalion commander in the U.S. Marine Corps, but Sam has also served as a federal air marshal.

MR. BRINKLEY: Thank you very much, Philip.

The question is what do we know about the tactics used in the takeover of the four flights. The hijackers strategically planned the flights they chose: Early morning departures from East Coast airports of large Boeing 757 and 767 aircraft fueled for a transcontinental flight to maximize the destructive power of the impact on their selected targets.

One fact that I want to point out. There is no evidence at this time to suggest that the 9/11 hijackers or their associates purchased unused tickets for the hijacked flights. And with the Chairman's permission I would like to move to the charts.

The seat selection on the two type aircraft are indicative of the planning of the hijackers in being able to conduct their operation. First of the two charts on the 757. In both instances you will notice that the pilot -- Jarrah on Flight 93 and Hanjour on Flight 77 -- were sitting in the very front row of these aircraft. This single-aisled airplane gives less maneuverability and access to the cockpit than a double-aisled airplane. This was carefully chosen. These are not random seat selections. You will also notice that the remaining members of the hijack team were placed in a position to better have them be able to seal off the front cabin of the aircraft from the passenger cabin crew.

In contrast, the 767 aircraft of Flight 11 and Flight 175 show a significantly different arrangement of the hijack teams. In both these cases two members of the hijack team were sitting well forward and guarding the front end of the aircraft. In fact, in both of these the pilot, designated pilot, was sitting in the center between members of the hijack team, two in front and two behind, which allows the hijack team to better off seal and move forward and to the rear, and to then also control both aisles as the maneuverability capability to seal off the front of the aircraft. These indicators show that the test flights they took and the process they did in their planning demonstrated in their seat selections which could not have been at random.

The question has been raised about whether one or more of the hijackers may have used pilot's credentials in order to sit in the cockpit with the pilots during the flight to facilitate the takeover. In view of the requisite paperwork and other procedures which must be followed to permit a jumpseat privilege, there is no evidence that such a tactic was used by the hijackers. They actually had reservations and sat in the seats that they were assigned.

We do know that the seating arrangement chosen by the hijackers facilitated the isolation of the front of the aircraft and the terrorist pilots' entry into the cockpit. The exact method of entry into the cockpit is not known. However, the strength of the cockpit doors in use on 9/11 would not have precluded forced entry. Cockpit keys were widely available on that day. Also the Common Strategy did authorize flight crews to allow entry into the cockpit under certain circumstances. There is no way to know whether the terrorist had an access to a key, but

if not, access to the cockpit could readily be gained by luring the flight deck crew out of the cockpit or forcing the door open.

From what we have learned so far, the hijackers successfully gained control of the forward section of the cabin after the aircraft seatbelt sign was turned off. The flight attendants began cabin service and the passengers were allowed to begin to move around the cabin. This was followed by the hijackers gaining access to the cockpit. There is scattered and conflicting evidence about what happened to the cockpit crew during the takeover, but what we do know is that at some point the pilots were displaced and no longer in command of the aircraft.

The evidence we have examined to date indicates that the terrorists' tactics and techniques initially resembled the traditional hijacking scenarios. The hijackers took over the aircraft by force or threat of force. This was reported on all four flights. The hijackers gained access to the cockpit and sealed off the front of the aircraft from the passengers and the remaining cabin crew. This was reported with slight variation on all four flights.

Some of these reports included the presence of mace and/or pepper spray in the cabin and indications that passengers had difficulty breathing. We believe this indicates that the terrorists created a sterile area around the cockpit by isolating the passengers and attempting to keep them away from the forward cabin, in part by using mace or pepper spray. Pepper spray was found in Atta's checked luggage that was recovered at Logan Airport.

The hijackers used the threat of bombs. This was reported for all but Flight 77. They also used announcements, reported for Flights 11, 77 and 93, to control the passengers as the aircraft supposedly flew to an airport destination. These longstanding tactics for terrorist hijackings were consistent with the paradigm of the Common Strategy developed for flight crew to respond to hijackings. There were no reasons for flight crew to respond outside the training they had received at the time their respective flight was hijacked.

Even so, as the hijackings progressed, there is evidence of growing awareness aboard the aircraft that something extraordinary was unfolding. Callers from both Flights 11 and 175 noted early in the process very erratic flying patterns and talked about the possibility that the hijackers were piloting the aircraft. Reports from Flight 175 included one passenger predicting the hijackers intended to fly the aircraft into the building. Another said the passengers were considering storming the cockpit.

Later on Flight 77 at least one passenger was explicitly informed about what had happened to Flights 11 and 175. And, as widely known in the case of Flight 93, a growing awareness among the passengers of what had already occurred with the other flights spurred a heroic attempt to take over the plane from the hijackers. The nation owes an eternal debt of gratitude to those who took action to ensure that Flight 93 never reached its target.

Let's turn to pilot training. To successfully complete the 9/11 plot aboard the aircraft, at least one member of the team had to be able to pilot the plane, navigate it to the desired location, and direct it to the intended target. These tasks required extensive training and preparation. FAA records show that four of the 19 hijackers, one aboard each flight, possessed FAA certificates as qualified pilots. FAA certification required that a candidate complete a requisite amount of flight training and pass both a written exam and a practical skills

test. Each of the four pilots received flight training in the United States, which is recognized as having one of the world's most advanced pilot training, education and certification in the world, and trains many pilots from many nations.

Among the five hijackers on American Flight 11, only Mohamed Atta held a certificate from the FAA as a qualified private and commercial pilot, including proficiency rating in multi-engine aircraft operation. Atta received his commercial pilot certificate in December of 2000. Records indicate that Atta received Boeing flight simulator training sessions. According to the experts questioned by commission staff, simulator training was critical for the hijacker to familiarize himself with the cockpit controls and the proper operation of the Boeing 757 and 767, the type hijacked on 9/11, and to gain the operational proficiency of feel and confidence necessary to fly the aircraft into an intended target.

Among the five hijackers aboard United Airlines Flight 175, only Marwan al-Shehhi is known to have completed flight training and possessed an FAA pilot certificate. Al-Shehhi received his commercial pilot certificate in December 2000 on the same day and at the same facility as Atta received his. He also had Boeing flight simulator training.

Among the five hijackers aboard American Airlines Flight 77, Hani Hanjour was the sole individual who FAA records show completed flight training and received FAA pilot certification. Hanjour received his commercial multi-engine pilot certificate from the FAA in March 1999. He received extensive flight training in the United States including flight simulator training and was perhaps the most experienced and highly trained pilot among the 9/11 hijackers.

Among the four hijackers aboard United Airlines Flight 93, Ziad Jarrah was the lone individual who is recorded as having received flight training and FAA pilot certification. Jarrah received his private pilot certificate from the FAA in November 2000 and was recorded as having received Boeing flight simulator training. Staff would note that Jarrah had logged only 100 flight hours and did not possess a commercial pilot certificate or multi-engine rating.

The staff would note the existence of computer-based software programs that provides cockpit simulation available on the open market to the general public. According to the experts at FAA, such computer based-training packages, including products that simulate cockpit controls of the Boeing 757 and 767, provided effective training opportunities. The terrorists were known to use computers and there is no reason to believe they did not have the computer literacy necessary to take advantage of computer-based training aids.

Although the investigation is still ongoing into what methods the hijackers employed to navigate and direct the aircraft toward their target, the following information is offered in regard to this analysis. Boeing 757, 767 aircraft are outfitted with highly capable flight management systems and autopilot features. Knowledge of these systems could be gained through simulator training, readily available operational manuals, and perhaps PC-based simulator software.

Information from the flight recorder recovered from Flight 77 indicated that the pilot had input autopilot instructions for a route to Reagan National Airport. It should be noted the flight management computer could be programmed in such a manner that it would navigate the aircraft automatically to a location of the hijacker's choosing, not merely a commercial airport, at a speed and altitude they desired, provided the hijackers possessed the precise positioning data necessary.



By using the sequence waypoints dialed into the computer, the hijackers could also approach the target from the direction they wanted. Financial records indicate that one of the hijackers had purchased a global positioning system, perhaps for the purpose of acquiring precise positioning data on al Qaeda's 9/11 targets. They had also purchased a Boeing flight deck video and flight simulator software program. Flight manuals were also found among their belongings.

The Commission continues to acquire and analyze data on pilot training, operational requirements, flight information and other relevant evidence that will provide the most informed theory of what means the hijackers used to fly the aircraft to their targets. Whether the hijackers flew the aircraft manually, engaged the flight management computer to take them to a programmed destination, or employed some combination of the two, experts consulted by the Commission believe it quite credible that given the certificates held by the hijackers, the training and educational opportunities available to them through the publicly available flight operations manual and computer-based flight training software, the hijackers, particularly Atta, Hanjour and al Shehri, had the know-how to complete the mission.

Let's turn to weapons. Records of purchases by the hijackers and other evidence indicate that the knives with blades of less than 4 inches long were the primary weapons of choice. We demonstrated one sample of that this morning. With regard to reports from crew, passengers, knives were sighted on all four flights. The threat of a bomb was reported in Flights 11, 175 and 93. Box cutters were specifically indicated in only one report, from Flight 77. Staff specifically notes reports from callers aboard at least two of the hijacked aircraft, 11 and 177, suggesting that the terrorists used mace or pepper spray aboard the flight.

As mentioned previously, the evidence suggests that one of the tactics employed by the hijackers on all the flights was to move the passengers to the back of the aircraft, away from the cockpit. Mace, pepper spray or a similar substance would have aided the terrorists in that effort and assisted them in maintaining a controlled area around the flight deck. Both mace and pepper spray were specifically prohibited items under the Air Carrier Standard Security Program. The questions of how these items were carried on board remains an issue under investigation.

One is left to consider the following. Had the consequences of being a selectee under the passenger pre-screening program, as nine of the terrorists were, required a more intense screening of the selectee, as had been the case before the pre-screening system was computerized in 1998, the system would have stood a better chance of detecting the prohibited item, possibly depriving the terrorist of an important weapon. Staff notes this is in order to highlight a major policy question arising from the Commission's investigation. Was it wise to ease the consequences of being a pre-screening selectee at a time when the U.S. government perceived a rising terrorist threat, including domestically and when the limits of detection technology and shortcomings of checkpoint screening efficiency were well-known?

