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WHAT REGULATIONS ARE NEEDED TO ENSURE AIR SECURITY?

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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WHAT REGULATIONS ARE NEEDED TO ENSURE AIR SECURITY?

TUESDAY, NOVEMBER 27, 2001

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY POLICY, NATURAL
RESOURCES AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:07 p.m., in room 2154, Rayburn House Office Building, Hon. Doug Ose (chairman of the subcommittee) presiding.

Present: Representatives Ose, Shays, Tierney, and Kucinich.

Staff present: Dan Skopec, staff director; Barbara Kahlow, deputy staff director; Regina McAllister, clerk; Alexandra Teitz, minority counsel; and Earley Green, minority assistant clerk.

Mr. OSE. Good afternoon. Welcome to the subcommittee hearing.

The tragic events of September 11, 2001, have shaken the confidence of the U.S. Government and its citizens in the Nation's air security. Immediately after September 11th, the President and Congress began to examine the existing system, including the laws, regulations and actual practices governing air security. Much was found to be lacking. Some changes were made immediately by the President, such as having more Federal law enforcement officials on airplanes and in airports. Other changes were quickly made by the airlines, such as locking all cockpit doors.

On November 19th, the President signed a comprehensive Aviation and Transportation Security Act written by this Congress. This law places responsibility for air security in the hands of the U.S. Department of Transportation. Within 1 year, DOT is required to primarily use Federal employees for passenger and baggage screening. In addition, the law addresses many other areas of air security.

Today, we plan to examine how to make this new system work. As we are talking about people's lives, there is no room for error. We will hear from an expert in air security and other witnesses representing the airlines, airports, pilots, flight attendants, and consumers about what regulations are needed to ensure air security.

Federal regulations specify detailed procedures to ensure uniform implementation of laws. The new law establishes "emergency procedures" allowing the DOT to issue interim final regulations without any public notice or comment. Today's hearing provides a useful forum for congressional and public input into the regulatory decisionmaking process that is currently under way.

Even before the Airline Deregulation Act of 1978, there were minimal Federal protective regulations governing air security. In 1981 DOT's Federal Aviation Administration issued minimal regulations on airplane operator security, including less than one page on "screening of passengers and property." Currently, FAA has only one page of codified rules on this subject. Also, FAA has noncodified directives and customized provisions in its contracts with each of the airlines since airlines to date have been responsible for air security, including screening of passengers, carry-on baggage and checked baggage. FAA's approach led to nonuniform and unpredictable screening practices across airlines.

Following the July 1996 TWA Flight 800 airplane crash shortly after takeoff from JFK in New York, in October 1996, Congress passed the Federal Aviation Reauthorization Act of 1996. This law required FAA to certify companies providing security screening and to improve the training and testing of security screeners through development of uniform performance standards for providing security screening services. Even after a November 2000 law established a deadline for FAA to issue an implementing rule for this 1996 law, FAA failed to do so. I am amazed that, in over 5 years, FAA has failed to issue a final rule on certification of screening companies.

The new administration has realized there is a problem. In its April 2001, U.S. Department of Transportation Performance Report Fiscal Year 2000 and Performance Plan Fiscal Year 2002, DOT stated it did not meet its 2000 performance target for aviation security and, "screener performance has not improved enough."

To ensure the most effective approach, the new law provides for a 2-year pilot program at five airports to test different screening approaches using private security firms instead of Federal employees. In addition, the law provides, after a 3-year period, an option for any airport to meet strict Federal standards for passenger and baggage screening by using private security firms instead of Federal employees.

The new law also includes provisions on many other aspects of air security, such as hiring criteria, identification and screening of airport employees, employee training, identifying passengers and the like.

I look forward to the testimony of our witnesses today on what DOT should include in its air security regulations to ensure uniformity and maximum protection for airport and airline employees as well as passengers. Ladies and gentlemen, I travel every single weekend. This is a critical issue. This hearing is very timely.

I am pleased now to recognize my colleague from Massachusetts, Mr. Tierney, for 5 minutes.

[The prepared statement of Hon. Doug Ose follows:]

Chairman Doug Ose
Opening Statement
What Regulations are Needed to Ensure Air Security?
November 27, 2001

The tragic events of September 11, 2001 shook the confidence of the U.S. government and its citizens in the nation's air security. Immediately after September 11th, the President and Congress began to examine the existing system, including the laws, regulations, and actual practices governing air security. Much was found lacking. Some changes were made immediately by the President, such as having more Federal law enforcement officials on airplanes and at airports. Other changes were quickly made by the airlines, such as locking all cockpit doors.

On November 19th, the President signed a comprehensive Aviation and Transportation Security Act written by Congress. This law places responsibility for air security in the hands of the U.S. Department of Transportation (DOT). Within one year, DOT is required to primarily use Federal employees for passenger and baggage screening. In addition, the law addresses many other areas of air security.

Today, we plan to examine how to make this new system work. We will hear from an expert in air security and other witnesses representing the airlines, airports, pilots, flight attendants, and consumers about what regulations are needed to ensure air security.

Federal regulations specify detailed procedures to ensure uniform implementation of laws. The new law establishes "emergency procedures" allowing DOT to issue interim final regulations without any public notice and comment. Since DOT has begun its initial consideration of the subject matter content and language for its regulations, it is prohibited from participating in a Congressional hearing. Therefore, today's hearing provides a useful forum for Congressional and public input into the regulatory decisionmaking process.

Even before the Airline Deregulation Act of 1978, there were minimal Federal protective regulations governing air security. In 1981, DOT's Federal Aviation Administration (FAA) issued minimal regulations on airplane operator security, including less than one page on "Screening of passengers and property." Currently, FAA has only one page of codified rules on this subject. Also, FAA has noncodified directives and customized provisions in its contracts with each of the airlines since airlines have been responsible to date for air security, including screening passengers, carry-on baggage, and checked baggage. FAA's approach led to nonuniform and unpredictable screening practices across airlines.

Following the July 1996 TWA Flight 800 airplane crash shortly after takeoff from New York's John F. Kennedy International Airport, in October 1996, Congress passed the Federal Aviation Reauthorization Act of 1996. This law required FAA "to certify companies providing security screening and to improve the training and testing of security screeners through development of uniform performance standards for providing security screening services." Even after a November 2000 law established a deadline for FAA to issue an implementing rule for this 1996

law, FAA did not do so. I find it astonishing that, in over five years, the FAA failed to issue a final rule on certification of screening companies.

The new Administration immediately realized there was a problem. In its April 2001 "U. S. Department of Transportation Performance Report Fiscal Year 2000 and Performance Plan Fiscal Year 2002," DOT stated that it did not meet its 2000 performance target for aviation security and "screener performance has not improved enough."

To ensure the most effective approach, the new law provides for a 2-year pilot program at five airports to test different screening approaches using private security firms instead of Federal employees. In addition, the law provides, after a 3-year period, an option for any airport to meet strict Federal standards for passenger and baggage screening by using private security firms instead of Federal employees.

The law also includes provisions on many other aspects of air security, such as: hiring criteria for screeners, identifying airport employees, screening airport employees, employee training for baggage screening, other employee training, identifying passengers, identifying those seeking flight instruction, screening passengers, screening carry-on baggage, screening checked baggage (all by some means within 60 days and all with explosive detection equipment by December 31, 2002), matching passengers and checked baggage, performance standards, and enforcement (including penalties).

I look forward to the testimony of our witnesses on what DOT should include in its air security regulations to ensure uniformity and maximum protection for airport and airline employees as well as passengers. Our witnesses include: Transportation and Infrastructure Subcommittee on Aviation Chairman John Mica; Isaac Yeffet, former Director of Security, El-Al Airlines; Edward A. Merlis, Senior Vice President, Legislative and International Affairs, Air Transport Association of America; Todd Hauptli, Senior Vice President, Legislative Affairs, American Association of Airport Executives; John O'Brien, Director of Engineering and Air Safety, Air Line Pilots Association, International; Patricia Friend, President, Association of Flight Attendants; Mark Roth, General Counsel, American Federation of Government Employees; and Paul Hudson, Executive Director, Aviation Consumer Action Project.

Mr. TIERNEY. Thank you, Mr. Chairman, and thank you for holding this hearing on security of air travel. This is, as you said, a timely and important topic.

I also want to thank our witnesses that are going to share their expertise with us today and am particularly pleased to welcome our colleague, Mr. Mica.

The Aviation and Transportation Security Act is a major victory for the American people. This is legislation which, if done right, will help restore public confidence in the safety of our airlines. It can also give our economy a needed boost by encouraging air travel and promoting other hospitality sector businesses, including travel agencies, hotels, and restaurants.

The Aviation and Transportation Security Act establishes a national system for air security. Security screeners will now be able and trained professionals working for the Federal Government who will meet uniform high performance standards. Federalization of the security system should also promote efficient sharing of intelligence information, a clear chain of command and accountability for maintaining security in and around airplanes and airports. The American people overwhelmingly supported full Federalization of aviation security functions, and I am pleased that Congress has delivered these protections to the public.

The law also requires other important measures to protect our aviation system. It will expand the Federal Air Marshal Service, require criminal background checks of all persons with access to secured areas, and mandate the reinforcement of all cockpit doors. All checked baggage must be screened by explosive detection equipment by the end of next year, and checked baggage must be screened through other means in the interim.

The Aviation and Transportation Security Act establishes a new Transportation Security Administration within the Department of Transportation, and it is charged with carrying out these provisions. The TSA has a lot of work to do under difficult circumstances.

This hearing could have been a useful forum for us to hear from the Department of Transportation and give the Department and TSA guidance on their next steps. It is unfortunate that no representative of the Department chose to be with us here today. Nevertheless, there are several points that I urge the Secretary of Transportation to bear in mind as he implements this law.

The new Federal security system gives us an excellent opportunity to help those in the airline industry who have lost their jobs since September 11th. When hiring Federal security personnel, we should give first priority to those in the airline industry who have been laid off. I have cosponsored legislation, H.R. 3067, to give these workers priority; and a version of that provision was included in the Aviation security bill passed by the House. While that provision is not in the final law, the Secretary of Transportation has the authority to help those laid-off workers by giving them priority for the new jobs, and I urge him to do so.

It is also vitally important that we provide Federal security personnel with appropriate compensation and the benefits that we provide all other Federal workers. Uniform Federal benefits are a matter of equity, and they are necessary to attract and to retain

a high caliber of dedicated people to perform those critical security functions.

The Aviation and Transportation Security Act conference report included an expectation that the Secretary will establish benefits and conditions of employment for Federal security screeners. The report also stated that these Federal workers should have access to Federal health benefits, life insurance, retirement benefits, and workers' compensation benefits as well as whistleblower protections. I encourage Secretary Mineta to comply with the Congress's directive in this regard, and I thank you for the opportunity to participate, Mr. Chairman.

Mr. OSE. Thank you, Mr. Tierney.

We are pleased today to be joined by the chairman of the Subcommittee on Aviation and Transportation and Infrastructure, the distinguished gentleman from Florida, Mr. Mica. Welcome.

STATEMENT OF HON. JOHN L. MICA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. MICA. Thank you, Mr. Chairman, and also thank you, Mr. Tierney. I am pleased to join you here today. I think this is a very important hearing which is focusing on what regulations are needed to ensure our air safety, and I commend you and the subcommittee on your important oversight responsibility and work. I want to again thank you for allowing me to testify first.

We have just gotten through putting together in a record timeframe a major overhaul of our Nation's aviation and transportation security system and I think this hearing couldn't be more timely, particularly today as you focus on the important issue of rulemaking in aviation security.

I believe one of the most momentous provisions of the recently signed Aviation and Transportation Security Act is the unprecedented provision giving the new transportation security Under Secretary the authority to pass rules in an expedited fashion. In fact, if you look at legislation we passed, there is nothing in that entire legislation that is more significant than, again, this unprecedented authority that we gave to this new transportation security czar to put rules in place on an expedited basis.

On July 11th of this year, my Aviation Subcommittee heard very disturbing testimony about the Department of Transportation and the Federal Aviation Administration's inability to pass rules in a timely manner. Let me give you some examples that we heard in that hearing.

It takes the Department of Transportation an average of 3.8 years to finalize a rule. We also had testimony that with FAA it takes a median time of 2½ years again to go through the process of enacting a rule. And let us face it, our country is now on a very high state of alert and we can't afford to wait another 3 years to get aviation security technology or screening standards in place.

Witnesses at our hearings that we held on the problem of cutting through the red tape and enacting security rules on an expedited basis shared some stories with us about the time it takes for different rules. For example, the emergency exit rule took 10 years to process; the child safety restraint rule has taken over 3 years and

still isn't finished; and, finally, the flight simulator rules took 13 years.

Often an agency will place the blame for the time it takes to pass a rule on the time it takes to study the issue, analyze the cost/benefit data, publish the rule, gather public comments and incorporate those comments, and finally send the proposed rule to the Office of Management and Budget for its approval. That also often takes a good deal of time. However, the layers of review and analysis have become impediments that are in fact hindering our ability to achieve a secure aviation environment, particularly in a time of national crisis.

Perhaps the rule that has received the very most attention recently has been the rule requiring screening companies to be "certified" to ensure that they were meeting minimum standards of performance. Sadly, despite the Gore Commission recommendations—and the Gore Commission after TWA 800 and the Oklahoma City bombings acted and recommended action—and two congressional laws, one in 1996 and another in the year 2000, the FAA in fact dallied for 6 years on the screening rule which was still not in place, standards again for screeners were still not in place, a rule was not enacted by September 11th of this year.

It is absolutely critical the administration get the right employees to be screeners and also that we set up a rational personnel system.

Again, we have given unprecedented authority in the aviation security law for this new transportation czar to have almost unprecedented hiring/firing discipline authority over this new class of Federal workers. The major complaint that we often hear about Federal employees has been the impossibility of disciplining them.

I chaired for 4 years the Civil Service Subcommittee in the House of Representatives. We found some interesting things in looking at the performance of Federal employees. Federal employees' complaints take, on average, 3.5 years to resolve. We must be able to enact performance measures—and if this is done by a rule and it does affect our security performance as it relates to our most important assets and that is human workers, but we must be able to enact performance measures in a meaningful manner, something that has been resisted in the past.

Twice in the House I passed performance-based management systems for a Civil Service system and twice they were defeated or not taken up in the other body. In fact, I let the employees' groups help draft the provisions of those standards. We cannot have security tangled in the normal bureaucratic red tape and employee protections that have been chiseled in stone over many years.

The new Under Secretary's unprecedented rulemaking authority should not only provide impetus on getting the right standards for screeners and these new Federal workers but should also give them the ability to put the most cutting-edge technologies in our airports immediately. That was part of the purpose of the way we crafted the legislation. Again, while technology exists which could have detected the plastic knives that we believe were used on September 11th or could detect other plastic weapons, it has not yet been deployed at our Nation's airports. To approve new technology can, in

fact, take months. To complete acquisition or deploy the latest security technology can unfortunately take years.

I know there are other areas which the new Under Secretary will find this, again, unprecedented rulemaking authority critical, but I am convinced that just by getting the right technology in place and the standards set for screeners—again high standards we have been seeking for many years—will have made great progress in making our transportation system much more secure and making the traveling public much more confident.

I hope today that your subcommittee will examine carefully the torturous and time-consuming process required to pass simple rules related to security requirements. On September 11th, above all else, the rulemaking process failed. It failed to allow new rules for technology approval and deployment. It failed to identify new security risks and adopt new standards by expedited rulemaking. We cannot as a matter of normal course of our conduct of business of government allow red tape and bureaucratic delays to hinder the rulemaking process, particularly when it comes to matters of national and aviation security.

Finally, let me just say one thing, and it is not in this prepared statement. But the rules and even laws need to be realistic, and they need to be flexible. We did put provisions in this law that we just passed, unfortunately, that I believe are not realistic. The 60-day baggage screening provision which we put by law is not realistic, and I think today or shortly the administration will announce that they can't meet that provision that we, in fact, put in law. So our rules, even if they are expedited and put into place on an unprecedented, cut-through-the-red-tape basis as we've provided for, have to be realistic; and, second, they need to be flexible, flexible enough that we don't tie the hands of those who are deploying the latest technology, those who are deploying the most highly skilled workforce, those that are involved in putting again these other necessary procedures in place that we give them flexibility.

With those comments, I will be glad to answer any questions.

Mr. OSE. Thank you, Mr. Mica. I appreciate your coming. I know that you worked hard on this bill.

[The prepared statement of Hon. John L. Mica follows:]

STATEMENT OF THE HONORABLE JOHN L. MICA
Rulemaking and Aviation Security
Subcommittee on Energy Policy, Natural Resource & Regulatory Affairs
November 27, 2001

Chairman Ose thank you for inviting me to testify and I commend your Subcommittee's work on the important issue of rulemaking and aviation security.

I believe that one the most momentous provisions of the recently signed Aviation and Transportation Security Act is the provision giving the new Transportation Security UnderSecretary the authority to pass rules in an expedited fashion.

On July 11 of this year, the Aviation Subcommittee heard very disturbing testimony about the Department of Transportation and Federal Aviation Administration's inability to pass rules in a timely manner.

DOT takes an average of 3.8 years to finalize a rule and FAA takes a median time of 2 and half years. Let's face it, our country is now in a state of high alert and we cannot afford to wait another 3 years to get aviation security technology or screening standards in place. Witnesses at our hearing shared stories of some rules, like the emergency exit rule, which took 10 years and the child safety restraint rule which has taken over 3 years and still isn't finished. Finally, flight simulator rules took 13 years.

Often an agency will place the blame for the time it takes to pass a rule on the time it takes to study the issues, analyze cost/benefit data, publish the rule, gather public comments and incorporate those comments, and finally send the rule to the Office of Management and Budget for their approval. However, these layers of review and analysis have become impediments that are hindering our ability to achieve a secure aviation environment in a time of national crisis.

Perhaps the rule which has received the most attention recently has been the rule requiring screening companies to be "certified" to ensure they were meeting minimum standards of performance. Sadly, despite the Gore Commission recommendations and

two Congressional laws (the first passed in 1996) the FAA dallied for six years on the screening rule which still was not in place by September 11.

It will be critical that the Administration get the right employees to be screeners and set up a rational personnel system. The major complaint about federal employees has been the impossibility of disciplining them. A federal employees complaint takes on average 3.5 years to resolve . We must be able to use performance measures in a meaningful manner, something that has been resisted in the past. We cannot have security tangled in the normal bureaucratic red tape and employee protections that have chiseled in stone over the many years.

The Under Secretary's new unprecedented rulemaking authority should not only provide impetus on getting the right standards for screeners, but should also give him or her the ability to put the most cutting edge technology in our airports immediately. Again, while technology exists which could have detected the plastic knives or other weapons, it has not yet been deployed at our nation's airports. To approve new technology can take months, to complete acquisition or deploy the latest security technology can take years.

I know there are other areas which the Under Secretary will find the new rulemaking authority critical, but am convinced that just by getting the right technology in place and standards set for screeners we will have made great progress in making our transportation system more secure and the traveling public more confident.

I hope your Subcommittee will examine the tortuous and time consuming process required to pass rules related to security requirements. On September 11, above all, the rulemaking process failed. It failed to allow new rules for technology approval and deployment. It failed to identify new security risks and adopt new standards by rulemaking. We cannot as a matter of normal course of business allow red tape and bureaucratic delays to hinder the rulemaking process when it comes to matters of national and aviation security.

Mr. OSE. I have a couple of questions I would like to followup on. Before I do, I would like to recognize Congressman Shays. Thank you for joining us. I appreciate your coming.

On the issue of the rulemaking process at DOT, there was a law that we passed in 2000 mandating the FAA to come forward with some new requirements, and you have correctly highlighted that inability to finalize these rules. In the context of what FAA was required to do, would that have had an effect on anything that occurred on September 11th?

Mr. MICA. Well, I believe it probably would have. I think in my testimony I pointed out that you have to adopt rules or regulations that can identify, for example, in the aviation security area the most vulnerable risks and then be able to act on them. We are so bogged down in bureaucratic red tape. It takes us so long to get in place even standards for a screening company, that the larger picture is lost in this.

One of the first things I did in February when I took over the Aviation Subcommittee was bring in the new head of security for FAA. We tried to talk about the big picture, but FAA spends most of its time mired in trying to pass these rules in this torturous process that we have described. And you lose sight of the big picture. You lose sight of where the risks may be.

Could the events of September 11th been prevented? Possibly. We have equipment; we have technology that has been tested that will, in fact, identify plastic weapons, and we believe knives were used. There was no rule in place to ban box cutters. If someone had looked at the potential risk, possibly we could have had an expedited rule that would have banned box cutters or looked again at the larger picture, but we certainly could have had equipment in place on September 11th that would detect the type of weapons that were used. But, again, the torturous process of getting this deployed, and you get everybody and their brother involved in this process.

Even a few weeks ago the ACLU was protesting the possibility of us getting some of this technology deployed that is very high in its definition and felt it was a personal intrusion into passengers or citizens.

Mr. OSE. The gentleman from El Al who will testify later, having reviewed his remarks, indicated that the two questions that are typically asked of a traveler right now, did you pack your bag and were they——

Mr. MICA. Totally, totally useless. I just had them asked of me as I got on a plane on the way here. I think you will have a representative from El Al, and they testified before our subcommittee. I don't know who came up with that particular provision, but it doesn't do the job. They need to ask more specific questions, probably on a limited basis and maybe on a profile basis.

My God, little old ladies in a wheelchair I just saw that are being wanded are not taking down airplanes. We know specifically the types that are taking down airplanes. So we spend all this time being politically correct in trying to get even basic rules in place which have been impossible. It sounds a little bit like we are self-defeating.

Mr. OSE. In that same testimony there were comments highlighting the fact that we match baggage to passengers, for instance, on planes in Europe coming to the United States or, as El Al does, matching bags to passengers on every flight. Does that——

Mr. MICA. We have done most of that in the past restricted to international flights. But the events of September 11th indicate that we are in a new ball game. When someone is willing to take down a plane and be on the plane and direct a plane into a target, whether you match the bag or not is sort of a moot point. So we may be wasting a lot of money. We tried to shy away in our legislation from requiring matched baggage, but some people think that matched baggage is the answer to security problems. Personally, I don't think it is.

Mr. OSE. One of the themes that I discern from your comments is that there is a tradeoff here between security and perhaps some loss of privacy. Does the law that we have just passed give the Secretary the ability to issue regulations that implement that tradeoff?

Mr. MICA. Well, we are so accustomed to personal freedoms and trying to keep government out of our lives and out of our business or personal affairs and that is appropriate. When it comes to issues of national security, when you have someone that is willing, again, to die to take down a plane and passengers and thousands of people on the ground, we have to balance that with our security needs. So we have to protect privacy, and we tried to do that in the legislation that we passed.

But again this new Under Secretary transportation czar, I could—the only one I can think of that has the power that individual has in any provisions of law would be the President of the United States.

Now, the rulemaking ability of the new transportation czar is very narrow. It is confined to transportation security and aviation security. So he or she is not going to be out doing all these kinds of things that will invade people's privacy. I hope they will be respected. And we do have a check-off in the bill that we passed with a panel made up of our chief law enforcement agencies, one representative from the Attorney General's Office, the Department of the Treasury and others involved in law enforcement where a rule could be overridden by this panel. So we have some protections in there, but it is something that we always have to be on guard.

Mr. OSE. I thank the gentleman.

Gentleman from Massachusetts.

Mr. TIERNEY. I have no questions. Thank you for your testimony.

Mr. OSE. The gentleman from Connecticut.

Mr. SHAYS. Thank you, Mr. Chairman, for holding this hearing and thank you, ranking member.

Mr. Mica, I have been very impressed as have your other colleagues with the job you have done in airport security.

I am puzzled by one provision. In the amendment that we put in the House on checking baggage for explosives, there we had it at the end of the year 2003 because we knew there would be a task of getting equipment and also having space for some of the equipment. And in the House bill I was pleased that it was moved up to the end of year 2002. I am unclear as to the provision that says

deadline for all checked baggage to be screened by some method within 60 days. Explain that provision——

Mr. MICA. Well, again, that provision was put in the legislation trying to get deployed. As you may know, in the past after each of these incidents and tragedies, we tried to cobble together legislative provisions or attack the problem. After TWA 800 and also Oklahoma City, all the emphasis was placed on explosive detection devices. We went out and bought $443 million worth of explosive detection devices. Some of that equipment was good and worked. Some of it didn't work. Some of it was deployed. Some of it was not deployed.

In the past, the airlines had the responsibility before the President signed the law on November 19th of actually conducting the security procedures. They employed the personnel, the screeners, and the people who also did the work with these explosive detection devices.

In fact, the security chief who came in and talked to me said that some of the airlines told him basically to go take a hike; they weren't going to use this equipment. It slowed things down. It cost money. They didn't want to do it. But, we have no way of enforcing that they used it.

So the provision we put in the law was basically to deploy any of the equipment that is sitting idle, to put in place by any means possible. Drug-sniffing dogs could do probably as good a job as some of the equipment or other equipment or it may be some spot-checked baggage. So that was a directive to try to get these things in place.

Can it be done in 60 days? I don't think so. I think——

Mr. SHAYS. Can I just——

Mr. MICA. The intent was good, but I don't think——

Mr. SHAYS. See, I am not even understanding the intent. Let me just be clear. By the end of 2002——

Mr. MICA. Well, 2002 is a different date——

Mr. SHAYS. Let me ask my question so that I can structure it. You know so much about this bill, you want to tell me more than what I want to know. I want to know, by the end of 2002, they have to be totally complete, all baggage will be screened for explosives; is that correct?

Mr. MICA. That is right.

Mr. SHAYS. The 60 days—there is a news account that says Secretary Mineta said it is unlikely to meet the toughest deadline in the aviation security law President Bush just signed that all checked and carry-on baggage should be screened for explosives in 60 days. We don't require that all baggage be screened for explosives in 60 days, do we?

Mr. MICA. We do not now, no. And we won't be able to do it in 60 days. We tried to explain this to some of our colleagues, too——

Mr. SHAYS. But are you saying we have a 60-day requirement that all luggage has to——

Mr. MICA. Yes. Well, the intent was to deploy everything we have, every means we have possible, technology that we have possible, dogs, some searches, maybe using the National Guard——

Mr. SHAYS. I just want you to define the 60 days. Technically, the bill requires it——

Mr. MICA. Technically, the bill requires it. Practically—and that is part of what I spoke at the end of my testimony—we need to be realistic, and we need to be flexible. Whether it is a law or whether it is a rule——

Mr. SHAYS. I don't mind being realistic. I want us to be realistic. I just want us to understand, and I want you to put it in clear terms. You are saying that, basically, the bill has a contradiction, that we say 60 days all explosives, and we say 2 years all explosives?

Mr. MICA. Well, again, it started out as an intent to try everything, deploy everything possible within 60 days and take every provision we could or take every action we could to ensure that as much baggage that was checked was screened. And then it turned into more of a mandate without flexibility. The true mandate in there is the one that you worked on that was originally 2003 and got moved to December 2002. That is in the bill. It is achievable. There are some problems even with that requirement, and you will hear that either from other witnesses or people who are involved in producing the technology.

Mr. SHAYS. I will try to track down the language on the 60 days before we have our next panel. I just want to be clear on this one point.

Mr. OSE. Would the gentleman yield? I have the language.

Mr. SHAYS. Pardon me?

Mr. OSE. I have the language.

Mr. SHAYS. OK. Do you want to read it to me?

Mr. OSE. The language on the 60-day requirement is, a system must be in operation to screen all checked baggage at all airports in the United States as soon as practicable but not later than the 60th day following the date of enactment of the Aviation and Transportation Security Act.

Mr. SHAYS. It doesn't say all explosives there. It just says check all baggage; correct?

Mr. OSE. Correct. And there is an insert on page 49 that relates to explosive detection systems that says, explosive detection systems are deployed as soon as possible to ensure that all U.S. airports described in Section 44903(c) have sufficient explosive detection systems to screen all checked baggage no later than December 31, 2002, and that as soon as such systems are in place at an airport, all checked baggage at the airport is screened——

Mr. SHAYS. So when I am hearing this language, it says, explosives by the end of 2002, a system that checks for all; and then in 60 days it says, all baggage will be checked. It doesn't specifically highlight the issue of explosives; correct?

Mr. MICA. Well, again, it is a directive. Is it possible to put systems in place? Yes. Will the systems work to cover 100 percent? No, not in 60 days. No way, Jose.

Mr. SHAYS. I understand. It does not say explosives in 60 days. That is all I am saying. I mean——

Mr. MICA. The other problem we had in testifying before us, Mr. Shays and members of the panel, is that even by the time we deploy some of the technology that can detect explosive devices, the material that is used for explosives is changing. So if we gave them 2 years to deploy technology, the material that can be used as ex-

plosive may change and we may not have available in place the technology that can, in fact, detect these new explosives by changing the chemical composition or the makeup of the bomb device or explosive device.

