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PROGRESS IN CONSOLIDATING TERRORIST WATCHLISTS— THE TERRORIST SCREENING CENTER (TSC)

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY

AND THE

SUBCOMMITTEE ON INTELLIGENCE AND COUNTERTERRORISM

OF THE

SELECT COMMITTEE ON HOMELAND SECURITY

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PROGRESS IN CONSOLIDATING TERRORIST WATCHLISTS—THE TERRORIST SCREENING CENTER (TSC)

THURSDAY, MARCH 25, 2004

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,

AND

SUBCOMMITTEE ON INTELLIGENCE AND
COUNTERTERRORISM,
SELECT COMMITTEE ON HOMELAND SECURITY,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:20 p.m., in Room 2141, Rayburn House Office Building, Hon. Howard Coble [Chairman of the Subcommittee on Crime, Terrorism, and Homeland Security] presiding.

Mr. COBLE. Before we begin, about 25 people have stopped me and asked me if I was dying or if I am feeling okay, and in the hopeful event of some of you might be wondering if I am about to expire, I had a chemical facial peel this morning. I don't look too great and I don't feel too great, but hopefully I am not about to expire. So I wanted to set your minds at ease. Good to have you all with us, and my colleagues are on the way.

Today the Judiciary Committee, Subcommittee on Crime, Terrorism, and Homeland Security and the Select Committee on Homeland Security, Subcommittee on Intelligence and Counterterrorism, will conduct a joint hearing on the consolidation of terrorist watchlists at the new Terrorist Screening Center.

I want to welcome all the Members from both Committees and the witnesses. Unfortunately, already in this election season we have heard a great deal of political rhetoric that fails to show the true bipartisan efforts of Congress to protect our Nation. It is easy to be a Monday morning quarterback, but such talk does nothing to improve our homeland security nor to support our public safety officers and troops in harm's way. If there are problems, we need to try to resolve them quickly. If there are ways to improve our homeland security, we need to implement them efficiently and effectively.

Today, it is my belief that our country is safer than it was prior to September 11, 2001. That is due not only to the work of the Congress and the Bush administration, but also the extraordinary ef-

forts of Federal, State and local law enforcement officers and our military men and women.

This hearing focuses on one of those efforts. On September 16, 2003, President Bush established the Terrorism Screening Center, through Homeland Security Presidential Directive 6, to provide ready access to information regarding suspected terrorists, to allow Government investigators, screeners, agents, and State and local law enforcement officers to respond promptly.

The Terrorism Screening Center aims to improve the screening of known and suspected terrorists at consular offices at international points of entry and the tracking of these individuals abroad and at home if they manage to enter the United States. The Terrorism Screening Center aims to improve information-sharing at all levels of Government and to securely and quickly get the right information to the right people.

Today we will hear testimony from the director of the TSC on the progress the new Center has made in reaching its goals; from two customers of TSC, the National Targeting Center at the Department of Homeland Security, and the director of the New York State Counterterrorism Unit and the Center for Democracy and Technology on concerns about civil liberties.

I look forward to hearing from our panel today. And at this juncture, I guess protocol-wise, I should call on the—I see the Chairman of the Subcommittee, Mr. Gibbons, is not here, but the Chairman of the full Committee, I believe, of Homeland Security, Mr. Turner from Texas—and I will recognize him for 5 minutes.

Mr. TURNER. Thank you, Mr. Chairman. I am pleased today to join our colleagues from the Judiciary Committee to address the subject that we all know is enormously important to our homeland security, and that is determining our progress in developing an effective Terrorist Screening Center that integrates the multiple terrorist watchlists in a way that is meaningful in terms of protecting the security of the American people.

I want to thank in advance the witnesses for being here today and I hope you excuse the questions, because I think all of you know we have had a great deal of concern on the Homeland Security Committee for some time regarding the delayed accomplishment of an effective, functional Terrorist Screening Center. I believe very strongly in the missions and the goals of the screening center, and I certainly value the hard work and the dedication of the personnel who work there, and I certainly want to contribute in any way that we can to the success of your objective.

But because we are here 2½ years after September 11, we still know that we do not have a fully integrated terrorist watchlist database to identify and apprehend potential terrorists. Some may ask, what does that mean in practical terms; why would anyone care if this has not been accomplished?

What it means is that someone could still slip through the cracks because the Government is not able in real-time to check a name against every available watchlist of known or suspected terrorists. This is true when the police pick up a suspect, when border inspectors are deciding to let someone in the country, and when consular offices are reviewing visa applications.

For a function that is absolutely vital for our homeland security, the delay in completing the project is totally unacceptable. The damaging effects, I would submit, are incalculable, since we can't even begin to know what opportunities have been missed to arrest, question, or prosecute possible terrorists. And, of course, we know if we had this capability prior to September 11, two of the hijackers might not have been permitted to board airplanes on that fateful day. More backsliding and excuse-making ought to be met with the stiffest bipartisan criticism.

Responsibility for this task shifted four times during the first 2 years after 9/11. And since the responsibility for the project has been given to the FBI, the deadline for completing it has been moved to December of 2003, to March, 2003, to mid-summer of 2003, and now through December of 2004.

There cannot be further delay. And according to the experts with whom we have consulted, there are no technological barriers to getting this job done. It is simply a matter of will, commitment, energy, and dedication to the task. Leadership by the Administration needs to be exercised at the highest levels to ensure that the latest deadline is met. And we need the entire Government to be on the same page.

It is striking to me that the same week Secretary Ridge announced that this project was one of his top goals for 2004, a senior official in the Department of Homeland Security questioned whether watchlist consolidation was even necessary. I want the message to be clear: There is a bipartisan consensus in Congress that we need to forge ahead as rapidly as possible to implement a robust, agile, and comprehensive terrorist screening capability through consolidation of all existing Government watchlists.

Through vigorous oversight we have tried to help the process along. Four months ago, the Democratic Members of our Committee prepared a concise list of 10 attributes that we believe ought to be the cornerstone of an effective Terrorist Screening Center database. As we elaborated in the report, we believe the Terrorist Screening Center must be, among other things, comprehensive, accurate, acceptable, timely, flexible and correctable. So, for example, even once watchlists have been integrated, the screening center cannot be considered fully operational until the information is accessible to everyone who needs it: Border Patrol, immigration inspectors, local police officers, and Federal law enforcement.

Consistent with the letter I sent to the screening center earlier this week, I hope we can hear more from your testimony regarding the progress that has been made.

One of the related issues that I hope you will comment on is whether all the right people even know about the Terrorist Screening Center. My staff was on the border earlier this month in Texas, and we were told that the Border Patrol is not aware of or linked to the Terrorist Screening Center. Likewise, we had a discussion yesterday with the State homeland security director who said that local law enforcement in his State was not aware of this important resource.

In closing, while we know progress is being made, I think there is much more that must be done. And if that means putting people to work 24 hours a day in three shifts, as our soldiers are doing

in Iraq today, then that is what we need to do to get this job done and get it done now to protect the American people.

Thank you, Mr. Chairman.

Mr. COBLE. Thank the gentleman.

The gentleman from Nevada Mr. Gibbons, who chairs the Subcommittee on Intelligence and Counterterrorism on the House Homeland Security Committee, is recognized for 5 minutes.

Mr. GIBBONS. Thank you, Mr. Chairman. And to our witnesses today, I want to welcome all of you and thank you for your appearance before us today. I think your testimony is going to go a long way into helping us to understand how the Terrorist Screening Center is working and what Congress can do to help make it a user-friendly system.

Four months ago, before Congress passed the Homeland Security Act, and almost a full year before the Department of Homeland Security was up and running, the President's National Strategy for Homeland Security established a consolidated terrorism watchlist as one of the President's highest priorities. While there have been substantial technical and legal hurdles to overcome in the process of consolidating and integrating these lists, the names of suspected terrorists are now available to law enforcement and Federal officials, and have been since December of 2003.

The Terrorist Screening Center Initiative has given our law enforcement officers the ability to identify terrorists who pose a direct threat to our Nation. While this information is now available, improvements are being worked on to help make the system faster and more user friendly so that the law enforcement officials patroling our streets and our border protection workers have immediate, seamless access to the information that they need.

While it is essential that the Terrorist Screening Center is robust and fully deployed, we must make sure that the proper procedures are in place to ensure that the information is not misused. It is important to note all the information that the Terrorist Screening Center maintains has been collected in accordance with existing laws, and officials will continue to be bound by any applicable laws and constitutional requirements. But I hope, Director Bucella, that you will further address the civil liberties issue a bit today, especially as it relates to systems that have been put in place to ensure that this information is not misused.

I look forward to your testimonies and to the hearing and how we can help ensure that the Terrorist Screening Center serves as a single, seamless resource in our fight against terrorism. Thanks again to each of you for appearing here today. And, Mr. Chairman, I yield back the balance of my time.

Mr. COBLE. I thank the gentleman from Nevada.

I now recognize the Ranking Member for the Subcommittee on Crime, Terrorism, and Homeland Security, the distinguished gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman, and I am pleased to join you and our colleagues on the Intelligence Counterterrorism Subcommittee. Now, no one would question the need for law enforcement at all levels to conduct terrorism screening in today's world. It is certainly appropriate to have information and processing of information by certain private entities such as airlines and nuclear

power facilities integrated into their screening processes. All of us are willing to endure more inconvenience to accommodate reasonable security procedures designed to protect our persons and property as well as our Nation's rights and liberties; yet we ought to be secure from terrorism with our traditional rights, not in exchange for them. If we have to diminish or balance our rights and liberties for security, we have handed those who scoff at our society a substantial victory.

Even before 9/11 tragedies galvanized the need to be much more diligent in preventing terrorism, we were still seeing problems with protections of basic rights and remedies. Accounts of general racial and ethnic profiling and from abuse of sensitive data against citizens and others by either inept or overzealous or ill-willed persons in their efforts to ferret out ordinary street crime, such as drug crimes, were well established through lawsuits and conscientious evaluations of law enforcement practices in many jurisdictions. So with the breadth of access to information, dissemination, and vision to all law enforcement officers as well as private entities, we know that unless privacy measures are made systemic, the prejudices and biases already there will only be enhanced by the gravity of permitting terrorism.

I look forward to hearing from our witnesses with the hopes that we can protect persons and properties as well as protect our traditional rights and liberties. I yield back.

Mr. COBLE. I thank the gentleman.

I note the presence of the Chairman of the full House Homeland Security Committee, Mr. Cox from California. Did you want to be heard, Mr. Chairman?

Mr. COX. I would just make a brief opening statement. I want to thank you for holding this hearing and also thank Chairman Gibbons. This is the second joint hearing of the Homeland Security Committee and the Judiciary Committee.

And I welcome you in joining our witnesses. This is an excellent panel and I think it will focus us on the topic before us. It has been less than 5 months since the President's directive. The Terrorist Screening Center began carrying out the task of providing unified, accurate terrorist screening information to screeners around the country 24 hours a day, 7 days a week, through a single node. The Terrorist Screening Center will serve State and local officials as well as private sector entities that manage critical infrastructure. It will even serve foreign governments that have entered into immigration agreements with the United States if they are partners in the global war on terrorism. But the Terrorist Screening Center support is particularly important to our Nation's first responders, our border protection officials, and the consular offices who adjudicate hundreds of visa applications everyday. Our overriding objective is, after all, to prevent terrorist attacks.

There, the Terrorist Screening Center represents a quantum leap in the Nation's ability not only to keep terrorists out, but also to apprehend terrorists who manage to get in. It will give law enforcement officers a reliable way to determine whether a person stopped for a routine traffic violation is, based on all the information available to the U.S. Government, involved in some way in terrorist activity.

It also represents another important milestone in tearing down barriers to information-sharing between the Intelligence Community and law enforcement officials. Integrating the data contained in the Government's legacy watchlist is a positive step. It was needed. Historically, 9 Federal agencies maintain 12 disparate watch lists. The contents of these watchlists weren't accessible across agency lines and they weren't comprehensively analyzed. That means we had no efficient way of accessing the information we had, and, as a practical matter, what you can't access, you don't really know. That is one of the hard lessons of the 9/11 attacks.

But integrating the information on all those lists is a complex task, even in the era of interoperable computer systems and instantly searchable data bases, and it must be done right. And to be the right solution, TSC must not come at the price of the civil rights or first amendment freedoms of American citizens, because we are fighting to preserve our way of life. That is a fundamental part of protecting our Nation, and I believe it has been worth the time it has taken to get TSC done right.

The information collected and maintained in the Government's various watchlists was collected under different authorities for widely divergent purposes and it has been maintained in different formats. There was no agreed-upon set of discriminators to determine whether an individual should be watchlisted and the 12 legacy lists, taken together, had hundreds of thousands of names. They couldn't be dumped into some massive Government data base of potential bad guys. Each name had to be analyzed to make sure it belonged on TSC's integrated list.

So at this hearing, we hope to get an update on the TSC's progress and relationship to the Department of Homeland Security. And equally important, we hope to be reassured that TSC and the databases that feed it will not impinge upon the civil rights and civil liberties to which we as Americans are entitled.

Mr. Chairman, there are also serious questions we must ask: Is the Terrorist Screening Center the solution for the present, or is it the solution forever? Is it structured in the most effective way? Does it work? Is it fast? Is it reliable? Is it being used by those who need it the most? Can a user get additional information on a TSC name hit quickly and reliably? Is TSC's management and supervision appropriate? How can it be improved? Are civil liberties and privacy interests scrupulously safeguarded? Could a name get on TSC's list erroneously? If so, how would that be discovered and how corrected quickly?

And certainly I look forward to hearing from each of our witnesses on these points. And I thank you, Mr. Chairman, and I yield back on these issues.

Mr. COBLE. I thank you, Mr. Cox.

And I noticed Ms. McCarthy from Missouri has joined us, and good to have you with us, and the other Members of the Subcommittee as well.

I say this to the panelists. We inevitably are going to be interrupted at least two or three times, so we will try to move along as quickly as we can. And if you would keep a sharp look-out on that panel at your desk, and when that amber light appears, it is your warning that the 5 minutes is about to expire, and when the red

light appears you are on thin ice. If you could wrap up at the 5-minute mark, we would be appreciative to you.

We have read your written statements. We have four distinguished witnesses today. Our first witness is Donna A. Bucella, Director of the Terrorist Screening Center. Ms. Bucella is detailed to the Federal Bureau of Investigation as Director of the Terrorist Screening Center from the Transportation Security Administration. At TSA, Ms. Bucella is the Director of Aviation Operations. She has had a very distinguished career in public and private service. She received her bachelor of arts agree from the University of Virginia and her law degree from the University of Miami school of law. She began her legal career in 1984 in the U.S. Advocate Generals Corps and has been a reservist since 1987. She holds the rank of Lieutenant colonel. During her service in the U.S. Army, she served as defense counsel for the JAG Corps. In 1993, she became the Director of the Office of Legal Education for the Department of Justice. In 1999, Ms. Bucella was appointed by President Clinton and confirmed by the U.S. Senate as the U.S. Attorney for the Middle District of Florida.

Our next witness is Mr. Charlie Bartoldus who became the Director of the National Targeting Center, Customs and Border Protection in September, 2002. Prior to his assignment as the NTC Director, he served as Director of the U.S. Customs Service port in Baltimore, Maryland. During his career in Customs, he has served as Director of Seizures and Penalties, Director of the Department of Treasury's Executive Office of Asset Forfeiture, Director of Account Management under the trade compliance redesign, the ACE program, and Deputy Director of Outbound Programs. He began his Customs career in 1979 as a customs inspector at JFK International Airport in New York.

Our third witness is Director Jim McMahon of the Office of Public Security for the State of New York. Congressman Sweeney from New York has requested to introduce him, and I am pleased to yield to Representative Sweeney.

Mr. SWEENEY. Thank you, Mr. Chairman, and it is an honor to be able to introduce not just someone I served with, but he lives in my hometown and we grocery shop at the same place.

I am pleased to introduce Jim McMahon who is currently the Director of the New York State Office of Public Security. Mr. McMahon has the distinguished record having served in the New York State Police for 37 years, including 8 as its top official, as the Superintendent. His accomplishments serve as a model demonstrating how Federal, State and local officials can work together productively on the urgent counterterrorism and homeland security mission. He will give us an important perspective demonstrating how law enforcement in both rural and urban areas interact with the new Terrorist Screening Center. While he is a Rochester, New York native, he currently resides in Clifton Park, New York. He is a U.S. Army veteran and has served Governors from both sides of the political aisle. Welcome, Director McMahon, and all of the witnesses.

Mr. COBLE. I thank you, Mr. Sweeney.

Our final witness is Mr. Jerry Berman, who is the President of the Center for Democracy and Technology and a member of the

Markle Foundation Task Force on National Security in the Information Age. From 1978 to 1988, Mr. Berman was Chief Legislative Counsel at the ACLU and Founder and Director of ACLU Projects on Privacy and Information Technology. In December, 1994, he founded CDT, a Washington, D.C.-based Internet public policy organization. In 1999, he served on the congressionally appointed Child Online Protection Commission Task Force to study technologies and other methods for protecting children from objectionable material on the Internet consistent with constitutional values. Mr. Berman received his B.A, M.A, and L.L.B. At the University of California, Berkeley. He was graduated with honors, was elected to Phi Beta Kappa, and served as editor of the California Law Review at the Bolt Law School.

It is good to have each of you. As I have said before, we have your written statements and they have been examined and will be reexamined. And, folks, as you know, we are now in a situation where accusatory fingers are being pointed by everyone toward everyone. And when I last checked when you apply hindsight, it usually comes up 20–20. It is easy to play with hindsight. I think what we need to do is to try to benefit from mistakes—and mistakes have been made—but to benefit and hope that they don't repeat themselves subsequently.

Good to have you all with us. And, Director Bucella, you are recognized for 5 minutes.

STATEMENT OF DONNA A. BUCELLA, DIRECTOR, TERRORIST SCREENING CENTER, FEDERAL BUREAU OF INVESTIGATION

Ms. BUCELLA. Good afternoon, Chairman Coble, Chairman Gibbons, and Members of both Subcommittees. The Terrorist Screening Center was created to consolidate terrorist watchlists from multiple agencies and provide 24/7 operational support for all Federal, State and local law enforcement officers across the country and around the world.

We began operation on December 1. For the first time, local law enforcement has a direct, real-time line of communication to the Federal Government concerning terrorism.

Today I will tell you about our daily operations, including some of our successes, our future plans, and how we will safeguard civil liberties. I will provide as much information as I can in this open forum. However, I will be happy to provide additional classified details in a closed hearing at your request.

First, I would like to introduce our partners in combating terrorism: Captain Richard McLaughlin from the Arlington Police Department, Massachusetts; Sergeant Victor Hall and Officer Brad Land from the Arlington Police Department in Texas.