Moreover, we believe that in practice, the FAA's approach to admonishing air carriers to use common sense about what items should not be allowed on an aircraft, while also approving the air carrier's checkpoint guidelines that define the industry's common sense, created an environment where both parties could deny responsibility for making hard and most likely unpopular decisions.

The question remains about a gun. We continue to investigate the allegations that a gun was used aboard American Airlines Flight 11. This allegation arose from a notation in an executive summary produced on September the 11th, 2001 by FAA staff, indicating that the FAA headquarters had received a report of a shooting aboard the plane, reportedly from an American Airlines employee at the company's operation center. The individual alleged to have made that report to the FAA denies having done so. While staff continues to investigate the origins and accuracy of the report, we note, regardless of what reports were received in the chaotic environment of various operation centers at the FAA, the airports and the airlines -- the only authoritative information about whether a shooting occurred on Flight 11 had to have come from individuals on the aircraft who were reporting what was taking place to contacts on the ground.

Two flight attendants aboard American Airlines Flight 11 placed calls to ground contacts to report what was happening to the aircraft, and as indicated above, the Commission will receive testimony shortly about Mrs. Ong's call. Staff notes that the flight attendants did their duty with remarkable courage. The evidence shows that the flight attendants remained in phone contact with authorities for an extended period of time, providing valuable information with extraordinary professionalism. Their actions were nothing short of heroic.

Neither the tape recordings of the call from flight attendant Betty Ong, nor the accounts by at least seven separate witnesses to the calls placed by Ms. Ong or Ms. Madeline Sweeney reported the presence of a gun or the occurrence of a shooting. The witnesses' accounts of the phone calls were consistent and are quite specific about the kind of weapons that were reported present, knives, mace and a bomb, as well as the nature of the assaults on board, the stabbing of flight crew members and a passenger.

In order to accept the accuracy of the initial FAA executive summary with regard to a shooting, disregarding the evidence by eyewitnesses to the contrary, one would have to believe that the American Airlines systems operation center, the SOC, relayed to the FAA the account of a shooting that no witness recalls, while neglecting to include the account of a stabbing that was widely reported, including the personnel in the SOC. This seems highly implausible.

Finally, staff notes that the alleged victim of the shooting was seated in 9B. Both the seat and its occupant are described by several of the witnesses' accounts from the aircraft as the place where the stabbing occurred. At this point in the investigation it seems evident that the form of attack on the business class passenger, the only attack upon a passenger reported by the eyewitnesses, became garbled in the account of the assault as it was relayed between the airline and the FAA authorities in the fog and confusion of the rapidly unfolding events of that day.

Other relevant evidence bears mentioning. While investigators have uncovered evidence of numerous knife purchases by the 19 hijackers leading up to September the 11th, 2001, no firearm purchases or possession are in evidence. Further, the tactics of all four hijacking teams involved in the plot were similar. No evidence has been uncovered to suggest that the hijackers on any of the other flights used firearms, and none were found in evidence at any of the crash sites, notably the crash site of United Airlines Flight 93, where items from the aircraft were collected as evidence.

To the contrary, the common tactic among the four teams of employing knives and mace, the wielding of a bomb, either real or simulated, is indicated by all other evidence. It seems unlikely that one of the teams would depart from the tactical discipline of the plotters' mutual strategy.

Finally, though it appears erroneous at this point in the investigation, staff continues to develop information on how the gun story may have come to be reported. Again, we stress our investigative work, including on the issues we have discussed today, is by no means complete. Our investigation continues.

MR. ZELIKOW: In conclusion, we started today by asking us all to try to remember the world before 9/11 and the factors and pressures that influenced the civil aviation security system prior to that day. We cannot and will not forget the events of 9/11. The lessons of that tragedy continue to inform our work, especially our effort to develop recommendations to make America safer and more secure.

MR. KEAN: Thank you all very much. I want to say on behalf of the Commission how much we appreciate the work of this staff, how professional you are and how we recognize the fact that many of you are working seven days a week at this point.

Thank you all very much.

September 11 will also be remembered for the countless acts of duty, courage, selflessness and love. So many of those who lived them or witnessed them are no longer with us. We are only left to imagine and to contemplate. Many we do know about. Fire-fighters and police officers who ran up the stairs of burning buildings to save others. Emergency responders who rushed to the aid of the injured. Passengers and crew who fought to assure that the terrorists never made it to their target. Countless instances, people from all walks of life who reached out to help. The multiple acts of courage that day are too numerous to recount, but they live on as part of the story of September 11. They give testimony to the resilience of the human spirit in the face of unspeakable horror.

We are now going to hear one remarkable story of such courage. Aboard American Airlines Flight 11 flight attendants Betty Ong and Amy Sweeney were able to contact people on the ground and in the midst of dire circumstances were able to relay critical information about what was happening on the plane to the outside world. It so happens that a portion of Ms. Ong's call to an American Airlines customer service facility was recorded. We will listen shortly to that recording. Ms. Ong was able to make contact with Ms. Nydia Gonzalez, an employee at the American Airlines facility, via air phone after the terrorists had taken over the aircraft. Ms. Gonzalez is with us today. Nydia herself is an example of the great courage displayed on that day -displayed on that day of 9/11. With extraordinary composure, she talked with and comforted Ms. Ong. She received and handled the vital information Ms. Ong provided with remarkable professionalism and with compassion.

Also recorded was a call placed by Ms. Gonzalez to American Airlines headquarters in Fort Worth, Texas. Without the capability of transferring the call from Betty Ong to American Systems Operating Center or to patch Operation Center personnel into the call from the flight attendant, Ms. Gonzalez handled calls from both Ms. Ong and the American Operations Center at once. She took the information she received from Betty Ong on one line and immediately relayed it to American Airlines operation personnel on the other. We will hear these

recordings of those calls after her testimony. Much of what we know about the events of 9/11 are because of Ms. Ong and Ms. Sweeney and other passengers and crew aboard the four aircraft who were able to contact people by phone and relay vital information. There is every indication that all members of the flight crews did their duty with dedication and with professionalism.

I'd like at this point if I could to acknowledge Ms. Ong's sister and brother who are with us today: Ms. Cathie Ong-Herrera and Mr. Harry Ong. Would they please stand and on behalf of the Commission I'd like to address our deepest sympathies to you upon your loss, and the appreciation of a very grateful country for Betty Ong's heroism. Would you like to stand and be recognized, please.

(Applause.)

Ms. Gonzalez.

MS. NYDIA GONZALEZ: On Tuesday, September 11 -

MR. KEAN: I'm sorry, go ahead.

MS. GONZALEZ: Do you need to swear me in?

MR. KEAN: Do you want to be sworn? I don't think we really need to with you.

MS. GONZALEZ: Okay. On Tuesday, September 11, 2001, a day that forever will be remembered as one of pain and anguish for our nation, I was the operations specialist on duty at American Airlines Southeastern Reservations Office in Cary, North Carolina. As an operations specialist, one of my responsibilities includes monitoring emergency situations and forwarding information to American System Operations Control. am here to share and describe an emergency call that will be etched in my memory for the rest of my life.

At approximately 8:20 in the morning on Tuesday, September 11, Betty Ong, an American Airlines flight attendant, called our reservations office requesting assistance with a situation on American Airlines Flight 11. Before I describe her call, let me tell you about this brave and courageous individual. Betty Ong, affectionately known by her family and friends as "Bee," was a flight attendant with American Airlines for 14 years. She was a very caring, warm and loving person. Her zest for life, her passion for her job, her ability to make people laugh; and her concern for mankind is what truly made her, along with her fellow crew members, our first heroes of September 11th.

In a very calm, professional and poised demeanor, Betty Ong relayed to us detailed information of the events unfolding on Flight 11. With the assistance of her fellow crew members she was able to provide us with vital information that would later prove crucial to the investigation. Betty's selfless act of courage and determination may have saved the lives of many others. She provided some important information which ultimately led to the closing of our nation's air space for the first time in its history. For approximately 23 minutes, Betty patiently told us that she thought they were being hijacked because two or three men had gained access to the cockpit and the cabin crew couldn't communicate with the pilot. She informed us that two flight attendants had been injured and a passenger might have been fatally stabbed. She indicated that there wasn't a doctor onboard, but that they were able to administer oxygen to one flight attendant and that she was able to breathe.

Although she wasn't able to give us a description of the attackers, she told us the seat locations of these individuals,

which helped law enforcement authorities identify the terrorist attackers. The teamwork displayed by Betty and her fellow flight attendants, combined with their extensive training in safety and security, enabled them to relocate the passengers to an area of the cabin out of harm's way.

Several media accounts of what occurred on Flight 11 claimed that Betty was hysterical with fear, shrieking and gasping for air. I am here to tell this commission that those accounts are wrong. As I previously stated, Betty was calm, professional and in control throughout the call. I honestly believe after my conversation with Betty that the 81 passengers and nine crew members on Flight 11 had no idea of the fate that they were to encounter that day.

Betty, we're here to commemorate you. Your acts of courage on September 11 will never be forgotten. On that day not only did you have a team of fellow employees in the air, you also had a team pulling together on the ground in reservations and security. Your loving family, your American Airlines family, and your friends are extremely proud of your selfless actions, and I for one will forever be grateful and honored to have had the opportunity to know such a truly remarkable person. On that day you asked, "Pray for us." As I assured you then I will assure you today, we are. Absolutely.

MR. KEAN: We will now hear the recordings from the two phone calls. The first phone call was placed from Betty Ong aboard the Flight 11 to Ms. Gonzalez. We'll hear the entire four and a half minutes that was recorded on that call. The second phone call was placed by Nydia Gonzalez to the American Airlines operations center to report the call from Mrs. Ong and to relay the Center information Mrs. Ong was providing.

You may hear a momentary blank on the tape. The Commission edited a very small portion in order to protect one family member from unnecessary pain. The second phone call we will hear was approximately 20 minutes in duration. Due to time constraints the Commission has selected four minutes from that particular call.

(Phone calls played.)