Mr. SHAYS. I will——

Mr. MICA. That is the scary part about all of this.

Mr. SHAYS. Well, the bottom line is, if we can't check for explosives in the belly of an aircraft, we can't say that airline travel is safe.

Mr. MICA. But again——

Mr. SHAYS. So it is important that we begin this task immediately. It will not be foolproof. But I did not read in the legislation that we are supposed to have in place within 60 days a system to check for all explosive material, but I do read in the legislation that by the end of the year 2002 we must do it. Obviously the administration is going to work overtime to accomplish that task, and it may have to come back and say we are meeting it or not meeting it. But in the course of trying to reach that deadline, I make an assumption that 6 months into this a good number of the bags will be screened for explosive devices, not all. I realize that we don't want to buy equipment that doesn't work, but I just want to reemphasize the 60 days is not explosive material, as the story seems to imply, and I am kind of disappointed it has become an issue so quickly with Mineta saying we can't do it.

Thank you, Mr. Chairman.

Mr. OSE. Thank you, Mr. Shays.

Do you have anything else?

Mr. Mica, thank you for joining us.

Mr. MICA. Thank you, Mr. Chairman. I wish you well, and we have staff here who are listening to the proceedings. We appreciate your conducting complete oversight again on this most important issue and encourage you to continue this process, and we will work with your subcommittee.

Mr. OSE. Thank you, Mr. Chairman.

Mr. MICA. Thank you.

Mr. OSE. We will have the second panel join us now.

The second panel comprises of Isaac Yeffet, Edward Merlis, and Todd Hauptli.

Gentleman, in this subcommittee we swear all our witnesses. So if you would please rise.

[Witnesses sworn.]

Mr. OSE. Let the record show the witnesses all answered in the affirmative.

Our first witness on the second panel is Isaac Yeffet. He is the former director of security for El Al Airline. Welcome.

I want to caution the witnesses we have your written statements, and I know that everybody up here has read them. I have a heavy gavel at 5 minutes. The green light shows you are in the first 4 minutes, the yellow light shows you are in the last minute, and the red light means that trap-door underneath your chair opens and you are finished.

So, for 5 minutes, Mr. Yeffet.

STATEMENTS OF ISAAC YEFFET, FORMER DIRECTOR OF SECURITY, El Al AIRLINE; EDWARD A. MERLIS, SENIOR VICE PRESIDENT, LEGISLATIVE AND INTERNATIONAL AFFAIRS, AIR TRANSPORT ASSOCIATION OF AMERICA INC.; AND TODD HAUPTLI, SENIOR VICE PRESIDENT, LEGISLATIVE AFFAIRS, AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES

Mr. YEFFET. Thank you, Mr. Chairman.

Mr. Chairman, distinguished members of the subcommittee, I would like to thank you for giving me the opportunity to testify here about the aviation security of the United States of America and especially the changes that should be made to upgrade the level of security to a degree where any enemy who would try in the future to hijack or to blow up any aircraft of our country, of American air carriers, will fail. This is in the air and on the ground. If they will come to attack and to kill our passengers on the ground at any terminal in the world, and especially this country, we have to make sure that the enemy will get the answer from our guys in a second and they will pay with their life and not any more American people.

For this, changes—there are a few conditions that in my belief we cannot reach this goal if we don't change the system and the concept of the FAA. We cannot continue so many years to rely only on technology, on machinery. This technology failed so many times, whether by the test that the FAA made, the enemies, or by mistakes when passengers were carrying guns and nothing stopped them at the security checkpoint. It is time to understand that machinery can help the qualified and well-trained human being and not to replace them.

Since September 11th we are witnesses to so many times that we fail in our security checkpoints when statement after statement was made that now we have a very high level of security and it is safe to fly with American air carriers when, in reality, nothing has been changed. I flew enough times since September 11th. I didn't see any changes, and I cannot tell the American people, yes, we are safe when we are not safe.

This morning I took a flight from Newark airport to Reagan airport. The ticket agent behind the counter asked me two questions without looking at my eyes when I am answering the questions. I decided to talk to her to tell her that I am a security expert of an airline and why did you ask me these two silly questions when you didn't even pay attention to my answers? She said we never were trained what to do. We only were told to ask questions, and whatever you answer me, you answer me, sir.

I said, don't you think that you are making a joke out of security? She looked at me and she said, you know, I was hired to do my job as a ticket agent, not as security. I'm not an expert in security.

When we boarded aircraft, we heard an announcement that we have to remain seated on our seat from gate to gate and we cannot move during the flight. This is a result of failures when it comes to the aviation security of our country. Passengers should not suffer because of the lack of security. It's in our hands to change this system. The FAA charged millions of dollars every year to the airline for so many times the security people at the security check-

point failed, but they never said stop here. Money's important. Life is more important, and, therefore, we want to know why so many times our system fails time after time and why we still keep this security company running the security at our airports.

We know about security. A year ago, a huge company hired security people with criminal records. They were caught, and they made a settlement. Pay us a fine, $1.6 million, and don't do it again. Recently, they were caught again——

Mr. OSE. Mr. Yeffet, we're going to come back to your testimony here because I think you have got such a wealth of knowledge——

Mr. YEFFET. Can you allow me one more sentence, please?

Mr. OSE. Yes.

Mr. YEFFET. OK. My last sentence is, if we want to succeed having a high level of security, we must match the passenger with his luggage at the terminal before he is headed to the check-in. We must interview every passenger by qualified and well-trained security people. American people and permanent residents with green cards, they have to come with the government ID. All others that are noncitizens and are not permanent residents, they must come with passports.

Every tourist should come with his passport, and the security people will check the passport to find out from what nationality the man is, what kind of visa he has. Is the visa that he has expired? Is this a fake or real passport that he is carrying? Based on this, we can build enough security questions to determine if this passenger is suspicious or bona fide.

But by the fact that I've heard from Mr. Mica that he doesn't believe that to match the luggage to the passenger will help us, this will not help us if we will not interview the passengers, and we need to do it because through the passengers we come to the explosives and to the weapons inside the luggage. The luggage cannot talk, cannot tell us what is the contents inside the luggage. The passenger will give us the answer, and, if we are professionals and we know how to ask the right questions and we look at the eyes of the passenger, we can determine who is bona fide and who is not.

Thank you very much.

Mr. OSE. Thank you, Mr. Yeffet.

[The prepared statement of Mr. Yeffet follows:]

Statement of Isaac Yeffet

Former Director of General Security for El Al Airlines

November 27, 2001

Mr. Chairman and Members of the Subcommittee: I would like to thank you for the opportunity to appear before the subcommittee to speak about the current state of security for American flag carriers. In your invitation, you requested that I address certain specific matters that concern your subcommittee. What follows is a brief summary of my experiences and thoughts about those areas of concern.

What are the goals for strengthening aviation security for each airline around the world? We must ensure that every flight will take off and land without having any dangerous explosives and/or hijacking. With the assistance of our national intelligence, we need to learn and determine who the enemy is. In addition, based on the previous incidents by terrorism and lack of flawless aviation security around the world, we can learn and take the right steps to successfully prevent the enemy from fulfilling their goal. Furthermore, any intelligence information about the plan and intention of the enemies to endanger aircraft and passengers either in air or on ground will be beneficial in reducing the risk of terrorist threats. We can also make an assessment of the dangers posed to aviation security based on the changes that comprise the terrorist organization against the aircraft, airline and its passengers.

The kind of risks involved with certain airports in all cities can be determined. Different factors such as costs, the level of security existing in different airports around

the world, the approach of local authority to the security, and the steps that are being taken to secure every airline flight that is taking off and landing. Based on the degree of security the local authorities are taking, we can determine which ports we can take a risk on, and those that have less security, we can not. This includes: guarding the perimeter by local authorities, guarding the terminals, and guarding the passengers. Above all this, the approach of the government to terrorism in general and how serious they act against it will establish a large portion of the risk involved. Efforts that the intelligence is putting forth are imperative to make certain that terrorist acts will not be tolerated and cannot succeed. For example, in Switzerland's case, the local government at Zurich airport does not take any risk whatsoever and they protect the terminal, runway, and perimeter at a very high level so that terrorists will not be able to achieve their goals. Conversely, in Athens, Greece, the base of many terrorist organizations exists. They are free to move and act wherever they want, including the airports. Therefore, no airline will allow themselves to take even the smallest risk given this situation.

The Israel based airline, El Al, serves as the blueprint for how all security systems should be conducted by all airlines. El Al, by necessity, has developed a system that is based on covering all the possible risks of every flight. This security system concentrates on the concept that primary focus should begin with passenger interviews. It is up to the qualified and well-trained security agents to question the passenger while they have their baggage in their possession. All the passengers of El Al flights must pass the same interview and based on the results of the interview, the security people determine what kind of check they need administer.

The passenger interview process is very important in achieving the first step of terrorist prevention. For example, at the airport in Heathrow, London, a piece of luggage with a large quantity of explosives was concealed by a sophisticated terrorist. He had packed it for his girlfriend and told her that she needed to fly to Israel to meet his family and deliver all the gifts he packed. The baggage screening x-ray device checked the luggage, and nothing was identified. El-Al security screeners interviewed the woman with her luggage, and the answers she gave to the questions identified her a suspicious passenger. Through expert hand searches, they found all of the explosives in the luggage and arrested the terrorist involved once the girlfriend revealed all of her story and information about her boyfriend. El Al saved hundreds of lives that were boarded on the aircraft from London to Tel-Aviv just by framing the passenger screening questions in such a way that reveals any suspicious information. Its also important to note that effective security agents combine information gained from the passenger interview with profile behaviors, identified through experience and intelligence information.

In another case, taking place in Zurich, Switzerland, a German criminal was released from jail in Germany and confronted by a group of terrorists who spent money on him to have a good time. From Germany, they took him to Switzerland for a vacation and to win him over. Once they were there, they asked him if he was looking for a way to make easy money. He admitted he was, so the terrorists offered him a deal to smuggle drugs to Israel. They told him they will buy his ticket and give him $5,000. Once in Israel, he is to go to the address they give him in order to drop off the luggage and receive another $10,000. After complying, the man was given a round trip ticket from Zurich to Tel-Aviv. The terrorists packed the man's luggage and concealed explosives in a

professional way. On the day of the flight, they drove him to the airport and warned him about the El Al security people. When they left, the man proceeded to local immigration authorities and passed with his real passport and luggage he thought contained the drugs. The bags were x-rayed by the local authorities and nothing was identified. When the El-Al security screeners interviewed him, through his answers, they determined that he was a suspicious passenger. With precise hand searching of the luggage, they found the explosives hidden and once again saved the lives of hundreds of travelers to Tel Aviv.

Besides passenger interviews, another clear indicator of suspicious behavior is 1-way ticket purchases. In the situation of Mohammed Atta, the leader of the terrorists that hijacked four aircraft on Sept 11, 2001, he bought a 1-way ticket to Los Angeles. This is a classic suspicious sign that should have been recognized. If the airline that sold him the ticket had a good security system implemented, this important information would not have gone unnoticed and would have been reported to the security officials of the airlines. When questioned, Mr. Atta could have failed the interview process by qualified and well-trained security people, therefore having to answer why he bought a one way ticket to LA. Normally, non-American tourists do not buy 1-way tickets for they are traveling and touring the country, and Mr. Atta could have been targeted as a prime suspicious passenger. Further questioning of Mr. Atta and his associates may have revealed passport and VISA irregularities that may have required further search and/or detention.

Another case involving a 1-way ticket purchase involves a man from Nepal that took a flight two weeks ago from Chicago O'Hare to Kansas City and bought the ticket at the last minute with cash. These are two classic suspicious signs that should have been

detected by airline officials, and could have been detected by proper interview procedures. If he was interviewed with his luggage at the terminal check-in by security before reaching the gate check-in point, he would probably have been deemed as a suspicious passenger. With a thorough hand-search of luggage, the knife and stun gun would be found before he could have proceeded to the gate check in.

Failure of proper security procedures and passenger/baggage screening can result in detrimental consequences. Along with the recent events of September 11th, Flight 103 of Pan-American in December 88 also led to the loss of many lives. A passenger carrying explosives in his carry-on luggage passed through metal detectors with ease. Due to the lack of a high-level security system installed and security screeners, the passenger was able to continue to board the aircraft without answering any questions. Thus, in flight, his bombs exploded killing 259 passengers and 11 innocent bystanders on ground.

If we compare the El Al security procedures to those practiced by the FAA, we can see that FAA relies heavily on technology and less on interaction with the interview process of passengers. El Al focuses on the passengers as the first means of security checks. The security system of interviewing every passenger with his luggage is the most important step to finding concealed explosives or weapons. This whole system does not exist through the FAA, thus leaving many loopholes and causing weak points in the operation that secure the flights of the American air carriers. Luggage itself cannot inform airlines of its contents, therefore concentration on the passenger is necessary. From here, the opportunity to discover suspicious passengers and their luggage is made possible. By not having a strict security interview with passengers, the FAA concept is taking a high security risk in regards to the lives of many passengers. There is only a

standard questioning process consisting of 2-3 questions, and the FAA only x-rays 10% of the luggage boarding the aircraft. Even if they would screen 100% of the luggage, we learn from the history of experiences, that machines are not error-free devices guaranteeing detection of dangerous items. X-ray machines can help in assisting the security people, but can never replace the qualified and well trained personnel that can determine who is innocent, and who is not, by the interview process. Human beings invent security machines, thus humans can invent new ways to overcome these devices by outsmarting them.

We face tragedy due to the non-existence of passenger interview. Background information of the passenger must be researched *before* the passenger reaches the airport. A list should be composed based on information from our nation's intelligence agency. If the passenger is on the warning list, then the airline agents will thoroughly question the passenger instead of only relying on machines. In addition to the list, suspicious signs are also taken into consideration. Nervous attitude, cash bought ticket, and 1-way travels are sure signs. When interviewed passengers are innocent and honest, they are appreciative of security questions because they know it is for the safety of their own lives. If agents don't have any reason to suspect a passenger, then they will be released and the filtering process continues in order to identify the passenger that may pose a risk to the safety of the flight. Airlines should also review immigration and naturalization service information as well as passport origin information for non-citizens.

The concepts of El Al's security system was built for their first and only concern, that of the passengers' safety. Based on this concept, El Al hires qualified people and trains them at the highest level to thoroughly understand all security system procedures

and facts in regards to the flights. These subjects include: Baggage room procedures, delivery to the aircraft, cleaning the aircraft under supervision, check in processes and aircraft searches before boarding. Knowing how to read passports and tickets are also part of the training. The employees undergo many exercises and tests similar to real life instances that keep them aware at all time. Above this, El Al constantly makes sure that they get information about threats from their intelligence staff so that all security people will be updated and ready. Unfortunately, we do not have this system with the FAA. Otherwise, we could not understand why the FBI had part of the list of the hijackers from the four aircraft on Sept 11th , but never reported these names to the airline security to make sure that proper precautions were taken. Communication is key and with this secure relationship, the right steps can be taken in order to reveal potential terrorists that try to board flights with or without explosives.

Airlines must instill a coordinated security plan including the following subjects: Passenger and Baggage Screening, Matching Baggage with Passengers, Performance Standards, Enforcement via sky marshals and armed undercover civilian guards, specific Hiring Criteria, Employee Training, Proper Employee/Passenger Identification, and assign specific responsibilities to all involved.

The objective of the security screening of passengers and baggage is to prevent explosives or weapons to be placed on the plane. The threats thus forestalled are those of mid-air explosions and of hijacking. It should be emphasized that there are other pathways, besides passengers and baggage, through which these threats can materialize. Weapons or explosives may be carried onto the plane in the following ways: the passenger's belly baggage, the passenger's hand baggage, or on the passenger himself.

The means of prevention are to identify the passenger and/or detect the explosives or weapons before they can be placed on the plane. Several alternative approaches may be employed to achieve the above-mentioned objective, each having its merits and disadvantages. Four of these are described here.

The first is called the "Total Approach" where each and every passenger is searched, along with every piece of baggage in the presence of its owner. The advantage yields a profound deterrence effect. The disadvantages include a heavy load of routine screening that tends to lower vigilance, and reduce the security officers' alertness to suspect passengers and articles. Also, the screening effort is spread over a large mass of passengers, who most likely are not a security risk. In order not to interfere with flight schedules and passenger time, the method requires large manpower teams and much work time. Hence, it is very costly.

Second, is the "Random Approach," which is conducted on some of the passengers and their baggage. It is of lower cost than the previous method, and also equates a considerable deterrence effect. However, statistically, the chances are greater that concealed objects will escape detection.

Next, the "Security Risk" approach involves interviewing all passengers to detect suspects, by prevailing standards such as lack of concrete answers to screening questions, nervous attitudes, 1-way tickets, and suspicious appearances. Only suspects are subjected to thorough searching. The advantages are that the chances are better for detecting suspicious people and items. In terms of effort/result, the method is efficient and economic. Although, the method does require a highly trained and experienced security

staff. In all three approaches described above, manual searching is assisted by technical aids.

"Technical Only", the last approach, is based chiefly on the use of technical aids (x-raying, magnetometer, etc.) and manual searching is secondary. This enables processing large masses of passengers. If conducted in the presence of the owners, the procedure is moderately deterrent. However, this technique cannot detect expertly concealed explosive devices in packed baggage. The FAA currently utilizes this approach and has made for a weak security system as we have recently experienced.

The "Security Risk" approach is considered to be the most effective. In spite of this, the current experience and professional level of the security staff of many airports nationwide are not yet up to the required standard. Passenger Screening will cover maximum information about each traveler before the passenger boards the aircraft. In addition, every piece of baggage must get the treatment based on the level of risk associated with the passenger. Every passenger must come with his luggage to the check-in terminal area to be interviewed by the security personnel. After interviewing the passenger, the agent assesses whether or not they need to heighten their security procedure when screening the luggage. If the traveler proves to be suspicious, then careful and thorough screening of luggage is necessary, in addition to the normal FAA standards. For the passengers that are determined to be safe and non-suspicious, a sticker should be placed on the luggage with the code of the flight, and delivered to the baggage room and checked by security people that the correct sticker was placed. Only after approval by security people in baggage room, can it be delivered to the aircraft, escorted by security people so that nothing is added in route to the aircraft. Every baggage article

will not be allowed to board the belly of the aircraft, if the owner of the baggage is not boarding the aircraft as well.

Baggage matching with passengers is also a crucial part of an effective security plan. At most stations, passengers are counted as they board the plane. The number of baggage items of each passenger should be recorded by the ticket agents into the main computer system. At the same time, the agent should write the passenger's seat number on each baggage tag. The list of boarding passengers will be compared with the check-in list. Many US airlines already have automated systems in place to conduct these matches. In the case that a passenger is missing (including connecting passengers), his baggage will be unloaded from the plane before it is cleared for take-off.

Performance standards should be at the highest level/standard confirming that every security agent must perform on every flight like it is their first flight, and first passenger. The agents must pass tests very often by unknowingly receiving "test" passengers with undercover stories and suspicious signs to see if the security agent can detect it and determine the passenger as being suspicious. Every security agent must know how to approach all passengers with necessary security questions. Zero tolerance for failures is accepted. Any security person that will fail the tests should be fired because there is no ability to replace the lives of people that might be killed due to the failure of the agents. We must ensure that every test be conducted in a level that would be similar to real attempts of terrorists wanting to hijack or explode an aircraft.

Enforcement should be carried out via armed undercover special unit guards. On-the-spot armed security persons are the only means of protection in the case of an armed terrorist assault on passengers. As the number and placement of visible guards may figure

in the planned tactics of the attackers, covertly armed guards must be present, and integrated in the defense system. I don't think that we should bring the airports to emulate a military camp. Instead of the existing National Guard that we see today at airports around the country, I believe that soldiers that served in a special unit of the military should be hired and trained to be undercover agents at the airports to ensure the safety of all passengers. Armed guards should be the responsibility of the local authorities. It is the task of the Local Security Officer to ensure that adequate armed protection is always present. Any access to restricted areas should be controlled so that people will not have the chance to penetrate and cause harm at the airfield. Moreover, sky marshals are necessary in order to reach maximum aircraft security. Every flight will be assigned a certain number of sky marshals to accompany the flight. The number will be based on intelligence information the airline receives. The Head of Security will also determine the need of sky marshals according to the terms of each flight, its destination, and the security that exists at the destination airports.

Specific hiring criteria is necessary in order to control the kind of people the airlines have working and representing them. A thorough background check is required of every employee and applicant before an employment badge can be given. Only American people, ages 25-45, with proper citizenship will be hired to perform the security of the airlines, plus a minimum of high school education. Every employee must have a clean criminal record and no history of drugs. There are no exceptions to this rule. Priority is given to people that speak another language in addition to English, along with people that can express themselves when they talk. Also, one who knows how to interact well with people and can make the right decisions when interviewing will be hired.

The purpose of thorough employee training is crucial to ensure a high level of service with regards to security procedures in every department. Two training programs should be implemented. One of basic professional training, the other of upgrading or refresher courses. Major topics include: Principles of airline security, including case histories. Background and the worldwide terrorist threat. Enemy practices, and evaluation of intelligence information, and the enforcement of security procedures. In addition, identification of suspicious persons and articles, searching of baggage and carry-on baggage, along with body searches. Pre-departure questioning and area screening is also of importance. Conduction of tests and exercises so that every security person passes practical and written tests before they are placed at the terminal. These exercises should be administered on a continuous basis so that job performance is kept at the highest degree.

The Local Security Manager should conduct security exercises to test all aspects of the security operation. Tests should include real-life situations to represent all potentialities. Following are some suggestions: sending baggage to the baggage room without a tag or sticker attached, or without a security-signed label, along with sending a passenger with dummy explosives concealed in baggage or on them. Hand search training is necessary to see if any explosives were concealed in the luggage such as a double-bottom. Learning to ask the right questions after approaching the passenger and convincing them that the security questions must be asked for the passenger's safety, since they are the ones who are boarding the flight. Every person should be trained to phrase the interview question in a leading form where the answer will be quality information, not yes or no. A new question can be built based on the answer given by the

passenger. For example, the question should be as follows: "To whom does this luggage belong?" , "Who packed this luggage?" , "What are the contents inside the luggage?" If the passenger is honest, then he does in fact know what's inside. If someone else packed it, then physical signs can be noticed such as nervousness or hesitance. The Local Security Officer should periodically hold individual exercises to check the performance of each officer. The lessons learned from these exercises shall be transmitted to all security officers at the station. If security offices fail at the exercises, the manager will have to discontinue their employment. The security personnel must realize the huge responsibility they have in detecting any type of potential harm to passengers. Furthermore, attendants should be trained and dedicated to conducting a thorough search of aircraft pre-boarding to make sure that no weapons or explosives were planted. In order to have a serious, professional search of the aircraft, flight attendants, with the supervision of a security official, should conduct the inspection because they are taking the same flight as the passengers and their safety is also involved. A full report on the exercises should be submitted to the Chief Security Manager. Manuals of each function should also be administered to each security employee.

Passenger identification is imperative and knowledge on how to read passports, identification pieces, and flight tickets for suspicious signs is a must. Every passenger must have a picture ID and information should be compared to the list of suspicious people that the airline has for each and every flight. Reading the details of the passports to see if they match the passenger criteria is a must. For example, date of birth. In the past, it has been found that criminals use stolen passports and they change only the picture and not the rest of the information. The age listed on the passport should match

the physical appearance of the passenger. With Visas, if the country visited is known to support terrorist organizations such as Sudan, Iran, Libya, Iraq, Syria and others, special attention should be given. Flight tickets should be examined to see if it is a one way ticket or if it is a stolen ticket that was filled out not by the airline, but by the passenger himself. In addition, every employee should carry a badge to prove that he is apart of the security operation or an employee of the airline when he is working or traveling through the airport.

The last issue of concern is unattended luggage at the terminal. The security officials must assign people whose sole responsibility is to make sure that no unattended luggage, packages or any suspicious items are left without an owner. If so, local authorities should be contacted to remove the item in order to minimize the risk of harming travelers.

This report emphasizes the need to implement a thorough passenger interview process by relying on qualified, well-trained security agents. With this approach, the risk is minimized, as the degree of security is increased. It is imperative that aviation security begin with the instant the passenger approaches the terminal check-in for this has proved to be effective. Successful prevention is achieved through human intervention, not through the use of technology as exercised by the FAA. Machinery should be used secondary as a means of backup. In addition to the passenger interview process, hiring processes, employee training, manual baggage screening, matching passenger with baggage, and employee/passenger proper identification are tools to accomplish a meticulous security plan. Although I haven't addressed everything that needs to be considered in creating a successful security plan, I want to mention that security issues in

regards to cargo, catering, and Duty Free should be of concern as well when doing a thorough assessment. It is possible to conduct a polished, professional security system for all American air carriers once the weaknesses and problems are recognized. It is important to be proactive and establish policies and procedures that leave no room for error. Millions of people in this country and in the world depend on flight carriers to transport them safely to their destinations. With all of these security measures implemented, airlines can successfully fulfill their goals and reduce the risk of terrorist attacks. Communication is also a strong necessity, and our nation's intelligence must work together with the FAA and airline officials to reveal all necessary information and knowledge on known terrorist threats and descriptions. I am confident that we can improve our aviation security with the cooperation of many in order to protect and ensure the safety of our travelers. Effective security can be achieved with public, private and federal cooperation.

Mr. OSE. Mr. Merlis, 5 minutes.

Mr. MERLIS. Thank you, Mr. Chairman and members of the subcommittee.

I am Edward Merlis, senior vice president of the Air Transport Association of America.

I appreciate the opportunity to appear before you today to discuss the transition regulations flowing from last week's enactment of the Aviation and Transportation Security Act. We are very pleased that Congress and the administration have reached consensus on this legislation that will place the Federal Government in control of aviation security, a position we've advocated since at least 1973.

We've long felt that airlines do not belong in the security and law enforcement business. We move passengers and goods efficiently, and we should focus on that job. Government, on the other hand, not only has the authority but also the societal responsibility to provide security protection for our customers, our airlines, and the Nation they serve.

Why have we felt that government has absolute preeminence in aviation security? Simply stated, aviation security and the fight against terrorism starts with the deployment of our Nation's intelligence gathering and analysis resources. Once our intelligence apparatus determines where the threat lies, we must utilize the proper tools to combat terrorism.

Fundamentally, there are six tools that can be used to remedy the problems identified by our intelligence assets. The tools are diplomacy, economic sanctions, military intervention, covert action, law enforcement and countermeasures.

The first five are exclusively governmental authorities, functions far beyond this industry or any industry's abilities. In these areas, we need the full-scale participation of the FBI, the CIA, and a host of other government agencies which have the wherewithal to fulfill those obligations.

Unfortunately, for too long the airlines have been delegated by the government to take charge of aviation security. The airline industry does not have the expertise, much less the right, to engage in any of the essential activities necessary to combat terrorism. Airlines are not law enforcement or national defense agencies. As a result, too much of our aviation security effort was devoted to countermeasures, the last line of defense, an important line of defense, no less, but in concert only with the preceding five authorities once they have been deployed. In essence, we have been essentially ignoring the best lines of defense and relying only on the last.

Thus, we review last week's enactment of the Aviation and Transportation Security Act as the fulfillment of what should have been done long ago, putting the government in full control of aviation security.

Mr. Chairman, the hearing focuses on regulatory requirements emanating from the enactment of the Aviation and Transportation Security Act, and I've enumerated five different provisions in the act which we feel are particularly important as they apply to the airline industry.

We're committed to working with the Transportation Security Administration in implementing these requirements so that the vi-

sion of the Congress can become a reality. In each case we have some measure of experience and offer that up for the TSA's consideration. But we recognize that, in the end, the TSA is the responsible party that must issue the regulations and implement a comprehensive aviation security program.

One area I'd like to focus on briefly is the use of intelligence data. Much of the attention in the legislation is focused on looking for things among the billions of bags, packages and people we carry. We would hope that, in the interest of erecting a better aviation security barrier, much more is done to utilize existing resources of data to, in effect, look at the people involved and decide on that basis where to focus our screening efforts. That "needle in the haystack" can be found if the haystack is small enough but not so long as the haystack stretches beyond the horizon.

We believe that better utilization of intelligence and law enforcement resources is the key to that goal as well as to the specific requirements of Section 138, the background check provision. What we envision is a dynamic process through which real time communication of our reservations systems and the government's data bases are put to best use. Airlines do not need to know who is on the government list, but the government surely needs to know that people on their hot lists are planning to travel. Through the efficient use of these data, security attention can be focused on where it can be of highest utility.

Aviation security is the process of finding the one person out of hundreds of millions of passengers who intends to do harm. Government can best do that, and we are prepared to work with Government to ensure that it is accomplished.