The Terrorist Screening Center includes participants from the Departments of Justice, Homeland Security, State and Treasury. During our first week of operations, we answered 56 calls. And on at least two occasions during that week, we were able to link separate State and Federal investigations of two known or suspected terrorists. Since then, we have had a steady increase of calls, now averaging over 210 calls per week, and close to half of those calls are positive identifications of known or suspected terrorists that were encountered within, at, or outside of our borders.

Let me take a moment to describe to you how we operate. A police officer checks the National Crime Information Center, NCIC database, during a routine traffic stop and may be directed to contact the TSC for assistance in the identification process. We run the name through our database to determine if the person is a positive match. If positive or inconclusive, we pass the information to the Federal Bureau of Investigation's Counterterrorism Watch, which then coordinates with the local joint terrorism task force or the case agent, who then directly responds to the police officer.

For example, two individuals were arrested for speeding. We were contacted and assisted in identifying one of these individuals as a known or suspected terrorist. This encounter significantly impacted a long-term investigation confirming the immeasurable value of bringing local law enforcement into the war on terrorism.

The State Department plays an essential role opposite the screening center. Since December 1, we have reviewed over 54,000 security advisory opinions. Eighty of the visa applicants were determined to be associated with terrorism. Fifty-three visas have been revoked due to the actions at the Terrorist Screening Center.

We have approached this enormous and complex challenge to consolidate terrorist watchlists by implementing a phased-in approach. Since December 1, we have had the ability to, one, make the names and identifying information of terrorists accessible to Federal, State, and local law enforcement; two, have a system for properly reviewing whether a known or suspected terrorist should be included in or deleted from additional screening processes; three, administer a process to ensure that persons who may share the same name with a known or suspected terrorist are not unduly inconvenienced; and four, implement a system to adjust or delete outdated or incorrect information to prevent problems arising from these identifications.

We now have a single database which is updated daily and is unclassified, law enforcement-sensitive, containing identifying information of known or suspected terrorists. We are supplied with information regarding international terrorists from the Terrorist Threat Integration Center and domestic terrorist information from the FBI. Our database facilitates the consolidation of disparate information currently held by multiple agencies and used in different ways to be brought together for a single purpose, to help identify terrorists.

We recognize that with all of these capabilities also comes the responsibility to ensure that we continue to protect civil liberties. We have absolutely no independent authority to conduct intelligence collection. In fact, we do not collect information at all. We only receive information collected by other entities with preexisting authority to do so, each with their own policies and procedures to protect privacy rights and civil liberties.

The handling and use of information including U.S. persons' information is governed by the same statutory, regulatory, and constitutional requirements as if the information was not to be included in our database.

We are committed to addressing the issues arising from the misidentification of persons under previous watchlists and practices. Procedures are in place to review and promptly adjust or de-

lete erroneous or outdated information. And such records have already been identified and removed.

The creation of our Center marks a significant step forward in protecting America by detecting, disrupting, or preempting terrorist threats. We are already contributing to nationwide efforts to keep terrorists out of the United States and locate those who may already be in our country.

I have given you but a few of our successes. We have screened to date over 2,000 calls and the numbers continue to rise. State and local law enforcement officers now know if they have encountered a known or suspected terrorist during a routine traffic stop. Numerous State and local law enforcement officers are providing invaluable assistance and are integral in the efforts combating terrorists.

As previously stated, the opening of our Center on December 1 is the beginning, not the end. I appreciate your interest in our activities and I will be happy to answer any questions.

Mr. COBLE. Director Bucella, we thank you for that.

[The prepared statement of Ms. Bucella follows:]

PREPARED STATEMENT OF DONNA A. BUCELLA

Good afternoon Chairman Coble, Chairman Gibbons, Ranking Members and Members of both Subcommittees. Thank you for the opportunity to discuss the missions and objectives of the new Terrorist Screening Center (TSC). Homeland Security Presidential Directive 6 (HSPD–6), issued on September 16, 2003, ordered the creation of the TSC, directing its operations to begin on December 1, 2003, and we met that goal. The TSC was created to ensure that government investigators, screeners, federal agents, and state and local law enforcement officers have ready access to the information and expertise they need to respond quickly when a known or suspected terrorist is encountered here in the United States, at our borders and at our embassies. Today, I will tell you about our daily operations, including some of our successes, our future plans, and how we will safeguard civil liberties. I will provide as much information as I can in this open forum, however, I will be happy to provide additional, classified details in a closed hearing at your request.

TSC OPERATIONS

The TSC is a multi-agency Center, including participants from the FBI, Department of State, Customs and Border Protection, Immigration and Customs Enforcement, Secret Service, Coast Guard, Transportation Security Administration, and the Office of Foreign Assets Control. Other agencies, including the Postal Service and Drug Enforcement Administration, have agreed to participate. Our goal is to consolidate the Government's approach to terrorism screening and provide for the appropriate and lawful use of Terrorist Information in screening processes. We will be a diverse Center, manned by experts to include intelligence analysts and law enforcement from a wide variety of agencies, and to communicate and coordinate efforts across the full spectrum of federal, state and local government agencies. Currently, the TSC is staffed by approximately 84 employees, including permanent personnel, temporary duty assignees, and contractors to staff our 24/7 operation.

Since December 1, 2003, TSC has been providing key resources for screeners and law enforcement personnel. These include:

(1) a single coordination point for terrorist screening data;

(2) a consolidated 24/7 call center for encounter identification assistance;

(3) access to a coordinated law enforcement response to federal, state and local law enforcement;

(4) a formal process for tracking encounters and ensuring feedback is supplied to the appropriate entities, and

(5) a process to address the misidentification issues.

The TSC's initial capabilities were limited because of the need to integrate records in a way that ensured that the data about known and suspected terrorists was as accurate as possible. Each agency contributing data to the TSC is using its own

database. These databases, which were created to support the mission of the individual agencies, are in many instances their case management systems, not terrorist watch lists.

Despite our limited capabilities in the first week of operation, the TSC answered 56 calls, including one in which a local police department was seeking information regarding an ongoing investigation. A suspected terrorist had traveled over 1,000 miles from his home, and the department's call alerted the FBI to his activities. The police department coordinated their surveillance with the FBI investigation, resulting in solid intelligence for both local and federal law enforcement.

Another call came from a West Coast police department that was investigating an individual for a state felony charge. The TSC determined the individual was a terrorism suspect in a federal investigation, and our operational component at the FBI's Counterterrorism Division put the respective investigators together. The FBI and the local investigator are now sharing case information, resulting in a coordinated approach. Again, we are linking investigations and coordinating the U.S. Government approach to screening for suspected terrorists.

There are three fundamental types of inquiries: interior (within the U.S.), border (at the border/ports points of entry) and exterior (outside the border). Interior inquiries will normally be made by state and local law enforcement. Border inquiries are made by Customs and Border Protection (CBP). Exterior inquiries are conducted by the State Department.

The process for making an internal inquiry is relatively simple. A police officer checks the National Crime Information Center (NCIC) database on a routine traffic stop, and he/she is requested to call the TSC because the person stopped has similar identifying information to a known or suspected terrorist listed in the NCIC. When the officer calls TSC, through the police department's dispatch, the call center verifies the caller's identity, takes the information on the encounter and the circumstances of the encounter, and checks his name through the TSC's database. The TSC database includes the name, date of birth and other identifying information for a known or suspected terrorist. The call center quickly researches the underlying information, including classified, sensitive information. We make a determination as to whether the encounter is the same person as the one in our database. After notifying the officer of a positive, negative or inconclusive result, we help coordinate operational support as to how the person should be handled. For example, the officer may be advised—in appropriate and lawfully authorized circumstances—to arrest, detain or question the individual. Simultaneously, we contact our operational component at the FBI's Counterterrorism Division known as CT Watch. CT Watch provides for the local Joint Terrorism Task Force (JTTF) to respond. In some cases, officers provide valuable intelligence from a simple car stop, and in other cases, JTTF agents will respond to assist. Two cases serve to demonstrate the process:

In one case, local police arrested a suspected terrorist associate on a state criminal violation. After TSC assisted in the positive identities match, the CT Watch, contacted the FBI case agent, who immediately went to the local detention facility to talk with the individual. During that interview, the individual agreed to cooperate with the FBI. Another case illustrates the intersection between local law enforcement, homeland security and counterterrorism investigations. Local police arrested an individual and while conducting the "search incident to arrest," discovered significant evidence of terrorist activities. The TSC confirmed the individual's identity and our operational component, the CT Watch, notified the case agent. Intelligence gained from the local arrest has significantly affected a long term counterterrorism case, confirming the value of bringing local law enforcement into the war on terrorism.

In addition to serving local law enforcement, the TSC receives a high volume of calls from Customs and Border Protection (CBP) inspectors who are stationed on the Nation's borders. A typical CBP call involves incoming passengers on international flights. A CBP inspector will query a list of names and may receive several possible suspected terrorist hits from IBIS and NCIC. The CBP inspector will go through their National Targeting Center (NTC), where the record will be analyzed, then passed to TSC. Our process is the same as it would be for a law enforcement call, that is, to examine the underlying record which often contains all source sensitive and highly classified information on a 24/7 basis, and determine whether the individual is identical to the person in the Terrorist Screening Center Database. The TSC then appropriately passes any derogatory information on the subject, and CBP makes a determination on whether the individual will be allowed into the United States.

Our consular officers are our first line of defense in keeping known and suspected terrorists out of our Homeland by denying visas to these individuals. In this regard, State Department assignees at the TSC are continuing the work previously done by

the TIPOFF Office. Since December 1, 2003, when the TSC came into operation, State Department assignees and their staff at the TSC have reviewed over 54,000 security advisory opinions, which are cables from U.S. Embassies and Consulates around the globe, to determine if the visa applicants described in these cables were "true hits" with records contained in the database. Eighty of those "hits" resulted in true matches. As an example in December, a member of a terrorist organization applied for a visa at a U.S. consulate overseas. Consular officials denied the visa based on the TSC's review of the information and confirmation that the individual was a "true hit," i.e. matched the record at the TSC. The same process applied to a senior member of a proscribed terrorist organization based overseas. His visa was also denied.

In addition, 53 visas have been revoked, as a result of the State Department's careful comparison of new records entered into the terrorist database with visas that had been previously issued.

Finally, since December 1, 2003, agreements between the State Department and several allies are now implemented at the TSC, resulting in over 125 possible "true hits" of known and suspected terrorists at the borders of those nations. During January, an individual known to the U.S. government as an affiliate of a terrorist organization attempted to board a flight to enter one of these nations. The individual's identity was one of several thousand consolidated from various U.S. agencies and passed to this nation. According to protocols contained in our agreement, State Department assignees at the TSC worked with their counterparts in our allied nation, and the individual was removed from the flight despite holding valid travel documents.

According to a 16 September 2003 Memorandum of Understanding between Secretary Powell, Secretary Ridge, Attorney General Ashcroft, and DCI Tenet, the Terrorist Threat Integration Center's (TTIC) identities database will serve as the single source for the TSC's terrorist database, excluding purely domestic terrorism. Currently TTIC, which assembles and analyzes information from a wide range of sources to identify potential terrorists, provides the TSC with the vast majority of its information about known or suspected international terrorists.

The FBI provides the TSC with information about purely domestic terrorism—that is, information that has been determined to have no link to foreign intelligence, counterintelligence, or international terrorism. The TSC consolidates this identifying information and makes it accessible for queries from federal, state, and local agencies for screening purposes.

When a nomination is received at the TSC from TTIC or the FBI, it is reviewed by assignees to the TSC from participating agencies, who, in consultation with their assigning member agencies, determine how an encounter with this individual will be handled. The system is tailored to provide different feedback depending on where the encounter takes place. For example, an FBI representative who reviews a record may determine that an individual is subject to a criminal warrant and needs to be arrested by state and local law enforcement, while the Transportation Security Administration (TSA) representative may decide that the individual is not appropriate to board an aircraft. This tailoring ensures that specific guidance is provided to federal, state, and local agencies based on their legal authority.

TSC CAPABILITIES

The TSC has approached the challenge to consolidate terrorists watch lists by implementing a "phased in" approach.

We implemented phase one from September 16, 2003 to December 1, 2003, on the day the TSC achieved initial operating capability. During Phase One, the TSC had the ability to: (1) make the names and identifying information of terrorists, known to or suspected by the U.S. Government, accessible to federal, state and local law enforcement; (2) have a system for properly reviewing whether a known or suspected terrorist should be included in or deleted from additional screening processes; (3) administer a process to ensure that persons, who may share a name with a known or suspected terrorist, are not unduly inconvenienced in U.S. Government screening processes; and, (4) implement a system to adjust or delete outdated or incorrect information to prevent problems arising from misidentifications.

Phase two occurred from December 1, 2003 to March 1, 2004 in the development of the Terrorist Screening Database (TSDB). The TSDB is an unclassified law enforcement sensitive database, containing identifying information of known or suspected terrorists. The TSDB allows the consolidation of disparate information, currently held by multiple agencies and used in different ways, to be brought together for a single purpose—to help identify and detain potential terrorists to prevent future terrorist attacks.

We are currently in phase three which concludes before the end of this year. The TSC will create a more dynamic database and use a single, integrated system for ensuring known or suspected terrorists' identities are promptly incorporated into all appropriate screening processes. The terrorist screening database will eventually allow private sector entities, such as operators of critical infrastructure facilities or organizers of large events, to submit a list of persons associated with those events to the U.S. Government to be screened for any nexus to terrorism. In addition, the TSC will begin to implement mechanisms for sharing terrorist screening information with additional cooperating countries and to obtain such information from these countries. The Department of State is currently working on this issue.

Because our mission cuts across traditional boundaries between law enforcement, national security, and homeland defense, we have begun an aggressive outreach program. Our outreach must include members of the intelligence community, federal law enforcement, non-law enforcement/non-intelligence related government agencies, critical infrastructures, and most importantly, officers from the Nation's 18,000 law enforcement agencies. We not only train our law enforcement and government agency partners; viewing outreach as a two-way process, we also seek feedback and innovative ideas from them.

SAFEGUARDING CIVIL LIBERTIES

We recognize that with all of these capabilities also comes the responsibility to ensure that we continue to protect our civil liberties.

The TSC has absolutely no authority to conduct intelligence collection or other operations. In fact, the TSC does not collect information at all—it only receives information collected by other entities with preexisting authority to do so, each with their own policies and procedures to protect privacy rights and civil liberties. The handling and use of information, including U.S. person information, is governed by the same statutory, regulatory, and constitutional requirements as if the information was not to be included in a TSC-managed database.

The TSC's primary mission is to ensure that the identities data that is already known to the U.S. Government is held in one location where it can be queried by those who need it, including federal security screeners and state and local law enforcement officers. The structures which are in place also ensure that information about U.S. persons that has been determined to be purely domestic terrorism information with no link to foreign intelligence, counterintelligence, or international terrorism does not go through the Terrorist Threat Integration Center, but instead is placed directly into the TSC by the FBI. The Attorney General has also been directed to implement procedures and safeguards with respect to information about U.S. persons, in coordination with the Secretary of State, the Secretary of Homeland Security, and the Director of Central Intelligence.

We are also committed to addressing the issues and inconveniences arising from the misidentification of persons under previous watch-listing practices. Procedures are in place to review and promptly adjust or delete erroneous or outdated domestic terrorism information. The TSC works closely with TTIC regarding any international terrorism information errors, as only TTIC can make changes to the records it provides to the TSC. In addition, we are currently in the process of creating a dedicated staff specifically to address the misidentification process for the TSC.

CONCLUSION

The creation of the Terrorist Screening Center marks a significant step forward in protecting America's communities and families by detecting, disrupting, or preempting terrorist threats. The TSC is already contributing to nationwide efforts to keep terrorists out of the U.S. and locate those who may already be in the country. For this unclassified hearing, I have given you only a few of our successes. We have screened over 2,000 calls since our inception, and the numbers continue to rise. State and local law enforcement officers are now assisting in the identification of known or suspected terrorists here in the U.S., have provided invaluable intelligence for pending investigation, and are now integral in the efforts of combating terrorism in the U.S. I appreciate the Joint Subcommittee's interest in the TSC's activities and I will be happy to answer any questions you may have.

Mr. COBLE. And in a sense of fairness, Director Bucella used 6 minutes, so I will allot—if you need 6 minutes, Director Bartoldus

STATEMENT OF CHARLES BARTOLDUS, DIRECTOR, NATIONAL TARGETING CENTER, CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY

Mr. BARTOLDUS. Good afternoon, Chairman Gibbons, Chairman Coble, and Members of both Subcommittees. Thank you for this opportunity to testify today on the subject of U.S. Customs and Border Protection, CBPs interaction with the Terrorist Screening Center, or TSC.

I would like to begin with a very short update on the efforts that Homeland Security has taken during the merger itself to achieve one face of the border. CBP is responsible for effectively deploying 42,000 employees in preserving the traditional missions of our predecessor agencies. The actions undertaken over the past year have set the stage for the planned conversion of approximately 18,000 legacy Agriculture, Customs, and Immigration inspectors to Customs and Border Protection offices. People, technology, automation, electronic information, and partnerships are concepts that serve as the foundation of CBP's antiterrorism initiatives. These concepts improve the security of our borders by reinforcing the components of our layered strategy of defense.

Today I would like to focus solely on how these elements of our layered defense work with regard to CBP's interaction with the TSC. As the Director of the National Targeting Center, which came into existence in October of 2001 in direct response to the events of 9/11, my staff and I have worked extensively with the Terrorist Screening Center since its formation in December of 2003. I have witnessed firsthand the improvements in the process and the information-sharing and coordination.

CBP officers at the National Targeting Center routinely work with the TSC to evaluate and assess potential matches of individuals that may be attempting to enter the United States with harmful intent.

The TSC enhances CBP's effectiveness in several ways. The primary benefit to CBP has been TSC's ability to provide substantive information pertaining to subjects. This information is critical to the positive identification of individuals and, consequently, the timely release of individuals deemed to be negative matches. The TSC provides for one consolidated point of contact, rather than having multiple contacts for different agencies and different departments, as was the case prior to the TSC's formation.

Prior to the creation of the TSC, hours could be lost waiting for responses on inquiries. However, now in addition to the ease of access, the average turnaround time we experience with the TSC is 20 to 30 minutes or less. The reality of a single sensitive but unclassified database has greatly enhanced our ability to identify suspect individuals while facilitating legitimate travelers. CBP benefits from the clear channels and direction provided by the TSC as well as increased coordination, consistent training, and clear guidance that results from a single response and database. This has enhanced our law enforcement efforts.

A critical component of CBP's mission is the 100 percent screening of passengers and cargo entering the United States. The TSC single database allows CBP officers in the field and at the National Targeting Center to identify high-risk travelers and transactions.

The interaction between the TSC and CBP provides for a cumulative view of law enforcement and intelligence database information rather than a single-scope vision.

Continued cooperation between the TSC and CBP further serves to bridge the gap between the international and domestic venues in which terrorists operate. CBP has a strong history of cooperation and partnership with law enforcement agencies at the Federal, State and local levels. CBP's layered defense is the cornerstone of our antiterrorism mission, and as a key component of that layered defense, we depend on the TSC in order to operate at our full potential.