BETTY ONG: Number 3 in the back. The cockpit's not answering. Somebody's stabbed in business class and . . . I think there's mace . . . that we can't breathe. I don't know, I think we're getting hijacked.

MALE VOICE: Which flight are you on?

BETTY ONG: Flight 12.

OPERATOR: And what seat are you in? . . . Ma'am, are you there? . . .

BETTY ONG: Yes.

MALE VOICE: What seat are you in?

FEMALE VOICE: Ma'am, what seat are you in?

BETTY ONG: We're . . . just left Boston, we're up in the air.

FEMALE VOICE: I know, what . . .

BETTY ONG: We're supposed to go to LA and the cockpit's not answering their phone.

FEMALE VOICE: Okay, but what seat are you sitting in? What's the number of your seat?

BETTY ONG: Okay, I'm in my jump seat right now.

FEMALE VOICE: Okay.

BETTY ONG: At 3R. FEMALE VOICE: Okay. MALE VOICE: Okay, you're the flight attendant? I'm sorry,

did you say you're the flight attendant?

BETTY ONG: Hello?

FEMALE VOICE: Yes, hello.

MALE VOICE: What is your name?

BETTY ONG: Hi, you're going to have to speak up, I can't hear you.

MALE VOICE: Sure. What is your name?

BETTY ONG: Okay, my name is Betty Ong. I'm number 3 on Flight 11.

MALE VOICE: Okay.

BETTY ONG: And the cockpit is not answering their phone. And there's somebody stabbed in business class. And there's . . . we can't breathe in business class. Somebody's got mace or something.

MALE VOICE: Can you describe the person that you said -someone is what in business class?

BETTY ONG: I'm sitting in the back. Somebody's coming back from business. If you can hold on for one second, they're coming back.

BETTY ONG: Okay. Our number 1 got stabbed. Our purser is stabbed. Nobody knows who is stabbed who, and we can't even get up to business class right now cause nobody can breathe. Our number 1 is stabbed right now. And who else is . . .

MALE VOICE: Okay, and do we . . .

BETTY ONG: and our number 5 -- our first class passengers are -- galley flight attendant and our purser has been stabbed. And we can't get into the cockpit, the door won't open. Hello?

MALE VOICE: Yeah, I'm taking it down. All the information. We're also, you know, of course, recording this. At this point . . .

FEMALE VOICE: This is Operations. What flight number are we talking about?

MALE VOICE: Flight 12.

FEMALE VOICE: Flight 12? Okay. I'm getting . . . BETTY ONG: No. We're on Flight 11 right now. This is Flight 11. MALE VOICE: It's Flight 11, I'm sorry Nydia. BETTY ONG: Boston to Los Angeles. MALE VOICE: Yes.

BETTY ONG: Our number 1 has been stabbed and our 5 has been stabbed. Can anybody get up to the cockpit? Can anybody get up to the cockpit? Okay. We can't even get into the cockpit. We don't know who's up there.

MALE VOICE: Well, if they were shrewd they would keep the door closed and -BETTY ONG: I'm sorry? MALE VOICE: Would

they not maintain a sterile cockpit?

BETTY ONG: I think the guys are up there. They might have gone there -- jammed the way up there, or something. Nobody can call the cockpit. We can't even get inside. Is anybody still there?

MALE VOICE: Yes, we're still here. FEMALE VOICE: Okay. BETTY ONG: I'm staying on the line as well. MALE VOICE: Okay. NYDIA GONZALEZ: Hi, who is calling reservations? Is this

one of the flight attendants, or who? Who are you, hun? MALE VOICE: She gave her name as Betty Ong.

BETTY ONG: Yeah, I'm number 3. I'm number 3 on this flight - And we're the first . . .

NYDIA GONZALEZ: You're number 3 on this flight?

BETTY ONG: Yes and I have. . .

NYDIA GONZALEZ: And this is Flight 11? From where to where?

BETTY ONG: Flight 11.

NYDIA GONZALEZ: Have you guys called anyone else?

BETTY ONG: No. Somebody's calling medical and we can't get a doc --

(Beep)

MALE VOICE: American Airlines emergency line, please state your emergency.

NYDIA GONZALEZ: Hey, this is Nydia at American Airlines calling. I am monitoring a call in which Flight 11 -- the flight attendant is advising our reps that the pilot, everyone's been stabbed.

MALE VOICE: Flight 11?

NYDIA GONZALEZ: Yep. They can't get into the cockpit is what I'm hearing.

MALE VOICE: Okay. Who is this I'm talking to?

NYDIA GONZALEZ: Excuse me. This is Nydia, American

Airlines at the Raleigh Reservation Center. I'm the operations specialist on duty.

MALE VOICE: And I'm sorry, what was your name again?

NYDIA GONZALEZ: Nydia . . .

MALE VOICE: Nydia. And what's your last name?

NYDIA GONZALEZ: Gonzalez -- G-o-n-z-a-l-e-z.

MALE VOICE: (Inaudible) -- Raleigh Reservations. Okay, now when you -

NYDIA GONZALEZ: I've got the flight attendant on the line with one of our agents.

MALE VOICE: Okay. And she's calling how?

NYDIA GONZALEZ: Through reservations. I can go in on the line and ask the flight attendant questions.

MALE VOICE: Okay . . . I'm assuming they've declared an emergency. Let me get ATC on here. Stand by.

NYDIA GONZALEZ: Have you guys gotten any contact with anybody? Okay, I'm still on with security, okay, Betty? You're doing a great job, just stay calm. Okay? We are, absolutely.

MALE VOICE: Okay, we're contacting the flight crew now and we're . . . we're also contacting ATC.

NYDIA GONZALEZ: Okay. It seems like the passengers in coach might not be aware of what's going right now.

MALE VOICE: These two passengers were from first class?

NYDIA GONZALEZ: Okay, hold on. Hey Betty, do you know any information as far as the gents . . . the men that are in the cockpit with the pilots, were they from first class? They were sitting in 2A and B.

MALE VOICE: Okay.

NYDIA GONZALEZ: They are in the cockpit with the pilots.

MALE VOICE: Who's helping them, is there a doctor on board?

NYDIA GONZALEZ: Is there a doctor on board, Betty, that's assisting you guys? You don't have any doctors on board. Okay. So you've gotten all the first class passengers out of first class?

MALE VOICE: Have they taken anyone out of first class?

NYDIA GONZALEZ: Yeah, she's just saying that they have. They're in coach. What's going on, honey? Okay, the aircraft is erratic again. Flying very erratically. She did say that all the first class passengers have been moved back to coach, so the first class cabin is empty. What's going on on your end?

MALE VOICE: We contacted Air Traffic Control, they are going to handle this as a confirmed hijacking. So they're moving all the traffic out of this aircraft's way.

NYDIA GONZALEZ: Okay.

MALE VOICE: He turned his transponder off, so we don't have a definitive altitude for him. We're just going by -- They seem to think that they have him on a primary radar. They seem to think that he is descending.

NYDIA GONZALEZ: Okay.

MALE VOICE: Okay, Nydia?

NYDIA GONZALEZ: Yes dear, I'm here.

MALE VOICE: Okay, I have a dispatcher currently taking the current fuel on board.

NYDIA GONZALEZ: Uh, huh.

MALE VOICE: And we're going to run some profiles . . .

NYDIA GONZALEZ: Okay.

MALE VOICE: To see exactly what his endurance is.

NYDIA GONZALEZ: Okay.

MALE VOICE: Did she . . .



NYDIA GONZALEZ: She doesn't have any idea who the other passenger might be in first. Apparently they might have spread something so it's -- they're having a hard time breathing or getting in that area.

What's going on, Betty? Betty, talk to me. Betty, are you

there? Betty? (Inaudible.) Okay, so we'll like . . . we'll stay open. We, I think we might have lost her.

MALE VOICE: Okay.

END

MR. KEAN: Talk about it all you want, this brings it to life. Any of the Commissioners have any questions they would like to ask? If not, Ms. Gonzalez thank you, so very, very much for bringing yourself and this to us today, thank you for your calmness, your heroism and thank members of the Ong family for their courage in coming here today and for listening to this. Thank you all very much, we have nothing but admiration for your sister

Thank you.

MS. GONZALEZ: Thank you.

MR. KEAN: If I could ask Mr. Loy to take the stand please? Is Mr. Loy here yet?

(Off mike.)

Our last witness of the day will be James M. Loy, deputy director of the Department of Homeland Security.

Mr. Loy, thank you for coming today. Will you raise your right hand?

(Witness sworn.)

Thank you very much. You can begin your testimony, Mr. Loy.

MR. JAMES M. LOY: Thank you, Mr. Chairman. I'd like to just submit my written testimony for the record if I may, sir, and just make a couple of points orally and then ask or answer your questions. First of all, I wanted to apologize for my absence in May. It was an opportunity scheduling-wise that I had other engagements that just simply had to be dealt with. I trust that my deputy at the time, Steve McHale was providing good answers to the Commission but I realize how important this work is. I've spent several hours on several occasions with the private interviews and look forward to the testimony today, sir.

Just a couple of things that I think are very important for all of us to keep in perspective as we proceed from the emotion of the panel you just went through and move on to methodical day after day improvements in the aviation security system of our country, and our homeland security system in general. First of all, sir, I think it is enormously important that we find a way to hold a sense of urgency, to sort of keep the edge. Complacency is a fascinating thing, it finds its way to the surface in people and in organizations and in even nations from time-to-time, and this business that we're in, when we have an opportunity like you just had to listen to those folks, we must find a way in our business to hold that urgency.

I have a photo in my office that I took from a helicopter that was over the Ground Zero site three days afterwards. And it's just there for the principal reason of reminding me as I get up and leave the office, as I go back into the office, day after day

after day, that the work that we are about is enormously important and noble work and that we have to find a way to hold onto that edge. That is not to suggest that I see us losing that edge from time to time, but there are certainly pressures that would suggest this notion of a return to normalcy, whatever that phrase means to people, but when it means returning to something in the 9/10/01 window, we're just not going there, and the idea for all of us is to hold on to this sense of urgency as we move forward.