Thank you, Mr. Chairman.

Mr. OSE. Thank you, Mr. Merlis.

[The prepared statement of Mr. Merlis follows:]

Statement of Edward A. Merlis, Senior Vice President
Air Transport Association of America
Before the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs
Committee on Government Reform
House of Representatives Hearing on
Federal Regulations Needed to Ensure Air Security
November 27, 2001

> *"A major area of controversy surrounding the airport security program is whether the security force should consist of federal or local officers. The airlines believe that the security force should be composed of federal officers..."*
>
> *Paul R. Ignatius, President,*
> *Air Transport Association of America*
> *House Transportation and Aeronautics Subcommittee*
> *March 7, 1973*

Good afternoon, Mr. Chairman and members of the subcommittee. I am Edward Merlis, Senior Vice President of the Air Transport Association of America (ATA).[1] ATA members move approximately 95% of the passengers and cargo transported on U.S. flag air carriers.

I appreciate the opportunity to appear before you today to discuss the transition regulations flowing from last week's enactment of the Aviation and Transportation Security Act. We are very pleased that Congress and the Administration have reached consensus on legislation that will place the federal government in control of aviation security -- a position we have advocated since at least 1973.

We have long felt that airlines do not belong in the security and law enforcement business – we move passengers and goods efficiently and we should focus on that job. Government, on the other hand, not only has the authority but also the societal responsibility to provide security protection for our customers, our airlines and the Nation they serve. Congress' recent action has properly seen the government takeover aviation security and now begin to implement appropriate measures to provide a secure environment for our customers and employees.

Why have we felt that government has absolute preeminence in aviation security? Simply stated, aviation security and the fight against terrorism starts with the deployment of our nation's intelligence gathering and analysis resources. Once our intelligence apparatus determines where the threat lies, we must utilize the proper tools to combat terrorism.

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[1] ATA member airlines include: Airborne Express, Alaska Airlines, Aloha Airlines, America West Airlines, American Airlines, American Trans Air, Atlas Air, Continental Airlines, Delta Air Lines, DHL Airways, Emery Worldwide, Evergreen International Airlines, FedEx, Hawaiian Airlines, JetBlue Airways, Midwest Express Airlines, Northwest Airlines, Polar Air Cargo, Southwest Airlines, United Airlines, United Parcel Service Airlines, and US Airways. Associate members include: Aeromexico, Air Canada, KLM Royal Dutch Airlines, and Mexicana.

Fundamentally, there are six tools that can be used to remedy the problems identified by our intelligence assets. The tools are:

- Diplomacy
- Economic sanctions
- Military intervention
- Covert action
- Law enforcement
- Countermeasures

The first five of these are exclusively governmental authorities -- functions far beyond this industry's or any industry's abilities. In these areas we need the full-scale participation of the FBI, CIA, DIA, NSA, and the Departments of State, Defense, Treasury, etc.

Unfortunately, for too long the airlines have been delegated by the government to take charge of aviation security. The airline industry does not have the expertise, much less the right, to engage in any of the essential activities necessary to combat terrorism. Airlines are not law enforcement or national defense agencies. As a result, too much of our aviation security effort was devoted to countermeasures, the last line of defense; an important line of defense but only after the preceding five authorities have been fully deployed. In essence, we have been essentially ignoring the best lines of defense and relying only on the last.

Thus we view last week's enactment of the Aviation and Transportation Security Act as the fulfillment of what should have been done long ago: putting the government in full control of aviation security.

Mr. Chairman, this hearing focuses on the regulatory requirements emanating from the enactment of the Aviation and Transportation Security Act. As we read the Act, after the government takeover in ninety days, major regulations applicable to airlines will include those related to

- Obtaining information from employees and prospective employees sufficient for law enforcement agencies to perform criminal history background checks. (section 138)

- Procedures for using government provided information to identify individuals on passenger lists who may be a threat to civil aviation or national security. (section 101)

- Installation of technologies to improve flight deck integrity (section 104)

- Threat response training programs for flight crews and security awareness programs for airport based employees (section 106 and 107)

- Securing computer reservation systems from unauthorized access (section 115)

We are committed to working with the Transportation Security Administration in implementing these requirements so that the vision of the Congress can become a reality. In each case we have some measure of experience and offer that up for the TSA's consideration. But we recognize that in the end, the TSA is the responsible party that must issue the regulations and implement a comprehensive aviation security program.

One area I would like to focus on briefly is the use of intelligence data. Much of the attention in the legislation is focused on looking for "things" among the billions of bags, packages and people we carry. We would hope, that in the interest of erecting a better aviation security barrier, much more is done to utilize existing sources of data to, in effect, look at the people involved and decide on that basis, where to focus our screening technologies. That "needle in a haystack" can be found if the haystack is small enough but not so long as the haystack stretches beyond the horizon.

We believe that better utilization of intelligence and law enforcement resources is the key to that goal as well as to the requirements of section 138. What we envision is a dynamic process through which real time communication of our reservations systems and the government databases is put to best use. Airlines do not need to know that their passengers are on government lists, but government surely has a need to know that people on their hot lists are planning on travel. Through the efficient use of this data, security attention can be focused on where it can be of highest utility.

Aviation security is the process of finding the one person out of hundreds of millions of passengers who intends to do harm. Government can best do that, and we are prepared to work with government to ensure that it is accomplished.

Mr. OSE. Our third witness is Todd Hauptli, who is the senior vice president for legislative affairs for the American Association of Airport Executives and the Airports Council International-North America.

Welcome. You are recognized for 5 minutes.

Mr. HAUPTLI. Mr. Chairman, thank you. It is good to be with you again, Mr. Chairman, Mr. Tierney, Mr. Shays.

I have four points that I would like to try to make in my oral testimony. First is, talk about funding; the second, talk about the new Transportation Security Administration; the third, talk about screeners; and then, finally, the use of technology.

On the issue of the funding, airports in the immediate aftermath of the events of September 11th were required by the FAA to deploy additional law enforcement personnel throughout the airports. That has been something that airports have done. It has been an extremely expensive requirement, an extremely expensive Federal mandate. The legislation that Congress enacted authorizes but does not appropriate funds for reimbursement for law enforcement officials. That is something that we will continue to work on.

Mr. Chairman, I picked a very random airport to illustrate the point. I just grabbed one out of the hat, and it happened to be Sacramento.

In that instance——

Mr. OSE. Your testimony says Cedar Rapids.

Mr. HAUPTLI. Well, we modified that for the oral presentation, Mr. Chairman.

In Sacramento, we spent $3 million on additional law enforcement officers at the same time that the Sacramento airport will lose $5 million in revenues from lost concession revenues, parking revenues, and the like.

Mr. Tierney, another semi-random example, at Boston Logan Airport they will spend an additional $10 million this year for law enforcement requirements and lose probably $75 million in revenues.

Additionally, airports are going to need help with the capital requirements of terminal redesign, and we are going to have to look at how we queue passengers in screening lines, where we are going to put them, where we are going to put these explosive detection systems. They are heavy pieces of equipment that need reinforcement in the infrastructure. All of that is going to cause us to need additional resources.

With the creation of the Transportation Security Administration, that will require government and industry to work cooperatively like they have never done before. The legislation is replete with requirements for the TSA to come up with new things in 60 days, 90 days, 120 days, 180 days, within 2 years, within 1 year. We need to make sure that government and industry are working together.

While we recognize the point Mr. Mica made earlier about the vast authority given the Under Secretary to promulgate rules without comment from outside groups, we hope that vast power is used sparingly. We believe it is necessary to work with the government in the promulgation of those rules.

Third point, on screeners. The airport groups were relatively agnostic during this debate as to who should sign the paycheck,

whether that be a Federal employee or not. But we felt very strongly, and do to this day, that there needs to be improved screening, improved training, improved proficiency for those screeners. We think that the provision in the law that allows airports to opt out of the Federal screeners after a 2-year period, combined with the fact that class of Federal employees may be removed or fired, gives airports important leverage that we don't have now, say, with INS or with Customs or with Agriculture inspectors.

That puts pressure on the TSA and on the screeners to make sure that they are doing a good job because they may lose their jobs if they don't, and we think that is an important provision that Congress put in.

Finally, on the use of technology, the legislation calls for a pilot program on access control for up to 20 airports. We believe that is important so that we can experiment with different biometric models to determine what might be the best course to take in the future.

Also, I think it is important to explore the possibility of using smart credentials, smart cards, the possibility of using passports. There are 65 million passports in the system today. That may jumpstart us in our ability to, as Mr. Merlis pointed out, take that haystack and make it smaller. If you have to find the needle in the haystack, the best way of doing that is making the haystack smaller.

El Al uses a system, a trusted traveler system, where you are subjected to interviews and background checks initially if you are a frequent traveler; and, if you obtain a card, you are allowed to essentially bypass a portion of the screening process that takes the security screening time down from several hours in many instances down to as little as 15 to 20 minutes.

That is something that we should explore in the future, using technology to help some of the problems that we have experienced to date.

With that, I will yield back and respond to questions.

Mr. OSE. Thank you, Mr. Hauptli.

[The prepared statement of Mr. Hauptli follows:]

Statement of

Todd Hauptli

Senior Vice President,

Legislative Affairs,

American Association of Airport Executives/

Airports Council International-North America

Before the

Subcommittee on Energy Policy, Natural Resources

and Regulatory Affairs

Committee on Government Reform

U.S. House of Representatives

November 27, 2001

Chairman Ose, Ranking Member Tierney, and Members of the House Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, thank you for inviting me to participate in today's hearing on federal regulations needed to ensure air security. It is a pleasure to appear before this subcommittee again. I am testifying today on behalf of the American Association of Airport Executives (AAAE) and Airports Council International-North America (ACI-NA). On behalf of members from both associations, I appreciate this opportunity to discuss ways that we can work together to improve aviation security.

The tragedy of September 11 has changed air transportation forever. We never designed our aviation security system to withstand a threat from teams of special operations-type forces, comprised of suicide pilots, trained for years, with the goal of using the plane as a bomb. It is still hard to believe such people exist, but now that we know they do, airport and aircraft security must be hardened to defend against this and other potential threats that, in the past, we would have labeled as unreasonable. A military-type threat requires a near-military defense. This job would be easier if we could focus on security alone, but we cannot. Changes must both increase security and permit aviation to operate efficiently as public transportation.

Airports, airlines and general aviation must begin to plug the security holes, one by one, despite the complexity, cost and daunting magnitude of the job. While the costs and complexities are huge, they pale in comparison to the greatest threat to our system's future. The 800-pound gorilla of problems is today's lack of public confidence in air transportation safety, and the concomitant revenue impact that attitude has on all aviation businesses. Surveys released at the end of October showed only one-third of the public have a high level of confidence in aviation security. Our industry cannot survive and perform its essential economic role unless we turn that perception around soon.

Air transportation is the safest form of transport in history. More people have traveled farther and more safely by air than any other system invented. Yet, we still cannot expect the system to regain the broad public confidence lost on September 11 until we make

significant, systemic improvements in the federal regulations needed to ensure aviation security. I do not believe the public demands an unachievable "perfection" in air travel, but they are demanding more security onboard the aircraft, more professional screening of passengers and baggage and better perimeter control around parked aircraft.

Immediately after September 11, the Administration worked closely with the airlines and airports to improve aviation security and improve public confidence in our aviation system. I think the Administration, Department of Transportation Secretary Norman Mineta, and Federal Aviation Administrator Jane Garvey deserve a great deal of credit for their quick response during this national crisis. I also applaud the leadership and staffs of the nation's airports that have been working with Department of Transportation (DOT) and Federal Aviation Administration (FAA) officials at an extraordinary pace to heighten security and safely resume air service.

Congress also made a major contribution to aviation security when it recently passed S. 1447, the Aviation and Transportation Security Act, a comprehensive aviation security bill that calls for the federal government to oversee the screening of passengers and baggage. Specifically, the bill creates a new Transportation Security Administration (TSA) within DOT to oversee security in all modes of transportation as well as the screening of passengers and baggage, personnel and supervisors who perform those checks, perimeter security, security aboard aircraft and all other security functions now handled by the FAA.

Since the President signed the bill into law last week, it is now up to the Administration to draft the necessary federal regulations and implement the numerous changes prescribed by Congress. I would like to discuss some of the main provisions in the Aviation and Transportation Security Act and the challenges that I foresee in implementing them over the next few years. Before I do, however, I would like to take a moment to review some of the administrative actions that DOT and FAA have already taken to improve aviation security and describe the economic impact that the recent terrorist attacks and subsequent federal security mandates are having on airports around the country.

After the terrorist attacks occurred on September 11, the FAA closed our nation's commercial airspace system and issued two emergency amendments that included a variety of security initiatives. Airports and airlines were required to implement these new security measures before the FAA allowed them to resume their operations. Airports, for instance, were immediately required to deploy more law enforcement officials and K-9 units, increase security inspections throughout their facilities, strengthen access control measures and remove all vehicles parked near their terminal buildings. With the possibility of additional terrorist attacks in the United States, the FAA issued additional emergency amendments requiring airports to implement even more security measures.

Airports are paying a high premium to implement these new federal security mandates. For instance, increased law enforcement alone is costing the John Wayne Airport in Orange County, California, an additional $1 million per month. More law enforcement

officials are costing the Hartsfield International Airport in Atlanta $2 million more per month. These figures do not reflect the cost of other security initiatives that the two airports have implemented in recent weeks. Overall, we estimate that the new security requirements could cost airports around the country up to $1 billion per year.

While airports are spending more to increase airport security and deploy more law enforcement personnel at their facilities, their incoming revenue has declined with numbers of passengers using the aviation system. Even more so than airlines, airports have high fixed costs and have little financial leeway to absorb the great increases in operating costs required since the terrorist attacks. Airport revenues generated from airline landing fees and rents, automobile parking, rental car and terminal rental space, and rents from concessionaires have all declined precipitously sine September 11. For instance, the Los Angeles International Airport has been losing $1.8 million per day. The Eastern Iowa Airport in Cedar Rapids, Iowa, an example from a smaller airport, is losing more than $12,000 a day.

Reimbursement for Security Expenses: For the past several months, we have been encouraging Congress to reimburse airports for the costs associated with additional security mandates. Although the Aviation and Security Transportation Act authorizes up to $1.5 billion in FY02 and FY03 to, in part, reimburse airports for new security requirements, it does not include the necessary appropriations. Airports are disappointed that Congress passed an aviation security bill that does not provide them with the funds they need to pay for costly new security requirements. As I mentioned previously, these

unfunded federal mandates are having an enormous economic impact on airports around the country. We hope Congress will rectify that mistake by appropriating much-needed funds for new security mandates in the emergency section of the Fiscal Year 2002 Department of Defense Appropriations bill or the economic stimulus bill.

Temporary Flexibility for the Use of PFCs and AIP: Until Congress passed the Aviation and Transportation Security Act, airports were prohibited from using Passenger Facility Charges (PFC) and Airport Improvement Program (AIP) funds to pay for any operational expenses, including the hiring of law enforcement officials. We have been arguing that airports should be able to use PFC and AIP monies to pay for operational expenses and for debt service for a limited time. We also suggested that airports that currently charge passengers a $3.00 PFC should be allowed to raise it to $4.50 as quickly as possible to pay for the additional demands of this challenging fiscal environment.

The Aviation and Transportation Security Act will allow airports to use AIP and PFC funds in FY02 to pay for security-related expenses and debt service if the Secretary of Transportation determines that such payments are necessary to prevent a default. The bill also requires the FAA Administrator to expedite the processing and approval of PFC requests. We hope that the FAA will develop the regulations to implement these provisions regarding AIP and PFC flexibility as quickly as possible.

Security Screeners: Although the question of who should conduct security screening functions at airports was the source of great debate on the airport security bill, the key in

our view is to improve the hiring, training, testing, and thereby the proficiency of those individuals, conducting the screening of passengers and baggage. With the passage of the Aviation and Transportation Security Act, the responsibility in these areas now rests with the TSA. The bill specifically requires federal employees to screen all passenger, property, mail and cargo within one year. During the interim period, the TSA is to assume the existing screening company contracts as soon as possible but no later than 90 days after the President signs the bill into law.

The TSA will be responsible for establishing the hiring criteria, employee training and performance standards for the myriad of other federal workers who will have responsibilities at screening checkpoints and at other secure areas of the airport. While the law is specific in setting out the requirements for screeners, supervisors and others, it is clear that there must be continued federal oversight and accountability for the new federal workforce charged with airport security functions.

Two years after the initial phase-in period, airports will have the ability to opt-out of requirements for federal workers in favor of qualified private contractors. While it is difficult to know how many airports will ultimately choose this option, we believe it will help pressure the TSA to maintain high standards with regard to hiring, training, and performance standards. We are pleased that the bill calls for a pilot program to help TSA evaluate how private contractors will perform in the new environment.

As implementation moves forward, we also think it is important to ensure a cooperative working arrangement between federal employees and airports, which will maintain a number of responsibilities even with enactment of the new law. Local law enforcement, for example, will continue to play a role in responding to threats and providing perimeter security. Ensuring clear lines of authority, responsibility, and communication will be critical to enhancing security.

The TSA must be cognizant of the distinct and important role of airports and consult with airport operators and managers as the process moves forward. Specific questions about whether or not local law enforcement should be present at checkpoints must also be addressed. We firmly believe that current regulations that require airports to respond to events in a time certain should remain in place.

Passenger Identification: Just a few days after the terrorist attacks, Secretary Mineta formed two teams to examine ways to improve airport and aircraft security. The Rapid Response Team on Airport Security, which issued its report on October 1, concluded that new technologies must be deployed more widely to augment aviation security and that there is an urgent need to issue "smart credentials" to facilitate expediting the processing of passengers. I think there are many new technology options that Congress and the Administration should explore in an effort to enhance security at our nation's airports. The Senate Commerce Committee included several new technology provisions in the Senate-passed aviation security bill, and I would like to take a moment to outline a few other proposals for your consideration.

Technology can be effectively used in three ways: 1) to find dangerous "things;" 2) to find dangerous people; or 3) to verify the identity of people who do not present a risk. The first two are relatively difficult even with good technology due to the large number of people and bags being processed in air transportation -- they amount to finding the proverbial needle in a haystack. The third, however, is relatively easy with today's technology as long as we come to agreement on the criteria of a low-risk profile, and it makes the haystack smaller for application one and two.

At the top of any technology list is a "smart credential" as called for in the Rapid Response Team report. We cannot run an efficient public transportation system if we try to treat all 700 million passengers a year like potential terrorists. We need a voluntary system that allows frequent travelers to provide enough information on themselves, so government and industry can agree they belong in a "low-risk" pool.

In return, a so-called "smart card" with biometrics can confirm identity and provide access to an expedited screening process. The system can then concentrate its resources for rigorous screening on passengers who do not qualify to be listed as "low-risk," or passengers we do not know anything about (including those individuals simply uncomfortable with providing information on themselves).

Such a voluntary database of passengers can reside either in or out of government control, but the federal government must be involved in validating the criteria for

information used in this process. I think smart credentials are key to identifying those who may be potential threats to aviation security, and I am pleased that the Aviation and Transportation Security Act requires the TSA to use available technologies to expedite the security screening of passengers who participate in "trusted passenger programs." I hope the Under Secretary of TSA considers the use of biometrics and smart cards to positively identify passengers.

Checked Bags: Without a doubt, one of the most difficult challenges that airports and the aviation industry will have to contend with is the new requirement that a system be in place to screen all checked baggage at all US airports within 60 days of enactment. The technology necessary to meet this requirement is expensive, remains unavailable to screeners at the vast majority of airports, and is sometimes unreliable. There are only about 142 explosive detection systems deployed at approximately 47 airports today, and it will take years for manufactures to produce enough of the $1 million machines to screen checked baggage at the remaining airports around the country.

It is critical that Congress appropriate the funding necessary to purchase and maintain these explosive detection systems and to provide airports with the capital funds they need to house these exceptionally large and heavy explosive detection systems. I am pleased that Aviation and Transportation Security Act includes funding for industry, academia and government entities to accelerate the research and development of these explosive detection technology and to study more cost-effective ways to deploy these systems at small- to medium-sized airports.

The Aviation and Transportation Security Act requires screeners at most airports without explosive detection systems to rely on other alternatives to screen checked baggage including bag-match programs, manual searches, or canine explosive detection units. While airports agree that increased scrutiny of passengers and baggage is a critical component of increasing aviation security, all acknowledge there will not be enough explosive detection systems or canine units available for the next couple of years. Moreover, it is unclear how many carriers will implement the domestic bag match program.

The only alternative remaining in the aviation security bill is manually searching the 1.5 billion bags that passengers check every year. Without some flexibility, this will create a logistical challenge for air carriers, airports and passengers who use the aviation system. Until enough explosive detection systems are deployed, the federal government, which will be responsible for screening checked baggage, must have the personnel to manually check each bag. In addition, because of space limitations at many airports, the federal government must provide airports with capital assistance they need to modify their facilities in order to meet this requirement.

Furthermore, the provision will be difficult to implement given the fact that the TSA is not required to assume existing screening contracts or assume civil aviation security functions for 90 days. With the checked baggage requirement coming a full 30 days prior

to that time, a troubling situation is further complicated. Again, airports must play an active role in moving forward with efforts to address potential problems in this area.

Criminal History Record Checks: Just as we need to have well-trained screeners, we must also focus on eliminating undesirable behavior that can nullify even the best technology used to control secure areas. Toward that goal, it is essential that we concentrate our efforts on ensuring that only those employees who have undergone thorough criminal history record checks have access to aircraft and airport secure areas.

Last year, Congress passed the Airport Security Improvement Act, which called on the FAA to work with air carriers and airport operators to strengthen procedures to prevent unauthorized access to secure areas of airports and commercial aircraft. The legislation also required criminal history record checks for new employees who have access to secure areas in the top twenty most at risk airports and for new employees at other airports to be phased-in over three years.

Administrator Garvey recently announced that the FAA would order criminal history record checks on all workers who have access to secure areas of airports and commercial aircraft now rather than phasing those checks in over the next few years. Similarly, the Aviation and Transportation Security Act requires the Secretary of Transportation to expedite the criminal history record checks for <u>all</u> employees including current employees who have access to aircraft and airport secure areas.

Since airports, airlines and vendors employ approximately 600,000 to 750,000 people, airports will need electronic fingerprint assessment technology to expedite these criminal history record checks. Moreover, procedures and organizations must be in place to allow airports to transmit hundreds of thousands of fingerprints to the Federal Bureau of Investigation (FBI) in a timely manner. Once the FBI receives these fingerprints, the agency must have the necessary resources to conduct their background checks as soon as possible.

After the FBI conducts a criminal history record check on a potential new employee, airports are limited in their ability to disqualify that person by a very specific list of criminal convictions. That list, which airports use to determine who is allowed access to secure areas at airports, should be broadened to include other criminal convictions and other acts that may pose a threat to aviation security. Since various federal agencies such as the U.S. Customs Service keep records of persons with a propensity to commit criminal acts and or terrorism, airports should be able to submit the name of potential new employees to a single entity to determine whether that person is on one of those federal watch lists.

Access to Secure Areas in and around Airport Terminals: In addition to improving the screening process for passengers and baggage, we need to do a better job of controlling access to secure areas in and around airport terminals. Last year, the DOT Inspector General highlighted the shortcomings in access control technology and procedures at some airports around the country. Airport operators take this issue seriously, and we

need to continue to improve procedures and deploy new technology to tighten the perimeter of secure areas. It is critical that we use new technology such biometrics and smart cards to control these access points. However, we should be aimed at developing a universal database to all airport and airline employees with secure area access, rather than airport-by-airport individual databases.

We strongly support provisions in the Aviation and Transportation Security Act that require the Under Secretary of TSA to work with airport operators to strengthen access control points and to consider the deployment of biometric or similar technologies that identify individuals. We are also pleased that the bill requires the FAA to establish a pilot program in no fewer than 20 airports to test and evaluate new and emerging technology for providing access control to secure areas in airports. We hope TSA and the FAA will implement these provisions as quickly as possible.

Emergency Procedures: Finally, I would like to point out that the Aviation and Transportation Security Act gives the Under Secretary of TSA new regulatory authority to protect transportation security. Specifically, the bill gives the Under Secretary the authority to issue regulations and security directives without providing notice or an opportunity for the public to comment and without prior approval of the Secretary of Transportation. This is a sweeping grant of authority to the Under Secretary which may be necessary, but should be used sparingly.

Chairman Ose, Ranking Member Tierney, and Members of the House Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, thank you for inviting me to participate in today's hearing. All of us at ACI-NA and AAAE look forward to working with you during the 107th Congress as you continue to work to improve aviation security.

Mr. OSE. I want to go through a series of questions here. I am going to ask each of you for your response. Brevity is appreciated.

Mr. Yeffet, from your standpoint, from your experience, the interview process is integral to establishing security. Is that correct?

Mr. YEFFET. That's correct.

Mr. OSE. Mr. Merlis, does the ATA agree with that?

Mr. MERLIS. Absolutely. We want to look for people, not things.

Mr. OSE. Mr. Hauptli.

Mr. HAUPTLI. Interviews are very important, yes.

Mr. OSE. Second question. Is there a tradeoff that is necessary to be made and accepted here in America between providing an adequate level of security and being able to fly? In other words, should the American people just come to expect that one of the consequences of providing security is that they may be asked a series of questions that some might consider intrusive? Is that a necessary tradeoff?

Mr. YEFFET. Mr. Chairman, I interviewed, during the last 15 years in this country, so many passengers, and we discussed together about their convenience, if we can ask them the question and they will give us the answer for their safety.

The problem is how we approach the passenger, to explain to him why we have to ask the security questions. This is for your safety. You take the flight. We stay on the ground. And, therefore, please cooperate with us so that we will make sure that you will fly safe and secure.

Not even one told me, I don't care, I don't want to answer any questions, I don't care about my life or my childrens' lives. Everybody said, please do it.

No. 2, after September 11th, Mr. Chairman, the world has been changed, not only United States of America, and everyone will love to cooperate with the security instead of being tortured when he goes to a security checkpoint or where he takes a flight.

I flew to Denver, and I told my colleagues I want to make sure now that I will make the alarm go off. I want to see what will happen. I did it.

First step, I was told take off your shoes. I said, why do you want my shoes? We think we found what you have, what we are looking for. I said, take my shoes. Like me, other 15 passengers were waiting without shoes for 10 minutes until they came to us and they gave us back the shoes. But they forgot from which part of my body the alarm went off. This was not important. The shoes have to be taken off.

In Newark, announcement of the security people at checkpoint, they said, everyone that the alarm will go off, he has to take off his shoes. So help me God, people next to me with boots were afraid to death. They took off their shoes, and they placed it on the x-ray machine.

This is not the security that we want. We cannot be paranoid. We cannot be in panic. We cannot overreact.

After September 11th, the FAA eliminated the skycap. Two weeks later, they are back.

This is not a system. This is not a concept. The American people will love to cooperate if they understand, and they are convinced that we do it for their safety.

Mr. OSE. Does the ATA share that?

Mr. MERLIS. Absolutely. As I said, we keep doing what I call one step removed from harassment, instead of focusing on people who are potential hazards and dangers to us. We take knitting needles away from grandmothers when in the history of terrorism there has never been a female terrorist over a certain age—and not using those efforts in time and energy to focus on the potential terrorists and doing a strip search if necessary of that individual.

Mr. OSE. Mr. Hauptli, how about the airport executives and the airport operators?

Mr. HAUPTLI. On the continuum between absolute safety and absolute convenience, clearly our mark has moved since September 11th; and I think everyone would agree that additional questions are just fine at this point.

Mr. OSE. So, if I could synthesize your comments, you are all in agreement that the regulations that might be adopted on an interim or emergency basis should provide for the opportunity to do interviews?

Mr. MERLIS. Yes, sir.

Mr. YEFFET. Yes, sir. This is best opportunity for the security people to check passports of non-American citizens and permanent residents with green cards to see who is coming to take the flight with us. What kind of passport does he have? Is he legal in the country or is he illegal in the country? Is the passport real or fake? This is the best opportunity for the country, not only for airline security, to find out if there are any passengers that are illegal here, that are suspicious, that gave any suspicious sign from the ticket office and reservation department of the airlines.

And, I am very sorry to say that I am not happy with the new law that was signed by the President, because I don't believe that we have to release the airlines from the responsibility of their security. They run the flight, every flight they are responsible for their operation from A to Z.

Mr. OSE. OK. We are going to come back to that question.

Mr. Hauptli.

Mr. HAUPTLI. Thank you, Mr. Chairman. I just wanted to make one point.