Essentially as the merger under the Department of Homeland Security matures, we find the layers of defense are increasingly transcending agency boundaries, and CBP's interaction with the TSC is just one example of these successes.

Thank you again, Chairman Coble, Chairman Gibbons, and the Members of the Subcommittee for this opportunity to testify. I will be happy to answer questions.

Mr. COBLE. Director Bartoldus, we thank you as well.

[The prepared statement of Mr. Bartoldus follows:]

PREPARED STATEMENT OF CHARLES BARTOLDUS

Good afternoon Chairman Gibbons, Chairman Coble, and Members of the Subcommittee on Intelligence and Counterterrorism and the Subcommittee on Crime, Terrorism, and Homeland Security.

Thank you for this opportunity to testify on the subject of U.S. Customs and Border Protection—CBP's—interaction with the Terrorist Screening Center (TSC).

I would like to begin with an update on the Department of Homeland Security merger itself, and the efforts to achieve "One Face at the Border." CBP is responsible for effectively deploying approximately 42,000 employees and preserving the traditional missions of our predecessor agencies. Over the past year CBP has:

- Established a unified chain-of-command structure for the Office of Field Operations and the Border Patrol.
- Developed a new comprehensive Border Patrol strategy that incorporates the CBP priority mission.
- Created a new CBP uniform, patch, and badge with the phased roll out expected to reach completion July 2004.
- Refocused and broadened the skills of legacy employees by delivering Unified Primary training.
- Introduced new CBP Officer and CBP Agriculture Specialist positions.
- Developed and delivered more than 50 new training courses in support of our homeland security mission.

These actions have set the stage for the planned conversion of approximately 18,000 legacy Agriculture, Customs, and Immigration Inspectors to Customs and Border Protection Officers.

People, technology, automation, electronic information, and partnerships are concepts that serve as the foundation for CBP's anti-terrorism initiatives. These concepts improve the security of our borders by reinforcing the components of our layered defense.

CUSTOMS AND BORDER PROTECTION NATIONAL TARGETING CENTER

The Customs and Border Protection National Targeting Center or NTC came into existence in October 2001 in the immediate aftermath of the events of September 11th. From its beginnings as the Office of Border Security, the NTC has grown swiftly, providing nationally directed targeting technology, targeting methodology, subject matter expertise, and training that encompasses the enforcement and regulatory missions of CBPs predecessor agencies.

In January of 2003 the NTC staff moved to a state of the art facility in Northern Virginia, and CBP personnel assigned there represent subject matter areas in agri-

culture, customs and immigration. Other CBP offices providing staff to this effort include the Border Patrol, Office of Intelligence, and Office of Information and Technology.

Additionally, the NTC supports the enforcement and regulatory missions of various agencies through a network of liaisons, which includes the Transportation Security Administration, the U.S. Coast Guard, the Department of Energy, and U.S. Immigration and Customs Enforcement. Contact is maintained with members of the intelligence community to include the Federal Bureau of Investigation, the Central Intelligence Agency and other intelligence services. CBP's commitment to collaborative targeting efforts is also demonstrated by the Food and Drug Administration Prior Notice Center located at the NTC and operational since December 11, 2003. There, CBP and FDA personnel conduct joint targeting on a round the clock basis in support of the Bio-Terrorism Act.

AUTOMATED TARGETING SYSTEM

The Automated Targeting System is an automated tool that permits CBP to process advance information and focuses its inspection efforts on potentially high-risk transactions and travelers. The ATS is a flexible, evolving system that integrates information from government, commercial, and enforcement databases. In the cargo environment, ATS analyzes electronic cargo information related to individual shipments to profile and rank them in order of risk based on the application of rules. ATS outputs are then reviewed for potential further action by CBP such as document review and inspection.

I would like to note at this point that through a combination of national targeting efforts at the NTC, local targeting performed by Manifest Review Units, and International targeting performed at CSI locations, we review and evaluate data regarding all ocean shipments bound for the United States, prior to arrival. And, we screen 100% of those identified as high or potential risk.

To reach this level of screening, CBP has worked aggressively over the past year to increase the quality, quantity, and timeliness of the cargo information we receive electronically. As a result, the industry data that feeds ATS is substantial.

The 24-Hour Manifest Rule for shipped goods requires detailed and accurate information for all shipments destined for the U.S., 24 hours prior to lading overseas. This is key to CBP's targeting successes in the sea environment. CBP implemented the 24-Hour Rule Manifest Compliance Program on February 2, 2003. CBP has seen great improvement in data quality through a phased-in strategy of informed compliance monitored and enforced by the NTC.

This is further reinforced by the Trade Act Final Rule published on December 5, 2003, less than one year after the process began with public meetings. It mandates advance electronic cargo information, inbound and outbound, for all modes for transportation.

Today, I would like to focus on how these elements of our layered defense work with regard to CBP's interaction with the TSC.

CBP Officers at the NTC routinely work with the TSC in order to evaluate and assess potential matches of individuals on the TSC watch list that may be attempting to enter the United States with harmful intent. The TSC enhances CBP's effectiveness in the following ways:

- The TSC provides for one consolidated watch list rather than the multiple lists that were maintained by different departments and agencies prior to TSC's existence.
- TSC provides around the clock, real time access to substantive information pertaining to subjects on the watch list. This information is critical to the positive identification of watch listed individuals and consequently, the timely release of individuals deemed to be negative matches.

CBP also contributes to the TSC consolidated watch list via an information sharing arrangement with the Transportation Security Administration in which CBP provides Advance Passenger Information System data for TSA's performance of a risk assessment on crewmembers on international flights. Any hit or other derogatory information is then coordinated with TSA and the appropriate agency which may result in the addition of names to the TSC watchlist.

The interaction between the TSC and CBP provides for a cumulative view of law enforcement and intelligence database information, rather than a single scope vision. Continued cooperation between TSC and CBP further serves to bridge the gap between the international and domestic venues in which terrorists operate.

CONCLUSION

CBP has a strong history of cooperation and partnerships with law enforcement agencies at the Federal, state, and local levels. CBP's layered defense is the cornerstone of our anti-terrorism mission, and as a key component of that layered defense, we depend on the TSC in order to operate at our full potential. Essentially, as the merger under the Department of Homeland Security matures, we find that the "layers" of defense are increasingly transcending agency boundaries, and CBP's interaction with the TSC is just one example.

Thank you again, Chairman Gibbons, Chairman Coble, and the members of the Subcommittee for this opportunity to testify. I would be happy to answer any questions you may have.

Mr. COBLE. Director McMahon.

STATEMENT OF JAMES W. McMAHON, DIRECTOR, OFFICE OF PUBLIC SECURITY, STATE OF NEW YORK

Mr. MCMAHON. Thank you, Chairman Coble and Chairman Gibbons, and distinguished Members of both Subcommittees. It is an honor for me to be able to testify here today about the Terrorist Screening Center from a perspective of a State and local law enforcement customer.

Throughout my career in public service, I have been fortunate enough to have worked cooperatively with all the Federal law enforcement agencies as well as the majority of the 540 law enforcement agencies in New York State. These close cooperative relationships, many times informal, have been instrumental in reducing the incidence of violent crime in New York State to levels not seen since the 1960's.

The backbone formal information-sharing system for State and local law enforcement during this time was the National Crime Information Center, or NCIC. NCIC is a system that reaches law enforcement throughout the United States and has the capability of providing information through a patrol car radio or an in-car computer to nearly every officer across the Nation out on patrol. The information contained in the system is what we refer to as "hot files," wanted persons, missing persons, stolen cars, stolen guns, or stolen property.

In New York, since the deadly attack of 9/11, our first and foremost responsibility is to do everything humanly possible to prevent another terrorist attack by utilizing our 75,000 local law enforcement officers to the fullest extent possible. To facilitate this effort, we have built an intelligence center near Albany, New York. Our ultimate objective is to be able to provide timely, relevant, and actionable terrorism intelligence to patrol officers and detectives which could prevent a terrorist act or enhance a terrorist investigation by a Federal agency.

NCIC is still the only national system able to reach the State and local patrol car. There are three scenarios that a State and local law enforcement officer can be faced with during an encounter with a person during a traffic stop or an ongoing investigation. The first is what we call the red light stop. In these cases, the patrol officer accesses NCIC with a name and date of birth inquiry and receives back information sufficient to arrest the subject if he or she is a person wanted by a State or local jurisdiction or by the Federal Government.

The second situation involves a green light stop. This indicates, based upon the NCIC name and date of birth inquiry, that the person stopped is not actively wanted by any law enforcement agency.

The third situation is the most complicated and the most critical to an ongoing terrorist investigation. This is what we refer to as a yellow light stop or investigative inquiry. In this situation, a police officer has someone detained or stopped. The person is not actively wanted, but the officer has suspicions about whether the individual is connected to a terrorist-related investigation or has suspected links to terrorism. It is this yellow light area where the Nation's 700,000 State and local law enforcement officers can be most beneficial in assisting our Federal investigative partners.

Kindly allow me to provide a hypothetical yellow light situation. A patrol officer responds to a call of a suspicious person filming the perimeter of a nuclear power plant. The individual is not from the area and has no apparent association with the immediate area. The officer is suspicious and therefore conducts an inquiry into the NCIC database.

Prior to December 1, 2003, the inception date of the Terrorist Screening Center, there was no way to conduct a search of the various Federal databases to ascertain if the suspicious person had any ties to an ongoing investigation. The inception of the Terrorist Screening Center has provided State and local law enforcement, its customer, with an important tool to instruct the law enforcement officer in a noncustodial situation like the example I provided above as to what if anything he or she should do.

Returning to the nuclear power plant hypothetical, I will detail what now occurs. The patrol officer queries the name and date of birth of the suspicious person through the NCIC system. If the individual is a person of interest, the patrol officer receives a Violent Gang and Terrorist Organizational File, VGTOF, hit that directs the officer to call a toll-free number for additional direction from the Terrorist Screening Center.

Once the Terrorist Screening Center is contacted and confirms the individual, additional information is provided which places that hit into any one of four classifications: arrest, detain, investigate or query. This interaction also expands to include the FBI's Counterterrorism Watch that has the ability to provide additional direction and information on what action to take next, in addition to providing further identifying data. The resulting conversation provides the law enforcement officer with the specific guidance necessary as to the type of action to take. This guidance could include observations to be made, the location and time of the observation, questions to be asked, or possibly that no further action is required.

This interaction and the ensuing information that is obtained are not only important for investigative purposes, but also for the safety of the officer. In New York State, there have been 41 confirmatory incidents wherein a VGTOF hit was received through the NCIC system and involved the Terrorist Screening Center, the most recent which occurred within the New York State Police when a uniformed trooper made a vehicle and traffic stop that resulted in a traffic ticket being issued. The trooper then conducted an inquiry through the NCIC computer to ascertain if the subject was wanted. This inquiry resulted in a VGTOF hit which put the inves-

tigating trooper in touch with the Terrorist Screening Center, who in turn advised the trooper that the individual queried was the subject of an investigative hit. The trooper was conferenced with the Counterterrorism Watch, which was able to provide additional information to the trooper as to what action to take next. This in turn resulted in the notification of the local Special Agent of the FBI's Joint Terrorism Task Force, and I am confident that that interaction provided valuable information to the FBI on a subject currently under investigation.

And, Mr. Chairman, I see I am the subject of a red light stop. I did provide further written testimony, as you said earlier, and I will be glad to answer questions.

Mr. COBLE. Thank you.

[The prepared statement of Mr. McMahon follows:]

PREPARED STATEMENT OF JAMES W. MCMAHON

Chairman Coble, Chairman Gibbons, Congressman Scott, Congresswoman McCarthy, and the other distinguished members of the Subcommittee on Crime, Terrorism, and Homeland Security of the Judiciary and members of the Subcommittee on Intelligence and Counterterrorism of the Select Committee on Homeland Security, good afternoon and thank you for this opportunity to testify on such an important matter.

My name is Jim McMahon. I am the Director of Public Security for the State of New York. In this pos ition I oversee the efforts of all of New York's State Agencies with regard to their capabilities to respond to, deter, detect and prevent acts of terrorism from occurring within the state. I was appointed to this post by Governor Pataki last year after serving 37 years in the New York State Police, the last 9 of which I served as Superintendent. I have been asked to testify today about the Terrorist Screening Center, or TSC, from the perspective of a state and local law enforcement customer. My testimony will begin with a chronological brief on the evolvement of information sharing in order to better show the TSC's impact and how it has enhanced pre-existing law enforcement tools.

Throughout my career in public service, I have been fortunate enough to have worked with many of the 540 law enforcement agencies in New York State that are comprised of over 75,000 dedicated law enforcement professionals who are putting their lives on the line, each and every day.

I have also had a considerable amount of interaction, and an excellent working relationship, with my federal colleagues in the investigation of organized crime, robberies, homicides, and narcotics, crimes that have the potential of crossing jurisdictional boundaries and typify the importance of working together and sharing information.

These close cooperative relationships, many times informal, have been instrumental in reducing the incidence of violent crime in New York State to levels not seen since the 1960s.

The "backbone" formal information sharing system for state and local law enforcement during this time was the National Crime Information Center or NCIC. NCIC is a system that reaches law enforcement throughout the United States, and has the capability of providing information, through a patrol car radio, or an in-car computer, to nearly every officer across the nation out on patrol. The information contained in this system is what we refer to as "hot" files: wanted persons, missing persons, stolen cars, and stolen property. In the year 2000, in New York State alone, law enforcement made 30 million inquiries into NCIC and received nearly 3.5 million positive "hits." This is just a snapshot of the effective role state and local law enforcement, cooperating in the performance of routine duties, can play in reducing crime, and why it remains a critical role in the post 9/11 era.

On September 11, 2001, an organized terrorist group attacked our nation. This signaled a new era for our country, as well as for state and local law enforcement. This terrorist organization, and others like it, is determined to make our country its battlefield. In doing so, state and local law enforcement, 75,000 strong in New York State, and 700,000 nationally, have become our nation's foot soldiers against domestic targeted terrorism.

In New York, as here in Washington, our first and foremost responsibility is to do everything humanly possible to prevent another terrorist attack by utilizing our 75,000 law enforcement officers. To facilitate this effort, we have built an intel-

ligence center near Albany, New York, with direct connectivity to the New York City intelligence center. From these two points we have created a seamless information sharing system that reaches law enforcement in all corners of our state.

Our ultimate objective is to be able to provide timely, relevant and actionable terrorism intelligence to patrol officers and detectives, which could prevent a terrorist act or enhance a terrorist investigation by a federal agency. To accomplish this objective, our federal partners have worked closely with state and local law enforcement to enhance the exchange of relevant terrorism information.

NCIC is still the only national system able to reach the State and local patrol car. There are three scenarios that a state and local law enforcement officer can be faced with during an encounter with a person during a traffic stop or an ongoing investigation; the first is what we call a "red light" stop. In these cases, the patrol officer accesses NCIC with a name and date of birth inquiry and receives back information sufficient to arrest the subject, as he or she is a person wanted by a state or local jurisdiction or by the federal government.

The second situation involves a "green light" stop. This indicates, based upon the NCIC name and date of birth inquiry, that the person stopped is not actively wanted by any law enforcement agency. The third situation is the most complicated and most critical to ongoing terrorist investigations. This is what we refer to as a "yellow light" stop, or investigative inquiry. In this situation a police officer has someone detained or stopped, the person is not actively "wanted," but the officer has suspicions about whether the individual is connected to a terrorist related investigation or has suspected links to terrorism. It is this "yellow light" area where the 700,000 sets of eyes and ears can be most beneficial in assisting our federal investigative partners.

Let me provide a hypothetical yellow light situation. A patrol officer responds to a call of a suspicious person filming the perimeter of a nuclear power plant. The individual is not from the local area and has no apparent association with the immediate area. The officer is suspicious, and therefore conducts an inquiry into NCIC database.

Prior to December 1, 2003, the inception date of the Terrorist Screening Center, there was no systematic way to conduct a search of the various federal databases to ascertain if this suspicious person had any ties to an ongoing investigation. The inception of the TSC has provided state and local law enforcement, its customer, with an important tool to instruct a law enforcement officer in a non-custodial situation like the example I provided above as to what, if anything, he or she should do.

Returning to the nuclear power plant hypothetical, I will detail what now occurs. The patrol officer queries the name and date of birth of the suspicious person through the NCIC system. If the individual is a "person of interest," the patrol officer receives a Violent Gang and Terrorist Organization File (VGTOF) "hit" that directs the officer to call a toll free number for additional direction from the Terrorist Screening Center.

Once the Terrorist Screening Center is contacted, additional information is provided which places that "hit" into any one of four (4) classifications; *arrest, detain, investigate*, or *query*. This interaction also expands to include the FBI's Counter Terrorism Watch that has the ability to provide detailed direction and information on what action to take next in addition to providing further identifying data. The resulting conversation provides the law enforcement officer with the specific guidance necessary as to the type of action to take. This guidance could include observations to be made, the location and time of the observation, questions to be asked, or possibly, that no further action is required. This interaction, and the ensuing information that is obtained, are not only important for investigative purposes, but also for the safety of the officer.

In New York State there have been 41 confirmatory instances wherein a VGTOF "hit" was received through the NCIC system and involved the TSC. The most recent of which occurred with the New York State Police when a uniform trooper made a vehicle and traffic stop that resulted in a traffic ticket being issued and an inquiry was done through the NCIC computer to ascertain if the subject was wanted. This inquiry resulted in a VGTOF hit which put the investigating Trooper in touch with the Terrorist Screening Center who, in turn, advised the Trooper that the individual queried was the subject of an investigative "hit."

The trooper was conferenced with the Counter Terrorism Watch, which was able to provide additional information to the trooper as to what action to take next. This, in turn, resulted in the notification of the local Special Agent of the FBI's Joint Terrorist Task Force. I am confident that this interaction provided valuable information to the FBI on a subject currently under investigation.

Lastly, I would like to mention a pilot program that complements the TSC and highlights the history of information sharing between federal and state law enforce-

ment. Initiated by New York State and the FBI, this program commenced prior to the TSC in October of 2003. In this program, the patrol officer contacts our intelligence center concerning a suspicious or "yellow light" stop with no VGTOF hit. Our intelligence center then contacts the FBI's Counter Terrorism Watch in Washington, DC, to ascertain if the individual detained is a person of interest. The Counter Terrorism watch then queries the FBI's automated case system in addition to other databases, providing our state intelligence center with relevant information for the patrol officer. Director Robert Mueller assigned a Washington based Counter Terrorism watch agent to New York and local law enforcement initiated 114 inquiries, some of which resulted in investigation hits. New York State is working with the Federal Bureau of Investigation to formalize this pilot project and expand it into a regional ten state information sharing initiative. This ten state regional proposal is a concept that was previously introduced during July 2003 testimony given by James Kallstrom, senior Advisor on Terrorism to Governor George Pataki, and submitted to the Department of Homeland Security. DHS endorsed the regional concept.