Secondly, sir, I think there's an awful lot of opportunities for us to cite then and now, circumstances to reflect an enormous amount of work that has been undertaken by the people in government, in the private sector, at the state and local level, to grapple as successfully as we can with the issues that are in front of us. Whether in this instance it's about airports and airlines, whether it's about a difference in terms of an instinct, in terms of whether or not we will use civil penalties for the value they may induce in terms of behavior that we'd like to see, whether it's about the construct of security directives and emergency amendments that can, in a window of time, direct and encourage the kind of behavior that makes a difference between whether or not we're going to be grappling with the same kind of aftermath as we all experienced in 9/11. I think there has to be an ethic of continuous improvement in everything that we're doing. The very nature of what we're about suggests that the enemy, the bad guys, are out there gaming everything we're doing as we're doing it. And our challenge is to never accept the notion that that project we just finished today or just put online yesterday is that final puzzle piece that's going to make us "secure", quote, unquote.

I believe this to be a journey -- it's not a destination. And at the other end of the day our challenge is to demand as a part of the ethos of the Department of Homeland Security and certainly the Transportation Security Administration that continuous improvement is what they wake up and drink and eat day after day after day, and never gaining contentment with whatever level they've achieved, or we have achieved.

Another point that I think is important is this idea that it's an all-hands evolution, to put it in military terms that I'm familiar with. The idea that every citizen of this country, every trade association, every sector of that economy that we often take for granted as the underpinning of our quality of life, must find their way to contribute to the well-being of this security paradigm, this environment which is dramatically different after 9/11 than it was on 9/10/01.

I spoke this morning at a marine law conference, a gathering of elements from the maritime industry and encouraged them and challenged them to recognize that the contribution that each of them has to make is going to be fundamentally different in this global war on terrorism. And I don't use that term lightly, war, because in the days before 9/11 the idea of anything that rose to the word war in our country meant that the federal government basically picked up the tab for that. And the whole notion of armies looking at each other across the falter gap or across the demilitarized zone, it was the federal government that dealt with whatever the issue was that in this war nature of our national challenge. The global war on terrorism is something very different than that and we must all rise to the occasion when it is our turn.

Another notion is that many of the agencies in our federal government establishment and even down through state, locals and tribal have had this notion of a prevention, response, consequence management paradigm as a means by which they structured their thinking. And I think there are, in the wake of 9/11, a requirement to break out the front end of

that thing we call prevention and concentrate on something that I have at least termed awareness, or domain awareness, or situational awareness, with the idea in mind that it deserves the intellectual energy and investment that we make in so many of the things at the same time.

To be truly focused on learning everything we can learn about what's going on in the domain in which we work so as to be more productive when we do get to things about prevention or response or consequence management at the other end of the day. Our work must go forward as threat-based risk-managed work. In learning what the terms are internal to that notion are enormously important for all of us who are in the business to get at. We must understand that risk is about, in its simplest terms, the likelihood of something happening in times and consequences if it occurs and in there are a couple of notions: Criticality assessments, vulnerability assessments, likelihood assessments and all of that as it plays out requires us to develop new tools of the trade so as to truly have a means by which we can go forward.

Technology is absolutely something that we must invest in. I am absolutely of the mind that the means by which we can displace human intensive elements of our system today deserve the investment of energy and dollars necessary to make that happen.

So, in the Department of Homeland Security and in TSA, for example, sir, we are working very hard with concentrating on those things that can either improve systems we have in place or replace them with systems coming on line that will be far fewer

- far less intensive as it relates to people and far more intensive as it relates to efficiency and effectiveness. I think we owe that not only as a good steward of the taxpayers' dollar but in the interest of getting the job done at the other end of the day.

Going forward, sir, I think there are probably a handful of things that I would ask the Commission to look at very, very carefully. CAPPs 2, the program is one of those opportunities that, when we put it on line, we'll have a dramatic increase in both the customer service dimension and the security dimension of what it's intended to do. It will replace a system that is currently compromised, broken, if you will, and the sooner we can sort through the eight descriptive elements that have been identified by the appropriations this year to answer the questions adequately for the Congress so that we can press on with this program. Meeting every privacy concern that must be articulated along the way, we will be able to make one of those infrequent step function improvements in the security of passenger aviation.

We must be concentrating on the well-being of this workforce that we've assembled. We have put together a workforce at the federal level and the workplace that they deserve to go along with the efforts that they are putting out for us must be dealt with as constructively as we can. As you know, sir, in November of this year, every airport director in the country will have the opportunity to reconsider whether or not they would like to re-privatize the workforce that we have federalized along the way. And we must have the answers in hand, the information and the data face up on the table to help us make good judgments there.

Cargo is an issue that we must spend an awful lot more time on than we have so far and I look forward to doing that. This Congress has exhibited an interest in aviation cargo and we will press forward with getting better at how we deal with it.

And I think we should be not only willing but obliged to revisit decisions taken as early as six months ago, let alone a year ago, with again the idea in mind that judgments that were taken then simply did not have all the cards face up on the table often.

And if we can make better judgments today based on reconsideration, we should be about the business of doing that.

And I'll close, sir, with where I opened. This sense of urgency, this almost attitudinal approach to the work that we are undertaking, I know it has been very evident in your deliberations and we, at the federal government level, and at the state and local level, in the private sector, must recognize the urgency of the business that we are working about and make the commitments necessary to hold the edge with the decisions that we are taking, with the investments that we are making so that, at the other end of the day, we never find ourselves trying to review one more time the horrible aftermath of a tragedy like 9/11.

Thank you very much, sir, and I'll be glad to answer your questions.

MR. KEAN: Thank you very much, sir.

Commissioner Fielding.

MR. FIELDING: Thank you very much, Admiral Loy, and thank you for coming here today. I also should congratulate you for successfully being the first administrator of the TSA. I was amused when I read some time ago that you would -- you had said

- I think it was to the Aviation Security Summit that you described you'd gone from an organization with over 200 years of infrastructure to an organization which was a piece of paper. Sometimes, that's not bad in Washington, you understand.

MR. LOY: It is a wonderful opportunity as well as a challenge, yes, sir.

MR. FIELDING: But, in any event, as you know, we're seeking to determine what took place in this horrible tragedy and what were the failures and what were the flaws, what are the solutions and the fixes -

MR. LOY: Yes, sir.

MR. FIELDING: -- and what has been done and what needs to be done. We understand that there is a risk and especially in situations and discussions with you because, although we seek to find out in a public session to reassure people and educate people, nonetheless we do understand that there are certain things that should be better discussed in closed sessions. So I am mindful of that. We'll understand that if that's part of the responses you feel you should give. But we would seek your cooperation in all regards.

MR. LOY: Yes, sir.

MR. FIELDING: There are several areas of interest that -I really liked your comment about these hijackers that gamed the system because anyone who clings to any vestige of a thought that they did game our system is wrong and that thinking will not be helpful and productive to fixing this problem. So I appreciate your comment in that regard. I guess the most important thing that is of immediate concern is risk management process and the priorities. You had said in

your testimony before the Senate Approps Committee that TSA and the department as well were committed -- I think you used the same phrase today -- to the threat-based risk management plan. And that concerned me originally, quite frankly because there is much more than threat analysis. There has to be a consequence analysis. There has to be prioritization over vulnerability and by vulnerability, it's got to be more than you find a bad screener, you fire them. I mean -- so I understand from your testimony that it is much more complete than just the threat based.

MR. LOY: Absolutely.

But I would ask if you could detail for us in a little more than you gave us, how it is working right now and the status of the plan as you see it and also I'd be interested to know how you're currently setting your budgets and your policy priorities, as you're developing the plan.

MR. LOY: Yes, sir. Let me see if I can explain that. The notion of threat-based and risk-managed, I believe, has to begin with the secretary, continue with the undersecretaries and those that are in leadership positions to make good decisions about how we are making investments, and end with the on line workforce personnel that truly will make a difference in terms of actually carrying it out. While I was at TSA, we had a staff that we referred to as our strategic assessment staff. They were in the business, first of all, of reaching to the private sector. There was no illusion that some group of feds inside the building known as TSA headquarters had some kind of a corner on the market of good ideas about how we would move forward. I, for one, spent the last six years of my time in uniform developing a public-private partnership notion that I believe in deeply. I know there are kids alive on the river systems of this country because of the partnerships that the Coast Guard entered into with the American Waterways Operators. And I tried to bring that notion to the TSA with the idea that we would bring the aviation industry to the table, whether it was through our advisory council, or whether it was through individual challenges associated with understanding what this threat-based risk management notion was all about.

To take them as two phrases, one at a time, on the threat-based end, sir, it's not like it's about Cold War national security intelligence community only information that is of value to us. I am absolutely certain that information is part of the keys to the security locks of the future, but it's going to be data elements and information pieces used differently than we've ever used them before. I can see mixing of traditional national security intelligence data with proprietary private sector data on manifests and bills of lading that can really give us as good a clue as possible as to what is in that container, that one of 17 million containers coming at us this year, or the one of seven million containers coming through our ports this year.

How do we optimize the notion of not finding the needle in the haystack, because that's counterintuitive to what I think we need to do? If the notion is one of those containers out of those 17 million, we've got to find the one, that's virtually an impossible job. But what we can do is take the haystack off the needle to the point where we then can concentrate the resources that we do have on those few remaining containers that we can't put in the fast lane, so to speak, and speed on through the system.

So the notion of understanding likelihood, criticality and vulnerability, I think those three notions really are what risk management is all about. We have spent hours and hours developing what I think are very good self-assessment tools

for industry elements to use, assessment tools that we would use if we went to those same places and assessed the industry elements, and our challenge is to put the two together as complete an information flow, analyzed as thoroughly as possible, and translate it into tactically actionable information products on one hand, and critical infrastructure notions about risk management that takes into account very hard priorities that we have to make between -- you know, is the bridge in San Francisco more important than the bridge in New York Harbor? The kinds of judgments that are very difficult to come by and need a thorough, methodical approach to making those kind of things happen. That calls for tools and we're in a business of developing all of those kinds of things, sir.