I agreed that, yes, interviews were important. I think it is also important to remember that in the system of ours with 700 million passengers it is not likely that we are going to be able to interview every passenger every time and have that work with the current system that we have in terms of moving people through in an efficient fashion. So there needs to be some balance in how we approach that, which is why I earlier addressed the notion of, for frequent travelers, the idea of getting a smart card or some kind of traveler card where you would be subjected to rigorous interviews initially, go through background checks, and then be able to go through an expedited process for frequent travelers, and then for the occasional travelers go through a more involved process.

We need to do something like that to use technology, because we move in 2 days the number of passengers that El Al moves in an entire year.

Mr. OSE. We will come back to the level of tolerance that we might be willing to accept.

Mr. Tierney for 5 minutes.

Mr. TIERNEY. Thank you.

Let me just start by saying that today's frequent traveler that is trusted may be tomorrow's compromised traveler. At some other point we can talk about how you get over that, what everybody talks about, making somebody special and putting them to the front of the line. I wonder what makes them special forever. Because things do change. People get compromised.

But, Mr. Merlis, you indicated that the airline industry has said that they have always wanted security to be a government responsibility. But how can you give us an assurance that the industry is going to abandon what I think has been its historical reluctance, if not its outright opposition, to putting security really ahead of the convenience of the passenger or the customer? Because I really think that that has been a key to a lot of things whether it is matching the bags, or whether it is asking the right questions, or whether it is completing a baggage check—I think that the airlines have had for a long time historically been reluctant to really do that to the extent it ought to be done. And, now I see them all jumping over to have the government take over on that.

But what assurance, if the government takes it over, that you are not just going to abandon any responsibility or any efforts on the part of the airline industry itself?

Mr. MERLIS. Let me say, first, that the questions are asked not because we wanted to. The government prescribed them. Second, if we pursued those questions, we might run severe risk of violating civil liberties. There have been certain airlines which have been sued repeatedly when they were suspicious of people and did not have proper cause because they are not law enforcement.

Mr. TIERNEY. Are you aware of any provisions that the airlines would have implemented but for their fear that the government would have disallowed their implementation?

Mr. MERLIS. Well, going back 8, 10 years, carriers asked certain questions, treated people sometimes differently, and got sued, so they said we will just ask what we are asked to.

Mr. TIERNEY. That was whether or not they won or lost the suit? Did they win or lose those suits?

Mr. MERLIS. I believe they settled. They were human rights or civil rights suits in New York City after the Gulf war. You just settle those. You don't go all the way through litigation. You don't go all the way to trial.

Mr. TIERNEY. What stopped them from checking baggage? What stopped them from matching bags? What stopped them from doing all of the things that make common sense in light of September 11th?

Mr. MERLIS. Well, in light of September 11th, we do not believe that 100 percent bag match is the right way. We think you should screen 100 percent of the bags. I think that is far more efficient.

Mr. TIERNEY. Why wouldn't you also want to match the bags? You are assuming then that only suicidal people are the ones that we are concerned about?

Mr. MERLIS. No. I think that the way to do security is a layered approach. You use a lot of different things, not the same thing on every single person. If you have something that does the same

thing on every single person, sooner or later your adversary is going to figure it out and figure out a way to pierce it. What you want to have is a variety of different kinds of tools that you use so that they never know what you are up to.

Mr. TIERNEY. Why didn't the airlines do that before September 11th?

Mr. MERLIS. Airlines did do some of those things.

Mr. TIERNEY. Well, they didn't do them all, and they didn't do it well enough, right?

Mr. MERLIS. Well, certainly there was nothing about any of those individuals who got through who violated any security requirement. Yet, at the same time, we know that many of those names were in government intelligence files and had never been provided to the airlines. That gets to Mr. Yeffet's question. If the government has the information and says, look for Joe, we will look for him. But we don't know who Joe is.

And I think that is the first step in the process. Once you identify who the person is, then let's do everything possible with those people to ensure that they are not a threat.

Maybe what you do with those people, after you search their bags and do a strip search, then you do a bag match on those people, or maybe you don't even let them fly on the flight that they have scheduled, just because they are suspect.

But I think that the question you asked is, will we abandon anything? We will do what is required under the law, and what is required under the law is CAPPS and bag match. We are relieved of screening. We are not supposed to do screening subsequent to the 90-day provision. But we do whatever we are asked to do by the Government in this case.

Mr. TIERNEY. Thank you.

Mr. Hauptli, just to clarify one thing. You made mention of some of the additional personnel that have been placed at airports.

Mr. HAUPTLI. Yes, sir.

Mr. TIERNEY. I guess, as a one-time cost, I can see your point. But if these are things that should have been done as security measures for which the airports were responsible at any rate, am I correct in saying that you are not asking for the Federal Government to pick up the ongoing cost on a regular basis, you just want them to pick up the one-time cost for the fact that it wasn't done and all of a sudden it had to be done, it wasn't accounted for?

Mr. HAUPTLI. That is right. We are looking for reimbursement for the security costs that airports had to assume as a result of FAA mandates, new security.

Mr. TIERNEY. I am assuming, though, that you want it for that one time, that you, on your own right—whether you be an airport authority, or whether you be a State that runs the airport, or municipality or whatever—are going to change their level of security personnel anyway and then be responsible for that themselves?

Mr. HAUPTLI. Yes, sir. In the future, we are also looking to try and figure out how to pay for some of these increased ongoing costs. That is a story for another day.

Mr. TIERNEY. OK.

Mr. Yeffet, let me just ask you. I would assume that you are not happy with the check-in people of the airlines not looking you in

your eye when you are talking, and you have a rather low opinion of the new computer check-in system, where you get to punch a number that says the answer to those two questions, and maybe the money would be better spent just training those personnel as opposed to computerizing and putting those computer systems in. Do you see any future use at all for those computer check-in machines?

Mr. YEFFET. I don't know why we have to use them at all.

Let's assume that I am terrorist, and the computer will ask me the question when I buy the electronic ticket, and I will punch that I am terrorist. What would happen? It is a shame that we still, after so many times that we suffered and we lost thousands of lives of innocent people, we still are working with the concept that it is totally wrong and that we don't stop it.

The FAA eliminated the skycap, but they kept the electronic ticket to be operated. If the skycaps were dangerous, why pull them back after 2 weeks? If they are not dangerous, why kick them out? They need to eat. They need to work. Keep them. Tell them, do not deal with security. Help the passenger bring the luggage to the check-in, to the security people, whoever, but don't eliminate them.

The problem with the FAA, unfortunately, and I see it since 1986, we act and then we think. I remember 1986, U.S. Air aircraft flew from L.A. to San Diego. At that time the FAA decided all air crew members and airline employees with uniforms can bypass the security checkpoint. Why? Because, they wanted this.

A guy who used to work for U.S. Air stole money from the company and he was caught; he was fired. No one took from him the badge and the uniform. He asked for compensation, and he was ignored. He said in his letter to his boss, I am a drug user. I am an alcoholic. Help me with the money. He was ignored.

One day he found out that his boss is taking the flight from L.A. to San Diego. He took a gun, he put on his uniform with the badge, he bought a ticket, he bypassed the security checkpoint. Close to San Diego he wrote a note to his boss, I left with nothing, you will have nothing, and opened fire. And, the aircraft was crashed and all of the passengers were killed.

I was hired to do the investigation at the time. I asked the FAA, what happened? Why? It was a mistake. Now we change it.

Before September 11th, a knife of 4 inches that you can kill a cow with it, it was legal to board the aircraft. And suddenly after September 11th, nail clippers are illegal. Where we are going to? Let's use our brain and not our emotion.

If people cannot decide traveling when it comes to life of American people, they should not stay in their position. The American people trust us. Do not disappoint them. And, don't do mistake after mistake.

Mr. OSE. Thank you, Mr. Tierney.

Mr. Shays.

Mr. SHAYS. I don't use this word very often. I don't like to think that I get frustrated. But I am listening to this testimony, and I am getting more frustrated than I ever thought that I would. Because, Mr. Yeffet, you bring your world to this. It is different than what I think my world is. And, each of you have your own different perspective.

I don't see how the damn system works. I don't see how the system works where I would want to fly for a whole host of reasons. I want safety. I care about cost somewhat, and I don't want to wait in an airport for 3 hours to go on a 2-hour trip. I mean, I might as well walk.

So I am thinking to myself, well, I am pretty sure of one thing. Maybe it is not a bad thing. I don't think that airline traffic is going to double in the next 10 years like we thought. So I don't think that we have to worry about congestion in the airports. Maybe that is a good thing. Maybe we need to think about using some other mode of transportation.

But of these 19 terrorists, 17 were legal. They got into the country legally. They were legal. And, I want to know, would all of the 19 have been interviewed by you, Mr. Yeffet? Under your system, would all of them have been interviewed?

Mr. YEFFET. Mr. Congressman——

Mr. SHAYS. I don't want a long answer. I want to know if you would interview them. Are you advocating that we have a system where all of those 19 would have been interviewed?

Mr. YEFFET. Yes. Sure.

Mr. SHAYS. So every passenger is going to be interviewed?

Mr. YEFFET. Every passenger. One passenger will be interviewed for 2 minutes. One passenger would be interviewed and be searched for more than 20 minutes. Yes, we would do it because I don't think that we can allow ourselves——

Mr. SHAYS. I am not going to disagree, because I don't have the expertise. I just know, if that happens, I am not flying. Because I don't want to wait an hour and a half to 2 hours.

I think you bring to this world, you know, mostly international travel, and so I can see it. But I don't see how a system works where when people are going from Boston to New York or New York to Washington they are going to fly. I guess we take the train.

I mean, is that one of the outcomes of what you think you are proposing, that basically short flights disappear?

Mr. YEFFET. Sir, today the American people are not flying not because they don't like the airlines——

Mr. SHAYS. You are not answering the question, though. You have so much to share, but I just want you to answer the question.

I am trying to visualize the world—and maybe you are right. I mean, I am frustrated, not because I disagree ultimately with your conclusion. I happen to believe that you and I agree on one thing. Tell the American people the truth, whatever the hell the truth is. Whatever it is. And if airline travel isn't safe, then let's just say it is not safe. If it is not going to be safe for a while, let's just say it is not going to be safe for a while.

My view was, I don't want a terrorist or anyone in the cockpit, so I figure if you lock the darn cockpit up so no one can go in, that is a good thing. And, if we can make sure that there aren't bombs on planes and weapons on planes, that is a good thing.

If a terrorist is in the body of the airplane and he gets in a fight with someone else and causes harm, that is not a good thing, but it is not going to bring the plane down. So, in my own mind, I was thinking, well, at least if we can get explosives and cockpits—respond to that.

Mr. YEFFET. Mr. Congressman, if I understood you well, you are looking for your convenience. And, my answer to this is very simple. You said an hour and a half you are not ready to wait——

Mr. SHAYS. Let me interrupt you. Then, you will get your chance.

The reason why I take an airplane is convenience. If an airplane is no longer convenient, I am not taking it. That is all right. I mean, I will drive or I will take a train. When you say my thing is convenience, I just want to be realistic about why I take a plane in the first place. And, if what you do suggests I won't take a plane, then I accept that.

I will let you answer. But do you understand it is not just convenience? It is understanding why I take a plane in the first place.

Mr. YEFFET. First of all, you can drive a few hours. But if you have to go from Washington, DC, to L.A., how many times can you drive, sir?

Mr. SHAYS. No, that I agree with.

Mr. YEFFET. This is No. 1. No. 2, you are talking about your convenience, which I like to fly with maximum convenience. But the question, very simply today, convenience by knowing that I am risking my life or inconvenience by knowing that I am gaining my life? I think, Mr. Congressman, the answer is very clear. We cannot have the stick from both sides. We love to fly with no one to bother us. I don't like to be asked any questions. I don't like to be searched.

I hate—but if I know that we have to pass through this system for our safety, I want to land alive and not dead, sir.

Mr. SHAYS. OK. I understand that.

You and I agree. None of us wants to be killed, and we don't want our passengers to be killed and we don't want our constituents to be killed. I understand that. I am just trying to understand the implications of what I think is an impractical proposal in one way. It is practical for the long flight, because frankly I will only fly by plane.

But it seems to me, and you are an honest man; I am asking for an honest answer. Are the short flights basically going to be impractical because the short flights will take as long to check as the long flights but you are only going a short distance?

And do you see under your proposal that the short flights kind of disappear?

Mr. YEFFET. The answer is very simple. There is no compromise in security. But if, in the short flight from LaGuardia to Reagan Airport in Washington, DC, we want to make it faster, we just have to increase the qualified security people to do the interview. Instead of four or five people, let's take 10 or 15 people and then you will have it faster, only a question of money.

If we are ready to spend the money, we will do it. The problem in this country is that we never accept that wee need to spend money on security. This is why the airlines signed a contract and hired the security company that offered the lowest bid; and to make the profit, we know whom they hired and what they paid them and how they trained them. This is why the FAA failed in their system. We have to change it.

Mr. SHAYS. Thank you.

Mr. OSE. Will the gentleman yield for a minute? I want to go to that one point. If I understand correctly, prior to September 11th and including the day of September 11th, the people at the screening stations in the terminals did exactly what the FAA guidelines laid out as their duty.

Am I correct in that? Mr. Merlis.

Mr. MERLIS. Yes, at least insofar as we know, there is nothing that they did that violated any FAA rule.

Mr. OSE. Is that your understanding also, Mr. Hauptli?

Mr. HAUPTLI. Yes.

Mr. OSE. Now, Mr. Yeffet, I understand what you are saying, that what they did was inadequate, clearly. But the fact of the matter is that they are not the ones who screwed up here, because they did exactly what they were assigned to do by Federal regulation, which is what Mr. Mica's point was earlier in terms of updating the regulations accordingly.

I know what you are going to say. I want to be clear that those folks at those stations did what they were assigned to do. If we change the assignment, then their success rate will hopefully change also.

Mr. YEFFET. It is a shame what kind of security system and level we had in this country.

Mr. OSE. Thank you, Mr. Shays.

Mr. SHAYS. My time is up. But let me, with your permission, just ask this followup.

How many of the 19 terrorists would your interview have caught?

Mr. YEFFET. I cannot answer the question because I didn't interview any of them, or my guys. But, for sure, I can tell you, sir, that the FBI, they had part of the names of these 19 terrorists. And, if we know about these, my question: Why did these names not go to the airlines? If any of these names appeared during the screening process, these passengers should have been stopped immediately and the FBI notified in order to arrest them.

And then we could avoid even the interviews.

Mr. SHAYS. Thank you.

Mr. OSE. The gentleman from Ohio.

Mr. KUCINICH. I want to thank the panel here. I would like to followup on some questions that my good friend, Mr. Shays, was asking of Mr. Yeffet.

Take me through an interview of a prospective passenger on El Al. I present myself to you. I have my luggage. What do you do? Just let's go through it.

Mr. YEFFET. I will try to do it in few sentences, because I can give a speech about it.

Mr. KUCINICH. Show me how it would work.

Mr. YEFFET. OK. First of all, qualified people should interview you. I approach you, and I am telling you that I am the security man of your flight; and I have to ask you, sir, a few security questions for your safety.

Mr. KUCINICH. OK. Ask me the questions.

Mr. YEFFET. Can I see, first of all, your passport?

Mr. KUCINICH. OK. Here is my passport.

Mr. YEFFET. I check your passport. Let's assume now that you are an American passenger, so I don't have problems with or questions of your passport. But if you are from Iraq or today Afghanistan or Syria, then you already turn on the red light to me as a passenger.

Mr. KUCINICH. OK. Let's say we——

Mr. YEFFET. Let's assume that you are not suspicious yet. All documents are OK. So my question will be the basic questions that I have to ask the passengers that are not suspicious, are not foreign; they don't have problems with them.

The question is: To whom does this luggage belong?

Mr. KUCINICH. OK. It is mine.

Mr. YEFFET. I don't want answers that will be Yes or No, like the FAA. I want words to you to use. Who packed your luggage, sir?

Mr. KUCINICH. I did.

Mr. YEFFET. When did you pack it?

Mr. KUCINICH. A week ago.

Mr. YEFFET. Where did you pack it?

Mr. KUCINICH. My home.

Mr. YEFFET. How long was the luggage left at your home or any other place?

Mr. KUCINICH. It has been with me all of the time.

Mr. YEFFET. Did you take the luggage with you to work?

Mr. KUCINICH. Well, it was in the trunk of my car.

Mr. YEFFET. In your car? Who drove your car except you, sir?

Mr. KUCINICH. Just me.

Mr. YEFFET. Just you.

What is the contents of your luggage, sir?

Mr. KUCINICH. Just clothes and some toiletries.

Mr. YEFFET. Can you describe——

Mr. KUCINICH. Copies of the Congressional Record.

Mr. OSE. He is very dangerous. You watch him.

Mr. YEFFET. Now, the point is that I have to look at your eyes close. And, once you answer me, when you lie to me, physiological changes will be seen in your face, believe me. And, whenever you lie to me, we can see that something is wrong with your answer. And, then we will stick on this point until we will make sure that I have no problem with the lie that you gave to me.

Mr. KUCINICH. So the screeners then are not simply asking questions; they are studying the people while the people are giving the answers?

Mr. YEFFET. Sure.

Mr. KUCINICH. Have you ever done any research to determine anyone who is denied boarding, whether they are being denied boarding with justification based on evidence that was found subsequently, or do you just deny people boarding and they go away?

Mr. YEFFET. No. What happens, some cases, were that people at the last minute had a call, what we call—they decided that they are not taking the flight. They were afraid. One that happens to us was at last minute sick, and ambulance had to take him. But just something—because I decided not to take the flight and disappeared, didn't happen.

Mr. KUCINICH. So your position then is that, if you subject passengers to greater scrutiny, there will be less of a chance that someone would slip in who might want to do harm?

Mr. YEFFET. That's correct.

Mr. KUCINICH. Your view is, it is not simply a matter of electronics; it is people to people?

Mr. YEFFET. That's correct.

Mr. KUCINICH. Thank you.

Mr. YEFFET. Because I like to hear you and not the luggage.

Mr. KUCINICH. Did you let me on your plane?

Mr. YEFFET. As a Congressman, with pleasure.

Mr. OSE. Thank you. I have actually flown El Al and been subjected to the interview. The reason I was subjected to the interview of the lengthy type was that my connecting-leg plane was late.

When my wife and I rushed up, a young woman, maybe 23 or 24, came and interviewed us, and it was extensive and it was exactly the questions Mr. Yeffet just went through.

Obviously we passed the interview, because we went on. But it was very interesting and it was very professional.

Mr. KUCINICH. Well, Mr. Chairman, I would guess that given that level of scrutiny, if someone was engaged in something that was irregular, they would probably be tripped up, you would imagine. I guess that is what it is about. You obviously are—your safety record has been very strong.

Mr. OSE. I want to followup on Mr. Kucinich's items. We are going to have another round here.

For El Al, you have government oversight of a private company and employees of the private company; if they are determined to be performing unsatisfactorily, they can be summarily dismissed. Prior to being employed, they receive extensive training. It is not 40 hours or 60 hours. How much is it?

Mr. YEFFET. At least a week in the classroom. And, then on-the-job training. Now, in the classroom, we have to train them about the terrorist organizations. Do you want me to repeat all?

Mr. OSE. I can multitask. I heard your answer.

Mr. YEFFET. No.

Mr. OSE. Keep going.

Mr. YEFFET. We have to train them about the terrorist organizations. We have to train them about countries that support terrorists. We have to train them about the acts of the terrorists against the airlines around the world, why they succeeded to blow up aircraft, why they succeeded to hijack, what was wrong with the security system and what should be done so that this won't happen to us.

And, then to train them how to read a passport, how to approach the passenger, how to ask the right questions, how to phrase the question in a way that it should be so clear that I want the passenger to answer me immediately and not to let him think and to tell me that I didn't understand you two, three, four times. In the meantime, he can think of what answer to give.

I prefer to see an interviewer that is asking the questions, and, if he can bring the passenger to answer me spontaneously so I can determine if he is lying.

Mr. OSE. Now, the personnel that I interviewed with, both on the leg to Israel and the way back, they were young, 25, 30 at the most. Is there some career profile for folks who do this kind of interviewing? How do you collect people? How long do you keep them? What characteristics do you look for on the interviewing site?

Mr. YEFFET. Normally we hire people to be security after the service in the Israeli army; and they have experience, and they know how vulnerable is the country and the airlines when it comes to security.

Now, we train them, as I mentioned, and we test them. When I was the head of security for El Al, I used to do thousands of tests every year. When I was a diplomat in this country, I used to take the people from the FBI from Washington, to and from New York, Friday night at 10 at night, running an exercise, when one of my group used to be the terrorists that attack the passengers and our group was the defender of the airlines. And, we did so many exercises, in order not to wait for something real to happen, any test that we used to do, so our people for them, real or test, should be the same, Mr. Chairman.

Mr. OSE. Who paid for the training process that includes these tests?

Mr. YEFFET. Part is the Government of Israel and part the airline.

Mr. OSE. So there is a passenger charge in part and a contribution from the Federal Government?

Mr. YEFFET. No. We did not charge the passengers for this, but they charge the passengers for airport fee; this included, I think, the security expense.

Mr. OSE. OK. Now, you indicate you have the interviewer. The reason I am exploring this is, I wanted to make sure that the people who can't join us today get this stuff into the record so that they can at least think about it.

You have the interviewer at the terminal. You have a second layer that checks everything at the gate, too, because I remember, and when I got there, panting, the guy took me through another series of questions. That person is part of the security process.

You also indicate that you have people that are trained on the plane for situations. That is part of the security process. These are all interwoven, if you will, as part of an overall package.

Mr. YEFFET. The security are trained to do everything from A to Z; if it is to interview passengers, to be in the baggage room, to search the aircraft, to search unattended luggage, or to open even an ashtray to look to see if somebody replaced anything or planted anything there, except the armed people that we have.

This is when I was testifying in the beginning today, I emphasized that we have to change the system, even on the ground, especially out of this country.

When the enemy will find out that you cannot hurt us in the air, he will try to kill us on ground. In security, in our aviation security, we have to make sure that we cover every single point from A to Z, including the catering, the duty free, the cargo, and so on, and so on.

Now, we cannot allow ourselves to keep the one weak hole in the system because we are dealing with a sophisticated enemy. They will definitely do enough studying to find out our true weak points, so they can have the access to hurt us.

Mr. OSE. You have testified in favor of matching baggage to passengers. So there is some element to the passenger standing there with the bag. That is part and parcel of the security process. Do you think that the DOT should mandate that or put it in its rules for domestic flights here in the United States?

Mr. YEFFET. Yes, sir.

Mr. MERLIS. No, absolutely not. We think it should be part of the overall screening process, but not 100 percent.

Mr. OSE. So you would use some means of sorting that—put a portion of the people through a baggage check process?

Mr. MERLIS. No. All passengers' checked baggage would be screened, but only some of the checked bags would be subject to the 100 percent bag match process.

Mr. OSE. Is that what is done on international flights?

Mr. MERLIS. In the international flights right now it is 100 percent bag match. But we are dealing with two totally different situations. Internationally we have 1,000 and domestically we have 20,000 flights a day.

Second, we have seen from the nature of the terrorist threat of September 11th that 100 percent baggage match is not good enough, so our view is that if you have baggage match as part of an overall screening process; a 100 percent screening process, you will be more likely to pick up the terrorist, suicidal terrorist, which you would not pick up on a 100 percent baggage match.

Mr. OSE. As it relates to September 11th, you are saying that the baggage match is irrelevant?

Mr. MERLIS. Absolutely.

Mr. HAUPTLI. Basically go with what Mr. Merlis indicated, and again, until we can get technology to the point where we can use it to try to slim down some of these times, 100 percent baggage match in all circumstances would grind the system pretty well down to a halt.

Mr. OSE. So what level of tolerance, coming back to this tolerance question, what level of tolerance should Congress be willing to accept? Mr. Yeffet says zero.

If I am on a plane, I have got to tell you, I am for zero. If my family is on a plane, I am for zero.

Mr. HAUPTLI. Again, if you want absolutely total safety in the system, you just never take off.

I mean—so that is one end of the continuum absolute safety, and the other end of the continuum is absolute convenience. Up until September 11th, we as a government, as an industry, as a people, demanded and selected one point on that continuum; it was closer to absolute convenience than it should have been. We have now shifted to a point that is more toward absolute security, recognizing that, as a practical matter, you are never going to get all of the way to absolute security. Where is the right spot, where that is the sweet spot, if you will.

That is a good question. It is a question that I think is going to be trial and error to see what the American people will tolerate in

terms of increased security measures, while still allowing for freedom of movement through the country.

Mr. OSE. I won't ask you to define what trial and error means.

Mr. MERLIS. All I would say, sir, is that there is a role for 100 percent—for baggage match in this process, if you focus on the people and you identify and sort out those people who need additional scrutiny from those who, because they have got clean NCIC and Customs records, they have Federal security clearances, they meet a host of criteria.

Let the government pick the criteria. You may have 200 million people out of our citizens who fit it. Maybe for those 200 million, you don't need a bag match. For the other 65 million people, and I am talking only about citizens, but for the other 65 million people who can't meet that test you do need bag match for; and one of the reasons, sir, is, as this statute is written, if you had a 100 percent bag match, and there was a misconnect, we know from our test in 1997 that 1 out of every 70 people at a hub does not meet his connection.

That means, first of all, you have got to pull that one bag off every single plane because every plane has more than 70 passengers. How do you ever get the bag to the owner? You can't put it on a plane unless the passenger is on it, so we are talking about passenger inconvenience without necessarily the concomitant increase in security, as proven September 11th. If the guy is suspicious, bag match for the guy; if he is not suspicious, then screen his bag.

Mr. OSE. Mr. Yeffet, I know that you have a 4 o'clock commitment. And I don't want you to miss your flight. One series of questions, if I might.

In terms of the folks we hire either for interviews or for the screening or what have you, what level of tolerance should we accept for their performance? Mr. Yeffet.

Mr. YEFFET. Zero tolerance. There is a difference between performance of a security man or woman that passed all of the training, and they have to run the security, and we rely on them. If they cannot pass the test, and they fail for us, the terrorists succeed; and, therefore, we cannot replace the life of anyone and the one who failed has to go home.

During the training, if the students, if I may call them, that fail in the test, they are still in the responsibility of the trainers and the security managers.

Maybe something goes wrong with the trainers, and therefore, we will retrain them to make sure that we did the maximum. If, after we did the maximum, the one here or one there will fail, he has to leave and to go home.

Mr. OSE. Mr. Merlis, do you share that opinion?

Mr. MERLIS. Well, I think when you do a layered approach, you don't have to have 100 percent. Your layers add up to 100 percent. So, if you have several requirements in this process—if one person doesn't ask all of the questions correctly, but the next one finds whatever the bad stuff is, then you have accomplished your goal of preventing someone from piercing the security system.

I think that 100 percent is not for every single person. Every single time is not accomplishable; it is not going to happen. So what

we have to do is recognize we need a system with appropriate redundancies. So, if at 98 or 99 percent, you know you get that 1 or 2 in 100 failure, then there is a backup there who—just look at the math of it. The likelihood is, the second one isn't going to have a failure on that same person. If you had a third layer the likelihood is you aren't going to have a failure on that same person.

I just don't think it is doable to have 100 percent for every single person every single time that they ask a question.

Mr. OSE. I understand the redundancies question. If you have someone who is not performing his particular layer of inspection, do you keep him or do you replace him?

Mr. MERLIS. I think you replace them, but if a person was diligent, I don't think you fire him. You retrain him and make sure that he does it the right way. I mean, a person may not say the 10 words he is supposed to say. He might cut his sentence off. Now he has violated the rule. The requirement cannot be so rigid that discretion isn't used, as long as the totality of the system is 100 percent, which I think is the goal.

Mr. OSE. Mr. Yeffet, in your experience, how have you dealt with that? If you have someone out on the line who does not perform satisfactorily under your management, how do you handle that?

Mr. YEFFET. I fired the director of security in Paris when—he had family with children in school. When I found out that he didn't perform properly in the level that we expect him to do it, I had to fly over there to make sure that my deputy was right with his evaluation. Once I was convinced, I fired him.

Now, what my colleague says here, that if the man was not trained well and made a mistake, so we have to retrain him. If he was not trained well, I would fire the trainer and the director of security that assigned him to do the job.

But, if he were trained well and passed all of the tests, and I am talking about testing, not this question or other question, if he failed in tests, he cannot remain in the security company.

Mr. MERLIS. If I can respond, I would agree. The fact is, I was referring to the practice that is now going on that if someone misses an object even now, is the person fired? Mr. Yeffet said questions should not be asked in any given way, which means yes/no, only if a person asks 10 questions. Under the theory that we have in place today, if a person asks 10 questions and inadvertently asks one which is a yes/no, has he failed and therefore is fired?

I am against that. I think that it is the overall performance, for which if there is a failure then you fire him.