I truly believe that, together, we have come a long way in understanding the importance of involving state and local law enforcement, its capabilities and its needs in preventing terrorism. This would not have happened if it were not for the full cooperation of our federal partners. The Terrorist Screening Center, the NCIC, the VGTOF file, the FBI Counter Terrorism Watch center, the Terrorist Threat Integration Center and the JTTF expansion, including the national Joint Terrorist Task Force, all have built a foundation that will provide the integration necessary to protect our homeland from future attacks. I also believe our proposed regional concept will compliment the Terrorist Screening Center and will be instrumental to the Department of Homeland Security in providing specific threat based intelligence information to state and local partners.

In closing, I would like to thank each of you for allowing me to provide a state and local law enforcement perspective on this critical matter.

Mr. COBLE. Mr. Berman, you are recognized for 6 minutes.

STATEMENT OF JERRY BERMAN, PRESIDENT, CENTER FOR DEMOCRACY AND TECHNOLOGY

Mr. BERMAN. Chairman Coble, Chairman Gibbons, and Chairman Cox, it is a pleasure to be here again to testify on the intersection between national security and civil liberties in this age of terrorism.

We as an organization are very concerned about the national security issue. As a member of the Markle Commission, I call your attention to their report. I am not speaking for them today, but the report of the commission I was on recommended the consolidation of terrorist information, threat information, including watchlist information, but under direction by this Committee, that it should be under standards, guidelines, oversight and management supervision. Congress gave that job to the Department of Homeland Security. It set up a Privacy Office and a Civil Liberties Office, and the idea was that these lists would be consolidated but under standards that would protect civil liberties, ensure data quality, and ensure that dissemination was correct to the right people; that this sensitive information did not go where it didn't have a need to go; that there would be ways to get off the list.

That job is not being done. As I said in June, the oversight responsibilities are not being handled by DHS. At that time, we were talking about TTIC, which looked like it was going to do the screening function. TTIC is not part of DHS. After I testified in September, the Terrorist Screening Center was set up again under another Presidential directive, and what it did was move a function which had been at FBI, then gone to DHS, and then gone back to the FBI. In terms of overall supervision to ensure clear standards,

oversight, guidelines and civil liberties protection, it is not within DHS, it is within FBI. And I don't think they have authority under any statute that I can find to perform the functions that the Committee laid out in its report for accuracy, completeness and timeliness.

Let me get down to the bottom line. I do not know what standards are being applied here. All I know is that Secretary Ridge the other day said, There are right now 50,000 names in the terrorist watchlist at TSC. Several hundred of them have been, and I am quoting, "are engaged in criminal activity, potential connections to terrorist organizations and the like." Who are the other 49,500 people in the database? I don't think that right now TSC has the authority to decide who goes in that database. TTIC is entering the foreign counterintelligence people. The FBI has entered their whole domestic terrorism list. That includes people suspected of engaging in terrorism who may be the Oklahoma bomber, or it may be an environmental organization or an abortion clinic. We don't know who is in that database, and this Committee has to make an inquiry about how that is done.

We don't know how information is purged. The MOU I have read between these agencies really gives the authority back to the FBI and to CIA and other agencies which maintain the watchlists in the first place, to continue to make decisions about who is in that database. When the Director of TSC says that it is under their statutes, their policies, and their guidelines consistent with the Constitution, that is not sufficient, because different agencies have higher standards for entry; different agencies have different needs.

Even if we are going to have a complex integration under different standards, we need to know what those standards are, what are the levels of access, who gets on it and who gets where. The policeman on the beat right now, when he queries that database, is not sure whether it is an arrest, detention, or inquiry, because there are so many people in that database. He has to go off line and talk to people and go back through a whole chain of bureaucracy to see whether it is a serious person he has encountered on the street.

On the other end, people may be detained, denied the right to travel, denied employment and so forth, because they are on the list and no one has cleared their name, or they are a mistaken identity, or it is overinclusive and including people who are not the hard-target terrorists.

Under a system which is too broad, you have the same problem that you had after 9/11, people are going to fall through this list. We talked to police officers who are not calling this number and don't know about the number and don't know how to call it and don't know until a day later that they may have had a suspected terrorist on the street. And then we know there are mistaken people in the database, which raises due process and civil liberties questions.

I will return to all of this in questioning. Thank you very much.

Mr. COBLE. Thank you, Mr. Berman.

[The prepared statement of Mr. Berman follows:]

PREPARED STATEMENT OF JERRY BERMAN

Statement of Jerry Berman
President
Center for Democracy & Technology[1]

before the
Subcommittee on Crime, Terrorism and Homeland Security
of the House Judiciary Committee
and the
Subcommittee on Intelligence and Counterterrorism
of the House Select Committee on Homeland Security

"Progress in Consolidating Terrorist Watchlists –
The Terrorist Screening Center (TSC)"

March 25, 2004

Chairman Coble, Chairman Gibbons, Ranking Member Scott, Ranking Member McCarthy, Members of the Subcommittees, thank you for the opportunity to testify today. I am President of the Center for Democracy and Technology. We commend you for holding this public oversight hearing on the Terrorist Screening Center (TSC), its role in the nation's counter-terrorism efforts, its relationship with federal, state and local agencies, and its implications for civil liberties. Better information sharing, including the sharing of terrorist watch list entries, is critical to our nation's efforts to combat terrorism. Information sharing will be effective only if it is managed well, with some entity within the Executive Branch having clear responsibility for implementation; if it takes full advantage of available technology, which can be leveraged both to facilitate appropriate information sharing and to protect privacy; and if it is subject to guidelines and oversight mechanisms that will protect civil liberties. Specifically with regard to the consolidation of terrorist watch lists taking place at TSC, there are serious unanswered

[1] The Center for Democracy and Technology is a non-profit, public interest organization dedicated to promoting civil liberties, privacy, and democratic values for the digital age.

questions about how various Executive Branch agencies are working together, which agency is (or should be) ultimately responsible, how state and local authorities participate, what it means to have an integrated watch list, what criteria there are for entering data, for sharing it and for using it as the basis of action, and what guidelines and oversight mechanisms apply to protect privacy and civil liberties. We urge you to seek answers to these questions and to continue this oversight process, and we look forward to being of assistance to you however we can.

I. INTRODUCTION

The threat terrorism poses to our nation is imminent and grave. There is no doubt that hostile groups are continuing to plan attacks in this country and abroad. To prevent terrorism to the greatest extent possible and to swiftly punish it when it occurs, the government must have adequate legal authorities and must develop a strong organizational structure. Improved intelligence collection and better sharing of information are central to success. One key component of terrorism prevention efforts is the creation, maintenance and use of watch lists. It is now clear that, before 9/11, the government was unable to use effectively the information that it was collecting. In particular, before 9/11 the government knew two of the hijackers by name and knew that they were very likely al Qaeda members planning an attack, but that information was not made available in a timely fashion to the border control authorities, so those men were able to enter the country. And that information was not available to airline security, so those men were able to board the aircraft on September 11. Clearly, it is a desirable and urgent goal to make better use of information technology to share information about individuals known to be terrorists.

II. MANAGEMENT, OVERSIGHT AND THE USE OF TECHNOLOGY

As the Markle Foundation Task Force on National Security in the Information Age has found, steps have been taken at the federal, state, and local levels to broaden the sharing of terrorist-threat data among government agencies at all levels and to improve analysis of terrorism-related information.[2] To date, however, the government is still a long way from having a dynamic, distributed network for sharing and analysis of information, including watch list data. The sharing of terrorist-related information between relevant agencies at different levels of government has been only marginally improved in the last year, and remains haphazard. It is still comprised of multiple systems that cannot communicate with each other and institutional barriers to sharing information. It is not the result of a carefully considered network architecture that optimizes the abilities of all of the players.[3]

Nor is there a clear framework for agencies' individual responsibilities. The Terrorist Screening Center, as part of the FBI, has been tasked with creating a consolidated watch list and disseminating appropriate watch list information to government officials and private sector entities. But watch listing involves multiple agencies at various levels of government, and it is not clear who within the Executive Branch is ultimately responsible. TSC is a crucial link in the

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[2] The Markle Foundation Task Force on National Security in the Information Age, co-chaired by Zoe Baird and Jim Barksdale, is comprised of leading experts from the fields of national security, technology, and privacy. Its members have extensive experience in and out of government at the federal and state level, in both the legislative and executive branches. The Task Force has published two reports, "Protecting America's Freedom in the Information Age"(2002) and "Creating a Trusted Information Network for Homeland Security" (2003), containing recommendations to strengthen national security while protecting civil liberties. While I quote liberally from the reports of the Task Force, I speak only on behalf of CDT.

[3] Markle Foundation Task Force, "Creating a Trusted Information Network for Homeland Security," at 7 (Dec. 2003), *available at* <http://www.markletaskforce.org>.

information chain, but who is ensuring the coordination of information sharing across the government, including the sharing of TSC information? Who is in charge of establishing the guidelines and safeguards for government-wide information sharing efforts?[4]

The Markle Task Force concluded that, for effective information sharing, the Executive Branch must clarify the respective roles, responsibilities, and authorities of the players responsible for homeland security information. The respective roles of the TSC, TTIC, the DCI's Counterterrorist Center (CTC), the Department of Homeland Security, the FBI and its JTTFs, and the Defense Department's Northern Command (NORTHCOM) are not clearly defined. As long as this remains true, there will be turf battles among agencies and gaps in information sharing and analysis.[5] Most significantly, without defined roles, responsibilities and oversight, civil liberties will fall through the cracks.

Resolving these issues is no easy matter. Information technology has much to offer in achieving the compelling national goal of preventing terrorism. At the same time, government use and dissemination of personal information raises privacy and related due process issues. Current privacy laws are not well-suited to the modern digital data environment. It is necessary to adopt new policies for collection and access, use, disclosure and retention of information, and for redress and oversight, as will be discussed further below. Technology itself should also be part of the solution. The same technology that permits the accumulation, sharing and analysis of

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[4] This question is all the more important because the watch list consolidation task was initially given to DOJ's Terrorist Tracking Task Force, then moved to DHS, then seemingly to TTIC, and now is back within DOJ at the FBI's Terrorist Screening Center.

[5] Markle Foundation Task Force, "Creating a Trusted Information Network for Homeland Security," at 26 Exh. F (Dec. 2003), *available at* <http://www.markletaskforce.org>.

information also allows for the incorporation into information sharing systems of features that protect information from abuse or misuse.

A key finding of the Markle Task Force is that technologies exist *today*, *off-the-shelf*, that can both facilitate information sharing and protect privacy. The second Markle Foundation Task Force report explains in detail how commercially available technologies can be adopted to create a government-wide information sharing network.[6] The Task Force calls this the SHARE Network, for "Systemwide Homeland Analysis and Response Exchange." It is important that your Committees encourage TSC to fully leverage the security- and privacy-protective capabilities of existing technology.

III. WATCH LISTS, PRIVACY AND CIVIL LIBERTIES

Information sharing, including the sharing of watch list entries, is a crucial building block in combating terrorism. The improvement of watch lists is a daunting task. In April 2003, the GAO issued a report on federal watch lists, finding that nine agencies maintain 12 different watch lists, that the lists contain overlapping but different information, and that the agencies had different policies governing when and how information on the lists is shared with others. It also found that sharing is constrained by the watch lists' differing technological architectures.[7]

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[6] *See* Markle Foundation Task Force, "Creating a Trusted Information Network for Homeland Security," at 16-19 (Dec. 2003), *available at* <http://www.markletaskforce.org>. Appendix G of the Task Force's second report, at pages 144-148, sets forth in detail the technology needed to implement the sharing network.

[7] GAO, *Information Technology: Terrorist Watch Lists Should Be Consolidated To Promote Better Integration and Sharing*, GAO-03-322 (April 2003), *available at* <http://www.gao.gov/new.items.d03322.pdf>.

Improving these watch lists is not simply a matter of putting them all together into a single list of names. Each of these watch lists was created for a different purpose, using different criteria. Some include only foreign nationals; others include citizens. Some watch lists are comprised of persons who are subject to exclusion from the U.S., but are not otherwise subject to arrest or detention. Others are subject to arrest on a criminal warrant. Still others are citizens or foreign nationals subject to neither arrest nor detention, but having some interest to intelligence or law enforcement agencies. In any given category, for some people, the government has a high level of assurance that they are dangerous terrorists. Others are suspected of being dangerous, but on thin evidence. Others are soundly believed to be associated with a terrorist group but are not suspected of being involved in any illegal conduct.

As the Markle Task Force found, to date, no government-wide guidelines have been issued concerning how individuals get placed on — and removed from — a watch list; how accuracy is maintained and errors are corrected across lists; or how information on the lists is shared among agencies and with private companies.[8] Furthermore, if there is a watch list "hit," law enforcement and security personnel may not be clear on how to respond. A police officer conducting a routine traffic stop, an airline screener and an immigration official would each react differently to the same "hit." Any one of them might react differently depending on whether the "hit" is an individual who is a known, dangerous terrorist, or is merely someone with tangential ties to someone who is subject to an investigation, assuming that specific information were made available to the officer on the front lines. The question before us today is whether TSC is resolving any of these critical issues.

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[8] *See* Markle Foundation Task Force, "Creating a Trusted Information Network for Homeland Security," at 9 (Dec. 2003), *available at* <http://www.markletaskforce.org>.

There are a number of fundamental questions associated with the watch list activities of the TSC: The first is who meets the standard (or standards) for inclusion on the TSC watch list? Is TSC establishing those standards, or is TSC following the different standards of the different agencies' lists? According to Secretary of Homeland Security Ridge, the current TSC list includes 50,000 names, but only some small subset of those individuals are wanted criminals.[9] How did the rest of the names get on that list? Who determines which watch list entries are shared and with whom? Given the necessarily wide range of criteria and the wide ranges of uses to which a consolidated list might be put, these are not easy questions. At the least, however, the criteria must be publicly stated and subject to debate and oversight. This might involve both a criterion of proximity to terrorist activity (e.g., member, associate, associate of associate) and a criterion representing a certain threshold of information justifying the inclusion (e.g., reason to believe based on specific and articulable facts).

A related concern is data quality. Little information is publicly available about how U.S. watch lists are compiled and maintained, but numerous reports have suggested that current watch lists are deeply flawed.[10] As an FBI official explained last year to a congressional subcommittee with respect to FBI watch lists, "many times there is insufficient data that [could be used to] accurately make a determination that it was in fact [the person on the list] because there's no date

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[9] *See Fiscal Year 2005 Appropriations for the Department of Homeland Security: Hearing Before the Subcomm. on Homeland Security of the House Appropriations Comm.*, 108th Cong. (Mar. 4, 2004) (statement of Secretary Tom Ridge).

[10] *See* documents obtained by the Electronic Privacy Information Center through FOIA, *available at* http://www.epic.org/privacy/airtravel/foia/watchlist foia analysis.html; GAO, *Information Technology: Terrorist Watch Lists Should Be Consolidated to Promote Better Integration and Sharing*, GAO-03-322 (April 2003), *available at* www.gao.gov/new.items/d03322.pdf; Ann Davis, *Boarding Impasse: Why a 'No Fly List' Aimed At Terrorists Delays Others*, Wall St. J. (Apr. 22, 2003), at A1.

of birth, biographical data or other relational type of data."[11] The adoption of data quality standards is therefore critical. If a watch list contains inaccurate or incomplete data, it will be very difficult to compare data against that list. In particular, name-only matches are meaningless; more information is necessary to determine whether an individual is, in fact, the person listed. In terms of the government's use of data, this suggests that watch lists need to be verified to ensure they are accurate, complete and up to date, and this is particularly important if watch lists become the centerpiece of any screening system.

Another fundamental question concerns dissemination. A determination has been made to add TSC watch list entries to the National Crime Information Center (NCIC) so that when state and local officials run queries through NCIC, "hits" are returned if an individual is on the TSC list. This represents a significant change in the purpose of NCIC, and it comes shortly after the FBI announced it would no longer consider NCIC bound by the accuracy and data quality requirements of the Privacy Act.

It also raises the fundamental question of consequences: What do police officers on the beat do when they get a TSC "hit" for someone who is not subject to arrest? How does the system handle, for example, someone the FBI just wants to track but doesn't want that person to know they are tracking him? What information is provided to state and local officials about how to respond, and what ability do they have to communicate immediately with federal officials?

Likewise, what do airline screeners and private sector entities do with this information if they are screening an individual and get a "hit"? How widely will watch list information be

[11] *See Can the Use of Factual Data Analysis Strengthen National Security? – Part One: Hearings Before the Subcomm. on Tech., Info. Policy, Intergovernmental Relations, and the Census of the House Comm. on Gov't Reform*, 108th Cong. at 9 (May 6, 2003) (statement by William L. Hooten).

available to the private sector? Will it be used to deny someone a job? TSC cannot share information about individuals indiscriminately with public and private entities, both for security reasons and to protect civil liberties.

A further fundamental question is redress. What are the due process rights associated with being denied a job or other privilege on the basis of a watch list entry? TSC's watch list is going to be used by government agencies and private entities for a variety of screening processes, from employment to airline security. Serious consequences will result for individuals who end up on the TSC watch list, from being denied the ability to board an airplane to being denied jobs in the private sector. Such denials of basic rights cannot be taken lightly. It is critical that a redress process is in place and careful oversight is conducted.

I also want to call your attention to an important First Amendment issue. The TSC Director has stated that the consolidated TSC watch list will include "domestic terrorist" entries obtained from the FBI. But who is a "domestic terrorist? We cannot place individuals on a watch list for exercising their First Amendment rights. Yet we know, for example, that just last month the FBI served a subpoena on Drake University about an anti-war conference held there, and that last year New York police officers questioned anti-Iraq war demonstrators about their political activities and associations.

For purposes of TSC's work, how is a "domestic terrorist" defined? Does the term "domestic terrorist" include an anti-abortion activist who breaks the law by blocking access to abortion clinics or who may be organizationally or ideologically related to those who have killed doctors or committed arson at clinics? Does it include members of Earth First or other radical environmental groups that have engaged in illegal acts and have been investigated by the FBI as domestic terrorist organizations? This concern is amplified by the fact that the only statutory

definition of "domestic terrorism" in the U.S. Code is overbroad. As defined in the USA PATRIOT Act, the term "domestic terrorism" casts a wide net, and potentially covers political protesters engaging in civil disobedience.[12] This broad definition blurs the line between "terrorism" and aggressive or unseemly political activity protected by the First Amendment.

IV. CONCLUSION

It is clear that the compilation and use of watch lists is a fundamental and urgent component of our nation's response to terrorism. Many questions remain about the Terrorist Screening Center's approach to this task. Questions include:

- What consequences might result from an individual being on the TSC list?
- For what purposes will agencies and private entities be permitted to access this information?
- What guidelines are in place to govern the sharing of information with private entities?
- When private entities use TSC's information for screening employees and other uses, how will government information be protected?
- What redress do individuals have if they are denied a job by a private company? unable to board an airplane? arrested?
- Ultimately, how can individuals challenge the fact that they are subject to a watch list entry?
- Who has oversight of TSC?