MR. FIELDING: Let me jump away from that, but thank you. And I may come back on another line here, but I want to talk a little about CAPPs, because we've had some testimony at our last hearing, a Professor Marc Rotenberg, who is the president of Electronic Privacy Information Center. He voiced his organization's objections to the CAPPs II system. His objection included that a substantial number of passengers had been misidentified because of the agency's selectee or no-fly lists, and that the TSA had failed to conduct the privacy impact assessment that was mandated by federal law, and that the CAPPs system therefore in his mind and probably for more other reasons violated the Privacy Act.

Now, you've discussed with us, as you said -- you mentioned one of the things you feel strongly about is the CAPPs project and how valuable it is in securing our airlines. So would you give us a sense of where you are in the balance of these interests and how's it working at this point?

MR. LOY: Yes, sir. We are -- we find ourselves at a point in the development of the system where the Congress, through the appropriations bill for '04 has stipulated eight areas of concern that they would want GAO to come back and help them understand before they would license us to go beyond the testing phase of the system. They allowed that the testing phase could continue but that we could not throw the switch, so to speak, and turn the system on until they were satisfied with these eight areas.

These are things like an adequate due process system so that an appeal could take place if you, as an individual, were kept from boarding an aircraft and you had no idea why and you truly were innocent of anything in the wrongdoing side. They want to make certain that the system is effective, that it works, that the false positive end of the system is going to be such that it is well within the bounds that we would have it be. They wanted to have demonstrated its efficacy as a system. They want to make sure there was an internal oversight board to hold us accountable for all the privacy elements that are very important.

Sir, I attended and arranged off-sites with Fortune 500 and small company privacy officers from around the country to truly get an understanding of what their concerns would be and how we could address them through the course of the development of our system. We had off-sites with representatives of EPIC and ACLU and all those organizations that are concentrated on Fourth Amendment protections and truly at their heart are trying to make absolutely certain that people and citizens of the country are not wronged by a system that we would be developing.

We absorbed all of their commentary and designed two privacy notices, and I think it's another one of those then and now notions. If you look at the privacy notice for CAPPs II that went out in January of last year and then at the one that

went out in late July of this year, there are just dramatic improvements along the lines of what we as a body learned from all the outreach that we had conducted with the people representing privacy interests. We narrowed, for example, where there was an inference that we might keep data for as long as 50 years in the January announcement, in July, it will never be for more than a couple of days, and then only on those who had registered as actual terrorists or those who supported terrorists.

So we learned along the way in the development process, and we have clarified to the public in public notices the seven or eight basic parameters of concern that the privacy community always brings to the table. I think we have probably done as good a job researching and reaching to privacy interests with respect to CAPPSS II as has been done on any project that I've ever been associated with. So I'm very, very proud with that outreach. The department has actually hired the first privacy officer in the federal establishment and she has spent virtually all of her time working with us on CAPPSS II as the initial challenge that she has taken on.

So as I say, sir, we're very confident that we have developed the kind of a program that respects the privacy interests of our citizens, and I for one would never turn it on until that was, in fact, the case. Old Franklin way back when said, "He who would trade a moment of liberty for safety, deserves neither." And I think here we are, you know, a couple of hundred years later discussing the same basic -- having the same basic discussion. And the honor that we have is to make certain that we can live up to what was prescribed by the founding fathers.

MR. FIELDING: Well, we appreciate that because obviously we're in a position to try to -- and under an obligation to try to make recommendations and so your input into that is valued not only today but hopefully in the future.

MR. LOY: Yes, sir. Is there anything -

MR. FIELDING: If I can stay with CAPPSS II for a minute. You issued an interim final Privacy Act notice. I'm trying to -yeah, here it is. It says, "After the CAPPSS II system became operational, it is contemplated that information regarding persons with outstanding state or federal arrest warrants for crimes of violence may also be analyzed in the context of this system." Now, that's classic mission creep, and I'd love your comments on that.

MR. LOY: Yes, sir. I think -- I mean, mission creep usually is not associated with two data points, it may be associated with something that is really a trend line going somewhere. The secretary and those of us who were reviewing the baseline for CAPPSS II had the opportunity on the occasion of producing that privacy notice to make a judgment as to just what it was that we were trying very hard to, (a) keep off airplanes terrorists, those who associate with terrorists, foreign or domestic, and felons with significant warrants against them with a very prescribed list of offences. That was the judgment call that was taken by the secretary that those are very, very important things for us to put our -- you know, to plant our flag around.

I suppose, easily, there could have been a third or fourth or fifth data point on that trend line that would have suggested it would have been okay to go all the way to the other end, you know, and deadbeat dads would also be identified by the process. And we chose to be very conservative in the alignment that was taken with respect to where those lines would be drawn. And, of course, that notice, sir, invited

additional commentary and before the -- again, before the system would be turned on there is a requirement for a final privacy notice to acknowledge what we have learned and listened to over the course of the time between the beginning of August, the end of July, this past year and whenever we would be actually turning it on. In fact, I suppose there's even conceivably the requirement for more than one: another interim and a final before we get there, in this ongoing dialogue of learning what we need to learn.

MR. FIELDING: Right. Well, I just think it's so important. We've discussed this amongst ourselves that, as important as CAPPs is, that it not be and its vitality be obscured by other issues.

MR. LOY: Absolutely. It should be as pristine as we can make it, focused on exactly what we want to use it for.

MR. FIELDING: Just to stay on CAPPs II for another minute, there is the theory that you're going after and identifying the bad guys and wouldn't it be better if you tried to figure out a way to identify the good guys?

MR. LOY: And frankly, sir, CAPPs II in large measure does that. I mean, the fact that -

MR. FIELDING: That's what I wanted to know your comment on, thank you.

MR. LOY: You know, my guess is today, one of the weaknesses of CAPPs I, in addition to being gameable and compromised, it produces about 14.5 percent selectees. So the challenge of getting through the airport from a customer service perspective is attendant to 14 or 15 percent of the people walking into the airport going through secondary screening as a result of being labeled a selectee by CAPPs I. I am very confident that CAPPs II will get that percentage down to around 3 or 4 percent and an infinitesimally small number -- smaller than that ever finding themselves in the so-called red category. What that really says is 97 or 96 percent of the folks walking through that airport portal will be in the green category and ushered aboard with the "have a nice flight" sign as CAPPs II works its magic.

MR. FIELDING: If I can switch gears for just a second, and this may be one of these areas that we should discuss offline, but can you tell us where TSA or the department's efforts stand in respect to addressing the MANPAD or civilian aircraft threat from surface to air?

MR. LOY: I can -- I think I can give you an adequate answer, sir. And obviously if there is more that you would care to have me provide in a private setting, I'd be happy to do that. The federal -- or the government's approach is sort of a three-pronged approach: two that we're very familiar with from nonproliferation days of the past and one that everyone sees on the front page and is looking at very carefully. The first is what I'd call the nonproliferation leg of the stool, which is to say great effort being undertaken in multilateral and bilateral means by which we can do whatever is possible to gain control of the inventory of the 700,000 plus MANPADs that are out there, quote/unquote, the vast number of which of course are inside military arsenals and being identified and contained as we speak.

But the gray market/black market reality is that there are thousands that are unaccounted for in that system and we must be about the business of trying to gain as much of a handle on those as we can. So whether those are buy-back programs or destruction programs mutually agreed upon between two nations; that is one of the elements of the stool



that is very important for us to continue. We're trying to work those down from the top, if you will, through G8 summit agenda items on down into all the rest of the nations of the world.

The second stool is basically what I'd call tactical countermeasures, and that's the identity of doing very good vulnerability assessments at all the major airports of our country, doing the footprint if you will that identifies carefully from where could a MANPAD be launched in the flight, approach and departure path of the aircraft that we're talking about. And then once that assessment is done, working with the state and local police officers and law enforcement community to understand that at different alert condition levels we will require different kinds of activities associated with being concerned about the MANPAD threat as one of the many threats to aviation today. We are also assessing a considerable number of foreign airports for the same reason.

We cannot, I don't believe, take comfort in the fact that virtually all MANPAD attacks have been in some area where it was war torn, where it was tribally disruptive, where there was a -not a very nice place to live and work, so to speak.

MR. FIELDING: I think we've all learned you can't assume since it hasn't happened once it would never happen.

MR. LOY: Absolutely, sir. And then the third piece is -the other pieces of tactical are things like what can the pilot do on the approach or on the takeoff to make a difference? Should he turn his lights off, should he do this, should he do that? And there's been a very good interchange with the aviation community, the airlines and the pilots' associations to help us sort our way through those and offer those back as an educational package to the airlines and to the pilots. And then lastly technical countermeasures, which is what is always on the front page.

We have just let three contracts to three different elements from the S&T, the Science and Technology Directorate at the Department of Homeland Security, whose purpose it is to identify what the "it" could be. Total ability to look inside some black box programs in the Pentagon and see what the potential for retrofitting a version of this counter-MANPAD technology might be on the aircraft that we have in the United States. Seven thousand, by the way, airframes roughly. And so once we figure out what the "it" is, then the subsequent judgment is, okay, all 7,000? Just the craft fleet? Just those that go to bad places? How do we sort our way through the one to 7,000 issue that is also on the table? And, of course, should the per airframe cost sort out to be a quarter of a million dollars instead of \$3 million each, that would obviously have a bearing on the judgment process as well.

MR. FIELDING: Let me get down in the weeds a little on you, sir -

MR. LOY: More specifically, by the way, on the three contracts and other aspects of that, I'd be happy to come back in a private setting.

MR. FIELDING: Well, I think we should come back in a private session on that.

MR. LOY: Yes, sir.

MR. FIELDING: But, as I say, let me get into the weeds a little and ask a question that probably everybody in this room would like the answer to because this morning in the paper we see that a woman passed through the security screening at LaGuardia and she had a stun gun and a knife in her purse and

she didn't discover it. She got on the plane and she discovered it on the plane and then alerted authorities. And it's not the first time anybody has read these kind of things -

MR. LOY: Sure.

MR. FIELDING: -- and you say, gee, if we're so darned good, how can that happen? We have all these rings of protection, we have threat evaluations. How does this happen? And obviously I don't want you to answer how it happens and tell somebody how to get by it the next time.

MR. LOY: Yes, sir.

MR. FIELDING: But in fact are records kept of all these such incidents?