Mr. OSE. The question of redundancy—Todd, we are going to get to you. The question of redundancy is a very good question, because we had an incident in Atlanta or Chicago where somebody got through the first level, and they got caught at the random screen at the gate.

The system worked. The redundancy worked. My question is, if that first screen keeps missing, I mean, there is a problem with either the training or the person, and it has to be fixed. I don't know how in an issue of this importance, you can even look past that for a moment. I mean, I have to tell Mr. Yeffet's perspective on the level of tolerance is a lot closer to mine than the two of yours.

Mr. MERLIS. Just if I may, sir. I am not disagreeing. I agree with him. I was talking about the context that we have today wherein if somebody asked a question wrong, he would be fired. I think that is excessive. One question asked wrong, not that the person breached security, but he asked the question wrong.

If his overall performance is deficient, he should be fired. If his performance means he let things through that shouldn't be let through, that should be grounds for doing it. But 100 percent, as it has been explained to me, means you do nothing, you do not deviate one iota ever. And I think that is a standard which is not going to be achievable. I mean it may be achievable for some people most of the time, but under that standard, you say a question wrong once in an 8-hour day, you are fired, that is wrong.

Mr. OSE. Mr. Hauptli, from the operator's and the airport's standpoint?

Mr. HAUPTLI. I think I forgot the question.

Mr. OSE. The question had to do with to what degree do you accept less than satisfactory performance by your security personnel?

Mr. HAUPTLI. The answer to that is, you don't. The legislation provides the Under Secretary of the Transportation Security Administration the ability to fire personnel that are not performing.

Mr. OSE. I want to thank the panel. Mr. Yeffet, Mr. Merlis, Mr. Hauptli, your testimony today was compelling and highly informative. I am sure the next panel is going to be just as good. I have to tell you that as a Member of Congress, I have a zero level of tolerance. There is no way to recover from a fatal mistake here. I mean, I am hoping that the rules and regulations incorporate that.

I can't quantify for you today what that means in terms of operations, and I am willing to take that risk. But, I would rather spend a couple of hours in an airport than what may well be the alternative.

Mr. HAUPTLI. Just make sure that you buy things when you are in the airport, sir.

Mr. OSE. I do regularly. I feel like I live in an airport. So thank you all for coming.

Mr. YEFFET. Thank you very much.

Mr. OSE. We are back from the recess. I will introduce our next panel.

John O'Brien is the director of engineering and air safety for the Airline Pilots Association, International. We have Patricia Friend, who is the president of the Association of Flight Attendants. We have Mark Roth, who is the general counsel for the American Federation of Government Employees, and joining us shortly will be Paul Hudson, who is the executive director for the Aviation Consumer Action Project.

Lady and gentlemen, I apologize for the length of time it has taken to get to this panel. That was, I thought, a compelling previous panel. I appreciate your patience. We have read your testimony. To the extent you can summarize, it would be appreciated.

Mr. O'Brien for 5 minutes.

STATEMENTS OF JOHN O'BRIEN, DIRECTOR OF ENGINEERING AND AIR SAFETY, AIR LINE PILOTS ASSOCIATION, INTERNATIONAL; PATRICIA FRIEND, PRESIDENT, ASSOCIATION OF FLIGHT ATTENDANTS; MARK ROTH, GENERAL COUNSEL, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES; AND PAUL HUDSON, EXECUTIVE DIRECTOR, AVIATION CONSUMER ACTION PROJECT

Mr. O'BRIEN. Good afternoon, Mr. Chairman. I am John O'Brien, director of the Engineering and Air Safety Department for the Air Line Pilots Association. ALPA represents 67,000 airline pilots who fly for 47 U.S. and Canadian airlines. We sincerely appreciate this opportunity to appear before the subcommittee to present our views on the important subject of aviation security regulation.

ALPA has been in the forefront of efforts to create a more secure airline system. We are pleased, therefore, that the President last week signed into law the Aviation and Transportation Security Act.

Mr. OSE. Mr. O'Brien, would you halt for a moment? I made a rookie mistake here. I need to have you all rise and swear you in.

[Witnesses sworn.]

Mr. OSE. Let the record show that the witnesses all answered in the affirmative and now we're going to go back to Mr. O'Brien.

Mr. O'BRIEN. This hearing is quite timely because it concerns the implication of that law's numerous provisions and other initiatives. Congress' oversight role will be a critical, important part of any effort to prevent a repeat of some of the regulatory adventures that have occurred in the past. An example of such an adventure was the 10-year odyssey that FAA embarked upon to revise some provisions of security, FAR 107 and 108, which were finally published this summer. We are hopeful that the new DOT Under Secretary's office will produce regulatory proposals and final rules in a more expeditious fashion.

I'd like to emphasize that ALPA strongly promotes one level of security in the implementation of Federal security regulations. A terrorist guided missile in the form of a fully loaded airliner can take off from any commercial airport in the country and wreak havoc on unsuspecting innocents virtually anywhere below. The type of operation is also not a discriminator. There is no difference between a fully loaded cargo airplane and a fully loaded passenger airplane in terms of their use as guided missiles. Each of our recommendations is made in this context.

ALPA has been promoting positive electronic verification of identity and electronic airport access control systems since 1987. This is primarily as a result of the PSA accident that was mentioned earlier this afternoon. This accident was caused by an armed, disgruntled former airline employee and in effect was a mass murderer of 43 passengers and crew members and bears striking similarities to the hijackings of September 11th. This accident was attributable in large measure to the identity verification inadequacies that are yet to be addressed 14 years later. On the heels of that tragedy FAA revised airport security regulations to require that many airports install computerized access control systems. In the mid-'90's Congress provided 2 million for testing and implementing a transient employee security system that came to be known as the

Universal Access System [UAS]. For all practical purposes, those funds were wasted.

Even though ALPA completed successful UAS tests and standards were finalized for the system in 1998, there has been no implementation of the system. This failure came as a result of the FAA policy to leave UAS implementation to the sole discretion of the airlines. In the meantime, technology has moved on and the standards devised for UAS are no longer current. FAA has now finished a report on smart card systems for identifying armed law enforcement officers who are using or supporting our air transportation system. The private sector is developing proposals based on that and other advanced technologies such as biometric readers. The new Aviation Security Act provides for pilot programs in no fewer than 20 airports to test and evaluate new and emerging technology for access control and other security requirements.

While we wholeheartedly endorse testing new technologies, there also must be requirements to install them or testing is for naught. Therefore, we recommend the standards be immediately developed and made regulatory for the creation of a UAS that could use the best technologies available. The tests at the 20-plus airports should be used to validate technologies designed to meet the new standard, and in addition to providing positive access control for employees. The UAS must also be used to facilitate employee screening at checkpoints in order to reduce delays for passengers, verify the identity of jump seat riders and it could be used as a media for digital pilot licensing or certificate information.

ALPA is also very supportive of efforts to perform voluntary checks on trusted passengers so that the amount of time spent at screening checkpoints is reduced. The UAS system could be used for that purpose and perhaps others that have not yet been considered.

I'd like to turn your attention to a new Security Act provision to require security screening of all checked bags and the screening of cargo and mail in cargo aircraft. We agree with these provisions as far as they go because the potential for carrying a bomb laden bag onto an aircraft is very real and needs to be addressed as soon as possible. However, the new security law provides the DOT Under Secretary with a 1-year study period for reporting on the screening requirements applicable to aircraft with 60 or fewer passenger seats used in scheduled passenger service.

We thought we had rid ourselves of dual regulatory standards with a successful one level of safety campaign but, apparently, that isn't so. We recommend that the airline security regulations be amended to require one level of security through security screening of all passengers and their baggage. Such action would be consistent with the precedents established by DOT and FAA under the 1995 one level of safety regulatory initiatives.

There are a number of issues surrounding the strengthening of cockpits that are deserving of congressional attention. We're encouraged by the rapid move toward full voluntary passenger fleet compliance with special Federal regulations on cockpit door hardening that the FAA recently issued. However, some important debates are now underway on how best to make longer term aircraft flight deck security improvements. Everyone understands the basic

concept of installing stronger flight deck doors to keep terrorists out of the cockpit. What may not be as readily apparent is the need for strengthening of cockpit floor as well as the bulkhead to which the door is attached. A strong door offers little protection if it's connected to a weak frame.

Another question is whether cockpit door hardening and other related security enhancements should be made for cargo aircraft. We believe that they should because cargo aircraft have been the target of security breaches in the past and they could be used as terrorist guided missiles like a passenger-carrying aircraft.

FAA has recently enacted special regulations to encourage cockpit door strengthening, including allocation of Federal funds for doors for passenger aircraft; however, they did not specify cargo aircraft; so these aircraft are not being retrofitted in spite of the fact that DOT's Rapid Response Team for Aircraft Security recommended retrofits for the entire U.S. fleet.

Mr. OSE. Mr. O'Brien, are you about finished there?

Mr. O'BRIEN. I'm just about. I'll skip the last one here and just say thank you, and I will be pleased to answer any questions.

[The prepared statement of Mr. O'Brien follows:]

STATEMENT OF

JOHN O'BRIEN, DIRECTOR
ENGINEERING & AIR SAFETY
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

BEFORE THE

SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS

THE COMMITTEE ON GOVERNMENT REFORM

U.S. HOUSE OF REPRESENTATIVES

ON

REGULATIONS NEEDED TO ENSURE AIR SECURITY

NOVEMBER 27, 2001

I am John O'Brien, Director of Engineering and Air Safety for the Air Line Pilots Association, International. ALPA represents 67,000 airline pilots who fly for 47 U.S. and Canadian airlines. We are sincerely appreciative of the opportunity to appear before the Subcommittee to present our views on the important subject of air security regulations.

ALPA has been at the forefront of the effort to create a more secure airline travel system. We are pleased, therefore, that the President last week signed into law the Aviation and Transportation Security Act (the Act) that contains many of the provisions that we have urged for adoption.

This hearing is most timely, in that it concerns the actual implementation of that law's numerous provisions and other initiatives. Congress' oversight role will be critically important to prevent a repeat of some of the FAA's regulatory missteps in years past. One example of such a misstep was the agency's failure to produce major security regulations in a timely manner – revised CFR 14 Parts 107 and 108 were published this summer, 10 years after revisions began! We are hopeful that the new DOT Under Secretary's office will produce NPRMs and final rules in a more expeditious fashion.

I would like to emphasize that ALPA strongly promotes One Level of Security during the implementation of federal security-related regulations. Instituting a single security level, by definition, means the abolition of today's sundry security levels and practices for airlines and airports based on perceived threat. A terrorist-guided missile, in the form of a fully loaded airliner, can take off from any commercial airport in the country and wreak havoc on unsuspecting innocents virtually anywhere below. A suicidal bomber can effect a terrorist attack as decisively on an airplane departing from Des Moines as one leaving

from Dulles. There is no difference between a fully-loaded B-747 cargo airplane and a fully-loaded B-747 passenger airplane in terms of their use as terrorist missiles. Each of our recommendations is made in this context.

Following are our responses to the Subcommittee's request for comments on several specific initiatives.

Employee and Passenger Identification

ALPA has been promoting the need for positive, electronic verification of identity and electronic airport access control systems since 1987 – shortly after the downing of PSA flight 1771 by an armed, disgruntled, former airline employee. This mass murder, which bore similarities to the hijackings of September 11th, was attributable in large measure to identity-verification inadequacies that have yet to be addressed 14 years later.

At ALPA's urging, the FAA required approximately 200 of the largest commercial airports to install computerized access control systems in the late 1980's and early 1990's. However, in spite of the entire aviation industry's arguments to the contrary, the agency failed to (1) create a detailed set of performance standards for use by the airport community and (2) provide for the access control and identification needs of the transient airline employee population. This mismanagement was, and still is, expensive for the airports and airlines – the initial estimate of about $170 million for access controls actually rose to more than $600 million, and the figures continue to climb. There are also numerous costs that are difficult or impossible to compute stemming from the inefficiencies related to transient airline employee's lack of access at airports.

In the mid-1990's the FAA, with ALPA's urging and congressional funding, performed a test of what came to be known as the Universal Access System (UAS). Two million taxpayer dollars were spent on those tests involving two major airlines and four large airports. For all practical purposes, those funds were wasted. Although the FAA completed successful tests of the UAS and standards were finalized for the system in 1998, there has been no implementation by any airline of the system, per stated congressional intent. This failure came as a result of an FAA policy to leave UAS implementation to the sole discretion of the carriers.

Although magnetic stripe technology was used as the basis for UAS tests, there are now several advanced, mature technologies that could be used to positively identify authorized personnel. The FAA is expected to complete a study of its recent tests of a Memory Chip Card (MCC) system for identifying armed law enforcement officers in the near future. This technology is much more secure than magnetic stripe and has the additional capability of storing an extensive amount of data that can be used for both security and other types of uses.

The FAA has stated that these same readers could also be used by airlines for issuance of MCC cards to their employees. ALPA is recommending that the airlines use the MCC, or an equally secure technology or technology combination (e.g., smart card with

biometric reader), as the means for performing several important functions, including the following:

1. *Positive access control for all employees who work at the airport, not just non-transients.* Airline pilots and other transient employees currently rely on a very non-secure method of moving around airports, which creates the potential for security breaches. Namely, they request airport-based, company employees to open doors for them as a courtesy based on their possession of an airline ID card. As we know, ID cards and uniforms could be fraudulently used to gain access, which underscores the need for electronic verification.

2. *Positive verification of identity at the screening checkpoint to enable transient employees to be processed more quickly.* Passengers are enduring long lines at the security screening checkpoint. These lines are made longer by the screening of pilots, flight attendants and other individuals in positions of trust, who are often screened several times a day. The lack of equipment for positively identifying these individuals wastes limited screening resources and further inconveniences the traveling public.

3. *Identity verification of jumpseat riders.* Use of the jumpseat by commuting pilots is an absolute necessity in today's airline environment. Unfortunately, that privilege has been severely curtailed since shortly after the terrorist attacks because there is no way to positively verify the jumpseat requester's identity and employment status.

4. *A platform for digital pilot licenses and medical information.* Consistent with language in the Act, we recommend that the same card, or type of card, be used by the FAA for containing a pilot's license and medical information. ALPA is working with FAA Flight Standards on this concept. Smart cards have more than sufficient memory for this purpose and others that the airlines may develop.

One important aspect of access control systems and UAS is the need for specifying a single set of performance standards to be used by all equipment suppliers and system integrators. Different types of technologies, used by different airports and airlines, can be incorporated into the aviation security system if interoperability is a requirement for all of them. RTCA, an aviation standards organization, may be useful in helping to create such standards.

In concert with the new security law's provisions regarding passenger identification, several organizations are promoting "smart" cards for passengers to be read at the screening checkpoint. Conceptually, such individuals would be processed more quickly than those without a card at a special lane created for this purpose. ALPA supports this recommendation provided that the passengers voluntarily submit to a thorough background check and, if possible, a criminal history records check, in order to receive this card. The background check should be updated at least annually in order to retain it.

Evidencing the importance of this issue, nine of the 33 DOT Rapid Response Team (RRT) recommendations relate to the subject of employee and passenger identification and access control, namely: Aircraft Security Report recommendations 7 and 8; and, Airport Security Report recommendations 2, 4, 7, 8, 9, 13, 16. A copy of these recommendations is included with my statement.

We recommend that the government amend CFR 14 FAR Parts 107 and 108 to accomplish the following:

1. Identify a single performance standard that will be used by access control equipment providers and integrators, the airlines and airports to create a universal access system.

2. Require airlines and airports to create such a universal access system that incorporates, at a minimum, the following features: (1) can be used by any transient airline employee at any U.S. airport where they operate (2) requires the carriage of only one piece of media (e.g., smart card) (3) positively identifies pilots for jumpseat-riding purposes (4) allows the bearer to open all access-controlled doors to which they have authorized entry (5) allows the electronic storage of pilot license and medical certificates, and (6) is used as the principal means of processing transient employees through the security screening checkpoint.

3. Establish a provision within FAR Part 108 that will allow the creation of a "trusted passenger" identification and security screening checkpoint methodology aimed at increasing security and checkpoint throughput.

Hiring Criteria and Performance Standards

The foundation of a good security system for any entity, public or private, is a sound set of hiring criteria. Non-trustworthy employees cost time, money, and in the most extreme cases, can be life-threatening. The aviation industry has failed in several respects to ensure that only the most trust-worthy individuals are hired into critical, security-sensitive positions.

Background checks, consisting mostly of employment verification, have been used by the aviation industry for a number of years. These checks have more recently been supplemented by criminal history records investigations when a lapse in employment has occurred or there is some other questionable matter associated with an applicant's past.

It is our recommendation that criminal history records checks be performed on all new employee applicants to help ensure that only the most ethical and trustworthy employees be allowed within airport secure areas. Unfortunately, the issue of background and criminal history checks is greatly complicated by non-U.S. citizens and those who have been U.S. citizens for only a short time.

Accordingly, we recommend that the government amend CFR 14 FAR 107 and 108 to require mandatory pre-hire criminal history records check for all applicants who are U.S. citizens. An Interpol criminal history records check should be performed on all applicants who are either not U.S. citizens, or have not been U.S. citizens for at least 10 years. We endorse the Act's specific provisions for screener hiring standards.

Performance standards for baggage screening can best be tested and monitored through use of the Threat Image Project System, or TIPS. TIPS intermingles images of bags containing threat objects at random with the x-ray or EDS images of real bags. Screeners are required to identify the threat objects in a TIPS image, just as they do in a real bag, and their results are quantified and logged by computer. Performance of screeners has been shown to substantially improve with TIPS technology and it should be made a mandatory component of all baggage screening equipment.

Employee Training

Pilots at many U.S. airlines view the security training that they receive from their companies as boring, irrelevant, and unrealistic – much of it is repetitive from year to year and may largely consist of watching video tapes. Accordingly, ALPA wholeheartedly endorses the new provision contained in the Act that calls for the government and industry to develop "detailed guidance for a scheduled passenger air carrier flight and cabin crew training program to prepare crew members for potential threat conditions." We recommend that new regulations also provide for security training of all-cargo pilots, who have special requirements in this regard.

An Air Transport Association (ATA) working group has recently developed, with our input, a very brief response to the RRT on Aircraft Security recommendation number 12. That response, however, does not fulfill the requirements of the Act for a number of reasons, not the least of which is that it does not identify an adequate response to acts of air piracy. ALPA has scheduled a meeting to occur in a few days with FBI, FAA, Secret Service, and other government and industry organizations to develop a new "Common Strategy" that can be used for training airline personnel on air piracy strategies. A revised Common Strategy is needed to develop many of the training elements that Congress has identified.

We recommend that FAR Part 108 be amended to specifically require that airlines incorporate all of the program elements identified in the Act, plus any additional elements that may be identified during the rulemaking process.

Baggage and Cargo Screening

ALPA endorses the new security bill's provisions to require security screening of all checked bags loaded onto passenger-carrying aircraft and the screening of cargo and mail

on cargo aircraft. The potential for carrying a bomb-laden bag onto an aircraft is very real and needs to be addressed expeditiously.

The new security law provides the Under Secretary with a one-year study period for reporting on the screening requirements applicable to aircraft with 60 or fewer seats used in scheduled passenger service. We recommend that all baggage of all airline passengers be screened, regardless of the size of aircraft on which they fly. Also, as we understand the Act, there will be some passengers who travel on small aircraft from certain points of origin without benefit of security screening who will be charged as much as $5.00 for security services on a one-way trip. This situation may be as the result of an oversight, but it is one that deserves the attention of Congress.

We recommend that Congress quickly take this issue up and provide legislation that will ensure that everyone who travels on U.S. commercial aircraft, and pays a security fee, is provided the same level of security.

ALPA has for several years promoted the concept of creating an electronic passenger and baggage manifest. Similar to the problem of employee identity verification, the airlines are not currently capable of positively determining who has boarded their aircraft. This is demonstrated when aircraft leave the gate with an inaccurate manifest; we know of one airline that routinely allows flights to leave the gate with up to a two-person error. As another example, after one accident last year, an airline CEO made a public request for assistance in identifying the passengers on his own aircraft! The security ramifications are also substantial – unless we know that the person boarding the aircraft is the same one who bought the ticket, we cannot positively determine that the individual has been through the security checkpoint.

Currently available technology can be applied to this problem in order to create an inexpensive photo manifest of boarding passengers and their checked bags. The photo manifest will enable airlines to, among other things, (1) positively identify each person and bag on the aircraft (2) reduce the potential of boarding someone who has not been through screening (3) create a strong deterrence against fraudulent ticketing (4) quickly identify a bag(s) that must be removed in the event that its owner does not board the flight (5) create an accurate passenger manifest that can be used in the event of an accident or other tragedy and, (6) if tied to appropriate databases, identify those of possible criminal intent.

Additional Measures in the Aviation and Transportation Security Act

I would like to turn your attention now to the need for additional regulations for implementing certain provisions of the Act. ALPA has been heavily involved in the development of, and responses to, the security recommendations of the DOT Rapid Response Teams (RRTs), and I would like to address the status of some of those recommendations as part of this discussion.

Aircraft Cockpit Hardening

We are encouraged by the rapid move toward full, voluntary fleet compliance with Special FAR 92-2 which FAA recently issued. Today, nearly every U.S. passenger airliner has been modified to provide better, although temporary, security of the flight deck. Modification of the cargo fleet, although allowed by SFAR 92-2, was not supported by FAA funding as was the case with the passenger aircraft fleet. As a result, modifications to cargo airlines' cockpit doors lag those of the passenger aircraft. It is important that cargo aircraft cockpit doors be strengthened for several reasons, including (1) cargo aircraft are subject to air piracy, just like passenger aircraft (2) security protecting cargo aircraft is nearly always less stringent than for passenger aircraft (3) cargo flight crews are often required by their companies to board additional, non-screened employees or couriers, about whom the pilots may know little or nothing, in seats outside the cockpit door.

The process to institute permanent cockpit door design changes referred to in the Act and in DOT aircraft security RRT's recommendations two, three, and four has already begun. A recent regulatory proposal by the ATA would provide for improved security of passenger airliner flight decks. Once again, however, the proposal does not include cargo carrier aircraft. The RRT recognized the need for improvements to both types of transport aircraft doors when they specified "retrofit of the entire US fleet" in their recommendations.

Furthermore, the ATA proposal stops short of requiring complete protection against gunshots, grenades, and other explosive devices. The design standards proposed for new aircraft provide such protection calling for "hardening" of cockpit floors, ceilings, and bulkheads, but retrofit of that protection is not addressed in the ATA proposal. This is a serious issue – many aircraft in the fleet today, thus exempt from regulations covering new designs, will likely be flying for decades to come. The number of aircraft of new design will be miniscule by comparison.

We note that the Act legislates "such other action, including . . . flight deck redesign, as may be necessary to ensure the safety and security of the aircraft." This language is consistent with aircraft security RRT recommendations two, three and four – to provide one level of security for every U.S. airliner, regardless of whether it is being flown today or still on the drawing board, for both passenger and cargo aircraft alike.

We recommend that new federal regulations address the need for enhanced flight deck security on today's fleet of aircraft, not just those aircraft of tomorrow.

The Act also calls for an investigation by the Administrator for determining a means of securing the flight deck of smaller passenger aircraft that do not have a door and a lock. These aircraft are particularly vulnerable, because many of them do not even have a flight attendant who can help prevent, or alert the pilots to, a security problem. New regulations should be developed that will ensure one level of security in this area.

Cabin Monitoring and Emergency Warnings

The Act provides for the use of "video monitors and other devices to alert pilots in the flight deck to activity in the cabin." The industry has held discussions about two related RRT recommendations, and there are numerous vendors with products that will address them, from the simple to complex. We recommend implementing regulations that are broad enough to allow airlines some latitude in selecting those products and systems that will work best for a given type of aircraft in the company's fleet. Pilot input should be solicited in the development of any such security enhancements, as they will be the ultimate end-user of them.

Even though video monitors may have a role in our aircraft cabins, we are duly concerned about the ultimate, improper use of any video recording. The recent television airing of recordings made during the struggle aboard United flight 93 on September 11th demonstrates that some within the media will not respect human dignity or decorum on a voluntary basis. We are adamantly opposed to any new type of audio or video recording device on aircraft unless all appropriate legal protections are in place in advance to prevent such recordings from misuse by the media, airlines, or government agencies.

Defensive Capabilities for Pilots

ALPA is most pleased that Congress agreed with the need for providing pilots a means of voluntarily arming themselves with lethal force. The Act's language in this area leaves considerable flexibility in how it may be implemented. We are currently studying this subject and intend to create a set of recommendations on what types of weapons should be carried, how the weapons should be transported, training curriculum and other related subjects. We plan to promote our views to the office of the new Under Secretary and appropriate FAA offices for their consideration in developing regulations.

We would note two specific omissions in the Act regarding carriage of lethal weapons by pilots. First, there is no provision in the Act for an exemption from liability in the event that a pilot uses a lethal weapon in self-defense. Secondly, the Act does not create a federal exemption from state laws for interstate carriage of weapons. We call on Congress to write new legislation aimed at addressing both of these requirements.

Regarding non-lethal defensive capabilities, discussions are ongoing with others in government and industry on the best means of providing such to both pilots and flight attendants. The discussions are not yet mature enough for regulations, consistent with the Act's provision for a study by the National Institute of Justice on this matter.

Passenger Volunteers to Provide Emergency Services

We endorse the Act's provisions for passengers to volunteer their services in the event of an emergency. This security enhancement is one that ALPA has promoted for several

years. The Act's language, however, is very narrow in that it limits the volunteers to law enforcement officers, firefighters and emergency medical technicians. Notably absent are others, such as doctors, bomb technicians, and able-bodied individuals, who could provide useful services in the event of various types of emergencies.

We recommend that Congress broaden the scope of this legislative language to include additional categories of volunteers. We also recommend that these individuals, if they pass requisite background and criminal records checks, be identified as volunteers via future "trusted passenger" cards. The information about their special abilities could be stored on a smart card that would be read by airline personnel and, eventually, be transmitted to the captain for his use as necessary.

Aviation Security Programs for Air Charters

ALPA endorses the Act's provision for air charter security programs. Under current regulations, large commercial aircraft can be operated with little or no security provisions because of their charter status. Clearly, new regulations are needed to ensure that the same level of security for scheduled operations is provided for non-scheduled operations.

Other Issues

Lastly, I would like to bring to your attention a couple of other issues that are not included in the Act, but we believe they are worthy of your consideration.

INS Deportees

ALPA has a long-standing concern about the use of airline aircraft to transport Immigration and Naturalization Service deportees out of this country. While the INS has, in our opinion, taken some steps to be more responsible with these "voluntary" deportations on our aircraft, the potential for problems still remains. In our view, anyone who is required to leave the country involuntarily is a security risk; they are traveling against their wishes to a destination where they may face prison or other hardships. A natural incentive is created for these individuals to try to escape or alter their travel destination. Many of the deportees carried aboard our aircraft have some type of criminal records and it is not uncommon for them to also have medical problems that are not conducive to passenger health. Buttressing these concerns are actual instances of sexual assaults, lewd behavior and other problems.

Under INS regulations, no escorts are provided for deportees unless they are deported in groups of 10 or more. We recommend that the INS find other means of deporting these individuals without subjecting the traveling public to potential for harm. Alternatively, deportees should not travel on commercial aircraft unless they are escorted by two or

more individuals who are assigned to control them from the moment of boarding until disembarking.

We recommend that Congress address this matter immediately with legislation aimed at eliminating the INS' deportation deficiencies.

Security Information

Aircraft Security RRT recommendation number 13 recommends that each airline develop a delivery system or procedure to provide government security advisories to crewmembers in a timely manner. Currently, many pilots receive no timely security information at all. Some airlines, which can legally provide information from security directives to pilots because of their "need to know," instead withhold that information.

A regulation needs to be added to CFR 14 FAR Part 108 to require that airlines provide captains with all appropriate information about new security provisions, potential areas of threat, and other related subjects.

Thank you again for the opportunity to testify today. I would be pleased to address any questions that you may have.

# # #

Mr. OSE. That is an excellent wrap up. Thank you, Mr. O'Brien. Ms. Friend.

Ms. FRIEND. Thank you, and good afternoon, Mr. Chairman and members of the subcommittee. My name is Patricia Friend, and I'm the international president of the Association of Flight Attendants. We very much appreciate the opportunity to testify today.

The American people have made it clear that they expect the government to correct fundamental problems in our air security system before they will resume normal travel patterns. Our Nation's flight attendants have not had the luxury of picking and choosing when we fly. We went right back to work after September 11th. Flight attendants continue to comfort anxious passengers while we cope with not only our own concerns and fears about our personal safety, but our grief for fellow flight attendants who lost their lives.