As the Markle Task Force concluded, the need to create an effective network for sharing counter-terrorism information is more urgent than ever. Terrorism remains a continuing threat

[12] *See* Pub. L. No. 107-56, § 802, codified at 18 U.S.C. § 2331(5).

around the world. And the potential for terrorists to use weapons of mass destruction raises the stakes considerably. Building the technical architecture, changing agency cultures, establishing new rules and procedures, and securing the necessary funding all take time. It is therefore imperative that the Executive Branch and Congress implement the measures necessary to create an information sharing network that would empower federal, state and local officials to be full and active partners in protecting our security, and that would be governed by guidelines designed to protect our liberties. Watch lists are a critical aspect of that network, but also raise the stakes on civil liberties.

We commend the Committees for holding this hearing. We urge you to continue the process of oversight and we look forward to working with you to achieve the inextricably linked goals of enhancing our national security and protecting our constitutional liberties.

Mr. COBLE. The Chair recognizes Chairman Gibbons for 5 minutes.

Mr. GIBBONS. Thank you, very much, Mr. Chairman.

I first direct my attention to Director Bucella, and thank you again, Director, for appearing here today. And I am sorry to have to throw you a hypothetical question to begin with, but I believe it really gets to the heart of the matter that we are dealing with here.

The Intelligence Community knew in early 2000 that two of the potential terrorists were meeting with al Qaeda operatives in Kuala Lumpur in Malaysia. These terrorists, Kalid al-Midar and Nawaf al-Hamzi, turned out to be two of the September 11 hijackers. If al-Midar and al-Hamzi were pulled over by a police officer in the United States today, would we be able to identify them and would we have caught them if they had been pulled over today with this watchlist?

Ms. BUCELLA. Hypothetically speaking, anyone that has been identified by a Government agency, whether it be in the prior TIPOFF list by the State Department or by any other agency and was put in the TIPOFF, if those two individuals were in fact in that, when they are stopped for a traffic violation, a routine traffic violation, there would have been some indication that they needed to contact the Terrorist Screening Center for coordination with us. But I can't hypothetically speak without having some more facts as to how they would have been—what guidance would have been provided.

The names that are in our database, for example, the files are being reviewed and that is why we provide some guidance as to—with CT Watch as to when there is an encounter, when there is a face-to-face contact, what the officer—what questions the officer needs to do.

As you previously heard, there are four basic guidelines. One is to arrest. But you can't arrest somebody unless there is probable cause to believe a crime is committed here in the United States. Second would be to detain, and there is a valid detainer on the person. Third would be to stop the person, ask them questions, and there would probably be a drop-down menu of a series of questions that have been recommended by the originating agency, whether it is the FBI or CIA, as to areas which if they encounter that person, what kinds of questions would you want us to ask if you had encountered that person. And the fourth category is to question in the standard operating law enforcement capacity and release.

The big difference is, though, that now that information goes back from the patrol officer, goes to the JTTF and back to whomever put that person or who was investigating that person into the database. And that information is invaluable for intelligence information for a number of reasons. One, just because you are pulling someone over and they have the same name doesn't necessarily mean they are, in fact, that terrorist. They may have the same name. There are other identifiers.

In our database, we are not the mother of all databases. We don't have all the derogatory information. That stays with each of the originating agencies. All we have in our database is the name and several identifiers. It is an identities database. It is not the

recordholder for every Government agency. We have the capability of looking at these case files of each of the different Government agencies, and some are highly classified. That information will assist the State and local law enforcement officers with the identities match. As to all the details of that, that information is not shared by us.

Mr. GIBBONS. I presume, then, also from what you have said, that if this person or these persons had been pulled over by a routine traffic stop and they did not have—or had false driver's license, forged documents, they probably wouldn't be in that database under that name and would not have been captured if they had used false documents.

Ms. BUCELLA. One slight correction. Some of these people do carry their false identities with them. They sometimes carry several identities with them, several different passports, different documents, driver's

licenses. Fortunately, the State and local law enforcement officers first on the ground, they are there. If they see false identification, there are various State laws in which they can pursue that. So it is not all the time that somebody might have a false identification and that would be it. There are times that if they do have false identification, though, there would be no way for us to identify unless, of course, they were driving a vehicle that is not owned by them, and then there would be some further inquiry.

We rely to a great extent on the State and local law enforcement officers doing what they do every day, and that is questioning individuals that violate the State laws.

Mr. COBLE. Gentleman's time has expired, and we have a vote on. And I will say to the Members who are here, we are going to vote and come back immediately and continue the questioning.

[Recess.]

Mr. COBLE. We will resume our hearing. Since this is a joint hearing, folks, procedurally the way we are going to do this, we are going to go Democrat, Republican, Democrat, Republican, and we will start with the Subcommittee Chairmen and Ranking Members, and then I will recognize the Chairman of the full Committee and his Ranking Member.

The Chair now recognizes the Ranking Member of the Subcommittee, Mr. Scott from Virginia, for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

And, Director, I wanted to follow up on the questions the gentleman from Nevada was asking about what happens after you get a hit. What provokes an inquiry to the system? Because usually you go through a normal outstanding warrant system just as a kind of routine. You get a traffic stop. They just kind of check, just run your name through the outstanding warrants to see if they have got an outstanding warrant. But what provokes this additional step to the—to this list?

Ms. BUCELLA. The process is that when they check through the NCIC, there now is a separate designation for those that are known or suspected terrorists. That is separately. That has nothing to do—there is nothing else—they would not call us, for example, if there was just an outstanding warrant for a drug case or something like that.

Mr. SCOTT. If you have a traffic stop and run the normal run-of-the-mill check, will that access this hot list?

Ms. BUCELLA. Yes.

Mr. SCOTT. Automatically.

Ms. BUCELLA. Yes. And if there is a person that is, in fact, a known or suspected terrorist, the NCIC will give guidance through the instructions to contact the Terrorist Screening Center.

Mr. SCOTT. Okay. Now, if there is no outstanding warrant for a person, what does the—what could the police officer possibly do?

Ms. BUCELLA. As I mentioned before, there are four instructions. If there is no warrant that is out, then you can't arrest them, and there can't be a detention. But the other two would be to stop, ask questions. As I mentioned to you before, the instruction could, in fact, be to ask questions as to where the person has been, any associates, where are they going. Many of those questions would be asked in the normal course of interaction between a local law enforcement officer.

Mr. SCOTT. You get a traffic ticket, and you start asking about where you have been? I would think that the person might say, sir, am I under arrest, or may I go? Then what?

Ms. BUCELLA. Well, when someone does get pulled over, sometimes the officers do say, what is your hurry, where are you going? It depends on what the interaction is with the State and local law enforcement officer and the individual that has been pulled over.

Mr. SCOTT. And what can you do when the person says, am I free to go?

Ms. BUCELLA. Well, that depends on what they were pulled over for.

Mr. SCOTT. A traffic violation.

Ms. BUCELLA. If they, for example, were arrested for a traffic violation for running someone over, DWI, driving without headlights, driving 100 miles an hour in a 30-mile-an-hour zone, then the State laws would pick up.

Mr. SCOTT. Right. But I mean if you get a run-of-the-mill traffic citation, speeding, and you run it through, and you find he is on the hot list, but no outstanding warrant, what happens?

Ms. BUCELLA. No outstanding warrant, they would ask questions and release the individual and pass the information back to—if the Joint Terrorism Task Force was involved, that there had, in fact, been an encounter.

Mr. SCOTT. How close—when you have names that are similar or the same, if you had a Robert Scott that is on the terrorist list, what is going to happen to me if I have a traffic ticket?

Ms. BUCELLA. Well, again, depending on the individual situation, what we have are the names and identifiers, so, for example, if a Mr. Scott is in the—our database, and he is 4 feet tall, clearly you would not—that would be one indicator that the person that the law enforcement officer is, in fact, encountering is not the person that has been identified as a known or suspected terrorist.

Mr. SCOTT. You have height, weight, age, birthdate?

Ms. BUCELLA. Right now, because there are a number, as I mentioned before, we have the accessibility to some of the classified databases. Some of the identifiers are, in fact, classified information. The people at the call center do not release the information.

What they do is they elicit information from the police officer. They will ask, for example, what we would have—the nonclassified identifiers right now are the name, the date of birth, the passport number and the country of origin. The other identifiers, height, weight, could, in fact, be classified. The officer would not—we would not ask the officer to please tell us if he has brown eyes, tell if he is wearing glasses, tell us if he has got gray hair. We would say, please describe any other identifiers, height, weight, that information, so that we are not releasing any classified information.

Mr. SCOTT. And is there an objective criteria to get on the list; and if your name is wrongfully on the list, to get it off?

Ms. BUCELLA. Let me explain this list concept. We have—the way our—the names have come to us, come to us from a number of different Government agencies. Obviously, the State Department, in putting names in their list, they have a much lower bar, because what their encounters are with people at embassies trying to apply to get visas to come to the United States. So the State—Department of State has a very, very low bar. They have identified individuals who are known or suspected terrorists that would never be arrested based on our bar here in the United States coming into the United States. The information has been gathered by many different agencies such that there is a different bar if someone is coming at our borders. It is a much higher bar than denying somebody from a visa. Then once somebody comes into the United States, it is even a higher bar if there is an arrest, because there has to be probable cause to believe that that individual has, in fact, violated the United States laws, or violated a State law.

So there are many different levels, and based on the different levels of information and where the encounter is, is what then prompts the Counterterrorism Watch to give the guidance to the local law enforcement officer who is encountering that individual. So, therefore, the information that they may actually just say is, ask questions and allow them to go.

Mr. SCOTT. Can I have one quick follow-up? Is this just for foreign people? I mean, if you have a domestic terrorist, what happens?

Ms. BUCELLA. There are two different forms of information that feed into our center. Domestic terrorism names, they come from the FBI, and the international terrorist names come from or through the TTIC, and they come from all various different agencies. So at our center we have both domestic terrorists names as well as international terrorist names in our database.

Mr. COBLE. I thank the gentleman.

Thank you, Director.

Folks, if time permits, we may well have a second round of questioning.

I recognize myself for 5 minutes. Director, I know you have a good working knowledge and some degree of expertise for both the Department of Homeland Security and the FBI. Tell me, or tell us, if you will, why the FBI was chosen to administer TSC in lieu of Homeland Security, and whether it is your belief that the FBI is the better choice.

Ms. BUCELLA. I am a DHS employee. I am with the Transportation Security Administration. My Deputy is also from the Depart-

ment of Homeland Security. We also have another Deputy that is from the FBI, as well as an individual, another department, from the State Department, so we really are a joint partnership. At our center, I have representatives from CBP, from ICE, from Secret Service, from the State Department, from the FBI. It is a whole conglomeration. The FBI was tasked with this, and I do report directly to the Director of the FBI because we had to set the center up immediately. Because of the sensitivity of the information that we have at our center, a number of individuals, their clearances—they are working in a very secure environment—the clearances of individuals, people already had to have their clearances. The FBI was able to set this up from concept to actual operations in probably a little bit more than 45 days, and we actually set up a command center.

Mr. COBLE. Okay. I need to move along because we impose the 5-minute rule against ourselves as well, and I want to get a couple more questions in.

Mr. McMahon, have there been any instances where you believe information should have been provided to local law enforcement that was not provided?

Mr. MCMAHON. Since the inception of the TSC, we have had no problems, and we have been able to coordinate with the TSC and get the information back down. But I do—I have to say that we did a very extensive outreach of instructions to all law enforcement, State and local, in New York State on just how the process works, how to use it. And we did training including with that, and we are going to do some follow-up training. So we have not——

Mr. COBLE. The lines are open and free-flowing?

Mr. MCMAHON. The lines are open.

Mr. COBLE. Good.

Mr. Berman, Director Bucella has described some safeguards for civil liberties. What safeguards would you suggest?

Mr. BERMAN. There has to be a set of clear standards, which are articulable and public, that we can debate about who goes into this terrorist watchlist. I am not—I would say that there may be more sensitivity on the foreign counterintelligence side where foreigners are involved who are dangerous. They are under classified guidelines. But with respect to U.S. persons and citizens in this country, I believe that the guidelines have to be public and articulable so that we know who is going into this database.

I believe there need to be clear levels of access, depending on the kind of watchlists being involved. The Director talked about different levels of sensitivity and different bars. We need to know what those are. There has to be a system of data quality to know how this system is being purged, how information is being corrected, so that misidentification, which is all too common, does not occur, because of the consequences that follow.

And there also has to be redress. If someone is not able to fly or is denied a job on the basis of incorrect, inadequate or wrong information based on terrorist watchlists, they ought to have redress. And some of that can be accomplished under—if this screening function was under the Department of Homeland Security, which has at least the privacy officer and a civil liberties officer, but part of it would require some statutory changes.

Mr. COBLE. Let me beat the red light by putting a question to Director Bartoldus. With the transfer of the TIPOFF Terrorist Watchlist function to the TSC Director, have the capabilities of other governmental entities with screening known and suspected terrorists been improved, and if so, how?

Mr. BARTLETT. The primary improvement in the new system with TSC is the ability of our personnel to contact the TSC 24/7. Under the old TIPOFF program, the contact office was available between 6 a.m. And 10 p.m. At night. On weekends or at nights when we encountered somebody, we had to require a State Department employee to drive in, access a file, give us the answer, many times creating a several-hour delay. The mere fact that we get all responses in 20 to 30 minutes or less is a major improvement in the system.

Mr. COBLE. Thank you, sir.

I see my time has expired. Now Ms. McCarthy would be next in line. I recognize the gentlelady from Missouri for 5 minutes.

Ms. MCCARTHY. Thank you very much, Mr. Chairman, and my thanks to the panelists for sharing their wisdom with us today.

Congress requires you to implement a system for analyzing information on terrorist threats, and that you also have a relationship with TTIC in order to do that. TTIC is housed in the CIA. And I wondered—many of us in Congress thought that was probably unwise to separate the two when the information is so important for us to have. I wonder if you would comment on how that is working.

And also, the director of the State of Missouri Office of Homeland Security, Tim Daniels, among others I visited with, tells me that information-sharing, as you discuss it here today, needs to go both ways, not just at the Federal level among agencies like you and the CIA, but with the State and local information offices and directors and personnel so that it can be—it would be timely and significant. And in your testimonies today, many of you reflected on incidents that have been important, and they have come from—in some instances they have come from those local first responders, some of whom are with us today, and we thank every one of you.

So I really wonder if you—I would welcome any input you have on how we in the Congress can help best complete that information loop so it is indeed a loop, that information from local entities, local first responders actually, once it gets in the information loop, gets to the Federal level where you need it when you start hearing that from different locals, all of a sudden bells and whistles can go off, and we can be much better informed. Tell us what we must be doing to assist you in that goal that I know we all share. And anyone is welcome to comment on this.

Director Bucella, perhaps you would like to start, and Director McMahon, I would love to hear from you.

Mr. MCMAHON. I can just give you an example of what we are doing to try to do that in New York State. I think it is very hard for any Federal entity to try to get information coming in from every emergent first responder, and what we did is we set up counterrorism zones, we call them, in New York State. They are 16 geographical areas that brings local law enforcement together, and then they address, from their geographic perspective, what they see

as critical problems dealing with terrorism there, and they bring the first responder community in.

Then we set up a State intelligence center so that you don't have a bunch of stovepipe systems where we can filter a lot of that information up to a Federal level, see what is specific to New York, what should go up to a State level, up to a Federal level.

So we are really looking at what could be intelligence and what is just information nice to know. And I think that helps a lot from a Federal standpoint at both DHS and both the FBI. So that has kind of been our answer in these counterterrorism zones, and we have a separate network for those that we get advisories out to law enforcement, and then we get an advisory below that level, some to the private sector, different sectors, whether it is the chemical sector, the energy sector. And then we also do it through emergency managers, fire and stuff and that way, and that has been working out very well.

Ms. MCCARTHY. And do you feel like when you send that information to the national level that, in fact, someone is listening.

Mr. MCMAHON. Yes. Yeah. We are——

Ms. MCCARTHY. How do you get that assurance?

Mr. MCMAHON. Because we do—we talk. It is not going up electronically. We talk back and forth with them. They are accessible on doing that.

But I will tell on you the Federal agency standpoint, they are part of our counterrorism zones. The FBI at the three resident offices are an integral part of it. So much of the information flow, too, comes down through them to us in a very timely basis on that.

So we have had a wonderful relationship with the Federal, our Federal counterparts—and I will go back to the last orange alert. We at the State and local level had the best, most specific information of any of the orange alerts. They were general before, to be perfectly honest. And we did—for the first time we did conference calls with our counterterrorism zones, and the FBI got on the conference calls along with the head of intelligence from the New York City Police Department. We really could put together a State perspective, and the feedback from all law enforcement to us was that is very beneficial and helpful.

Ms. MCCARTHY. And I bet it was helpful to the constituents we all serve, because that is part of the confusion we all have on what these colors mean and how best to react to that.

But let me turn to our national Federal voices.

Ms. BUCELLA. Thank you.

Congresswoman McCarthy, you have just identified a tremendous and enormous challenge for us. Right now in the last 4 months that we have been operating, we have been trying to do a tremendous outreach, not only just to our Federal agencies to find out sort of how they are operating, but also with our State agencies. There are 50 different States and I have called the director of homeland security for one of the States just because I knew the person and said, do you have a list? I mean, I know the Feds have it. Do you have a list? And the answer is, what do you think? I mean, it is that type of thing.

There is much work to do. We, as the United States, have to operate in a coordinated effort. That means across State and Federal

lines. We are the—the Feds are not the experts in what is going on in the States. The State law enforcement officer knows who is sort of out of whack in their neighborhood. Or they have threats, or they are aware of sensitive areas. But that information is getting up and going through the various Federal agencies, but there needs to be a coordinated approach.

And at the Terrorist Screening Center we are trying, and we are seeing ourselves as the facilitators of that approach. We have the incredible perception from where we are sitting to be able to see what is happening in California and Oregon and Mississippi, and we are able to reach back through the JTTF to get them to talk to the State and local law enforcement officers.

We are merely a facilitator, and we have seen some very, very unique opportunities. I know that we had New York come to visit us after they heard about this intelligence center, and they wanted to know, quite frankly, what were you, the Feds, doing; and were you doing what we are supposed to be doing. And we found out it was a perfect match.

Mr. COBLE. Director, the gentlelady's time has expired. If you can hold that thought, perhaps share it with us subsequently.

The Chair now recognizes the Chairman of the House Homeland Security Mr. Cox for 5 minutes.

Mr. COX. Thank you, Mr. Chairman.

I wonder if I can start with Ms. Bucella and ask you what you think should be the role of the Department of Homeland Security in TSC.