MR. LOY: Obviously when we know about them. There are records kept so as to provide the training appropriate to the team or the individual that perhaps was responsible for that person going by. But let's back up if I may, sir, just for a moment and help all of us understand that we looked very hard. When TSA was stood up, Secretary Mineta -- it was interesting, from the time ATSA was passed -- the Aviation Transportation Security Act was passed, until a year later when the mandated congressional requirement was to have federalized that workforce.

Secretary Mineta made I thought an enormously courageous decision. He said, we're going to take six months and figure out how to do this and then we're going to take six months to do it. He didn't plunge off into some array of things that people might have been calling for to be done. He demanded of us that we try as thoughtfully as possible to build -- to figure out what to build and then to build it. So we looked for the silver bullet. You know, we looked hard for what the technological protocol or people related silver bullet might be and frankly, sir, we never found it. So the default position became the rings of security notion that you alluded to. Over the course then of the ensuing design period, and even up to today when we continued to add rings to the array, we simply tried to take advantage of what might be five or six or seven or eight, 60 or 70 percent kind of tools and array them in such a fashion that we took advantage of the law of aggregate numbers.

And if in the law of aggregate numbers one is able to get closer to the 94, five, six, seven kind of notion that we would like to see in our system for the dollars invested and for the intellectual energy invested, then that became our default position: to array those obstacles in a path that the bad guy would have to take in order to get to the cockpit. So it begins with better perimeter security at the airport, it begins with better curb security at the terminal building, it goes on to the checkpoint and tens of thousands of much, much better trained people on the job at both the checkpoints and in the baggage rooms.

It includes 100 percent baggage instead of 4 percent baggage in terms of what it was on 9/11. It includes federal air marshals now flying tens of thousands of flights each month, when we started this process we had 33 federal air marshals to this country's name. It goes on to hardened cockpit doors, it goes on to now a training program for volunteer pilots, popularly known as guns in the cockpit, that is yet another sort of final notion of defense actually in the cockpit itself.

And it also includes, I would hope, this sense of urgency that I mentioned in my comments at the beginning. I just -- I am very concerned as a human being in an organization and a country, we have demonstrated unfortunately often enough in

our past when we can let that surface and become an unfortunately dominant influence on where we're going. One way or the other I've got a coin in my pocket that is a little TSA thing and I'll have in my pocket for the rest of my life.

And I encourage every person that came to work for TSA to find something that they hang on the kitchen door on their way out every morning that reminds them of why they have to what they have to do. So it's the array of that concentric set of rings that is the default position from the silver bullet that we simply could not find. And again, I point out this is a journey not a destination, there will never be a day when I can sit here and tell you with 100 percent certainty the last thing fell into place yesterday, Mr. Commissioner, and we are good to go. That day will never come.

MR. FIELDING: But you do keep records of these?

MR. LOY: Oh, yes, sir.

MR. FIELDING: Would those records be available for us to get some sense of progress of TSA in that sort of thing?

MR. LOY: Of course, sir.

MR. FIELDING: And let me just hit you with one other similar issue. I guess it was in October when the box cutters were found on the Southwest Airlines.

MR. LOY: Sure.

MR. FIELDING: At first it appeared as though, gee, this is great, you know, they got the -- they found them and there was quick coordination between the FBI and TSA. But then there were enough reports about the incident that indicated that there may have been some delay between the time that TSA found out about it and the time the FBI got it. Could you -

MR. LOY: Yes, sir, a dark day for us. Largely the reporting process on that one was on us, as it turns out of course, the young man was not a terrorist, was not a security threat, he was simply trying to demonstrate that it's possible to get a box cutter on an airplane. The checkpoints associated with getting passengers and their carry on baggage on board, that is

- if that was the silver bullet we wouldn't have needed all those others, so that too is one of the elements of a system that is going to have its percentage of success associated with that is other than 100.

But in the specific time orientation associated with the report, our call center, which had been stood up rather recently, simply had not had the adequate guidance to it to make certain that a report like that that looked out of the ordinary got into the right operational hands, if you will, so something could have been done about it immediately, and that's exactly what should have happened and it didn't and we fixed it and it's behind us and if you call the call center today they will recognize the out of the ordinary call and get it into the right hands immediately.

MR. FIELDING: Thank you, I'm being very greedy with your time so, Mr. Chairman, I'll turn this over to -- thank you, sir.

MR. KEAN: Thank you, Mr. Fielding.

Commissioner Gorelick?

MS. GORELICK: Thank you, Mr. Chairman.

Admiral Loy, thank you for being here, particularly on this

snowy day when almost everybody seems to have abandoned Washington.

MR. LOY: Everyone else has gone home.

MS. GORELICK: I got to know you when you were commandant of the Coast Guard. You did superb work outside of your narrow job description, in counter-narcotics, in dealing with waves of Haitians and Cubans coming our way, and I saw leadership there that I'm very pleased to know is in the Department of Homeland Security today.

MR. LOY: Thank you, ma'am.

MS. GORELICK: You remind me of that when you begin your testimony talking about the need to ensure that we are not complacent. We need leaders who step up to the plate, who see the whole field and do not narrowly define their jobs and that's the first topic I want to talk to you about. Over the last two days and in previous hearings as well I have been struck by how many people in government narrowly define their jobs, and in fact define the hard parts out of their jobs, and that include some agencies that now report to you.

We saw -- well, we saw some heroic behavior in INS and Customs and we also saw people who shrugged when they saw things that didn't comport with common sense, which when they saw things that were not in line with the regulations, and their view was it was not their job to think about the larger picture. We saw the same thing, frankly, with FAA, they took a very narrow job of their security role: That is that their job was to act when someone told them that there was a specific person who might do harm to an airplane as opposed to looking at the fact that they were in charge of security for the airline industry. And there was a wealth of information out there about bad actors who might like to go on our aircraft, and I find it frankly very shocking and very disturbing. We saw it in FBI and CIA, in headquarters who saw their job as proving a service to the field but not to make a whole strategy and make sure that the field was doing what it needed to be doing against that strategy -- the lack of common sense, the lack of the ability to evaluate the mission and say what can I do?

So my first question to you is you have inherited a lot of people and you have inherited a lot of people who -- many of whom have exhibited these behaviors and you are responsible for our homeland security. So my question to you is how are you going to change behaviors in an institution that big and that important?

MR. LOY: It's a -- it is an enormous undertaking. We are -- not to humor is a way of coping every once in a while and I tell the secretary it's like walking into the Borders bookstore and going to the management section and finding thousands of books on mergers and picking one, but he's got to pick 22. And then he's got to go the other section on startups and pick the very best book on startups and he's got to read all those and at the other end of the day be in the business of a 22 agency merger and a startup of 200,000 people and there's no book in Borders on that. He is writing it as we go.

I believe you have to start with the vision thing. I truly believe that in order to take, in this instance, agencies like Customs and Coast Guard with 200 years of service to this country, and I accept your commentary with respect to any given one of them and their cultural approach to things, and there are other brand new organizations like TSA literally wet behind the ears in terms of trying to get something established. I am of the mind that the President's national strategy for homeland

security is a good solid document, presidential in nature, for us to begin with.

But our responsibility at the department is to take that challenge notion that's in that document and interpret it adequately for our workforce and for the public at large, such that the vision thing is truly available to all of us to understand. A bit of it is going to be like the classic instructor who stands in the front of the room and goes through the notion of telling them what he's got to tell them and then telling them and then telling them what he told them and then hoping one out of three, they got the message.

I think a simple core message that is replete with values, replete with guiding principles that will be crystal clear to every leader and every workforce member in that department is in order, and the secretary is about the business of challenging us to produce exactly that. And I believe somewhere around the occasion of the first anniversary here coming up, that embarkation on a journey that has associated with it the right kind of values, the right kind of principles and the absolute accountability associated with each and every leader and member of the organization being held to task for his or her portion of that path forward.

MS. GORELICK: I think that's an excellent segue, if I can interrupt, into my next question, because you have described and we among us have described the war we're in against al Qaeda as one that requires a strategy and accountability and responsibility for carrying it out.

MR. LOY: Yes, ma'am.

MS. GORELICK: I have asked and I will continue to ask every relevant witness before this commission, who is responsible for establishing strategy against al Qaeda, long term and day-to-day and directing and managing all the assets of our government against it? To deprive it of the means that it needs to undertake to do us harm?

MR. LOY: Well, if you're asking me for a single person, if you're asking for the last advisor to the President, the president is the guy. The last advisor to the President is the national security advisor, with respect to the kind of challenge that you put on the table, and the pieces that comprise that game plan, that offers its nexus through the national security advisor to the President, are many of us who are responsible for various corners of it along the way.

If you're asking me where I fit in and where Secretary Ridge fits into that, the charter for the Department of Homeland Security is very clear. I believe that the strategy as exhibited publicly by the President for that department to do its work is very clear. So getting on with that is simply the challenge that we all have day in and day out, but if ultimately you're asking me for one person responsible for this nation's well-being in that regard, it literally goes to the Oval Office.

MS. GORELICK: Well, that is really too broad. It's both too broad and too narrow. Let's drill down a little bit.

MR. LOY: Sure.

MS. GORELICK: One of the responsibilities of the Department of Homeland Security is gathering all of the information about al Qaeda, so that you know who the enemy is, what its methodology is, and so that you act against it. That function has been, as I can see it, outsourced to TTIC. I don't see that function in the Department of Homeland Security. Is my assessment correct?

MR. LOY: I think your assessment is correct in terms of the TTIC being established specifically for the responsibility of -- with the responsibility of gathering all the elements of that threat and making it available to those that need it. That is absolutely correct. Now, the connectivity between the information analysis portion of one of our directorates in the department, we helped to people TTIC, the number two person at TTIC is from DHS, so the notion associated with what TTIC's responsibility is, is all about what it does with the product when it has it completed. And providing that finished product to those agencies that need it as a basis from which their operations are to ensue, if I may, just let me continue for just a second.

During the recent orange period, this is a maturing process for all of us as we go through this and get better and better at it as time goes by. But through the recent orange alert period, I watched day after day as TTIC articulated the smallest variants in the threat stream that was going by from yesterday's analysis and offered that to all of us in the action oriented departments and agencies to take on the challenges that would be necessary in our case to secure the homeland and in the case of others to aggressively follow things overseas.