I speak to you today from the perspective of the more than 50,000 flight attendants at 26 U.S. airlines represented by the Association of Flight Attendants. The Aviation and Transportation Security Act of 2001, signed into law last week by President Bush, makes crucial improvements in the security of our aviation system, but there's still more to do. Federalizing airport security screening and creating a new Transportation Security Agency separate from the Federal Aviation Administration was a vital improvement in securing our skies. We support Secretary Mineta's goal of a new security agency that focuses solely on security, and we support the hiring of a qualified candidate from law enforcement or the military to head that agency.

Just as important, we welcome the increased presence of air marshals, strengthened cockpit doors and the new training that we will receive. We welcome the screening of everything and everyone with access to secure areas of airports and enhanced identification of airport personnel through the use of new technologies. Yet, there are gaps still in our aviation security system and we are counting on you to provide the flight attendants with the tools that we need to protect our passengers and ourselves in the event of a future attack.

As we have tragically seen, once a security threat in the cabin compromises the flight deck, the aircraft and lives on the ground are in jeopardy. Securing cockpit doors and providing pilots with a defensive device are key to ensuring that terrorists will not in the future be able to use our planes as missiles. But the new law fails to require flight attendant access to non-lethal devices in the cabin.

The flight attendants have become the first and last line of defense for passengers. We are responsible for ensuring that a security threat doesn't reach the cockpit. To effectively meet that responsibility, we must be given the means to defend ourselves, our passengers, and the flight deck from intruders. You can accomplish this by ensuring that flight attendants will be trained and qualified in the use of an appropriate non-lethal weapon stored in a sealed or locked compartment somewhere on the aircraft.

At some level, government licenses automobile drivers, teachers, contractors, plumbers, nurses, doctors, a variety of other citizens and professionals. These licenses are issued in order to control and ascertain a level of proficiency.

Flight attendants are trained in the emergency, safety, and security operations on board an aircraft, but currently the Federal Aviation Administration does not license flight attendants. In virtually every in-flight situation, emergency or otherwise, flight attendants are the only trained professionals present to provide first aid to passengers, fight in-flight cabin fires, provide guidance during a decompression or turbulence, handle unruly passengers who might endanger the safety of other passengers on the flight, and even help passengers out of an airplane after a crash.

Now with the passage of a new law and the additional security training that will be provided to flight attendants, it's time for the public and other aviation workers to be given the assurance that flight attendants have been trained and are qualified to perform their duties. The best way to accomplish this is by the FAA's licensing flight attendants.

The size and amount of carry-on baggage directly affects the job of security screeners and the potential for a weapon to be brought on board the aircraft. Currently an FAA directive exists that limits carry-on baggage to one bag plus one personal item per passenger. The new security law includes a sense of Congress that the FAA should maintain its current restrictions on carry-on bags. The government now needs to go a step further and codify this limitation in its security regulations in order to avoid the possibility that the current FAA security directive could be changed or eliminated at any time.

The new security law states that, where baggage screening machines are not available, alternatives to screening checked baggage, such as a bag match program, are required, but regrettably it does not require 100 percent baggage/passenger match. Nothing short of 100 percent bag match and 100 percent evaluation of all passengers will close this loophole in the aviation security system.

The last issue I'll bring to your attention is currently one of the most controversial for flight attendants at many of our U.S. carriers. Recent security directives have required that each aircraft cabin be thoroughly searched before the first flight of the day. Secretary Mineta's Rapid Response Team on Aircraft Security reported that current procedures allow inadequately trained personnel to conduct these searches for dangerous items hidden on board the aircraft. The DOT team also reported that insufficient time is given to assigned personnel in order to conduct a thorough search. We agree with the Rapid Response Team, which made specific recommendations that security searches be assigned to trained experts and not to cockpit or cabin crew members.

Currently, cabin security searches are being done by airline staff, including flight attendants, at 14 AFA-represented carriers. Airline management further compromises security by forcing flight attendants to complete a review of their safety equipment and a thorough security search of the aircraft in as little as 5 minutes, all in order to ensure an on-time departure. While these policies are within the current FAA directive, they guarantee that inadequate searches are performed, making them in effect a sham. Security searches, as I'm sure you will agree, are important tasks that belong in the hands of trained security personnel who are part of the new Trans-

portation Security Administration at the Department of Transportation.

Overall we are pleased with the new security law and we believe that many security loopholes will now be closed once all the provisions of the new law are put into effect. It is essential, however, to move swiftly on the additional security enhancements to correct continuing flaws in our aviation security system. Hundreds of millions of U.S. passengers and crew fly each year. We deserve a truly safe and a secure environment.

Thank you for allowing me to testify, and I welcome any questions.

[The prepared statement of Ms. Friend follows:]

TESTIMONY BEFORE

THE SUBCOMMITTEE ON ENERGY POLICY,
NATURAL RESOURCES AND REGULATORY AFFAIRS OF THE
HOUSE COMMITTEE ON GOVERNMENT REFORM

ON

"FEDERAL REGULATIONS NEEDED TO ENSURE AVIATION SECURITY"

November 27, 2001

BY

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Good Morning Mr. Chairman and Members of the Subcommittee.

My name is Patricia Friend and I am the International President of the Association of Flight Attendants, AFL-CIO. Thank you for this opportunity to testify today about the important issue of improving airline security.

As our nation tries to regain its footing after the terrorist attacks of September 11th, the American people have made it abundantly clear that they expect the government to correct fundamental problems in the air security system before they will resume normal travel patterns. Our nation's flight attendants have not had the similar luxury of picking and choosing when they would fly — they went right back to work after September 11th. They comforted anxious passengers, while they coped with not only their own concerns and fears about personal safety, but their grief for fellow flight attendants who lost their lives.

I speak to you today from the perspective of these flight attendants. The Association of Flight Attendants (AFL-CIO) represents more than 50,000 flight attendants at 26 U.S. airlines. AFA members work every day in the skies, and have the right to expect a safe work environment, just as passengers have the right to expect a safe flight whenever they board a plane.

The Aviation and Transportation Security Act of 2001, signed into law last week by President Bush, makes crucial improvements in the airline security system that were long overdue. This law, while not everything we had fought for, makes important changes to the system. These include federalizing the airport security screening and creating the new Transportation Security Administration that is under the Department of Transportation but separate from the Federal Aviation Administration. We support Secretary Mineta's comments that this Administration will focus solely on security and to that end, his short-list of candidates for the Under Secretary all come from law enforcement or the military. That is how it should be. The focus of this Administration and the Under Secretary should be completely security and law enforcement related.

We welcome other features of the act as well, such as increased air marshals, strengthened cockpit doors, screening of all individuals and vehicles with access to secure areas of airports (including enhanced identification of these individuals through the possible use of biometrics), and requirements for screening of all property including US mail, cargo, carry-on and checked baggage — within 60 days. The law also includes essential anti-hijacking training language for flight attendants.

Even with this new law now on the books, more must be done to close gaps in the security system. Areas that require additional attention include: non-lethal weapons for the cabin, flight attendant licensing, more thorough cabin searches, enforceable limits on carry-on baggage, enhanced baggage-passenger match provisions, improvements in screening technology, screener training and ensuring the safety of our youngest passengers. I would like to discuss each of these areas in greater detail.

NON-LETHAL WEAPONS IN THE CABIN

While the Aviation Security Law included language on arming the flight deck crew with lethal and non-lethal weapons, the issue of requiring flight attendant access to non-lethal devices was not addressed in the law.

Some may argue that it is necessary for pilots to have weapons as a means to stop a possible threat. I would argue that it is also necessary for flight attendants to have access to a non-lethal device in order to keep the threat from even reaching the flight deck. The only alternative would be to mandate full implementation of Section 105 of the Act which authorizes the Undersecretary of Transportation for Security to "...provide for deployment of Federal air marshals on every passenger flight..." and require this deployment with assistance from other trained law enforcement officers, as authorized in Section 105(a)(6), on every flight. As we all know, once a situation escalates to the point where the flight deck has been compromised, the aircraft, passengers, crew members and countless U.S. communities are in jeopardy. Flight attendants are the first and last line of defense and must be given effective and appropriate means to defend themselves, the passengers, and the flight deck from intruders. We are an important layer in the overall security of the aircraft, and we must have the tools to protect the cabin and aircraft.

Appropriate non-lethal weapons should be maintained in a sealed or locked compartment somewhere on the aircraft with strict accountability procedures. Flight attendants should be trained on and qualified in the use of such a device. The training language in the law only requires that flight attendants are trained on non-lethal weapons if they are required by the Under Secretary. This is insufficient. Currently, one major airline is prepared to place non-lethal weapons in the cockpit, but because this is a carrier's recommendation and not a requirement by DOT, flight attendants may not receive training despite the weapons' presence on-board. I believe that flight attendants must receive training on non-lethal weapons whenever they are allowed on the aircraft.

FLIGHT ATTENDANT LICENSING

Currently, the Federal Aviation Administration does not license flight attendants. I know you find that hard to believe, so I will repeat it. The FAA does not license flight attendants. AFA believes the public has the right to know that the U.S. government is not assuring the proper qualification of the nation's flight attendants. At some level, the government licenses automobile drivers, teachers, contractors, plumbers, electricians, nurses, doctors and a variety of other people. These licenses are issued in order to control and ascertain the level of proficiency of the recipients. In other words, the government certifies that licenses are given to persons with a stipulated level of knowledge and skills.

In the airline industry, the FAA demands that airplanes, pilots, navigators, flight engineers, dispatchers, air traffic controllers, mechanics and repairmen are licensed or certificated. Yet, the FAA neither requires nor demands that flight attendants be licensed. The FAA's inaction in licensing flight attendants is based on the agency's lack of understanding of the importance of flight attendants. Why else would the FAA continue to ignore certifying a flight attendant with a certain level of knowledge and skill? We should all be outraged by this. After all, once the door is closed on that airplane, flight attendants are the only contact passengers have with a safety

professional. It is the flight attendant whom passengers will look to for leadership and assistance in a variety of in-flight situations. The flight attendants will be the ones to provide first aid, fight in-flight cabin fires, provide guidance during a decompression or turbulence, handle unruly passengers who might endanger the safety of other passengers or the flight, and even help passengers out of an airplane after a crash. And now, flight attendants will need to be trained in self-defense, defense of the cockpit from attack, use of protective devices as authorized by the Transportation Security Administration, more involved security coordination between and among cockpit and cabin crew including clearing and securing the area outside the cockpit door when necessary, recognition of and taking appropriate response measures to an array of suspect dangerous items/weapons that may be on board.

In the Federal Aviation Regulations (FAR), the FAA defines flight attendants as crewmembers. The FAA recognizes the importance of flight attendants as part of the overall airline safety system, and this is demonstrated by the number of FARs that are devoted to flight attendants and the safety duties we must perform. As I have stated before, we simply do not understand why the FAA has not required and does not require the licensing of flight attendants. However, we feel it is critical for the public and other aviation workers to be given the assurance that flight attendants are qualified to perform their assigned duties during flight. We believe the best way to accomplish this is by the FAA licensing flight attendants.

CABIN SEARCH

Recent security directives have required that each aircraft cabin be thoroughly searched before the first flight of each day. Secretary Mineta's Rapid Response Team on Airport Security reported that current procedures do not guarantee that those who are performing this job are adequately trained to conduct an effective search for dangerous items hidden on board the aircraft. They also reported that those assigned to conduct the searches have insufficient time to conduct them thoroughly. The Rapid Response team raised further concerns that access to the aircraft between the time when the plane was searched and the first flight took off was not restrictive enough. They made specific recommendations that security searches be assigned to employees other than cockpit or cabin crew members.

AFA is in full agreement with the Rapid Response Team. Currently, cabin security searches are being done not by trained personnel, but rather by airline staff, including flight attendants at 14 AFA represented carriers. These flight attendants have as little as five minutes to do a review of safety equipment and a security search of the aircraft. Flight attendants are also constantly pressured to "hurry up" so that an on-time departure can be maintained. It is common knowledge that the airlines' priority is on-time departures. By using flight attendants with inflexible schedules to perform this vital security role, airlines are guaranteeing that the searches are not being adequately performed, and are just another security sham.

We believe this responsibility should be given to trained ground staff in coordination with security personnel who are part of the new Transportation Security Administration at the

Department of Transportation. As the Rapid Response Team noted, this would avoid assigning additional responsibilities to current carrier personnel "who may not be as familiar with dangerous items or who may be performing other duties under limited time constraints."

The inadequacies of the current search provisions were demonstrated on a recent flight scheduled to depart Boston for Los Angeles. When flight attendants arrived at the gate, ground personnel advised them that a box cutter had been found hidden in the flight deck during that day's sweep of the aircraft. Flight attendants were asked to board the aircraft and help FBI, police and airline representatives conduct a security sweep of the entire aircraft. This is a security responsibility for which the flight attendants had not been trained, and which took away from their ability to perform other required pre-flight responsibilities. Imagine if you and your colleagues were suddenly given the responsibility to conduct a security search of the Capitol building without being given any training, and knowing that a dangerous weapon already had been found. How secure would you feel about working in and moving about the Capitol building? Security searches, as I'm sure you will agree, are important tasks that belong in the hands of trained security personnel.

CARRY-ON BAGGAGE

On September 29th, the Federal Aviation Administration issued a security directive limiting carry-on baggage to one bag plus one personal item per passenger. That was welcome news to flight attendants. We were also especially pleased that the new security law includes a Sense of Congress that the FAA should maintain its current restrictions on carry-on bags. The government now needs to go a step further, by codifying this limitation in its security regulations, and spelling out specific dimensions for what carry-on bags are to be allowed. This additional step is needed because the current FAA security directive could be changed or eliminated at any time, and it does not provide a clear definition of what size bag is acceptable. As a result, decisions by the carriers and airports on what bags are permissible have been arbitrary. Further, there is no system-wide enforcement and many passengers have been carrying more bags than allowed.

The idea of tighter limits on carry-on bags is not one that has been quickly embraced in the aftermath of the September 11th terrorist attacks. Indeed, in 1996, the FAA Aviation Security Advisory Committee specifically recommended that the FAA "prescribe uniform standards to restrict the size, type and amount of carry-on property and provide for strict enforcement."

The only way to ensure that these new limits on carry-on baggage are strictly and uniformly enforced is to clearly spell out what size bags are allowed. Absent such clear language, passengers will continue to push the limits and try to bring over-sized items on board planes. This can create unnecessary confusion at security checkpoints and at the gates. Avoiding such misunderstandings is even more critical now that security screeners have their hands full trying to more thoroughly check passengers and carry-on bags. It stands to reason that screeners can more carefully police baggage and passengers if they have fewer bags to check and less need to debate with passengers over what can or cannot be brought on board. Furthermore, allowing

over-sized bags to be brought through checkpoints increases the possibility that scanners will miss suspicious or potentially dangerous items.

We propose that each passenger be limited to just one piece of carry-on baggage, the dimensions of which do not exceed 9 inches by 14 inches by 22 inches. This common airline carry-on baggage standard comes from a survey by AFA of airlines around world. AFA believes that if the FAA continues to allow a second bag or "personal item," that that bag must also have a size limitation that will only allow it to fit under the seat. The only exclusions should be for a child restraint device, assistive devices for disabled passengers and outer garments such as a coat and hat. We strongly believe that in order to make a carry-on baggage policy effective, there must be clear limitations and only these exceptions. By allowing other exceptions, the door is left open to yet another unclear, unlimited and ineffective carry-on baggage policy.

If the job of security screeners is to find and stop any item intended for use in criminal activity, the government must take all reasonable steps to reduce the volume of baggage that screeners must check.

BAGGAGE-PASSENGER MATCH

AFA has long believed that the aviation security system should include a 100 percent positive passenger-bag match to ensure that no bags are checked on planes except those that belong to flying passengers. The new security law states that where EDS machines are not available to screen checked baggage, alternatives such as a bag-match program are required. Regrettably, the law does not require 100 percent baggage-passenger match.

The importance of a 100 percent match was sadly demonstrated by the tragedy of Pan Am 103 in December 1988, in which a bomb was planted in checked baggage for which there was no passenger. The current system of Partial Passenger Baggage Match of selected passengers, which was the system that Pan Am was using when Flight 103 was bombed, is clearly and wholly inadequate. Even the FAA knows that this system is inadequate. In 1985, the FAA required full baggage/passenger reconciliation for U.S. airlines operating from designated high-threat international airports. This became an International Civil Aviation Organization (ICAO) standard for all airlines operating from international airports on April 1, 1989. So, all U.S. airlines operating in the international arena have been conducting a 100 percent baggage-passenger match since that time. Unfortunately, this is not a U.S. domestic requirement.

The 100 percent ICAO international bag match should also be a continuing requirement for all U.S. domestic flights. The airlines' argument against such a step has always been that it would be too costly and create too many delays. But U.S. airlines know how to accomplish this task and have the skills to do it. A 1997 study by Arnold Barnett at the Massachusetts Institute of Technology evaluated a domestic experiment with 100 percent baggage match. Eleven airlines took part, and the test involved 8,000 flights, 750,000 passengers, and 50 different routes. It suggested that 100 percent baggage match would be far less costly and involve far fewer delays than had been anticipated by the airline industry.

Any terrorist will see the lack of a passenger-baggage match as a huge loophole in airline security. In addition, it is hard to believe that any calculating terrorist would be unable to defeat the current Computer-Assisted Passenger Pre-Screening Systems (CAPPS), which identify selected passengers whose checked bags are pulled. Before September 11, this system allowed about 95 percent of unaccompanied checked bags to travel unhindered. Nothing short of 100 percent bag match and a 100 percent evaluation of all passengers through CAPPS is necessary to close this enormous loophole in the aviation security system.

SCREENING TECHNOLOGY

AFA is pleased with provisions in the security act that require examination of all baggage (checked and carry-on) by all means possible within 60 days, and explosive detection technology screening of all bags by December 31, 2002. AFA wants to ensure that the best combination of screening technology is employed as soon as possible. Action should now be taken by the new DOT Under Secretary to identify, for implementation at U.S. and foreign airports used by U.S. carriers, the following: state of the art X-ray detection, explosive detection technology units for checked baggage handling systems, smaller EDS (explosive detection system) units for screening laptops and other carry-on items at the passenger screening checkpoint, and trace explosives detection units. Body scanning technology, which can detect metal (knives, razor blades, files, etc.) and organic (plastic handgun, plexiglass knife, plastic explosives, etc.) objects carried under the clothing of those subjected to such screening, should be considered for use at the passenger screening checkpoints for all U.S. air carriers. We also agree with the several references in the new security Act to researching the use of biometrics in our U.S. aviation security system. The several different technologies may have widespread application in our security system, particularly as it relates to confirmation of the identities of "trusted agents" that have access to our secured areas. I am also informed that these systems incorporating biometrics, fingerprints, pictures, etc. are developed to such an extent that they can now be incorporated into checked bag tags at check-in, associated boarding cards, etc.

TRAINING OF SECURITY SCREENING PERSONNEL

I am pleased that we now have in the Act a minimum number of hours of training for security screening personnel. We in the AFA have pursued this issue in the past with the FAA and believe that it is best dealt with in the public arena. While I am pleased that the minimum hours are a public issue, I am also concerned that the 40 hours of classroom training may be insufficient. It seems to me that developing a fully professional security screener may require considerably more classroom training. Our new Federalized screening force should have not only the basics of the screener's job but must know and understand the nuances of the history that makes their job necessary. I have in mind the need to know the complete history of attacks, e.g., types, methods, etc., against aviation. Only by understanding these things can they fully appreciate the possible dangers of some fairly innocuous articles that they will be examining. I am also concerned that the 60 hours of on-the-job training may be compromised, as it is now, by ostensibly placing a person on a position under the supervision of an adjacent screener who is

performing another job. The result is that the on-the-job screener is left to his or her own devices and never really gets the 60 hours of supervised on-the-job training.

ENSURING SAFETY OF OUR YOUNGEST PASSENGERS

The crew training provision of the new security law allows for the training of procedures or maneuvers to defend the aircraft. This language would allow pilots to perform evasive moves in order to destabilize terrorists on the plane. While these moves may dramatically help in a terrorist situation, they may also cause serious injury or death to unrestrained children. Currently, children under two are not required to be secured in child restraint devices on aircraft. Our youngest passengers are allowed to be held on their parent's lap. In the instance of such maneuvers, turbulence or an accident, these babies will fly from their parent's grip and could suffer serious injuries.

Earlier this month, the American Academy of Pediatrics joined AFA and the NTSB in calling for children under two to be restrained in child restraint devices on aircraft. In fact, even FAA Administrator Jane Garvey stated in 1999 that the FAA was committed to mandating the use of child restraint systems in aircraft and assuring that children are accorded the same level of safety in aircraft as adults. Parents simply cannot hold onto lap-babies given the G-forces of the airplane. Given the new call for potentially defensive maneuvers, it is more imperative than ever to require that children under two are secured in a child restraint seat for safety and security purposes.

CONCLUSION

While we are pleased with the new security law and believe that many crucial security loopholes have now been closed, it is essential that we do everything we can to make aviation safe. We must move quickly to make the skies as safe as possible, in order to protect aviation workers and passengers. If we leave one loophole in the system, terrorists will find it. I urge you to help us move swiftly on these additional security needs in order to build a truly secure and safe aviation environment. We must do everything we can to protect flight attendants and all airline employees and passengers from future terrorist attacks.

Thank you for allowing me to testify before you, and I welcome any questions.

Mr. OSE. Thank you, Ms. Friend.

Mr. Roth, from the American Federation of Government Employees, take 5 minutes.

Mr. ROTH. On behalf of the 600,000 government workers represented by AFGE, I thank you, Mr. Chairman, for this opportunity to offer our views focused on potential employee concerns regarding the implementation of the Aviation and Transportation Security Act.

Regardless of the issue of Federalization, I believe we all can agree that screening will not improve if the job status of screeners is not improved through better pay, better benefits, and real job protections. Ultimately, there is no other way to recruit the best employees and to keep them on the job.

Regarding job protections, the act gives unfettered discretion to the Secretary to summarily dismiss any Federal employee screeners regardless of tenure or proven cause. AFGE firmly believes that such unprecedented discretion is unnecessary, and we wish to point out that already during the lengthy 1-year probationary period a Federal employee may be immediately fired for virtually any or no reason. In the context of these particular inspection jobs, competent, focused supervisors should be able to easily weed out the bad actors within a very short time.

Following the probationary period in a nonsecurity context, under 5 U.S.C. 4303, a Federal employee can be fired or demoted with 30 days notice. In accordance with elementary notions of due process, that employee can then appeal his or her case. However, according to the Office of Personnel Management, a very small number of dismissals and demotions are reversed through such appeals, and it is also important to point out that the employee is off the Federal payroll. They are off the Federal payroll while the appeal is pending.

More importantly here, where airport security is now a national security issue, under 5 U.S.C. 7532 an employee may be suspended without notice and then removed after such investigation and review as considered necessary by the agency in the interest of national security. In that context the agency need not provide the employee the rationale for dismissal, and the agency's decision to dismiss that employee is not subject to appeal.

Thus, in the context of airport screeners and airport security, we believe these existing Title 5 management authorities to remove these workers are already extremely broad and sufficient.

The new law also gives the Secretary unprecedented discretion to determine the compensation packages and job protections of the Federal employee screeners, "notwithstanding any other law." AFGE believes here, too, that such unlimited discretion is unnecessary and actually counterproductive to maintaining a high quality work force. There is simply no reason for Federal employee screeners to be treated differently than other Federal employees with respect to their pay, benefits, and after the fact job protections.

The report language to the conference report encourages the Secretary to ensure that screeners have access to Federal health life insurance, retirement benefits, and whistleblower protections. We believe, though, that fixing terms and conditions of employment in statute would ensure that the lowest bid mentality that so under-

mined contractor airport screening will not be repeated after Federalization of the function. Therefore, AFGE urges the Congress to revisit the issue to expressly provide Federal employee airport screeners with the same compensation packages and job protections as other Federal employees.

It is clearly not in the interest of any American who values her or his freedom to fly to undermine the Federal Government's ability to recruit and retain the best airport screeners by making them second class Federal employees. AFGE does not believe it is the intention of either law makers or administration officials to allow such a scenario to unfold.

AFGE looks forward to ensuring that Federal employee screeners are treated equitably vis-a-vis other Federal employees with respect to issues like pay, health insurance, EEO rights, life insurance, retirement benefits, the right to organize and be represented by unions and whistleblower protections. The rights of Federal employees to organize and bargain collectively in particular serve as a check against the office politics and the pressures not to disclose safety violations identified by the whistleblower group, Government Accountability Project, and its argument in favor of whistleblower protections for airport screeners.

With respect to matters concerning public safety, it often falls to rank and file Federal employees to alert the Congress. At will employees like these screeners will not risk coming forward. Such warnings are most likely to be encouraged when the employees with the relevant information can go safely, even anonymously to their union that will protect them from arbitrary retaliation. Thus, it promotes the interest of the millions of American air travelers if the screener work force is free of coercion and free to organize.

Finally, there is no plausible rationale for denying Federal employee screeners the right to organize. AFGE is proud to represent tens of thousands of other Federal employees engaged in public safety, such as Bureau of Prisons correctional officers, DOD police, law enforcement officers throughout every agency, INS employees, and firefighters. Moreover, today airport customs officials are represented by unions, as are the skilled machinists, the baggage handlers, the mechanics, the air traffic controllers and those in the front lines, the flight attendants and pilots. There is no reason to treat a Federal employee screener's right to organize any differently. AFGE will work with the administration to ensure that Federal employee airport screeners have the right, if the workers so elect, to be represented by a union.

Again, Mr. Chairman, thank you for holding an important and timely hearing. I look forward to answering any questions that you and your colleagues may wish to ask.

[The prepared statement of Mr. Roth follows:]

STATEMENT BY

MARK ROTH
GENERAL COUNSEL

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO

BEFORE THE

HOUSE GOVERNMENT REFORM SUBCOMMITTEE ON
ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS

ON

AVIATION SECURITY

NOVEMBER 27, 2001

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INTRODUCTION

My name is Mark Roth and I am General Counsel of the American Federation of Government Employees (AFGE), AFL-CIO. On behalf of the 600,000 government workers represented by AFGE, who serve the American people across the nation and around the world, I thank you, Chairman Ose, for this opportunity to offer the views of the largest federal employees union concerning aviation security and the implementation of the Aviation and Transportation Security Act.

The Congress is to be congratulated for crafting a comprehensive approach to bolstering aviation security that commands the support of the vast majority of lawmakers and the vast majority of Americans.

I commend the Subcommittee for holding this important and timely hearing. The debate over particular parts of the legislation was occasionally intense. With past differences reconciled, today's hearing provides an opportunity for all concerned to focus on the future by offering constructive recommendations for carrying out the new law. Thanks to the Subcommittee's leadership, such recommendations can be considered *while* the law is being implemented, instead of afterwards. Given the importance of AFGE's role in the federal workplace, I will direct the bulk of my testimony towards issues of concern to those men and women who will soon become federal employee airport screeners.

DISCRETION TO DISMISS FEDERAL EMPLOYEE SCREENERS

Regardless of where we might have stood on the issue of federalization, we all agreed that screening would not improve if the job status of screeners were not improved—through better pay, better benefits, and real job protections. Ultimately, there is no other way to recruit the best employees and to keep them on the job.

AFGE anticipates that many of the current contractor screener employees will be able to make the transition to the federal employee screener workforce. It is important to distinguish between the current contractor screener workforce and the fundamentally flawed system in which they were forced to work. AFGE is confident that many members of the current contractor workforce will be empowered to excel once new standards are imposed, new training is conducted, and, most importantly, a new appreciation for the importance of their work is shown through better pay, better benefits, and real job protections.

The Aviation and Transportation Security Act gives additional discretion to the Secretary to dismiss any federal employee screeners who perform unsatisfactorily. AFGE believes that such discretion is unnecessary. During the one-year probationary period, a federal employee may be fired for virtually any reason with no notice and no appeal rights.

Following the probationary period, under 5 U.S.C. 4303, a federal employee can be fired or demoted, with thirty days notice. In accordance with elementary notions of due process and in order to guard against the inevitable attempts to transform the civil service into a spoils system, that employee can appeal his case to the Merit Systems Protection Board (MSPB); if represented by a union, that employee has the option of taking his case to arbitration or appealing to the MSPB. According to the Office of Personnel Management, a relatively small number of dismissals and demotions are reversed though such appeals. Even if successful, the employee is off the federal payroll immediately upon expiration of the brief thirty-day notice period.

In a situation involving national security, under 5 U.S.C. 7532, an employee may be suspended without notice and then removed after such "investigation and review" as "consider(ed) necessary" by the agency if the agency determines that such action "is necessary or advisable in the interests of national security." In that context, the agency need not provide to the employee the rationale for a dismissal and the agency's decision to dismiss that employee is not subject to appeal.