Ms. BUCELLA. Well, right now the role has been very aggressive because myself—and I am with the Transportation Security Administration, my Deputy is, and many of our people are. I think, first of all, that the Terrorist Screening Center should always have representatives from every single agency. It should not be one type of response. The absolute benefit that I have seen on a day-to-day basis is the expertise that everyone brings to the table with them at our center. We hope soon that we will be able to have members from DEA, the Postal Service. We also have people from the Office of Foreign Asset Control. We are also going to probably have people there from FINCEN.

There is an incredible benefit to have the richness and diversity of all our different agencies and to include, to bring somebody from State and local to be working side by side. This is not—this is not a—one answer of one person's going to take care of this. This is a cooperative effort where the United States Government has to be working in a seamless fashion.

Mr. COX. Do you work together with Daniel Sutherland?

Ms. BUCELLA. No. I am not sure what Mr. Sutherland's position is, sorry.

Mr. COX. Okay. How about Nualla O'Connor?

Ms. BUCELLA. Yes. Nualla, absolutely. One of the things, the reasons, why I know Nualla is—obviously being a lawyer myself, I believe in bringing the lawyers up front when you start and not later on. And we have had a number of meetings with not only the FBI privacy lawyers, DHS privacy lawyers, TSA privacy lawyers, Nualla chaired a meeting, because we are very, very concerned about the misidentification issue. We want to make sure that if

people are stopped, and they have the same name, if there is any other discriminating factor that we could put in our database to say that person is not the one, then that is what we want to do, because we really are concerned. I personally am concerned that we don't stop people that—unless we know that they are known or suspected terrorists, and the only way we are going to be able to do that is to be able to gather as much information from those people.

And Nualla has absolutely helped certainly in the discussion, and we have some documented procedures about how we work on some of the encounters. In fact, while we have been up in the last 4 months, we have really had a number of people, somebody, for example, working in the United States but living in Canada, and one morning they come in. The next—that night they leave. They get stopped. Secondary, secondary. The next morning the person comes in again, and finally, among my staff I said, I want to know why that person is on—why they are stopped, why they are on secondary, and let's see if it is good information or if it is outdated information. That individual's name was, in fact, taken off of one of the databases, the case management databases, based on old and outdated information. We did not do the operational response. We sent the JTTFs out there. That is exactly what they are supposed to do.

Mr. COX. The reason I asked about Nualla, of course, is because it is important that are you doing exactly what you described, and I am happy to hear that. The reason I asked about Daniel Sutherland is that he is the officer for civil rights and civil liberties. In title I of the Homeland Security Act, we created that officer right underneath the Secretary with responsibility, cross-cutting responsibility, for all the directorates because of the priority that Congress placed on this, which brings me to Mr. Berman's point.

Let me ask you the same question. What do you think should be the role for the Department of Homeland Security in this matter?

Mr. BERMAN. Well, I think it really should be demonstrable, looking at the standards by which people are entered into these—into the watchlists. And we were hoping that Homeland Security would publish at least standards for U.S. persons about who would be qualified, is it limited, or at least verify to the public that it is limited to dangerous people who are wanted overseas or who may enter the country. Is it people who are really under probable cause to believe that they are engaged in terrorism or reasonable suspicion that they are engaged in terrorism, or does it reach all the way to anyone who is of interest to the FBI under any preliminary inquiry?

There is a whole set of standards, but they become lower, with less evidentiary and then almost no evidentiary support. Do those people get entered into this watchlist?

Mr. COX. Now, those are all good questions. I understood your testimony to include the assertion that while Homeland Security, the Department, has privacy and civil rights, civil liberties officers, that that does not exist in TSC or its parent as it is presently set up. I mean, is that right? Is there nothing analogous to the civil rights, civil liberties officer or the privacy officer at the FBI?

Mr. COBLE. Mr. Berman, if you could make your answer terse, because the 5 minutes have expired.

Mr. BERMAN. There is no ombudsman or privacy officer, civil liberties officer. There is an inspector general that keeps working on the FBI, at the Justice Department, but there is no—there has been a proposal to create a privacy officer at the FBI, but there is no such officer. We did not want to create privacy officers maybe at every agency, but to have some coordinating approach to both the national security side, but also the civil liberties side.

Mr. COX. Well, the Chairman has been indulgent. It is only 5 minutes, and the time has expired.

Mr. COBLE. I thank the gentleman.

The Chair recognizes the gentleman from Texas, the Ranking Member of the full Committee, Mr. Turner for 5 minutes.

Mr. TURNER. Thank you, Mr. Chairman.

Director Bucella I want to inquire a little bit about how far we are along in developing a Terrorist Screening Center that meets the criteria that is set forth in the document that I know you have and I referred to in my letter to you a few days ago. And I want to be sure that I am reassured that you have the vision as to what we need to put together here.

Obviously, you have been at this job, I think, since December when this task was passed back to the FBI, and as you know, I have been quite concerned that the job has been passed around two or three different places since 9/11 before it finally settled somewhere and some progress began to be made.

But it does disturb me when I hear you giving your report. You made reference to, you know, 50 visas have been revoked as a result of Terrorist Screening Center. In my judgment, unless those holders of visas were determined to be terrorists suspects after they got their visa, they never should have gotten a visa in the first place.

And so I am concerned that we are not yet envisioning the Terrorist Screening Center consistent with the 10 criteria that I set forth in the document I forwarded you. For example, are you confident that you have obtained all the terrorist watchlist information from every agency of the U.S. Government? Is it all accessible to you today?

Ms. BUCELLA. Since September 23, when the HSPD–6 came out, and up until today, there is enough—there is a lot of information out there within all our Federal Government. We have a number of names. But we endeavor—and this is a work in progress—to be able to get all of the names from all of the different Government agencies.

Mr. TURNER. And so your answer is no, you do not have it all. And I think specifically, from a previous briefing you gave the Committee staff, one of those areas is the Department of Defense. Several of us on our Homeland Security Committee have been down to Guantanamo, and we all know the Defense Intelligence Agency, the naval intelligence, all these agencies within DOD have a lot of names of suspected terrorists who can move by airplane flight in less than 24 hours. And I hope that we can continue to pursue the objective of getting all the information from all agencies of Government into the Terrorist Screening Center watchlist.

Next question I have for you is are we making efforts to transform what I understand your current status to be, and that is to be a call center where people can call in and ask a question, and then, as I understand it, whoever took the call would turn and talk to an individual in your office that may be sitting at a terminal operated by the State Department, and may turn to somebody operating a terminal for some other agency that has a watchlist, and then turn to somebody else, and they all do their work, and, as has been suggested, within 20 or 30 minutes maybe you can get a check? I have been told that some of these watchlists are checked overnight; that you do not have the capability within 20 or 30 minutes to check all of these watchlists. And what I see we are doing now is piecing this together with bailing wire.

We have got people in your shop that have access to a computer terminal, but I want to know, do we have, today, efforts ongoing and contracts outstanding to integrate the database of every agency of the Federal Government that has a terrorist watchlist into one unified terrorist watchlist at the Terrorist Screening Center?

Ms. BUCELLA. Congressman Turner, first we currently have a database with the names and identifiers of a number of known and suspected terrorists. When a phone call comes in, it is usually from a dispatcher, or it could actually be from the NTC. Our turnaround time is very quick. As a matter of fact, I think one of my colleagues here will tell you how fast some of the turnaround time is. We do not have somebody answering the phone and then calling to the State Department person across the room and saying, could you go up on your database?

One of the requirements at our center is that once you walk in, you wear the TSC hat. And we have people that have accessibility, not just FBI agents, but BICE and CBP individuals that have accessibility to the FBI database, that they are sitting there. So the person picking up the phone actually could have accessibility to all of those databases right there in front of them.

But those databases are not just watchlists. Those databases contain information and case management information. That will never change. Our database will only have the names and identifiers in there. As to all of the other derogatory information as to why that person has been identified by one of the Government agencies as being a known or suspected terrorist will not be in our own database. That is not what HSPD–6 had dictated.

HSPD–6 was very, very clear. We are only to facilitate in the identities match, and therefore our database has to be unclassified, but sensitive law enforcement and would just contain the information regarding the identifiers.

Mr. COBLE. Director, Ms. Bucella, I regret having to continue to interrupt you and put a muzzle on you, but if you could wrap that up because we have Mr. Dicks waiting, and we have Mr. Keller waiting, and the gentleman from Texas' time has expired. If you could wrap up momentarily.

Ms. BUCELLA. I will wait for someone else to finish the question, sir.

Mr. COBLE. Very well. The gentleman's time has expired.

The gentleman from Florida Mr. Keller is recognized for 5 minutes.

Mr. KELLER. Well, thank you, Mr. Chairman. I have got several questions.

Let me start with Director Bucella. Let me give you just like a realistic scenario, and you kind of educate me on how this works. Let's say that there is a man we will call Almidhar, just because that is a famous name, who is just flat out on the terrorist list. There is no dispute that you are maintaining his name on the Terrorist Screening Center list. He comes to the Orlando International Airport 2 hours before his flight to Reagan National in D.C. He walks up to the ticket counter. He pays for a ticket at the—with the lady who works for USAir. She gives him a ticket. Now we have captured that name. Who then does the check that compares the passenger manifest with the terrorist watchlist?

Ms. BUCELLA. Currently what happens is the airlines right now has the no fly list, and so they would look at the no fly list. The no fly list was incorporated in our terrorist screening database. The TSA intel unit would then contact us. We would then contact through the NTC, which is really our—they are our dispatcher. They are the dispatcher, would then give the instructions as to whatever to do. We do not give the instructions as to what to do with the encounter. We are not in an operational setting. We are only there to facilitate the identities match.

Mr. KELLER. So it is not the nice little lady that you buy the ticket from, she puts the name in the computer, and somewhere in the bowels of some basement somewhere there is a USAir, a TSA person, who has the no fly list, and they say, hey, there is a problem?

Ms. BUCELLA. Probably in that case, well, if the person is here in the United States, and they are a terrorist, it depends on where they are going and what other interaction they are going to have, and it also depends on what—for example, what DHS has put in their lookout system as to what to do with that individual.

Mr. KELLER. So this name sounds suspicious, this Almidhar name. Who then shows up to gather more information? Is that a Customs and Border agent?

Ms. BUCELLA. It is ICE.

Mr. KELLER. Mr. Bartoldus, Director Bartoldus, is that who shows up, your guy?

Mr. BARTLETT. In the—for an international flight it would be CBP officers. We would immediately have queried in the system, contacted TSC, and then we contact locally ICE and JTTF. Normally, depending on who owns the record, FBI and ICE will both respond on site with our officers. At the same time through the National Targeting Center we have contacted Donna's office.

Mr. KELLER. So you can compare, there is a lot of people with similar names, but you mean you can look at dates of birth and Social Security number and height and weight, and it is not just a computer science. There is an art to this as well. There is some judgment call by the Customs and Border agent; is that right, Director Bartoldus?

Mr. BARTON. That is correct. There are many of these queries that, when do you the interview, we have the level of data to make a determination whether it is a match or not almost immediately.

Mr. KELLER. In my district of Orlando, Florida, Jose Melendez-Perez stopped the 20th hijacker without any computers at all, just

through being a sophisticated agent who asked the right question, correct?

Mr. BARTON. People are a major part of our defense.

Mr. KELLER. Okay. Now, some of the questions that were raised by Mr. Scott and Mr. Berman concern the mistaken identity issue, and let me just raise those with you, Mr. Berman. Mr. Scott says what if a guy named Bobby Scott is driving down the road speeding 55 miles an hour in a 30 zone, and he gets pulled over? And the local police officer does an NCIC check, and he is concerned that he is going to be detained. Now, it is my understanding that, once again, the dispatcher gives the officer the information, and he has the discretion to arrest. And so—if Bobby Scott is a hit. But we look at this Bobby Scott, and he has a different date of birth and a different Social Security number and a different weight and a different height, and that officer says, you know, I am going to arrest him anyway. You are probably going to have some civil liability for false arrest or a 1983 action. Isn't that correct?

Mr. BERMAN. You have a—the data that you just ticked off is not in this database. So as I understand it, and I am not at the operational level in any police department, if there is a hit on this, there is a call-back number. In some States it may be 1–800–TSC. In others it is just call your FBI agent. It does not resolve what that—the probative nature of that hit.

Mr. KELLER. And let me do one final question, because I have only got like 10 seconds here. Director McMahon, you used the example of someone who is filming at a nuclear power plant and is kind of suspicious, and the police officer does an NCIC check. Isn't one little flaw we have in the system that if you do the check on this guy, and he hasn't been arrested before, he hasn't been convicted before, but maybe he has done this at five other nuclear power plants, his name may not pop up; isn't that correct?

Mr. MCMAHON. That is correct.

Mr. KELLER. What is the solution to that?

Mr. MCMAHON. He wouldn't pop up unless he is already the subject of an investigation, and then the hit would have been a VGTIF hit we talked about, which would have said, contact the Terrorist Screening Center.

Mr. KELLER. If someone else had recorded it in there?

Mr. MCMAHON. Yes. Or unless there was other particulars that would—where the patrol officer that stopped that person could create reasonable suspicion to move forward within their State laws.

Mr. KELLER. Okay. My time is expired. Yield back.

Mr. COBLE. The gentleman's time has expired.

The Chair recognizes the gentleman from Washington Mr. Dicks for 5 minutes.

Mr. DICKS. Thank you.

Director Bucella, why has it taken so long to put together the integrated terrorist watchlist? We have had all these other lists. I mean, the Ranking Member has made a major point of this. It has been discussed. Why has it taken so long, and can you do it quickly? Tell us why it has taken so long.

Ms. BUCELLA. There are a number of reasons. One is there are not—they are not just watchlists. They are case management systems. There are—they come from many different agencies and they

contain much different information. And so it is not a matter of dumping somebody's data system with a bunch of names into just one database.

Mr. DICKS. What is it? If it isn't that, then what is it? How do you do it?

Ms. BUCELLA. We have the agencies going back through their case files taking a look to make sure that what they have in their case file, if it is a known or suspected terrorist, that it is identified as such. It is a matter of—from the different prerequisite watchlists they have. The biometrics, the IDENT and the IAFIS system, those are not watchlists, those are data information.

This is a tremendous challenge just to figure out in our Federal Government all of the different systems that are in existence. That is what the big challenge is. It is not only technologically, it is also just substantively of making sure that we have good and accurate information.

Mr. DICKS. How much of this job is done? None.

Ms. BUCELLA. No. There is a lot that has been done, but we have a lot further to go.

Mr. DICKS. But this date has been pushed to the right, pushed to the right, pushed to the right, pushed to the right and it is now December of 04 that this thing will be completed.

Ms. BUCELLA. No, that is the fully automated database will be completed, and that would give every Government agency the access ability to—by computer reach into our database for those identifiers. That is at the end of the year. Right now we have a database with names and identifiers and we have over 120,000 names in our database right now. But we are constantly populating. We are taking from the GAO list, we are currently, as we speak, uploading the IBIS case file, the NAILS case file, the NAILS list of names. This has been a long process. It is not just a matter of, as I mentioned to you before, of just dumping names into the system.

Mr. DICKS. But we are continuing to add to this system and the system can be drawn upon right now.

Ms. BUCELLA. We will always be adding. The system cannot be automatically drawn upon right now. We created a database which we have used at our screening center. The automated——

Mr. DICKS. But you can pick up on it from the screening center. At the screening Center you can pick up a name. It is just that the other agencies can't come in at this point

Ms. BUCELLA. Not yet. That is exactly it, sir.

Mr. DICKS. All right. Now what is this problem with the Department of Defense? Are they cooperating or not cooperating?

Ms. BUCELLA. It is not a problem with the Department of Defense. It is trying to figure out all of the information that the different agencies have. We have done outreach with the Office of Joint Chiefs of Staff. We have met with the Under Secretary's Office for Homeland Security. We are just trying to make sure that we have all of the information. It all should be pushed through the Threat Terrorist Integration Center for the international terrorists, and that is what we are endeavoring to find out, what other information is in fact out there. This is a complex process.

Mr. DICKS. Have you gotten anything from the Department of Defense yet?

Ms. BUCELLA. We have some names from the Department of Defense, yes, that are already—that have already been pushed through the FBI and through TTIC.

Mr. DICKS. And finally, those police officers back there, they can't call directly from their car to the Terrorist Screening Center. They have to go through a dispatcher, the dispatcher then connects to the TSC, and then they have a discussion. The dispatcher says to the officer, here is what the TSC has told us.

Is that basically it? I want to make sure my colleagues understand how this operates.

Ms. BUCELLA. Right. The dispatcher is there, letting the officer, for officer safety, take care of the individuals that they are encountering for whatever reason they pulled them over. And then the dispatcher is taking the information from the officer and giving it to our center. And our center is trying to match up the information that the dispatcher has given.

If the dispatcher—the requirements that the dispatcher would probably give back is, you know, either ask some more questions or move on or please give me some move descriptors, officer, as to what this individual looks like or what they are wearing or, you know, height, weight, and that type of information.

Mr. DICKS. Staff has told us that in January the information-sharing would be done by March. And you are saying it is not done yet.

Ms. BUCELLA. No, what I told the staff——

Mr. DICKS. That is the end of the year now. That has moved to the end of the year.

Ms. BUCELLA. No. What I told the staff is that we would have a database by March, not a totally complete database. We would have a database that we would use.

Mr. DICKS. But you don't have one now.

Ms. BUCELLA. We have a database now. It was up on March 12th. March 12th it was up. I think when I briefed your staff, I said it would be up by the end of March and we had it operational by March 12th.

Mr. DICKS. Is a memorandum of understanding necessary? MOU necessary?

Ms. BUCELLA. I believe it gives some guidance to all the different agencies so everybody is on the same footing.

Mr. DICKS. Thank you, Mr. Chairman.

Mr. COBLE. Thank you Mr. Dicks. The Chair recognizes the gentleman from Arizona, Mr. Shadegg for 5 minutes.

Mr. SHADEGG. Thank you Mr. Chairman.

Director Bucella, let me begin with you because I am trying to get this clear in my mind. As I understand it, in response to Mr. Dicks' questions you just confirmed that you have an—I guess it is called a terrorist-creating database, not yet complete but you have a database, right?

Ms. BUCELLA. We have a database, and though not yet complete, it needs to be improved upon so it is all automated.

Mr. SHADEGG. It seems to me that almost all law enforcement databases are not yet complete, so——

Ms. BUCELLA. We have been operational, sir, for 4 months. So we are trying to do operations and get this database going.

Mr. SHADEGG. What I would like to do is have you give me greater clarity of the difference between your database and the database, if there is one, that is maintained by TTIC.

Ms. BUCELLA. TTIC is currently working on their database, but their database has all of the underlying reasons why that person is a terrorist and it has highly classified information on it. So that is the real distinction. And also TTIC only has international terrorist information in it. It does not have the domestic terrorism information. That other feed comes from the FBI.

Mr. SHADEGG. Well, the FBI feeds into the TTIC database as well.

Ms. BUCELLA. For your international terrorists, sir.

Mr. SHADEGG. Okay. So you are saying the TTIC database will be international terrorists and it would include classified information. And your database would include international terrorists and domestic terrorists.