MS. GORELICK: I was struck though when the deputy director of TTIC appeared before us yesterday when he said -- and he has told our staff and it's quite clear he has no operational or collection responsibility, he is a recipient of stuff gathered by other people. So, again, I'm looking for who is setting the strategy. You have described the war against al Qaeda as one in which it's not a cat and mouse game, it is a serious enterprise and on the last round they beat us.

MR. LOY: Absolutely.

MS. GORELICK: Because they were more focused than we were. And my concern here actually is in the org chart. You come out of a highly disciplined organization in the Coast Guard. I saw you in action and I saw that institution in action. I don't think that we are set up right now to be highly disciplined because we have the enterprise that is supposed to be pulling together everything, taking again a very narrow, in my personal view, view of their job, which is to passively receive and albeit, you know, aggressively integrate, but receive what is given to them. It then passes that on to a directorate in the Department of Homeland Security, which has various tools at its disposal. Some of the tools in the government are at the CIA, some are at the FBI and I'm not saying we should amalgamate them in one place, but I want to know who, on a day to day basis, is saying we got to do this, we've got to do that, we've got to go here. It can't be the President and it can't be the national security advisor. I am looking for who that person is.

MR. LOY: And it's not TTIC. What is maybe the -- a bit of the missing link there is that it is also incumbent on we operators to define requirements that will enable us to do our job well. I can remember vividly as -- sometimes it helps to take it to another venue. In the drug business, in the counterdrug business, before Barry McCaffrey sat in his chair the notion was always from us, from we operators, finger pointing in the direction of the intelligence establishment that if only they gave us what we needed, we would be able to do a much better job operationally in terms of productivity and the counterdrug effort.

MS. GORELICK: It sounds very familiar.

MR. LOY: Yes, ma'am. And when Barry held us for long hours over long days and helped us understand that it was only when we had articulated our requirements well enough to the intelligence community that they could really adjust themselves to produce things that we declared that we needed, could we then see dramatic success or improvements in what we were doing, and that's exactly what we did. So the requirements articulation piece associated with not only DHS but anyone else outside of the intelligence community that is feeding TTIC, must be about the business of articulating the requirements well.

For us it is the requirement set associated with securing the homeland. That is about predominately a before and after the event notion where now that we have drafted a national response plan and a national incident management system that is associated in an all hazards environment, we must be about the business of articulating carefully the requirements that we have to do our jobs better. To prevent things from occurring that we don't want to occur, to protect critical infrastructure throughout this land in all 14 sectors, in all the key assets lists that we are inheriting and then in the aftermath, God forbid, of an actual event, to deal with the response, the recovery and the consequence management end of what we do for a living. Our challenge is to integrate that requirement set and articulate it clearly to those who can give us the wherewithal to do our jobs better.

MS. GORELICK: I appreciate that, and I think that that's an important step. I know I -- there are fellow commissioners who would like to get in a question here. I would just leave you with this thought, that the counternarcotics analogue in some respects falls apart because the counternarcotics effort operationally, in terms of integration of information and operations against narcotics organizations and collection against narcotics operations were consolidated in the Counternarcotics Center, which merged law enforcement and intelligence gathering and operations in one place. And what I'm saying to you is, so far, I haven't seen that with regard to our counterterrorism effort and it is an open question, at least for this commissioner.

Thank you.

MR. KEAN: Thank you, Ma'am.

Commissioner Roemer.

MR. ROEMER: Thank you, Mr. Chairman.

Admiral Loy, you have a lot of people that greatly admire you for your bluntness and candor in where I used to serve in the House of Representatives and I can see why today we appreciate that honesty. Let me ask you a quick question about the Homeland Security Council. As something that many people think is duplicative and not sure what the purpose is, what do you think? Should this evolve away? Should it be replaced by something else? What's your opinion on the Homeland Security Council?

MR. LOY: I guess I have two. The first is -

MR. ROEMER: As long as it's not pro and con.

MR. LOY: No, it's not. Maybe sequenced in time. It seems to me that we may unnecessarily bifurcate the council to the President by having more than one council associated with that advisory process. But, on the occasion of 9/11 and its aftermath, I believe it made very good sense to concentrate on this notion of homeland security and really sort through it

for whatever length of time it might take to get us to a point that the thinking powers that be, inside the Executive Branch, would find the requirement to continue with multiple council to no longer be necessary.

So, at the moment, they serve a very, very good purpose. They are sort of a challenging element, a filtering element, a sounding board for ideas that may be forthcoming from any of a variety of places, from state and local levels, from private sector levels, from within our department and to this particular point in time, I believe they have served us as a nation very well. But I can also see x number of years -

MR. ROEMER: So your recommendation might be that their time has come. They've served and gone and now it's time to -

MR. LOY: No, I didn't say that now is the time. I said that at the moment they continue to serve us very well in that regard but that there may be a time in the future where a re-bonding or a regeneration into a single conduit of councils to the President would be in order.

MR. ROEMER: You talked in your opening testimony about trying to develop new tools for the trade, which I strongly agree with. How do you feel specifically about new tools such as a national identification card or state ID cards? Identity seems to be such an important part, an integral part of how we move forward in many of these efforts.

MR. LOY: It truly is. All of CAPPS 2 is associated with doing two things for us, validating identity on one hand and then making a judgment as to whether that person now that we think we know that they are who they claim to be should be allowed on the airplane for whatever risk score they might develop in the system. Many of the things that we're about. We are working very hard on a transportation worker's identification credential which has practical value.

Our star is a trucker with 33 different things hanging on his neck or whatever to get him from point A to point B to do the business of his rounds. And so, the notion of a biometrically based -- there we go again with identity authentication -- and access control which are the two fundamental functions that we are groping with, grappling with day after day after day can be accommodated with a card that could be provided with all the means by which he can get to those places he needs to get to with only one card.

I think there is sort of a national aversion to the general notion of a national ID card for all that represents in the minds of many. But I am also very concerned that the things that we now use as a basis for identity, state drivers' licenses, for example, the myriad means by which they are dealt out in the 50 different states across the country and the holes, if you will, that are in there as it relates to identity authentication, suggest to me that standards associated with the issuance of identification documents may be the right way for the federal government to get involved in that process rather than sort of trying to think our way through all the pits and valleys of a national identification card.

MR. ROEMER: That's helpful. Commissioner Gorelick asked very artfully your opinion about how we try to organize this massive lash-up of various organizations called the Department of Homeland Security. Let me put it a different way. Don't you think that Congress went too far and made a mistake in lashing up too many different cultures, too many different organizations, that it's too big, it's too bureaucratic, it's too political, it can't get the job done quick enough going



against such a dynamic enemy as al Qaeda and how al Qaeda is going to work against the United States for the next five years?

And before you answer because I'm sure your answer -- you have to go to work tomorrow or tonight -- before you answer, just put this in the context of somebody who still believes that the Department of Energy which is 26 years old still has real problems functioning as an organization and a Cabinet-level agency in this town. How in the world is this Department of Homeland Security going to take on this commensurate threat? You have this huge bureaucratic organization on the one hand and this dynamic, agile, fluid organization that moves from Afghanistan to Pakistan to Indonesia, cells of four people in Berlin, another cell of six in the Sudan. Are you going to recommend at some point certain reforms to make this organization work more efficiently?

MR. LOY: There's no doubt, sir, that I think this is a work in progress. The organizational structure of the department, I think, is relatively sound. The idea of the four major directorates with a director associated predominantly with operating agencies and the work that they are doing, one associated with the science and technology, associated with an investment in R&D and technological improvement, that is a very sound organizational element, I believe. One that is associated principally with the response side of the post-event challenge in EP&R and one that's associated with predominantly the information and prevention or the pre-event side of this notion of when the event may trigger before and after.

I don't know that I'm smart enough, as I sit here today, to have reached fundamental conclusions as to whether or not it should have been only 16 agencies instead of 22 or 14 or 21 -

MR. ROEMER: You artfully suggested, I think -- you diplomatically suggested that maybe the Homeland Security Council could evolve, go away eventually. Is there a part of this that could be merged with a different department that has a better synergy with a different agency, that, in retrospect, some of us thought this could have been smaller and more agile like Secretary Ridge's first assignment in the White House? How might you help us think this through?

MR. LOY: Well, I think there's probably two things. One would be to understand the difference between one who is responsible and armed only with collaborative, coordinative kind of influence as opposed to one who has direct line authority over the engaged agencies that he is trying to get to do something. The homeland security advisor is just that, one who makes an effort to use the bully pulpit of the White House to influence things one way or the other. The secretary of the department in which there are these agencies has the direct authority to, as necessary, direct traffic with respect to what they do. That's one array of thought that suggests that a Cabinet level department has perhaps a better ultimate way of having things get accomplished because they have the line authority to make it happen.

The second thing is to -- I believe goes back again to Commissioner Gorelick's question about culture, and it has to do with what are those things that we must value in this brand new department, things like adaptability and agility and those that you were just describing, and make absolutely certain that in this white sheet of paper that we have, you know, in kicking off this new department in this new century, we design into the development of leadership programs in the department, in the day-to-day life of executing policy and things in the department, that those are the things that are

valued. We incentivize the process such that we reward behavior that goes that direction and we don't reward -- in fact we punish if appropriate behavior that goes the wrong way.

The enormity of the challenge on one hand to me is offset by the enormity of the opportunity on the other. And we are literally -- those of us who have been given this responsibility have a chance to take that white sheet of paper and create, if you will, a model agency for cabinet level functionality in the 21st century. And if we do that well, armed with the authorities that were provided by the Congress -- including those, for example, that were provided in TSA -- I can tell you that there is no way, absolutely no way we could have gotten accomplished what we got accomplished in TSA in two years if it had not been for the authorities the Congress offered to us in ATSA. I'm talking about sole-source acquisitions. I'm talking about an

H.R. program where pay banding offered us an opportunity to attract the very best in the public service because we could give them a couple of more bucks to do the job we were asking them to do.