We are often told, wrongly, that merit system rights are a luxury because it is impossible to fire federal employees. As the Government Accountability Project, a highly-respected government watchdog organization, pointed out recently in the context of airport screening, "That is not only false empirically; it is also a red herring. True, due process makes the federal government prove its case rather than permitting tenured employees to be fired on whim or unfounded accusations. But anyone who is not performing or undermines the new security mission can be reassigned from the front lines immediately, without cause, as a management prerogative. The point of the merit system is to shield against political betrayals of the public trust that are sustained by bureaucratic secrecy."

DISCRETION TO DETERMINE WORKING CONDITIONS FOR FEDERAL EMPLOYEE SCREENERS

The new law also gives the Secretary considerable discretion to determine the compensation packages and job protections of the federal employee screeners. As the report language to the conference report asserted, "the Secretary must be given wide latitude to determine the terms of employment of screeners." For example, while federal employee screeners would arguably be allowed to participate in the Federal Employees Health Benefits Program, it is up to the Secretary to determine the amount of the agency's contribution toward the purchase of the premium.

AFGE believes that such discretion is unnecessary. There is no reason for federal employee screeners to be treated differently than other federal employees with respect to their pay, benefits, and protections. Even assuming

for the sake of argument that the additional discretion to fire poorly performing federal employee screeners under the new law is necessary, that additional discretion would not be weakened or attenuated in the slightest by providing federal employee screeners with the same pay, benefits, and after-the-fact job protections as other federal employees.

The report language to the conference report encourages the Secretary "to ensure that screeners have access to federal health, life insurance, and retirement benefits, as well as workers' compensation benefits. The Committee believes that screening must also be given whistleblower protections so that screeners may report security conditions without fear of reprisal."

While less likely to occur in the federal sector than in the private sector, especially in the aftermath of the September 11 terrorist attacks, pressures to cut corners, particularly with respect to workforce compensation, will certainly not disappear. Fixing terms and conditions of employment in statute would ensure that the "lowest bid" mentality that so undermined contractor airport screening would not be repeated after federalization of the function. AFGE urges the Congress to revisit the issue of whether the Department of Transportation should be required to provide federal employee airport screeners with the same compensation packages and job protections as other federal employees.

The absence of such comparability can be deleterious to workforce morale and send exactly the wrong signal about the importance of airport screening. Comparability also facilitates the transition of federal employee screeners to other positions in the federal government. Even with appropriate compensation packages and job protections, not all of the federal employee screeners will have long careers because the work, while important, can be tedious. However, airport screeners who perform well as federal employees will have career advancement opportunities and thus be strongly incentivized to perform in exemplary fashion. It will be easier for federal employee airport screeners to take advantage of these promotional opportunities if they are treated like other federal employees from the very beginning of their careers as civil servants.

It is clearly not in the interest of any American who values her or his freedom to fly to undermine the federal government's ability to recruit and retain the best airport screeners by making them second class federal employees. AFGE does not believe it is the intention of either lawmakers or Administration officials to allow such a scenario to unfold. That is why AFGE looks forward to working with the Administration to ensure that federal employee screeners are treated equitably vis-à-vis other federal employees with respect to pay, health insurance, life insurance, retirement benefits, workers compensation, equal employment opportunity rights, rights to organize and be represented by unions, and whistleblower protections.

RIGHTS OF FEDERAL EMPLOYEE SCREENERS TO ORGANIZE AND BARGAIN COLLECTIVELY

It is particularly important that federal employee airport screeners also have the same job protections as other federal employees, including the rights to organize and bargain as well as whistleblower protections. As GAP pointed out during the debate over the aviation security legislation, "Whistleblower rights protect those bearing witness against fraud, waste, abuse, or other corruption buried within agencies, which, in turn, protects us. By failing to protect employees who raise legitimate concerns we actually protect the worst sources of government breakdowns—mid-level supervisors or political appointees whose fiefdoms are enforced by vicious office politics carried out in a climate of repression and reprisal."

Similarly, the rights of federal employees to organize and bargain collectively also serve as a check against the "office politics" and the "climate of repression and reprisal" identified by GAP. After the spotlight has shifted to other public policy issues and other areas of government, the pressures to cut corners, with respect to matters ranging from workforce compensation or public safety, will reassert themselves. It promotes the interests of both the federal employee airport screeners as well as the millions of American air travelers whose lives and property they will be responsible for safeguarding if the workforce is free to organize and bargain collectively. Again, it must be pointed out that, assuming for the sake of argument the need for discretion to fire federal employee airport screeners in addition to that which already exists generally, the rights to organize and bargain collectively would not weaken or attenuate in the slightest that discretion.

There is no plausible rationale for denying federal employee screeners the rights to organize and bargain collectively. AFGE is proud to represent tens of thousands of other federal employees with important public safety responsibilities: law enforcement officers, employees at the Immigration and Naturalization service, and fire fighters.

Moreover, the skilled machinists who build planes are represented by strong unions. The hard-working baggage handlers who load the planes are represented by strong unions. The careful mechanics who maintain the planes are represented by strong unions. The vigilant fire fighters who protect the planes are represented by strong unions. The dedicated air traffic controllers who direct the planes are represented by strong unions. The caring flight attendants who keep passengers on the planes safe and secure are represented by strong unions. And the reliable pilots who fly the planes are represented by strong unions. Again, there is no reason to treat federal employee screeners differently from their private sector or federal sector colleagues. AFGE will work

with the Administration to ensure that federal employee airport screeners will also have the right – if the workers so elect -- to be represented by a strong union.

As the Chairman understands, there are many important issues that have to be addressed in order to satisfactorily implement the Aviation and Transportation Security Act, including employee training, performance standards, screening practices, and employee and passenger identification. As we have all learned from experience, the distance from theory to practice can be farther than we ever imagined. There is no better way to shorten that distance than by allowing federal employee airport screeners meaningful opportunities to air their views as such policies are being developed and implemented.

Again, Chairman Ose, thank you for holding this important and timely hearing. I look forward to answering any question that you and your colleagues may wish to ask.

Mr. OSE. Thank you, Mr. Roth.

Our final witness is Paul Hudson, who is the executive director of the Aviation Consumer Action Project. Thank you for joining us today. For 5 minutes.

Mr. HUDSON. Thank you Mr. Chairman, Congressman Tierney. My name is Paul Hudson. I'm executive director of the Aviation Consumer Action Project [ACAP], which is a nonprofit organization that since 1971 has acted as a voice and ear for the public on major aviation issues. ACAP has been a national advocate for strengthened aviation security measures since the 1980's and has been a member representing the public on the FAA's Aviation Security Advisory Committee and its Aviation Rulemaking Advisory Committee since 1991. In 1998, I co-chaired the security group's Working Group for Public Education, and since 1989 I've testified about a dozen times before Congress and two Presidential commissions on the subject.

Since September 11th, I served on the FAA's Ad Hoc Aviation Security Subcommittee, which was evaluating new aviation security technologies and procedures, and was on the team evaluating airport screening.

I would like to thank you very much for holding this hearing today. With the enactment of legislation last week, this is a very timely and very important next step. What are the details, what are the regulations going to be? Before getting into that, though, I need to mention the goals that we need to keep in mind.

First, obviously is to prevent a repeat of the September 11th attacks or any variation thereof whereby U.S. civilian aircraft are used as weapons of mass destruction. Second, to protect airport transportation, which is an important part of the Nation's infrastructure and our way of life.

As we go through the process of regulation, we also need to keep in mind a unique feature in this type of regulation; that is, that the details of security regulations, unlike other types of regulation, are secret. This means that the level of congressional oversight must be at a higher level and also you must have a new aviation—excuse me—a new Transportation Security Advisory Committee that has highly effective public members because there is no peer review, there is no public comment process, there is no public scrutiny that normally applies in this field. Otherwise, we fear that the egregious policies of the past, some of which contributed to the success of September 11th, could potentially even be repeated, obviously not to the same thing but different ones in the same vein.

Moreover, the FAA practice of granting largely unrestricted waiver and exemptions to air carriers, airports, and others would be also likely to continue, we feel. The first test of the new system is going to be who the people the administration appoints to lead the effort. The second test will be what those people do, particularly in the key areas of security regulations and standards. The third test will be the performance of the new agency in the coming months, and the final test will be whether additional large scale aviation and transportation terrorism is prevented.

Congress needs to be kept up-to-date and needs to have appropriate oversight in each of these areas. With regard to transportation security personnel hiring criteria, in addition to the things

that are mandated in the act, we feel there should be national security background checks. And with the pay and benefits having been effectively tripled for screeners, hiring can and should be on a competitive basis, with only the best being hired for training, those who meet the high standards, surviving training and only those who pass a probationary period being retained.

Concerning employee training, there should be a minimum of 30 days training for all security personnel, or 175 hours. This is the same or less than what we have in many other areas of security. Proficiency tests and occasional spot testing are inadequate. The current system fosters boredom, constant small talk and a general lack of seriousness.

I've indicated in my testimony we need a universal in-depth screening system, and I would refer you to my written testimony for the details of that.

We also feel that cockpits need to be triple sealed and secured. In my testimony before the House and Senate, our first point was you must secure the cockpits. That's only been partially done to this point. There needs to be a reduction in carry-on luggage to levels that the screening system will be able to detect reliably at least 95 percent of prohibited items. We need frequent testing of screening with test objects as exercises as well as winner take all type gotcha tests we have now. And, since most screeners will never face a terrorist, unlike law enforcement officers, we need to utilize military-type exercises and gaming techniques. Otherwise, people will not maintain the level of alertness no matter how in principle they may be motivated.

With regard to where we start, I think a model aviation security program and training facility needs to be established at Reagan National Airport. It has all the ingredients needed for that and, if we're going to have a national uniform standard, we need to have a center, especially to start out with.

Regarding employee and passenger identification, the industry is heavily pushing "smart cards." These things would have fingerprint aspects to them. Face recognition is another technology that's being pushed. We feel they have a role to play, particularly for access of employees to sensitive areas, but they should not be issued to enable passengers to bypass or avoid standard security checks. Smart terrorists will be able to obtain them. And, even trusted employees, there is always a danger of them going to the dark side. If you look at the profiles which are outlined in my testimony of smart terrorists, most of them would be able to obtain these smart cards.

Now, there's often confusion about reducing the risk of aviation bombings. The things that need to be done in that area are not the same for the most part as anti-hijacking measures. Installing hardened cargo and baggage containers would be a very important first step. Passenger bag matching still is valid. None of the historical aviation bombings have involved suicide bombings and many involve dupes.

Explosive detection equipment for screening of checked baggage, this needs to be expedited, with regulations if necessary, to ensure that we have the equipment in the legislative timeframes. There is presently only one manufacturer that makes the stuff and we're

going to have to do something to change that if we want to have the congressional mandates met.

Mr. OSE. Mr. Hudson, the red light went off because I turned it off, but if you——

Mr. HUDSON. I'm not going to go through the rest of it, but I would just conclude by saying that the challenges and terrorist threats we now face, especially in aviation security, are immense, but the resources of this Nation are also enormous. The Federal Government needs to place its full power and energies to secure the skies over America, and I look forward to answering any questions you may have.

[The prepared statement of Mr. Hudson follows:]

TESTIMONY OF PAUL HUDSON, EXECUTIVE DIRECTOR, AVIATION CONSUMER ACTION PROJECT

BEFORE THE SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY REFORM OF THE COMMITTEE ON GOVERNMENT REFORM, U.S. HOUSE OF REPRESENTATIVES, HON. DOUG OSE, CHAIRMAN

HEARING ON FEDERAL REGULATIONS NEEDED TO ENSURE AIR SECURITY

RAYBURN HOUSE OFFICE BUILDING, ROOM 2154, ON NOVEMBER 27, 2001

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Good afternoon Chairman Ose, Congressman Tierney and Members of the Subcommittee.

My name is Paul Hudson. I am executive director of the Aviation Consumer Action Project (ACAP), a nonprofit organization, which since 1971 has acted as a voice and ear for the public on major aviation issues. ACAP has been a national advocate for strengthened aviation security measures since the 1980's and has been a member, representing the general public on the FAA's Aviation Security Advisory Committee (ASAC) and its Aviation Rulemaking Advisory Committee since 1991. In 1998 and 1999, I co-chaired the ASAC working group on Public Education. Since 1989, I have testified before Congress and two presidential commissions over a dozen times on aviation security representing ACAP and previously, the Pan Am 103/Lockerbie relative organizations. Since September 11th, I have served on an FAA Ad Hoc Aviation Security Subcommittee evaluating new aviation security technologies and procedures and on a team evaluating Airport Screening.

Thank you for holding this hearing today. With the enactment of legislation last week federalizing the aviation security system and creating a Transportation Security Administration, it is very timely and essential to consider the next steps to improve aviation security to a level needed to thwart or deter more terrorist attacks such as those that occurred on September 11th and to restore public confidence in air travel and the safety of locations on ground that could be subject to attack using civilian aircraft.

I will not repeat my testimony to the House Aviation Subcommittee on September 25th or our advice and comments to the House Senate Conference Committee on the aviation security legislation earlier this month, but would refer the subcommittee to our web site at www.acap1971.org where copies are available. Instead I will concentrate on the specific regulations and details that are needed to make aviation secure.

However, I need to first mention the goals that must be kept in mind. First, to deter or prevent a repeat of the 9/11 attacks or any variation thereof, whereby US civilian aircraft are used as weapons of mass destruction. Second, to protect air transportation which is an important part of the nation's infrastructure and way of life.

As we go through the process of security regulation, we need to keep in mind a unique feature of this type of regulation: That the details of security regulations are secret. Therefore it is essential that there be a very high level of oversight by Congress and that the new Transportation Security Advisory Committee have effective public members, as the normal public scrutiny, industry peer review and public comment process for other types of regulation does not

apply in this field. Otherwise, egregious policies, such as permitting passengers to carry box cutters and knives up to 4 inches on airliners, failure to check passengers against terrorist watch lists or provide a high level of scrutiny to passengers meeting terrorist profiles (that played a role in the failure of aviation security on September 11th), could potentially be repeated. Moreover, the FAA practice of granting largely unrestricted waivers and exemptions to air carriers, airports and others is likely to continue as such practices are deeply imbedded in the current aviation security and DOT/FAA regulatory culture.

The first test of whether aviation security will be improved to level needed will be the people the Administration appoints to lead the effort. The second test will be what those people do, particularly the key areas of security regulations and standards. The third test will be the performance of the new agency in the coming months, and the final test will be whether additional large scale aviation and transportation terrorism is prevented.

Transportation Security Personnel Hiring Criteria

In addition to the basic requirements in the new law that screeners and most other security personnel should be US citizens, proficient in English, pass criminal history checks, physical and mental tests, some additional criteria should be national security background checks (especially for supervisory employees and nationalized US citizens).

With pay and benefits having been effectively tripled for screeners, hiring can and should be on a competitive basis with only the best being hired for training, only those who meet high standards surviving training, only those who pass a probationary period being retained.

Employee Training

There should be a minimum of 30 days training for all security personnel or 175 hours. This compares to prison guards, military personnel, flight attendants and even police officers, who generally meet or exceed this amount of training and are paid comparably.

Training needs to include screening and searching of baggage, searching of passengers, questioning of passengers. Air marshals need a different type of training but no less and perhaps more extensive.

Establishing and Maintaining High Performance Standards for Security Personnel

At present, proficiency tests are inadequate and occasional spot testing fails to maintain a high level of alertness and seriousness. The current system fosters boredom, constant small talk and social chit chat among screeners, and a general lack of seriousness and competence, all of which is noticed by passengers and undermines public confidence and well as the actual security of air travel security.

A **universal, in depth screening system** should be used in the future. Such a system could have the following features: a) A second screening of 10% of all passengers/carry-ons on a random basis, plus selectees (at least another 10%) (this would provide continuous quality control for the main screening checkpoints and would quickly weed out incompetent or tired or impaired screeners); b) hand searches of all passengers meeting selectee criteria plus a random group, plus hand searches of their carry on baggage; c) questioning of a selection of passengers (at least 5%) most of whom would be advised in advance to report early for security checks. Recently, a second search was done at a gate in Chicago prevented a passenger from carrying on board 7 knives, a stun gun and a can of pepper spray in his carry on bag.

The analogy is that of the **triple seal** on medicine containers first developed by Johnson & Johnson , the maker of Tylenol after incidents of tampering and poisoning threat to destroy the brand and the company. The triple seal is effective and highly visible to the consumer. No fancy explanation is really needed, and it has acted as a deterrent as well as a preventive against tampering, terrorism, and blackmail of drug companies.

Cockpits need to be triple sealed and secured with both passive measures and especially until they are in place with armed security, using flight crews and properly trained state and local law enforcement officers as temporary sky marshals.

Reduction of carry-on luggage to levels at which screening check points can reliably detect at least 95% of prohibited items should be required immediately to mitigate against the risk of more airliner hijacking. Reductions to date are not sufficient.

Frequent testing of screening check points with red teams and with test object **exercises**, as well as proficiency **testing** is vital to maintaining high standards of competence, readiness and alertness. Screening personnel need to be rewarded for superior performance and penalized for inferior performance. Also competition between screening teams, and esprit de corps needs to be fostered. These methods and especially war games are used by the military, to maintain and improve readiness and efficiency, and should be adopted for screeners. Unlike law enforcement officers or even most security guards who often face criminal situations, most screeners will never come face to face with a terrorist. Only with testing and anti-terrorist gaming methods can we expect screeners and their supervisors to reach and maintain a high level of competence and alertness.

A **model aviation security program and training facility** should be established at Reagan National Airport and all personnel should initially go through the same training and testing program. In this way a truly national standard and high level system can be established. This airport is currently operating well below capacity due to the need for extra high security to protect the nation's capital. It has the features needed for such a program and facility.

Employee and Passenger Identification

Biological technologies such as fingerprint scanners and face recognition have a role to play in enhancing transportation security, particularly for access of employees to sensitive areas in airports, however they should not be used to enable passengers to bypass or avoid standard security checks.

Some airlines and security ID firms are pushing the use of ID cards with biologic identification information encoded in them (**smart cards**). The basic problems are they are only as good as the methods used to initially establish ID, and there is presently no real time capability to check names against data bases such as terrorist watch lists.

Accordingly, smart cards must not be issued to passengers, contrary to what is being advocated by some, because smart terrorists will be able to obtain them and use them to bypass most or all security. We know that the US is faced with smart terrorists who often have good ID , that terrorists and many criminals are adept at identity theft (several of the 9/11 hijackers are reported to have used this method, and the most notorious terrorist now in US custody, Ramzi Youssef, is suspected of having stolen the identity of a British resident), document forgery, and the creation of fictitious identities. Some terrorist cells are known to use credit card fraud as a way to support themselves.

Smart ID cards may have some use with employees, but even here caution is needed in that they should not be used to bypass security (only for additional security), since there is always a risk they may go over to the "dark side." At present, there are reported to be over 40 pilots on the FBI terrorist wanted list, and US based terrorists have been discovered with airport ID that would allow them access to airliners. After 9/11 box cutters were reported discovered on several airliners flying out of Logan Airport. Employee corruption, smuggling, theft and other criminal conduct is a known problem at a number of large US airports.

The 19 Sept.11th hijackers are reported to have had generally clean criminal history records, to be foreigners from the Middle East (16 from Saudi Arabia, others from Tunisia, Egypt, all US allies), radical Moslem men, eight with pilot training, between the ages of 21 and 34, and all with US State Department Visas, and passports. Some had US driver's licenses, Social Security Cards, pilot licenses, frequent flyer cards and bank cards. The reported leader also had a graduate degree in city planning. And an associate of the 9/11 terrorists arrested in Britain is reported to be a commercial pilot.

Other master terrorists have often had engineering backgrounds, some like the Pan Am 103 terrorists were foreign airline security personnel, others like the Air India bombers were respected businessmen (Sikhs who were long time Vancouver, Canada residents), or decorated ex US military personnel (e.g. Timothy McVeigh). Barring some very legally questionable profiling and

discrimination based on national origin, religion, age, sex, educational background, etc., the typical smart aviation terrorist of today would qualify for and probably obtain a smart ID card to avoid airport security checks, if they were made available.

The argument that we need to pre-clear a large group of passengers (some advocates of smart cards suggest pre-clearing tens of millions of frequent flyers) so we can concentrate on a smaller group of non-cleared passengers is specious, because the history of aviation security indicates this does not occur, for cost and commercial convenience reasons. Moreover, the risk of giving smart terrorists little or no security checks is far too great.

Finally, a smart card issued to certain frequent flyers **is reverse or positive profiling**, and profiling has generally been a failure in aviation security, particularly when used for anti-hijacking security. Prior to 1970 the anti-hijacking profiling system then in place was completely ineffective to prevent nearly one hijacking per week, versus the success of universal security screening with X-rays and metal detectors that deterred or prevented most US domestic airliner hijackings as soon as the system was installed.. The failure of CAPPS to stop any of the 19 Sept. 11th hijackers should give pause to anyone even contemplating such systems to be anything more than an auxiliary to a universal security system. Profiling also failed in the case of the Unabomber even after six years of serial bombings.

Reducing the Risk of Aviation Bombings

Hardened cargo and baggage containers should used on an expedited basis. This technology has been well tested and is ready for deployment. Its deployment would mitigate or prevent airliner bombing to a large degree, especially if coupled with check baggage and cargo screening.

Center fuel tanks should be inerted. This measure would also prevent accidental explosions of these tanks as happened in 1996 with TWA 800 and earlier this year in the Far East. The FAA is presently considering such a measure, and it has been studied at length by two industry task forces (in 1998 and 2001) who both found it to be technically feasible. It is presently pending before the executive committee of the FAA Aviation Rulemaking Advisory Committee (ARAC). This is also mature technology that has been used in military aircraft for decades. ACAP originally petitioned the FAA to mandate this technology in the mid 1980's.

Banning of unscreened mail and cargo over 12 ounces unless contained in a bomb resistant container on all passenger airliners. The ban was instituted during the Gulf War and was in place from Sept. 12 to 17th, 2001, when it was replaced with enhanced know your shipper regulations. The current FAA policy is inadequate. Technology for screening cargo is available and needs to deployed if airliners are to safely carry mail and cargo over a certain weight known to be sufficient to bring down an airliner with a bomb.

Passenger Bag Matching is still a valid method to prevent aviation bombings by a terrorist planting a bomb in checked luggage (the method used on the Lockerbie bombing and at least four

other airliner bombings that killed all on board the airliner). Notwithstanding the suicidal nature of the 9/11 attacks, there is no history of terrorists engaging in suicide bombing attacks by planting a bag in their checked luggage and then boarding the aircraft. Bag matching computer technology is available and is used by some airlines now. Bag matching has long been used on international flights and studies indicated that the expense and delay of this measure would be minimal. Bag matching should also be extended to ensure that passengers who exit the airliners at intermediate stops and do not reboard, have not left checked or carry-ons on the aircraft.

Explosive Detection Equipment for Screening Checked Baggage needs to be expedited with regulations if necessary to ensure that there is sufficient equipment in place. This may involve requirements for the CTX 5000 by INVISION, now the only machine really in use, to be manufactured by more than one company at more than one factory.

Until this or better equipment is available at all airports, temporary regulations need to be issued providing for spot hand searching, use of advanced X-rays, and baggage limitations.

New Air Security Threats and Security Measures

The most serious failure of air security that allowed the 9/11 attacks to be successful was the failure to anticipate and plan for and implement measures to prevent a suicide hijacking of airliners using well trained terrorists, some with pilot training as weapons of mass destruction. In all my years attending meetings and listening to security experts I never heard the possibility of a 9/11 type attack ever even mentioned. We cannot afford to just fight the last war and fail to take measures to prepare for or thwart the next type of attack. While it is true that we cannot anticipate, plan for or prevent every type of attack, we can plan for those that are believed to be most likely and are major threats to US national security (i.e. those involving killing thousands to millions and destroying key national and economic assets). Since the 9/11 attacks, much more is now known about about such likely future major terrorist threats. These new major threats in my view are:

1) Use of **small aircraft to spread biological or chemical aerosols in urban areas**, with the potential for killing several hundred thousand to several million. This is in my view the most likely means for terrorists to top the 9/11 attacks. We have reason to believe they were considering or planning such attacks, and we of course have already been attacked by weaponized anthrax in the mail. Hundreds and perhaps thousands of young men from Middle Eastern countries have received pilot training at US flight schools, generally with no criminal history or security (ads for US flight schools are reported to have recently been discovered in bin Laden terrorist facilities in Afghanistan). News reports have said that 44 pilots are on the FBI terrorist suspect list.

According to the Johns Hopkins Biodefense web site (citing US Congress Office of Technology Assessment and UN agency analyses, and referenced by the CDC) 50 kilograms of aerosolized

anthrax (1 gram contains a reported 1 billion spores), as has already been used against the US Government and media, spread by a small aircraft for less than a mile could be expected to create a deadly aerosol that would kill 100,000 to 3 million in a metro area of 5 million. As there is no system of detectors, we would not know an attack occurred until the people fell ill with inhalation anthrax, which is often to usually fatal. In sum, we know terrorists have these weapons and that our defenses are inadequate to nonexistent, and that they are capable of obtaining and using small civilian aircraft in the US. What we do not know is how much they have and whether it will soon be dispersed by aircraft or some other means.

2) Use of **larger non-airliner civilian aircraft to crash into US landmarks, nuclear facilities or mass gatherings.**

Nuclear power plants are potentially vulnerable to attack by air. A typical nuclear power plant contains about 1,000 times the radioactive material of a Hiroshima size bomb, so even a 1% release to the atmosphere could do enormous damage.

The security on non-airliners in the US is minimal to nonexistent. Accordingly, the main security currently is the US Air Force, which is spread much too thin for good air cover protection over likely targets.

3) Use of **civilian aircraft to deliver nuclear or radiation bombs** over US cities. A present overt threat has been made by the bin Laden terrorists and the Taliban leader backed up by some intelligence reports; the nation's top leaders say it cannot be completely discounted.
A nuclear device would probably do the most damage to the widest area if exploded in the air over or near a major city.

4) Use of **large (tractor trailer trucks) with fertilizer bombs to wipe out airports** or other ground targets up to several square blocks. The use of truck bombs is presently the third most deadly form of terrorism actually used, we know now that some suspected terrorists in the US have obtained commercial trucking and even hazardous materials licenses which would allow far more powerful bombs to be used.

5) Use of **Stinger missiles against airliners on take off or landing.**
Hundreds of such weapons are reported to be on the black market or in the hands of terrorists.

All of the above scenarios could result in thousands to millions of deaths and injuries, some could make certain urban areas uninhabitable for many years, and all would cause the US and probably the world economy to go into a deep recession..

Terrorists tend to want each act to match or exceed the ones before it, otherwise it will not shock or terrorize the population.

The **ways to mitigate against the new major threats** are to restrict general aviation and

cargo flights near urban areas until security measures are in place to identify both aircraft and pilots as friendly, to deploy detectors or use targeted geographic testing to detect biological and chemical attacks when they occur, to update and test evacuation and other civil defense plans for major cities, to stockpile antidotes and protective devices for known forms of biological, chemical or nuclear attack for the general population with necessary public health resources , to provide for public education to prepare and protect the public from such attacks and avoid panic, and to provide military air cover over likely target areas.

Such measures in peacetime seem inconvenient, expensive and unnecessary, but in wartime, such measures are not only appropriate but may well make the difference between victory and defeat in the war between the US and international terrorist organizations and their supporters. The US faces a global war against elusive decentralized terrorist organizations with a multimillion dollar and person support structure, and several thousand terrorists, coupled with the need to defend against civilian targets both at home and abroad. This is unprecedented in our history and will require both strong offensive and strong defensive measures.

The US is no longer at peace. We are not faced with some bothersome terrorist threats and the remote possibility of more serious threats in the future. In light of the Sept. 11th Attacks and subsequent events, we must presume that terrorist threats of mass destruction and more aviation terrorism are likely and plan accordingly.

The old approach of discounting more serious attacks as too unlikely to seriously plan for must be discarded. The usual calculus of multiplying the likely damage times the likely risk of occurrence must be updated at the very least to increase the likelihood of major attacks on the US homeland by terrorists and also to increase the range of uncertainty in our estimates of the probabilities. The Government should not heavily rely on the opinions of terrorist experts as their prediction track record is very poor. War is inherently uncertain.

The public has entrusts the Government fight and win wars and protect the national security. A major portion of federal taxes are used for national security. In general the public is looking for leadership from the Federal Government, will follow its lead and put up with many inconveniences, especially if the present perceived incompetence and inadequacy of aviation security is ended. The new approach must be to plan for and defend against more serious attacks in anticipation that they will be attempted in the future, unless there are very strong defensive or deterrent measures in place. No new form of terrorism has not been repeated without strong defensive or deterrent measures in place. Deterrence against terrorist organizations has been nearly nonexistent, unlike terrorist nations that cannot hide once they are identified.