Ms. BUCELLA. The names and identifiers only.

Mr. SHADEGG. Names and identifiers only, not the basis for which they were placed on the list?

Ms. BUCELLA. Yes, sir.

Mr. SHADEGG. And if I understood the description you gave to Mr. Dicks, the reason this is taking a substantial amount of time is to verify that someone actually belongs on the list.

Ms. BUCELLA. Yes, sir.

Mr. SHADEGG. Okay. At an earlier hearing, we were told that it would be impossible for an officer on the street to get data directly from this Terrorist Screening Center, essentially to get data directly out of your database. And in a sense I think the description you just gave us confirms that. That is to say, an officer in a patrol car who calls in with a suspect he is currently detaining doesn't talk directly to you or—and doesn't electronically access your database.

Ms. BUCELLA. Yes, sir.

Mr. SHADEGG. He goes through a dispatcher.

Ms. BUCELLA. Uh-huh.

Mr. SHADEGG. And the dispatcher passes the information on to you. You then pass the information back to them. If they provide you with sufficient identifiers, you give them back a confirmation or a denial: We don't have anybody by that name, or we do have somebody by that name.

Is that accurate? I see you shaking your head no.

Ms. BUCELLA. No, sir it isn't. First—let me tell you why we use a dispatcher. To authenticate and verify that that person is, in fact, a lawful police officer, number one. Number two, we don't give the confirmation or rejection. If it appears that the person is in fact the same individual that would be in our database, we forward the call to the Counterterrorism Watch at the FBI. They are the operational arm, along with the Joint Terrorism Task Force. We drop off the line while the Counterterrorism Task Force, the CT Watch, is talking to the individual so that they can then provide guidance to the law enforcement officer on the street as to what they should do with that individual they are encountering.

Mr. SHADEGG. Okay. That leads me to two follow-up questions. One of the questions I had was that at the earlier hearing, we were given the impression that when a line officer on the street makes this call and thinks he has somebody who may be a suspect, a terrorist suspect, that one of the reasons that they cannot access you directly is that it requires essentially the approval of some supervisor, that this ought to be checked for—that this stop, person they have stopped, a suspect, merits screening as a terrorist. Are you aware of any such requirement?

Ms. BUCELLA. No. And I am also not aware of the previous hearing as to who was even talking about this.

Mr. SHADEGG. It is a hearing of the Homeland Security Committee, probably 2 weeks ago, and maybe a month ago.

Ms. BUCELLA. Sorry, sir.

Mr. SHADEGG. All right. The second question I have is I understand that because are you not operational, you just maintain a database, this procedure is in place where you essentially bring in—who did you say?

Ms. BUCELLA. The Counterterrorism Watch at the FBI.

Mr. SHADEGG. Okay. Do we have experience, although you have been up and running fairly short, with how much time that takes because my—you know, my police officers are going to be concerned about that issue.

Ms. BUCELLA. Well I can give you—it depends on where the encounter is and when we get the phone call.

Mr. SHADEGG. Well, for me, the encounter is way out in rural Arizona in the Navajo Indian reservation.

Ms. BUCELLA. If there is a local joint—usually the information can be provided, CT Watch turnaround time is very very quickly. But, for example, I can get the answer for you as to what our experience has been in Arizona. But for right now I can't; however, I heard from New York that our time has been very very good. I mean, it varies.

Mr. SHADEGG. Well give me, other than very very good, give me some specific—some time frames. Is this a 2-minute process, a 4-minute process, a 16-minute process?

Mr. MCMAHON. Congressman if I can jump in on that. What usually happens is you get the VGTOF hit, person of interest. The call goes in to our dispatch center. Dispatch center calls the TSC, going back and forth to the car. They verify that that is the individual. The CT Watch is brought in.

Mr. SHADEGG. Well, the first question is, how long does it take to verify the individual?

Mr. COBLE. Folks, we are going have to wrap up quickly.

Mr. MCMAHON. We have been in minutes, but then with the CT Watch which gives specific information, get the person's name, associate's name, where they are going, whatever, and then let them go, it is running, you know, actually—usually I would say on average of 12–15 minutes, maybe, on something like that. Because when we talked, we said there should be—we were in about a 20-minute maximum guideline that we would need, and the FBI has been meeting that.

Mr. SHADEGG. My time obviously expired. I appreciate the Chairman's indulgence.

I would appreciate a written response to both questions: How long it takes to confirm, on average, that this is a person worth looking into; and then how long it takes to dispose of the matter. I think that is the concern of the average American.

Mr. COBLE. The gentleman's time has expired.

Prior to recognizing the gentlelady from Texas, I want to welcome the three law enforcement officers who Director Bucella introduced to us earlier. I failed to extend a welcome to you gentlemen. Good to have you all with us.

And, Mr. Berman, in response to one of the questioners, I don't recall who was examining you, but you indicated some concern about the fact that the Department of Homeland Security did, in fact, have a privacy officer, but the FBI did not. But the Department of Justice, as you know, does have an Office of Information and Privacy, and since the FBI is housed therein, that ought to assuage—well, I shouldn't say that. I hope that assuages your discomfort.

I am now pleased to recognize the gentlelady from Texas for 5 minutes, Ms. Sheila Jackson.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. And might I add my appreciation for the gentlemen as well, and welcome to our Committee. I hope that you sense a great curiosity and certainly a great recognition of the moment that we have in terms of dealing with these questions of homeland security.

Let me also add my appreciation to both Mr. Coble and Mr. Scott, Mr. Gibbons, and Ms. McCarthy for this joint hearing. I think it is really vital. I listened intently to the hearings yesterday of the 9/11 commission for the time that I was in the hearing room to listen to a part of two witnesses, and that is Mr. Tenet of the CIA and Mr. Clarke. And I believe that even though they might have been conflicted in where they were going with their testimony, they were very clear that we have not yet punched all the buttons on the war against terrorists.

In addition, I think George Tenet emphasized that the local law enforcement are key and must be integrated into the system extensively. And I agree with that.

One of the comments—and I don't want to attribute it to Mr. Clarke, for my recollection may not be completely accurate in that there were many witnesses—but I am not afraid to say that the thrust of some of the remarks were that even if the prize plum of Osama bin Laden is caught, that does not in any way end the war on terrorism. The terrorist activities are sufficiently diffuse and spread out, if you will, to indicate to us that we might even just be beginning. And so this whole question of the integration of the intelligence system and having it work is a key part of our survival.

One of the other points, I serve as the Ranking Member on the Immigration Subcommittee here on the Judiciary, and we balance and complement the Homeland Security Committee's issues. But I think it is well noted that one of the best defenses of terrorism is to ensure if you talk about homeland Security, that the terrorist never gets to your land.

[4:20 p.m.]

Ms. JACKSON LEE. That is where the watchlists and other integrated activities occur.

So I have a series of questions, and I appreciate very much, Ms. Bucella, but I would also include and welcome others who may wish to answer. You probably answered this three and four and ten times, but answer it again, if I am correct as to the Terrorist Screening Center that was supposed to be operational by December 1, 2003, if I am correct, and find out what is happening with that and its completeness and its operations.

The other point that I would like to trace is the utilization of this watchlist. I know there have been some questions dealing with civil liberties and the privacy questions. I want to ask questions about the visa operations. When foreign guests attempt to secure visas in their foreign posts in the United States embassies, what is the effectiveness of the watchlist by that process? They attempt to secure a visa. We are now sending names to a watchlist. What is the turnaround or the integration of the data such that you immediately are able to look at that name and coordinate it?

As you well know, there are a lot of Mohammeds and you can be sure that I am getting a lot of complaints on the system because I am not the Mohammed that people were looking for. I want us to be secure, but I also want us to recognize there are other elements of our life and business as well.

The whole concept of Field Intelligence Groups. Houston happens to be one of a very few regions that has that. I think it is a vital in terms of coordinating intelligence activities with the local law enforcement. What is the effort of the FBI to put these kinds of entities into regions, as many regions as possible?

These questions are to you, Ms. Bucella, and to others who may be able to comment on them.

Ms. BUCELLA. I first would like to comment on your question regarding the visas. The visa system is still being administered by the State Department. The State Department was, according to the MOU—part of their function came over to not only the Terrorist Threat Integration Center, but part of it came over to the TSC. The State Department employees are still reviewing those visa applications, but many times when somebody applies for a visa, it is not real-time. It is usually a week or 2 weeks. I am not sure. The expertise on the entire visa program, that would be better addressed to the State Department.

Ms. JACKSON LEE. I thought you were looking at a list that you comprised when they are talking about a watchlist, and my understanding is that the data collection was a problem in terms of interpreting and getting it up to date. I realize the—if you will, the categorizing of responsibilities. I know that they keep that, but they are supposed to be looking at a watchlist.

Ms. BUCELLA. The names that they are looking at are at our center. But the derogatory information, the underlying data, that resides at the TTIC.

Ms. JACKSON LEE. Here we have a mixture of confusion.

Ms. BUCELLA. No. Really, the function of the Terrorist Screening Center is only to have the names and identifiers of those known or suspected terrorists in their data base. We are an unclassified database. The responsibility of who keeps the derogatory informa-

tion on international terrorists resides with TTIC. So we have separate functions.

Ms. JACKSON LEE. And that is who the——

Mr. GIBBONS. The gentlelady's time has expired.

Ms. JACKSON LEE. Could she just quickly answer those last two dealing with the operations and the operational aspect?

Ms. BUCELLA. Again, the Terrorist Screening Center is merely facilitating in the identities match. As to the operations of field intelligence groups, I am not the person to be asking here.

Mr. MCMAHON. Only thing I can say is—and I don't think this would have happened prior to 9/11, the field intelligence group in Albany is putting that unit into the State Intelligence Center, which is like 2 miles away, instead of having two stovepipe systems. So I see a great integration.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. GIBBONS. [presiding.] Mr. Goodlatte of Virginia.

Mr. GOODLATTE. Mr. Chairman, thank you very much for holding this very important hearing.

I want to particularly welcome Jerry Berman, who was in another life wearing the hat of the Chairman of the Internet Caucus Advisory Council which is very interested in issues like this as well because of the technology that is deployed and the effects it has not only on the safety of our citizenry but also their rights to privacy.

I wonder, Mr. Berman, if you might outline for me the problems that exist with a multitude of different watchlists in terms of protecting the privacy of citizens. Are we better off with one watchlist or we better off with the alphabet soup of watchlists that we have? Related to that, when we start mixing watchlists so that someone who is on one watchlist for some reason gets on to another database watchlist that is built around another reason, is there a risk that people could be confused for being suspected of something they are not suspected of?

Mr. BERMAN. I think the answer is yes, yes. I think that the—it is a daunting and maybe impossible task to create one single, consolidated watchlist. I think that the different agencies have different bureaucracies, they have their own culture, they don't want to share information, and they have different functions. So mixing all those watchlists into one may be impossible, and it may not be necessary. It may be possible to have a set of watchlists that can be responded to on a computerized basis that have different levels of access both to protect privacy and the security of the information, but which trigger requests down line.

Mr. GOODLATTE. It can be done in real-time. Look at all those lists separately but look at them almost simultaneously.

Mr. BERMAN. There are the 200 most dangerous people who ought to be identified, and that ought to be triggered and sent back to an FBI agent and hit on that flag. They shouldn't have to call back 24 hours later and go through a bureaucratic system to find that out if it is the most dangerous people. If it is someone who is not really suspected of terrorism, that flag may say call back later and then call the FBI.

Maybe that is where the Terrorist Screening Center is going. But, right now, I don't think they have the technology. I don't think they have the money to use the kind of auditing technology that

the private sector could bring to this. I think they may want to. And I don't think they have controls on the civil liberties side, even if we had the right computers, on the problem of what is going in the system. The Director says, you know, we are trying to purge and make sure it is the right information. But they have no control over what the FBI wants to put on their watchlists. It is up to them.

Mr. GOODLATTE. Let me ask any of the other panelists if they want to respond to that question.

Ms. BUCELLA. One of the things that concerns I think everyone is to have one master database with all the underlying information being in one place. If that were ever compromised, that would really hurt America.

However, let me tell you one of the things that we have found at our center. We filled a lot of holes because of the perspective of where we are sitting. We have been able to marry up or facilitate the communication between many different Federal agencies having pieces of investigations on the same program.

Mr. GOODLATTE. We all agree with that and we want to have the access to that, but what I would like to know from you is, what do you think about one of those agencies with access to a watchlist or data base of another agency taking information off that database and putting it on to their own database? Are there protocols or standards for doing that?

Ms. BUCELLA. Right now, nobody can just pull from our database. We want to make sure that all the information we have on the individual is up to date.

Mr. GOODLATTE. Let me interrupt you there. When we set up the Department of Homeland Security, the Judiciary Committee went through quite an extensive debate about what function the State Department should serve in issuing visas. There are some who wanted to have more of a law enforcement type perspective on the person who is actually issuing these visas in these countries around the world where applicants come in and apply for a visa. Look at them from a different perspective than a State Department employee who might have a political consideration for why certain persons should be allowed to come to the United States for diplomatic reasons.

Can you say to me whether you are getting adequate cooperation from the State Department at those consular offices around the world providing you with sufficient information so that as you screen people on these watchlists, you are getting the cooperation? Are you finding the right people to give you data about or could that be done better?

Ms. BUCELLA. Right now, the partnership that we have with the State Department has been absolutely essential not only in educating us as to the visa program but, for example, if based on information that an individual gets a visa and they subsequently find out that there is additional information coming from one of the Government agencies, they are right there with us. We are able to immediately contact DHS, CBP so that if the individual does come into the United States or tries to come into the United States, they can be blocked immediately at CBP.

Even if there was a visa issued based on faulty information or incomplete information, if that person gets on a plane and while they are in the air subsequent information is found out by any Government agency, we immediately contact the National Terrorist Screening Center—the National Targeting Center, excuse me—and they will respond immediately at any of our ports of entry, whether the person is trying to come in over the border in Canada or trying to fly to the United States. That has been another hole that we have been able to fill.

Mr. GIBBONS. In view of the fact we are going to have another vote coming up shortly and we want to get to a second round, I am going to limit the second round of questioning to one very quick question for each of the Members; and I will start off with Mr. Bartoldus. Let me ask you, in the advancement of technology that is going to take place in this data watchlist that we are talking about, where you are going from the automatic targeting system to the new ACE system, the automatic commercial environment that you have, what does the link between ACE and the Terrorist Screening Center look like? Is that part of the consideration that you are talking about? Also, how is the database for agents in the field being considered when you look at this new system? How does it change what you do?

Mr. BARTOLDUS. The automated targeting system is the current system that is used by CBP officers to identify high-risk passengers or cargo in advance of arrival. It is fully compatible with our mission directives under the ACE program.

I actually have assigned two of my staff at the National Targeting Center as our ACE liaisons, and we developed the new automated commercial environment as a bridge between our current system and the future system. So we are fully integrated and sat down with Donna's deputy in several meetings so, as we develop the new system, we are developing it with an eye toward TSC and immediate sharing of data.

Mr. GIBBONS. It will improve your coordination and information sharing when you go to this ACE system?

Mr. BARTOLDUS. Yes.

Mr. GIBBONS. Mr. Scott.

Mr. SCOTT. Mr. Berman, if your name gets on the list by mistake, what is the process for getting your name off?

Mr. BERMAN. I may have to bring litigation right now or maybe I could call the Department but I don't know where I would go. I don't know how my name got on the list right now. I don't know which agency put it on. I am assuming I am stopped or can't fly. I could ask the Terrorist Screening Center if they have got my name on the list, but they would refer me back to the agency which provided the watchlist and they may tell me. But I don't know what the standard was. I may have to file litigation. I mean, I would like to have a response to that. I don't know what the process is.

Mr. GIBBONS. Mr. Cox.

Mr. COX. Well, I think that is an excellent question and we ought to ask the rest of the panel, beginning with the Director if we might, what the answer might be to that question.

Ms. BUCELLA. It does depend. If you were stopped at an airport and you were on a no-fly list, the TSA has a process in place in an office of the ombudsperson. If you were stopped going through a secondary search—Mr. Bartoldus could speak to that—but you could be, in fact, brought into secondary for a whole host of reasons that have nothing to do with terrorism.

Mr. COX. Let us say I am not being stopped or anything, it just came to my attention while I was at home one day, somebody told me I am on this list and so I want to do something about it because I don't think I should be on it; what do I do?

Mr. BARTOLDUS. Speaking for CBP, you can always write a letter to our headquarters in Washington, D.C. Or your local office. They will fully research it, respond to you saying whether or not we have a record, you know, depending—as long it is not a classified record. Or if there is a record of another agency, we will refer you to that other agency and they almost all have ombudsmen.

Mr. COX. Do I have to know which agency is a priority?

Mr. BARTOLDUS. If it was not our record and you asked us, we would confer with that other agency and refer you to that agency and send a letter back to you and the other agency.

One other quick point. If your name matches someone else who is on the list, that is information we collect and we use that in our screening, so that we can identify next time you come across the border that you are not the person we are interested in.

Mr. COX. Let us say I pursued the Berman route and I file a lawsuit because my letters didn't get answered or I got a form letter or something. Not that you would ever do that, but let us go down this path. What right would I have in discovery in this litigation to obtain the records that are the basis for my being included in the list? And let us assume that they are classified. Somebody is going to tell me I think, well, we can't tell you why you are on the list, right?

Mr. BARTOLDUS. CBP operates under the standard FOIA laws. If something is classified beyond the FOIA laws, then it is not discoverable.

Mr. COX. Since we are dealing with terrorism here and it has a big international component and it involves the Intelligence Community, I would assume in a lot of these cases names on the list are there because of classified information, right?

Ms. BUCELLA. That would be fair to say.

Mr. COX. It is reasonable to assume that if I want to get my name off the list and there are well-meaning people in the Government who are trying to help me, they are still going to have to write me back, even if it is not a form letter, saying, well, you are on the list and we can't tell you why.

Ms. BUCELLA. I would have to get an answer for you because I am not quite sure that they could even confirm that you were on the list.

Mr. BERMAN. Mr. Chairman, there are ways of dealing with classified information in litigation, but it is going to be a hard road to litigate, unless I was denied the right to travel or some other benefit. But I think the larger point is that TSC is not in a position to do this. It is going to refer you back to any number of 14 different watchlists, which are the watchlists that are supposed to be

consolidated in any event. The issue was to consolidate the watchlist and at least to make them systematic and accessible in certain ways to resolve terrorist issues, but it was also to bring us under some standard and guidance so that we would have some civil liberties protection. That is what DHS was set up to do. And it seems to me that the system is not functioning the way Congress intended it to function.

Mr. COX. I think what this real-life thought exercise has led us to is that, first, it is very important when we put names on the list that we take every reasonable precaution to make sure it is done right to begin with; and second, as Mr. Berman points out, that we not have it be so variegated that it depends on where it came from and who is making the decisions and so on.