It was more than a patriotic zeal that brought people to the department. They could have gone lots of different places and done their service to America after 9/11. If they came to TSA it was not only because of that zeal, it was because we could attract them with a couple of more dollars associated with the pay banding system that was licensed for us to use. So in those kind of areas of design where we design the culture of this organization for the ensuing future, there is enormous opportunity for us to do that well and we should be held accountable if we don't get that job done.

MR. ROEMER: Thank you, Admiral, I appreciate that. Are you a baseball fan?

MR. LOY: I enjoy all sports, sir.

MR. ROEMER: You enjoy all sports. I'm a Cub fan and I'm proud of it. I've seen my Cubs humiliated -

MR. LOY: You're not the guy that was in the left field stands -

MR. ROEMER: If I was, I sure wouldn't be up here. They would have chased me off a long time ago. And in 1969 the Cubs lost the pennant to the Mets, one of our many losses and humiliations. From what I've heard of that CAPPS program today, I think you said it's been gamed, it's been compromised, it hasn't worked well -

MR. LOY: CAPPS I.

MR. ROEMER: CAPPS I. I would not name anything CAPPS II. I think I'd -

MR. LOY: (Laughs.) Good point.

MR. ROEMER: -- work on a new name and be like exhorting the children of this country, in a coaching experience, to play like the Cubs of 1969. Let's think of something different.

Thank you again, Admiral.

MR. LOY: Great point, sir.

MR. KEAN: Senator Kerrey.

MR. KERREY: Well, take heart, Commissioner Roemer. Every team has a bad century. (Laughter.)

I don't have -- actually, there's not enough time to go into a lot of questions so I'm not going to do any questions. I'm just going to add a declaratory to your own thinking, in addition to having a great deal of admiration for your career, and I mean nothing that will follow here is made in a disrespectful fashion, but I'm a skeptic on all this stuff. I really am. I mean, put me in the ranks of -- just as a citizen, not as a commissioner here at the moment. I mean, my view is a lot of this new money we'd have been better off converting into \$1,000 bills and throwing it out the window.

Secondly, I mean I've never been more frightened in the last 18 months. I mean, every time some new alert comes out about some damned thing, my wife tells me we ought to move out of New York City. And, look, we made some terrible mistakes, and actually I'm becoming even more skeptical about the Department of Homeland Security, although from the standpoint of good government maybe at some point with all the new authorities you're talking about, it might make sense. I mean, maybe five years from now, just from a good government analysis, we'll look at it and we'll say this was a good thing to do.

But, I mean, all the witnesses that I've heard thus far in my short time on this commission, I mean, there's just too many of them that are saying, god, if I'd just had the intel from the CIA, as you were referencing, Barry.

If the FBI had just told me, or the FBI and the (ECM ?) and -- you know, I just didn't know what was going on. I had no idea that maybe terrorists would commit suicide. You know, I had no idea that something like this could happen. It was unimaginable.

It wasn't unimaginable. We had an Islamic terrorist organization that was operating right in the United States of America and we allowed it to happen. They were training in Afghanistan, we let it happen. And once we stopped doing all that stuff and going after people with a vengeance, it seems to me that the world has gotten an awful lot safer.

I mean, I tell you, I mean I travel a fair amount, and going to the airport is no fun. You know, you do have to add to your concentric circles the one that Commissioner Fielding was talking about, which is that law abiding passengers like us when we get on the plane, the last circle is we say, oops, here's the stun gun, Mr. Attendant. Here's the knife that I got on that I realize I shouldn't have had on. I mean, all the -- I take my shoes off.

I've got a prosthesis from the Vietnam War. You know, they've got to -- now they practically strip search me to check me out and do all that. I mean, go fly commercial. I've got friends today that won't fly commercial any more.

I mean, I hope that TSA doesn't do to Amtrak what it's done to the airlines. I mean, that's the way I feel, let me just tell you. I just -- from the standpoint of a single individual, I don't feel safer and I don't feel like -- in part because I don't think we're walking up to the microphones and saying, all of us made a terrible mistake. We miscalculated here.

I mean, I heard in earlier panels they said, well, we just didn't realize these guys were this sophisticated. I mean, get the hell out of here. They beat the Soviet Union, for god's sakes, in Afghanistan. That's no small accomplishment.

I didn't realize they could fly a plane. Get the hell out of here.

We sell them fighters and train them how to be a pilot, for

god's sakes. But we don't know -- we didn't realize they could learn how to fly a plane.

What is that all about, other than denial?

So when I hear this -- I hear people seem sort of chirpy that we've got it all figured out and it's all going to be better, I just say Jesus. I mean, you've got to start by saying every single one of us made a huge miscalculation and it got us into a hell of a lot of trouble. And we've stopped making that kind of miscalculation and we've stopped blaming it on somebody else. It's not somebody else's fault.

We made a terrible mistake and we paid a hell of a price for it. And I just -- I mean, my whole -- I wish you well. I mean, I hope that you and Tom Ridge are very successful and that you win distinguished service medals for great service in organizing this department, but I'm still a skeptic. I'm still skeptical that the whole thing has added much value to the security of the American people.

MR. LOY: Sir, I thank you for your candor. I could not agree with you more about the huge mistake. I mean, I'm one who is of the mind that this complacency thing does manifest itself in organizations and in fact can manifest itself in nations, and we took a decade off.

We took 12 years off. From the 1989 fall of the Wall and the implosion of the Soviet Empire, I am of the mind that we, the collective we, took a big deep breath, found no other superpower across the falter gap to worry about any more and tended to relax. And strangely enough, we woke up on the morning of 9/11 not only to get that cold pail of water in the face very directly, but also to realize that all that stuff that we had built over the course of the Cold War largely was no longer very meaningful in this new war that we had to encounter on -- you know, in this global war on terrorism.

It's not about, you know, the weapon systems, the protocols, the diplomatic engagements, all the things that were so dramatically effective for us to outlast the Soviet Union in the Cold War. A whole new ball game. I mean, a whole new ball game that we have to understand and build from scratch.

That is our challenge. That is our generation's challenge for this country.

MR. KERREY: Well, thank you for accepting the challenge and for your service and -- (off mike.)

MR. LOY: Thank you, sir.

MR. KEAN: Secretary Lehman.

MR. LEHMAN: Thank you, Admiral. You may recall there were hearings a long time ago when I was secretary of the Navy where there was a push to put the Coastguard under the Navy, and the Department of Defense put out a very strong statement that they didn't want that ball. And so I was called to testify and asked, now, we understand, Mr. Secretary, you really want the Coastguard and could you give us your frank personal view on whether the Coastguard should be part of the Navy Department. And I said, well, I do have a strong personal view on that, Senator, but I don't agree with it.

And with that caveat, I'd like to ask you -- as you know, there was quite a strong push up here -- when I say here I mean the Hill -- to push to have the domestic intelligence function as part of Homeland Security. In fact, the original authors of that concept had that as the number one function to organize the department around. Where do you think domestic intelligence

should reside?

MR. LOY: Sir, I think we are learning at the moment. My thought is that eventually, in a perfect system, domestic intelligence probably ought to be internalized in the department. That may be a while coming.

MR. KERREY: The Department of Homeland Security?

MR. LOY: Yes, sir. That may be a while coming. But, for example, one of the things that we have had to do in the stopgap measure business is both TTIC and TSC, the whole notion of trying to get our arms around a single watchlist for all of us who have to check things against such a watchlist and make very difficult decisions, I think it is a proper weigh point on the way to where it eventually might be housed. To single it out, stand it up, make it right and then, once it has proven itself functionally, to consider where the ultimate resting place might be for something like TSC, for example.

MR. KERREY: Thank you for that surprising frankness.

MR. LOY: Now, that is not to say that for the moment -- and again I go back to this last month of orange alert condition -- and I must say I was just enormously pleased with what I saw day after day after day several times a day where principals were modifying stands from the morning and the afternoon because of new pieces of information going by. A new piece of analytical product that had come out of TTIC or had come out of the agency or had come out of the Bureau, or had come out of our shop in the

I.A. side of IIAP. What was enormously gratifying was the sharing process that took place several times a day to enable us to get on to where we needed to go.

And that was the key, to me, to license the operators to take those products and go do something about them. And we did, of course, have more -- as you know, we always look for credibility and specificity in intel streams going by and in those instances we had plenty of both. And so the opportunity for us to reach to international partners, to reach to the private sector of international partners, airlines, for example, all of that activity was happening of the moment, of the moment, and it was a very gratifying process to be part of.

MR. LEHMAN: Thank you.

I've one last question. I was quite surprised to hear from an earlier panel of airline officials, former and current, to learn that political correctness is still very much being enforced. And they said that, for instance, after 9/11 when some 35-38 people were -- pilots declined to fly them because they suspected they were of a dangerous profile, that Department of Transportation is now suing them over that ethnic profiling.

And further, one witness said that current regulations for governing TSA are that if there are three ethnic persons more of three ethnic -- the same ethnic profile, selected out for examination, that the carrier will be fined. And I find after the experience of 9/11 that to continue that kind of political correctness, that they can't focus their attention on people that fit the profile when we're in a war against Muslim fundamentalism, that you look for Muslim fundamentalists, to be idiotic. Tell me it ain't true.

MR. LOY: It ain't true, sir. I just don't -- having stood the agency up and operated it for two years, I do not remember any such guidance being provided. We are -- you know, this profiling thing to me is all about capital "P" and little "p" and the capital "P" profiling that all of us have been against, for all

the right reasons, in our culture is not to be confused with profiling with a small p" where we are using a tool to do whatever is necessary to be safe in terms of putting American citizens on airplanes flying from Point A to Point B.

I have no recollection of that guidance. I certainly will go back and take a hard look because I have no recollection.

MR. LEHMAN: Could you run that to ground? I'd appreciate it because they said categorically that they were being both fined and sued because of such profiling.

MR. LOY: Yes, sir, I will sure check it out.

MR. LEHMAN: Thank you. Thank you very much, Admiral, for your -

MR. LOY: Yes, sir, Mr. Secretary.

MR. KEAN: Admiral, thank you very, very much. You have lived up to your reputation and it's a good reputation. Thank you, sir, for being with us today and this concludes our hearing. The Chair and the Vice Chair will be available to any members of the press who have questions in room 902 in this building.

MR. LOY: Thank you, Mr. Chairman.

END

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