We must also assume that some attacks cannot be prevented and have contingency plans in place for civil defense measures to mitigate the physical, economic and psychological damage of such attacks. Such plans were in place in varying degrees during the Cold War and World War II.

Where national priorities are necessary due to limited resources, in my view the focus should be

on defending against major threats (those that would kill thousands or millions or destroy national symbols or Government command and control centers), rather than defending against minor threats (those that would kill hundreds or less).

Conclusion

In conclusion, the challenges and terrorist threats we now face, especially in aviation security are immense, but the resources of this nation are also enormous. The consequences of a second failure to secure against the use of US civilian aviation by terrorists as weapons of mass destruction would be both devastating and unpredictable than the attacks of September 11th. For the Federal Government not be place its full power and energies to secure the skies over America would be unforgivable.

Mr. OSE. Thank you, Mr. Hudson. I want to preface my questions by conveying to Ms. Friend and Mr. O'Brien the sentiment of the Congress regarding your colleagues who aren't with us today and to Mr. Hudson for your loss. We're going to try to do everything we can to prevent that from repeating itself, and I thank you all for coming here today to talk about it.

I want to go to a question we dealt with in the last panel having to do with the level of tolerance to accept, whether in terms of what gets through or performance in the screening process. Mr. O'Brien—were all of you here for the previous panel's testimony so you heard the body of the conversation? Do you have any thoughts on, as we set this system up, with these rules and regulations, the issue of zero tolerance, where should we be on that spectrum as it relates to either the interview screening process or the performance level of the folks in that process?

Mr. O'BRIEN. Obviously, in the interviewing-screening process, applicants should be held to the highest standards, of course. This is similar to people or personnel who are involved in safety critical endeavors as well. However, as far as disciplinary or firing situations, I would suggest that there may be some value in looking at the safety programs that are currently in effect. We have programs now that apply to certain safety disciplines where, if there is a deliberate violation of a regulation or a deliberate act that compromises safety or a criminal act, then there is no recourse for the individual.

However, if the act or situation is not deliberate or inadvertent and an individual reports on him or herself, then there is an investigation undertaken jointly by the oversight responsibility, in this case maybe the FAA or TSA, the employer and, if the union is involved, a union representative. Corrective action is identified. FAA has veto power over whether that corrective action is appropriate or not when agreed appropriate action is taken.

So, I think something like that might be considered for compliance with security procedures. No matter how good the procedures are, there may be faults with the procedure development itself. If employees recognize those faults through self use and report on those faults and they're analyzed properly, then I think disciplinary action in that particular case is not warranted.

Mr. OSE. Ms. Friend.

Ms. FRIEND. We believe that aviation security has to be a series of layers and the first line of defense must be on the ground. Training today, is to keep the aggression off from the aircraft. So, to that extent we strongly support the most comprehensive and inviolate as possible first line of defense on the ground, but, having said that, we also advocate on behalf of our members the concept of trained to proficiency. We believe strongly that a person who interviews and is qualified for the job deserves the best possible training and that a failure is most often attributable to a failure in the training process, not in the individual.

However, we also support Mr. O'Brien's position that someone who deliberately compromises aviation security clearly falls outside the realm of a training issue. Part of my oral testimony that I left out in order to meet the 5-minute limit really did focus on the projected training for the security screeners. There's been some talk

of a minimum number of hours. We think it's premature to set a minimum number of hours. We believe that an expert in aviation security should develop a comprehensive training program and then tell us how many hours that will take to offer to the new Federalized security screening force.

Mr. OSE. Mr. Roth.

Mr. ROTH. Mr. Chairman, first of all, I want to say very clearly for the record that AFGE is not in the business of defending poor performers, people who could not do competent airport screening. The purpose of my testimony was to let you know that there are current tools in existing law which are extremely broad that are not used properly by supervisors, such as probationary periods and such as 7532 of title 5. I don't know how many of you are familiar with that provision on national security. It's very broad. If someone is on the lines and they are deemed a national security problem, they are gone immediately. They don't even find out why.

The other thing is there's a difference between zero tolerance and no right of an appeal after the fact. It is counterproductive if you give these people no rights. Where a workplace may be very arbitrary, there may be arbitrary conduct that the workplace—sometimes there are politics, with a small "p," at a small workplace, and a supervisor can be allowed to run rampant and can be allowed to coerce, terrorize, or actually, you know, put fear in a workplace so that they will not come forward with safety violations. They have no union, they have nowhere to go. They will leave. You know, there are environments where you have hostile supervisors and you've got to go along to get along. You must have some balance in the system, and we think the after-the-fact appeal, because mistakes are made, although in most cases employees lose, let's face it, 80 percent, that means that, in 20 percent of the cases, there was a mistake made, bad supervision, improper motive on the supervisor. But, to be able to just say that an employee is not meeting a standard where there's no right of an appeal to show that you did meet the standard I think goes way too far.

So, we're not in business to protect a poor performer, someone who has proven to be a poor performer, but also not to have a counterproductive set of rules that has people leave the agencies as soon as they're trained and go off to Customs, INS, where they are strongly unionized and these types of small "p" politics and games are not played.

Mr. OSE. Mr. Hudson.

Mr. HUDSON. With respect to this discipline approach, we would say, for any serious infraction, you should remove the person first and then have the due process follow. It's a similar process that's used with air traffic controllers. We also support, however, having whistleblower protection for these people. We think that's very important as a preventative against corruption or other abuses. With regard to minor things, poor performance, there should be penalties for poor performance and the approach that has been taken in the existing system, which, as I see, is in some of the legislation—I'm not sure whether it got into the final bill—is that you can fail a proficiency test and you get some remedial training and you go back. No one who fails proficiency tests should go back until they pass the proficiency test.

Thank you.

Mr. OSE. We up here have the red lights too. I want to make sure I just synthesize. None of you has objection to removal of someone from the front line, so to speak. It's the summary dismissal issue absent retraining or an appeal process, the "due process" I think was the phrase that you used, Mr. Roth. You think that protection should remain in the rules and regulations; is that accurate, Mr. O'Brien?

Mr. O'BRIEN. That is correct.

Mr. OSE. Ms. Friend.

Ms. FRIEND. Correct.

Mr. OSE. Mr. Roth.

Mr. ROTH. That's correct. I would make one more point on whistleblower protection. It's very rare to have an individual whistleblower. It's much more common to have a whistleblower go through a union or another group. So just to say we're going to give you a whistleblower right, that is not going to get it done. People—the experience, the studies even from special counsel, people are too afraid to put themselves forward alone.

Mr. OSE. Mr. Hudson, did I synthesize your remarks accurately?

Mr. HUDSON. Yes.

Mr. OSE. My time has expired. We'll have another round. Mr. Tierney.

Mr. TIERNEY. Thank you. Mr. Roth, I think the problem that some people had, you hit right on the head that with this legislation some people objected to having the security issue Federalized because they didn't want it unionized and that was it, and I think Mr. Mica, without putting words in his mouth, raised at least part of that reservation when he made the comment in his testimony that it takes 3½ years to discipline a Federal employee. Would you address that for us?

Mr. ROTH. I have some problems with that because they throw out that number and there may be a case and there may be an EEO process, but in most cases, like I told you, during the first year they're gone immediately and there are no appeal rights. After that, you have 30 days and then, you know, you have a right to respond. Under this law, you don't even have a right to notice and respond, and it may not even be Constitutional in that regard. There are some cases on that. However, in most cases you have 30 days, you have a right to respond, and then you're gone and you have a case. You have a day of hearing.

Now, it may go on appeal to some other Federal agency for months and months where you would never hear about it and no one works on it, but that doesn't mean the employee is not gone. There's no paycheck, they have to move on. So, on paper, you may have a case, but that person's gone within about 30 days.

Mr. TIERNEY. Thank you. I think it was helpful to clarify that. Ms. Friend, you indicated that you thought flight attendants should have access to non-lethal means of protection on a flight. Can you give me some specifics of examples of what you mean by that?

Ms. FRIEND. I sat on the Secretary's Rapid Response Team for Aircraft Security, and we specifically recommended a list and an evaluation of a list of non-lethal devices, including stun guns,

tasers, mace, pepper spray. We have asked for really four areas of defense in the cabin. Now that we have fortified the cockpit doors, which we absolutely support, it's important to change the procedures to say that the pilots will not compromise the security of the cockpit by coming out to assist in any disturbance no matter how difficult. We have asked for additional training, including upgraded security training, personal defense training. We've asked for an emergency means of notification to notify the cockpit that a hijacking was in progress, and we've asked for access to a non-lethal defense weapon.

None of these things are intended in any way to suggest that flight attendants could somehow overpower any violent hijacker, but they are intended to buy us time in the cabin, to buy our passengers time in order to allow the pilots to get the aircraft on the ground safely, which is where the only real help in that situation is.

Mr. TIERNEY. Thank you. I would like each of you to address the issue of a trusted passenger concept, if you would. I've heard it mentioned several times, the apparent insinuation being that there are some people that could be screened once rigorously and after that they have got some special passage onto the plane without going through the customary and every occasion flight review. Share with me your feelings on that concept, starting with Mr. O'Brien, and we'll work from my left to my right.

Mr. O'BRIEN. Conceptually the proposal has some merit. I have not seen any specific details of how it actually would be employed, what kind of screening would be required in order to make you a so-called trusted passenger, or what kind of identification system would be set up and how the trusted passengers would actually be handled. In concept, though, it has been offered as a means of expediting the flow of traffic through the checkpoints, and for that purpose it has merit. Until we see some more details on exactly how it would be employed, we just sort of view it as a potential means of expediting the flow through checkpoints but with some reservations.

Ms. FRIEND. We actually strongly object. We're very concerned that it creates a section of our aviation security that could be easily compromised. It's entirely inconceivable to me that some sort of identification could be created that could not be forged, that is not subject to fraud. In addition, you have to ask yourself once this is issued, is this a lifetime pass or does the person have to subject themselves to repeated security in order to renew their sort of license to bypass security? So we have grave reservations and in fact object to the concept.

Mr. ROTH. Well, of course I'm unqualified, let me say it upfront. I'm just an air traveler. However, when you talk about something——

Mr. TIERNEY. Then somebody should gag you and go on——

Mr. ROTH [continuing]. And with Mr. Yeffet here before, I think there are other places I would rather have been, but when you talk about a system needing zero tolerance, that is a system that would need zero tolerance. As an air traveler, I would be concerned that you would have the system and they would be not inconvenienced

but how would you have the zero tolerance in place. Again that's as a nonprofessional.

Mr. HUDSON. We're strongly opposed to this concept as well as the proposals that I've seen. Not only can smart terrorists probably and undoubtedly will get these cards, and some proponents have talked about prescreening as many as 50 million Americans, but you have to remember that we're dealing with very smart terrorists today. They are professionals at identity theft. A number of the September 11th terrorists used that method, document forgery, creation of fictitious identities, and when you get one of these smart cards, as they're called, they're only as good as the initial establishment of identity.

So for instance, the leader of the September 11th attacks had a graduate degree in city planning, and a number of the other terrorists have either had pilot's licenses or pilot training, other master terrorists have had engineering backgrounds, many of them have frequent flier cards, and they have the full panoply of ID that we expect of a normal American traveler. In order to screen out that sort of thing, you would have to engage in some very legally questionable profiling involving not only national origin, religion, a whole host of things that I think would cause serious problems. The airlines that I've heard their proposals of anyway are not talking about any kind of negative profiling with respect to this. It would be nondiscriminatory and probably not restricted even to Americans.

The other big problem with it is that it's in effect reverse or positive profiling and instead of saying this is a group that we need to give extra attention to because there could be a higher correlation of them being a terrorist, we're going to say, well, this group are good guys and we don't have to worry so much about them or we don't have to worry about them at all.

Profiling historically has been a failure in aviation security. If we go back to the original anti-hijacking profile system in the 1960's, before metal detectors, before x-ray machines, we were up to almost one hijacking a week and we had a profiling system, essentially an eyeball profiling system at that time. Profiling has had its successes, but it's also had dramatic failures. They tried to profile the Unabomber for 6 years. It failed. And, in the case of the CAP system, which is the current profiling system, that obviously failed to check or detect any of the 19 hijackers on September 11th, even though apparently six or seven of them should have been flagged.

So profiling, whether it's negative or positive, has major problems. It is necessary to do it, but it's not something you can rely on over a universal system.

Mr. OSE. Thank you, Mr. Tierney. I want to followup on a couple specific questions. Mr. O'Brien, you heard Mr. Yeffet's testimony about the personal interviews. Do you support that as part and parcel of our security processes?

Mr. O'BRIEN. Yes, indeed. It is an important element in our overall systems approach to security.

Mr. OSE. 100 percent or a select portion of the passenger load?

Mr. O'BRIEN. I'm not sure that we heard 100 percent requirement, even though we've vacillated around that. We talked about a mini set of questions, and depending on how that mini set of

questions went, then you went into more detailed questioning. So it was sort of a domino-type system depending on the initial reaction. So if you take it from that perspective, everybody would get some initial questioning. So it would be 100 percent from that perspective. The detailed questioning would entirely depend upon what kind of response you got from the initial questions.

Mr. OSE. But the initial questions, the 2-minute drill, so to speak, you would support that?

Mr. O'BRIEN. Some version of that, and again that would depend upon the other components of the total systems approach to doing business.

Mr. OSE. The third and the fourth and the fifth layers, so to speak?

Mr. O'BRIEN. Exactly. We spend a lot of time talking about the events of September 11th and these 19 individuals and what would and would not have worked. There's no guarantee that we're going to ever face that scenario again, so that speaks highly to a systems approach that takes a much broader view of potential terrorists threats. Some that we've already experienced, some that we know about but have not experienced yet. So we really do need a systems approach. Everything from the 100 percent bag matching to you name it, many of the things that we haven't talked about today that are included in some of the testimony I've read.

Mr. OSE. You support something more than the present two questions?

Mr. O'BRIEN. Yes.

Mr. OSE. Ms. Friend, how about the flight attendants?

Ms. FRIEND. We do, and it may be as simple as just changing the way you ask a question so it's no longer a "yes or no" question, but I think the real issue here is who is asking the question. It's not unlike our testimony on the airlines using flight attendants to do aircraft security sweeps. We are now asking overworked airline ticket agents to ask these questions while they're also trying to check bags and assign seats and check connections.

It should be a function of a newly created Transportation Security Agency and those personnel to ask these questions. Their only job is security.

Mr. OSE. OK. You guys deal with this every day. Mr. Roth and I are probably occasional travelers. Mr. Roth, your opinion on the——

Mr. ROTH. I will tell you that the last time I traveled, which was about a month ago, I got asked the questions by the person at the baggage counter, and I had to keep pushing my driver's license to them. They were more concerned about someone not being on the shift, and, therefore, the line piling up and I was like begging, you know, don't you want to see it.

Mr. OSE. Your point, take that off the guy at the gate or the counter.

Mr. ROTH. I agree with taking it off. They're not paying attention to it. And it's silly to ask the question if you're not going to look at the person and take it seriously.

Mr. OSE. Mr. Hudson.

Mr. HUDSON. I would agree that we need to take questioning away from the airline personnel and give it to the new security per-

sonnel. I think a few questions for everyone are appropriate. And, as I've indicated in my written testimony, certain people should, in effect, get an interrogation.

Mr. OSE. Let me work backward from my right to the left. Mr. Hudson, you support a match between the passengers and the baggage, 100 percent, if I understand your testimony.

Mr. HUDSON. Yes. The reason for that and why it's so important initially is we don't have the screening equipment, we don't have the bomb detectors in place. If we had 100 percent screening of baggage with bomb detectors as well as machines to detect weapons for the carry-ons, that would not be so important.

Mr. OSE. OK.

Mr. Roth.

Mr. ROTH. I'm going to have to pass on that one.

Mr. OSE. Ms. Friend.

Ms. FRIEND. Yes, we support it. Initially it may be the only means we have to improve the security of our checked baggage because there aren't enough of the explosive detectors to do 100 percent screening. But even after we have sufficient equipment to do 100 percent screening, those machines are not absolutely guaranteed 100 percent accurate either. And so, the continued use of passenger baggage match adds another layer of security.

There was a study done—MIT participated in it—in the past few years on baggage match in the domestic market. And, it is not impossible. That has been the position of the industry all along that it would bring the entire system grinding to a halt. This study proved that, in fact, that is not true. That it could be implemented domestically and be integrated into the system without a great deal of trouble. They simply don't want to do it.

Mr. OSE. Mr. O'Brien, how do the pilots feel?

Mr. O'BRIEN. We support 100 percent screening and 100 bag match. I disagree entirely with the opinions I heard earlier today that it would grind the system to a halt. We have seen technology that obviously is in the prototype stage now that would make passenger bag matching a very simple process. It could be used far beyond just the matching process. So it's a matter of time to get all this implemented, but we should have or continue to have a goal of 100 percent screening and matching.

Mr. OSE. All right. I just want to summarize. You all support the initial questioning something more than yes or no. You support, those who responded, passenger baggage match. My time has expired.

Mr. Tierney.

Mr. TIERNEY. Thank you. I just want to ask, I think, Ms. Friend and Mr. Roth, and maybe Mr. O'Brien has some people that his organization represents that might be affected. Is there any reason that any of you see that people that were laid off as a result of the events of September 11th, a significant number of people that are associated with the airline industry, could not be re-employed as part of the security operation with the proper physicals and training?

Ms. FRIEND. None that I'm aware of.

Mr. O'BRIEN. I think that several of the people who have been laid off could make very valuable contributions to what we're trying to do in the security sense.

Mr. ROTH. AFGE would agree with that.

Mr. TIERNEY. Ms. Friend, you also agree?

Ms. FRIEND. Yes.

Mr. TIERNEY. It's something that a number of us have been advocating. I assume that you would have some reason if you didn't agree with us, that's why I asked the question. The last question I have is basically a throw-away question out of curiosity. Mr. O'Brien, is there a valid reason why people flying from New York or Boston to Washington on the shuttle cannot get out of their seat in the last half hour of the flight?

Ms. FRIEND. It's only to National.

Mr. O'BRIEN. As I understand, as Ms. Friend just said, it's going into National.

Ms. FRIEND. It's only into National Airport, and that's because Reagan National is guaranteed the gold standard of aviation security, unlike the rest of the airports in this country, which apparently are only guaranteed second rate aviation security. I can tell you in case you want to know what happens if you do get up because——

Mr. OSE. Tell us.

Mr. TIERNEY. Why is it that you can't get up?

Ms. FRIEND. I can only assume that they somehow think that adds to the security. But——

Mr. TIERNEY. As representative of the flight attendants, do you think it adds to the security?

Ms. FRIEND. No, it's window dressing.

Mr. O'BRIEN. It obviously is a first step in a profile that has been developed, a scenario of events that leads to a particular situation. And those who are very anxious from a security perspective to prevent that sequence of events from ever occurring——

Mr. TIERNEY. The sequence of events we have profiled from September 11th is you get up early in the flight where there's still a lot of fuel on board, not in the last half hour when you're drained out.

Mr. O'BRIEN. Absolutely true. But there are other—without getting into details, there are other scenarios other than September 11th. I only remind you that we should not be concentrating——

Mr. TIERNEY. I agree with you fully on that. It's a rule that on its face without some further explanation doesn't seem to be helpful. But I'm willing to admit that it may well be. We may just be thinking of all the possibilities.

Ms. FRIEND. It's also true on takeoff out of Reagan National, you're not allowed out of your seat during the first 30 minutes after departure, the first 30 minutes inbound. Theoretically that somehow makes people feel more comfortable if no one is up moving around.

The fact is, Mr. O'Brien can speak to this better than I can, but I think the flying distance between Dulles and the Capitol building, if you will, is maybe 3 minutes as opposed to 1 minute from National. So I'm not sure why National is treated differently.

Mr. TIERNEY. What's good for one is good for the others in that.

Mr. O'BRIEN. Maybe it has something to do with perception.

Ms. FRIEND. Window dressing, John.

Mr. TIERNEY. Thank you all very, very much for your testimony.

Mr. OSE. Would the gentleman yield?

Mr. TIERNEY. Yes.

Mr. OSE. She offered to tell us what happened if you do get out of your seat.

Ms. FRIEND. Oh, you don't know.

Mr. OSE. I stay in my seat.

Ms. FRIEND. We had an incident a couple of weeks ago where someone got up and ignored the direction to sit down. He was tackled and handcuffed by two air marshals who held him with guns drawn while the aircraft diverted to Dulles.

Mr. OSE. The plane diverts to Dulles and you're under arrest.

Ms. FRIEND. You're under arrest, right. And, all of your fellow travelers are greatly inconvenienced and will never forget your face as long as they live, I'm sure.

Mr. OSE. Mr. Hudson, you had something you were going to add there when Mr. Tierney was questioning.

Mr. HUDSON. I just think that it doesn't take too much imagination to understand why they have that rule now, particularly coming in and out of Reagan National Airport.

Mr. TIERNEY. I guess the imagination would be if you have secured the cockpit, then it takes a little more imagination to figure why it is important for the last half hour, the last 45 minutes, the last hour, the first 45 minutes, the first hour.

Mr. HUDSON. I would remind you we had another incident of a plane coming to Chicago where an individual got up and charged the cockpit door and crashed into the cockpit and was subdued by passengers. Although we have some more bars on the doors, we, by no means, have fully secure cockpits at this time. Having a lot of people standing up at the bathroom next to the cockpit or other places is viewed by many as a would-be potential security risk.

Mr. OSE. I have a couple more questions, if I might. There's no provision in the law addressing the non-medical, non-firemen, non-EMT person who is asked by a flight attendant or otherwise assumes a responsibility to act in a situation—where's that chart? If I understand, under the voluntary emergency help, there is no liability for police, firemen or EMTs in terms of providing that assistance to crews in an emergency. What happens if there are no police, firemen, or EMTs and a passenger is asked, for instance, as they would be in an exit row? Is that something that needs to be covered in rules and regulations in terms of some sort of a buffer from liability when properly asked?

Mr. O'BRIEN. I think in our testimony we suggested expanding the types or numbers of individuals that would be covered. But certainly it's an issue that needs to be looked at. I'll just give you an example. There are some organizations who have people travel quite a bit and are connected with the aviation industry. And, those people let themselves be identified to the crew or to the cabin staff as people who will assist if called upon.

Mr. OSE. PWAs, people like that?

Mr. O'BRIEN. Many. Right. And that kind of assistance in today's environment, I think, is appreciated. So those kind of individuals

we would hope would not be exposed to some kind of liability as a result of being the good samaritan.

Mr. OSE. Ms. Friend, would the flight attendants agree?

Ms. FRIEND. Exactly. I think it's unrealistic to expect that after the events of September 11th, any passenger is going to just sit quietly as told in a situation like that. And certainly people who are willing to come forward and help and offer their assistance should not be punished. They should not be subject to some liability.

Mr. OSE. Mr. Roth, any observations?

Mr. ROTH. I couldn't agree more. As a passenger, I've been, you know, flying and in a row when we've all said to each other anything happens, you know, we're going for him. So yes, I think there should be some sort of immunity, some good faith immunity built into the statute or the regulations.

Mr. OSE. Mr. Hudson.

Mr. HUDSON. Yes, we would support good samaritan type laws in that area.

Mr. OSE. These would be rules and regulations at this point.

So, the other issue that I was checking into the red eye flight last night, which I was just fascinated by, was the new carry-on language. I'll read it to you. It says each passenger is allowed one carry-on bag. Exception: one personal item, such as a purse or laptop, a briefcase, a diaper bag, a camera case, or a small backpack.

In addition, a food item, an assistive device, one duty-free bag, a child-restraint device, a coat/jacket or an umbrella. The maximum free bag allowance is three bags. You can check 2 and carry on 1. You can check 3 and no carry-ons. It would seem to me that—I mean, it just seems very simple to me that the less baggage you put through the terminal-based screening process and into the cabin, the less your challenges from a carry-on security issue and the quicker you can get the people seated and the plane out.

Now, this was effective October 9th. Do the regulations that the Department of Transportation is going to consider need to look at this again and more clearly define what may be taken on both in terms of size and number? I mean, I've seen people they walk down the—what's the thing that goes out to the plane?

Ms. FRIEND. Jetway.

Mr. OSE. They walk down the jetway, they have a young child, they leave the child restraint device, you know they're carriage or whatever, they take the baby seat inside, they put the thing down. I understand that one. But beyond that, I don't understand why—boy, I'm going to get in trouble on this one, I don't understand why someone needs a suitcase, a clothes carry bag, a briefcase. Am I missing something here?

Mr. O'BRIEN. No, you're not missing anything at all. Beyond security, there are many safety implications associated with the carry-on baggage. I think that Pat can probably speak more closely to the problems in the cabin itself with carry-on baggage. I know that our organization, as many as 15 years ago, had petitioned the FAA to limit the number of carry-on bags and the size of the bags for operational safety concerns.

I'm not talking about things flying about the cabin. We're concerned about weight and balance. There was one major airline that almost lost a couple of airplanes taking off out of a high altitude airport in South America, it turned out, when they weighed the carry-on baggage, they were several thousand pounds overweight because of the carry-on baggage.

The normal dispatch requirements today give you a basic number that you allocate to each carry-on bag that you assume is going to come on. It bears no resemblance to surveys that have been conducted weighing actual bags in busy terminals. People have done this; universities have done some studies; students have done doctorate and masters theses on it.

There are some very good papers written about the situation from a safety perspective. Couple that to the point you're making.

Mr. OSE. They didn't need to kill all those trees and write all those papers to do the common sense thing here.

Ms. FRIEND. John is right. This is not a problem that was created by the events of September 11th. In fact, we have a petition that's been pending for some time with the FAA asking them to issue a carry on baggage rule, a single bag and with a specific size so that there isn't all that interpretation. They have not responded to our petition. However, in response to the events of September 11th, they did issue a security directive with this so-called one plus. That security directive could be amended, eliminated at any time. We absolutely believe that a carry-on bag limitation and a size limitation on that baggage must go into the regulations in order to ensure that we don't go back to business as usual as soon as the FAA gets a chance.

Mr. OSE. I do think this speaks directly to the efficacy by which we process people who are getting ready to board on planes. I mean, it just——

Ms. FRIEND. We don't tell them what they need to know. We leave them up in the air.

Mr. OSE. Then they argue with the gate agent.

Ms. FRIEND. That's right. The industry has resisted it as well because, of course, they don't want to inconvenience or have disagreements with their passengers. But, we noted in their testimony today that even they recognize the fact that if you're looking for a needle in a haystack, if you reduce the size of the haystack, your chances are better of finding the needle. We think that supports our carry-on baggage argument completely.

Mr. OSE. Mr. Hudson, anything?

Mr. Roth.

Mr. HUDSON. I think you should know the background for an issue which predates September 11th. Most surveys have been done of particularly frequent travelers find that one of the No. 1 things they want more of is more space for carry-on luggage. Now, there's a couple reasons for that. One is convenience and one is security. Not security of the airplanes, but security of the baggage. Statistic is 1 out of 200 bags is presently mishandled by the airlines, damaged, lost, delayed, whatever. Most passengers have gone through that once, don't want to have it repeated.

So there has been a great increase over the years of use of carry-ons. The other reason is convenience. It takes generally at least an-

other 20 minutes if you check your bag, and now, in the current environment, it's going to take you probably somewhere between an hour and 2 hours extra if you check your bag versus go to carry-on.

On the other hand, we have changed our position from supporting the prior two-bag limit, and we now favor going to one small bag that can be hand-searched, which is more stringent than what we have now. And, we also feel that people should voluntarily reduce their carry-ons. And we suggested that for a large airport, perhaps you should have a line for no carry-on luggage that would go faster and would encourage people further to go to checking luggage.

Mr. OSE. Not like the 10 items or less where you get people with 12 items but no carry-on?

Mr. HUDSON. Yes.

Mr. OSE. Thank you. I have no further questions. We're going to leave the record open for 10 days. We may have questions we'd like to direct to you in writing. We would appreciate your response. Today's hearing did show how much work we have to do on this issue to ensure smooth implementation of this new law. I encourage DOT to reflect on these panels' combined wisdom in terms of implementing these recommendations. Our witnesses, including the four of you, truly have given us compelling testimony and you are experts in your field. We appreciate your coming here.

I just want to repeat what I said in my first remarks, we are talking about people's lives here. And, from my perspective, we have no room for error. I may not agree with some of your comments about how to get to zero tolerance, but I'm hopeful that, in the course of the testimony today, we were able to give the agencies that are going to issue these regulations some sense of what we're doing.

My compliments to your people, Mr. O'Brien, Ms. Friend. Mr. Roth, thank you for coming. Mr. Hudson, I can't even imagine what it must be like to do what you do. You have our thoughts and prayers. Thank you all for coming.

[Whereupon, at 5:15 p.m., the subcommittee was adjourned.]

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