HSPD 6 is very different from the Homeland Security Act. The Homeland Security Act has shot throughout the notion that there is a one-stop shop, whether it is fusion of intelligence and so on, or this question. It also has, as I pointed out earlier, an officer for civil rights and civil liberties and a privacy officer, and that officer for civil rights and civil liberties is responsible for the whole Department, not just an individual directorate, so that there is constancy throughout. Lastly, we don't——

Mr. GIBBONS. Mr. Cox, we have been trying to limit the number of questions on this second round. I don't want to cut you off unnecessarily, but in order to be fair to everyone.

Mr. COX. If I may, I will just finish the sentence and say if we have the Department of Homeland Security playing a more significant role here, we will have somebody who can, no matter how your name got on the watchlist, from what source, deal with these kinds of inquiries, to not only provide the standards up front, but also help people who are trying to get themselves off when they think they are improperly put on and provide routine standard answers that won't be different, depending on where you entered the system and which agency it is.

I thank the Chairman.

Mr. GIBBONS. Thank you very much, Mr. Cox, Mr. Turner.

Mr. TURNER. Thank you, Mr. Chairman.

Ms. Bucella, Mr. Bartoldus, have you had a chance to see the presentation of the Markle Foundation that Mr. Berman is an advisory board member on, the presentation regarding the integration of data, the software that would allow different levels of classification to be accessible to different people who may be qualified and eligible to receive the different levels of classification?

Ms. BUCELLA. No, sir, I have not.

Mr. TURNER. I would urge you to do it. And I am very disturbed by what I am hearing today. I get the sense that there is nobody designing a system that is capable of integrating the various databases, the various information kept by various agencies, integrating them in a way where they are accessible in real-time. I get the feeling you are telling us that by the end of the year, you will have a single database constructed by collecting the data from the other 12 databases that exist. But I don't sense that that is going to be accomplished in a way that has a vision for an overall integration of databases in developing a system that provides accessi-

bility in real-time to various levels of information that should be made available.

Who is designing, who is in charge of developing the information technology architecture for the Terrorist Screening Center?

Ms. BUCELLA. Right now in the next week, we are—we have been developing some requirements and reaching out to all of our Federal partners to make sure that we can have some type of connectivity, because by the end of the year what we want to do is allow our system to be queried electronically by other systems.

Mr. TURNER. Are you going to do that internally with Federal employees? Are you reaching out with a request for proposals to the private sector to accomplish that task? How do you intend to do it?

Ms. BUCELLA. We have been meeting with contractors.

Mr. TURNER. Do you have any timetable when you might have a request for proposal for that kind of system?

Ms. BUCELLA. No, sir.

Mr. TURNER. I would urge you to move forward with that and also urge you take a look at what the Markle Foundation has produced in the process of developing that. Again, I am disturbed, because as you know—and I don't place it all at your feet. I mean, obviously you have been in this job since December. The FBI has just been asked about that time to take over the task. But we are 2½ years after 9/11, and none of these programs that we are spending billions on, U.S. VISIT, Caps II, none of them are going to work unless there is a unified integrated database comprising all the agencies that contain this data. We will never be able to stop issuing visas to the wrong people unless we have it done right.

And I would urge the Department of Homeland Security and the FBI to try to have a larger vision on what the architecture should look like to get this job done in the right way and effective way so that it is comprehensive, it is available to the people that need to see it at the various levels, and it is available in real-time.

Thank you, Mr. Chairman.

Mr. GIBBONS. Thank you very much, Mr. Turner. Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman. I am pleased to yield my one basic question to the Chairman of the Committee.

Mr. COX. I actually don't want to belabor the point, just say at the time we announced the creation of the TSC, I applauded the effort of the consolidation for the reasons that the Ranking Member, Mr. Turner, just pointed out. But I said at the same time, that the screening center should be part of the Homeland Security Department because it is the most appropriate location for the new center, for some of the reasons that I think we have been talking about here.

The Secretary of Homeland Security has statutory obligations to provide authoritative threat assessments that have major implications for the security of Americans against terrorism. And to do this, he or she in the future has to have the tools and the resources that centers such as the TSC are going to provide. In addition, I think it is becoming clear that to obtain all of the benefits that we want from consolidation, we need a consolidator.

So I guess my final question to the Director would be, Ms. Bucella—and I know this is something of a friendly question inas-

much as you are technically an employee of the Department of Homeland Security, is there anything—let me ask it the easiest way. Is there any harm that would come from making the Terrorist Screening Center part of the Department of Homeland Security?

Ms. BUCELLA. I can only answer as to some of the challenges that we have found in setting up the Terrorist Screening Center. Because the Department of Homeland Security was not in the past involved in the intelligence world, we have had a very——

Mr. COX. It didn't exist in any world.

Ms. BUCELLA. It is a brand new agency with 22 different organizations that have been brought together, different cultures, just trying to get the intercommunication done, but more specifically at our center, just trying to get the people with the right clearances so that they can come through the door and answer the 20,000 phone calls—2,000 phone calls that we have received since we have been up.

It has been a challenge to make sure that we can get the proper background clearances. The FBI agents have had a very large group of individuals that already have those clearances because they have been involved in intelligence and the terrorism aspect of it. But as to the future, I am not the expert here.

Mr. COX. So we have got the exigencies of getting such a thing set up, but there is nothing in nature that would be offended if all of this were ultimately reported to the Secretary of Homeland Security.

Ms. BUCELLA. The Terrorist Screening Center has an incredible mission that we may need to move forward on. I am not looking as to the future of where it is going to be. I just want it to work right. And the men and women that work with me are from all different agencies, and it is something that I would invite you to come see us, because it is incredible to see the partnership that is occurring there on a daily basis. We may have Coast Guard there with their uniforms on, but they are working side by side with the FBI and the State Department and it really is a cooperative effort.

Mr. COX. I want to applaud you for that, and we are very, very pleased with the effort that is being made and the progress that is being made.

Mr. Berman, I can tell you want to be heard on this.

Mr. BERMAN. The argument for DHS is Representative Turner's point, which is DHS could drive the vision that would break out of the traditional intelligence baronies that existed prior to 9/11. I thought that was part of the vision. And the Markle Foundation, of which I am a member, recommended that DHS take the lead in driving that kind of vision, including using some of the information technology that I discussed with Representative Goodlatte.

That is not going to happen through the traditional baronies. And what I am afraid has happened through the creation of TTIC, TSC, and all the rest, is a new alphabet soup which returns authority essentially to the traditional agencies so that they maintain maybe a changed world, but a lot of the status quo and power that they had originally, and that DHS is not in that visionary role or driving leadership in reorganizing their intelligence functions.

Mr. COX. Well, that is my abiding concern as well, and I think you aptly stated it.

Thank you, Mr. Chairman. I yield back.

Mr. GIBBONS. Thank you very much.

Mr. Scott, in an order of fairness, I will grant you time for an additional question or two.

Mr. SCOTT. I am a little concerned about what happens if your name gets on the list by mistake, where you factually are the wrong person. Certainly you would have no right to take your name off if the person with your same name is properly on the list.

I guess my question is, if you have the same name as someone on the list, how do you ever make an airplane flight without having missed the first one—I mean, how long does it take after you have gotten a hit, show up at the airport in plenty of time, you got a hit, by the time you have gotten cleared you have missed your flight; is that right?

Ms. BUCELLA. Not necessarily, and especially not since the TSC has been in existence. We have had occasion where not only on a plane but at the border, we have encountered a person actually with the same name and date of birth, but different identifiers. We have now gone back to the different case files systems, the case management systems, for example, the CBP, and there is a notation in the file, "Please ask the hair color immediately," or "Ask the weight immediately."

That is going to be a long process, but that has actually been in it and we have been able to make sure that people have not been unduly inconvenienced and they can go through the system a lot faster than they were able to previously. And Mr. Bartoldus can speak a little more about that.

Mr. BARTOLDUS. When I talked to my staff before I came here, I said, Is there ever a time you would not call TSC? They go, "Yeah, the frequent crossers who we have all identified with TSC are the people who are not looking for it, but their passport was stolen once or identity was stolen once, and the stolen identity is what we are looking for."

We have been able to work with the TSC and our own staff to put systems in place to make sure those people are facilitated when we encounter them again.

Ms. BUCELLA. Congressman Scott, what we are doing every day is refining the system.

Mr. SCOTT. How long does it take from the time you buy your ticket to the time you get a hit to the time you have been cleared? How long does that take? When you buy a ticket, give them your name, your name automatically goes through the system, right?

Mr. BARTOLDUS. No. For CBP purposes, it goes through the system when you are on the airplane or approaching the airplane. What we do in those circumstances is, you have been identified as a frequent traveler who has a name match or you have been encountered before and you are not the person we are looking for, we immediately identify that you usually make the same flight or the same exit. The record is hard-coded and improved that day by that event and captured by that event.

The other benefit of TSC is the information that is collected by the law enforcement officer, the border crossing agent, or whatever is incorporated into the field and the record to constantly update it.

Mr. SCOTT. Obviously, that is the second time. The first time was different.

Mr. Berman, did you want to make a comment?

Mr. BERMAN. There are several people who have contacted the ACLU, contacted our organization, there have been stories in the Wall Street Journal. And I know one person, I won't mention his name, who just doesn't fly anymore because they cannot get out of the system because they have the same name, and it requires they get detained, and then there is a reconciliation back through the system to see whether that person is the person; and they don't have enough query fields on the computer itself to be able to match a number of information fields. And they can correct me if I am wrong, it requires calling the agency and walking back the information, how tall are you, because for security reasons they won't provide that information up front.

So it is a query system. So it is not unduly inconvenienced, but that can be inconvenient, not being able to fly. I mean, I am prepared to hear that that is not the case.

Mr. GIBBONS. Thank you very much, Mr. Scott.

We have reached the end of the day for all of you and all of us on this Committee, and we want to thank each of you for your time here today. The buzzer is very timely. We ignore it as everyone else does. But I want to thank each of you again for taking part in this Committee hearing. Your testimony has been very valuable in helping us better understand this issue.

We may have some written questions from the Committee to you, and the record will remain open for 1 week. We would expect and request that you respond to those questions in a timely fashion.

This concludes the oversight hearing on the progress in consolidating terrorist watchlists, the Terrorist Screening Center. The record, as I indicated earlier, will remain open for 1 week. Again, thank you for your cooperation and this Subcommittee stands adjourned.

[Whereupon, at 5 p.m., the joint hearing was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND RANKING MEMBER, SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

SHEILA JACKSON LEE
18TH DISTRICT, TEXAS

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SELECT COMMITTEE ON HOMELAND SECURITY
SUBCOMMITTEES:
INFRASTRUCTURE AND BORDER SECURITY
CYBERSECURITY, SCIENCE, AND RESEARCH & DEVELOPMENT

JUDICIARY
SUBCOMMITTEES:
CRIME
RANKING MEMBER
IMMIGRATION AND CLAIMS

SCIENCE
SUBCOMMITTEE:
SPACE AND AERONAUTICS

MEMBER
DEMOCRATIC CAUCUS POLICY AND STEERING COMMITTEE

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CONGRESSWOMAN SHEILA JACKSON LEE:

JUDICIARY SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY; HOUSE SELECT COMMITTEE ON HOMELAND SECURITY SUBCOMMITTEE ON INTELLIGENCE AND COUNTERTERRORISM

JOINT OVERSIGHT HEARING - "PROGRESS IN CONSOLIDATING TERRORIST WATCHLISTS – THE TERRORIST SCREENING CENTER"

THURSDAY, MARCH 25, 2004
2 P.M., 2141 RHOB

Chairmen Coble and Gibbons, Ranking Members Scott and McCarthy, we are fortunate that you were able to organize today's joint hearing. In the spirit of attempting to make our Department of Homeland Security (DHS) "interoperable," it was important that these two subcommittees share the opportunity to analyze the

performance of the new Terrorist Screening Center (TSC) to date for effectiveness and utility across the entire Department. Given the massive bombing that took place just two weeks ago in Madrid, Spain and that took some 200 lives in the rail system as well as the car bombing that killed 27 people at the Mount Lebanon Hotel in East Baghdad, terrorist activity is very much a continued effort and is always imminent *anywhere in the world*. The success of the TSC carries a lot of weight because the progress we make in the American DHS serves as an example to the international community. When international homeland security administrators see that TSC has received 1,388 requests to date and has responded with "527 positive hits," they undoubtedly react that "it won't work" and hence will not expend its resources to create a model based on ours.

The testimony that we hear and analyze today allows us to assess how the TSC and DHS are fairing in the task of creating a useable and reliable database that will pick up on the most latent

irregularities in traveler or immigrant profile/activity while operating at a pace that will not clog up international travel and commerce. Equally as important, this system must operate in a way that does not violate individual human or civil rights or equal protection of the laws.

According to testimony by DHS personnel and the Department of Justice's website, this program was supposed to be "operational by December 1, 2003." Here we are, 3 months later, and we are told that the target date will be sometime midsummer of 2004. This Administration has faltered in this respect because the need for an integrated database for terrorist screening is extremely vital. How can a first responder react to emergencies intelligently if the information-sharing is still weak? It is clear that, to date, we remain in a labor-intensive and risk-prone situation with multiple terror watch lists. One of the major concerns with screening programs, the likes of the Computer Assisted Passenger Prescreening System (CAPPS II), is

misidentification of individuals as potential threats. Furthermore, once a mistake is made or once a potential "hit" is made, agencies focus their efforts on "troubleshooting" to the detriment of the system, thereby decreasing accuracy.

On Tuesday, the FBI regional office in Houston received a cable from the main headquarters in D.C. that Al Qaeda was planning to blow up the Texas pipelines and/or major refineries in an effort to influence the upcoming presidential elections. In response to this threat, the regional office utilized the Field Intelligence Group (FIG), that is comprised of dozens of intelligence and law enforcement agencies and is a repository for all intelligence information in the region, to disseminate this information to the regional agencies to get them prepared.

The Houston FIG is one of the few in the country and is used as the prototype (the main FIGs are located in Los Angeles, New York, and Houston). Furthermore, once the regional FBI office

received the threat, it sent the information electronically to the counterpart law enforcement agencies and offices via the Texas Coastal Region Advisory System (TCRAS) and to the private sector by way of the "Infragard System. With Infragard, information is sent to industries that are potentially affected by a particular incident.

I plan to hopefully organize a field hearing with the House Select Committee on Homeland Security to visit and analyze the Houston FIG and the operation of the TCRAS and Infragard to establish the model for the rest of the nation to use for the efficient coordination of intelligence-gathering.

With regard to the threat to ports, due to the volume and traffic of hazardous materials, a terrorist attack in the Port of Houston could result in the loss of millions of lives if the TSC fails. Of course, it would also interrupt our Nation's energy supplies, delivering a huge blow to our economy at a time when

we certainly cannot afford any more economic disturbances. However, there are other ports as well in Texas, and smaller ports throughout our Nation.

Using its own resources, the Port of Houston has beefed up its patrols and its security guards for implementation of the Terrorist Screening Center initiative. Certainly, the Coast Guard is more involved in checking manifests and the ships that come into the Port of Houston. The Port of Houston is the largest port in America in terms of foreign tonnage. It handles more than half of the Nation's petrochemical capacity. We need to ensure that the TSC operates to serve high capacity and heavy traffic ports of entry and decrease their vulnerability and risk.

We must utilize our resources to make integration of intelligence-gathering systems a priority – locally, state-wide, and internationally. Thank you.

PREPARED STATEMENT OF THE HONORABLE CHRISTOPHER COX, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRMAN, SELECT COMMITTEE ON HOMELAND SECURITY

Thank you, Chairman Gibbons and Chairman Coble, for holding this important hearing—the second hearing the Homeland Security Committee has held jointly with the Judiciary Committee. I join you in welcoming our witnesses.

On December 1, 2003, at the President's direction, the Terrorist Screening Center stood-up with the task of providing unified, accurate terrorist screening information to screeners around the country, 24 hours a day, seven days a week, through a single node. The TSC will serve State and local officials, as well as private sector entities that manage critical infrastructure. It will even serve foreign governments that have entered into immigration agreements with the United States, if they are partners in the global war on terrorism. But the Terrorist Screening Center's support is particularly important to our nation's first responders, our border protection officials, and the consular officers who adjudicate hundreds of visa applications every day.

Our overriding objective is, after all, to *prevent* terrorist attacks. There, the Terrorist Screening Center—TSC—represents a quantum leap—in this nation's ability to keep terrorists out and to pursue potential terrorists who have managed to get in—for example, by giving law enforcement officers a reliable way to determine whether a person stopped for a routine traffic violation is, based on all the information available to the U.S. Government, involved in some way in terrorist activity. It also represents another important milestone in tearing down barriers to information sharing between the Intelligence Community and law enforcement officials.

Integrating the data contained on the Government's legacy watch lists is a positive step—it was needed. Historically, nine Federal agencies maintained 12 disparate watch lists, the contents of which were not accessible across agency lines and were not comprehensively analyzed. That means we had no efficient way of accessing the information we had—and as a practical matter, what you can't access, you really don't know. That's one of the hard lessons of the 9/11 attacks.

But integrating the information on all those lists is a complex task, even in the era of interoperable computer systems and instantly searchable databases—and it must be done *right*. And to be the *right* solution, TSC must *not* come at the price of the civil rights or First Amendment freedoms of American citizens. Because we are fighting to preserve our way of life—that's a fundamental part of protecting our nation. And I believe it has been worth the time it has taken to get TSC done right.

The information collected and maintained on the Government's various watch lists was collected under different authorities for widely divergent purposes and maintained in different formats. There was no agreed upon set of discriminators to determine whether an individual should be watch-listed. And the 12 legacy lists, taken together, had hundreds of thousands of names. They could not just be dumped into some massive, Government database of potential bad-guys. Each name had to be analyzed to make sure it belonged on TSC's integrated list.

So at this hearing, we hope to get an update on the TSC's progress and relationship to the Department of Homeland Security. And, equally important, we hope to be reassured that TSC, and the databases that feed it, will not impinge upon the civil rights and civil liberties to which we, as Americans, are entitled.

There are also serious questions we must ask: Is the Terrorist Screening Center the solution for the present—or forever? Is it structured in the most effective way? Does it work—is it fast, reliable? Is it being used by those who need it most? Can a user get additional information on a TSC name "hit" quickly and reliably? Is TSC's management and supervision appropriate? How can it be improved? Are civil liberties and privacy interests scrupulously safeguarded? Could a name get on TSC's list erroneously? If so, how would that be discovered and how corrected, quickly and certainly?

I look forward to hearing from each of the witnesses on these important issues. Thank you, Mr. Chairman, and I yield back the balance of my time.

QUESTIONS AND RESPONSES FOR THE RECORD FROM DONNA BUCELLA

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 21, 2004

The Honorable Howard Coble
Chairman
Subcommittee on Crime, Terrorism and
Homeland Security
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed please find responses to questions posed to Ms. Donna Bucella, Director or the Department's Terrorist Screening Center, following Ms. Bucella's appearance before the Subcommittee on March 25, 2004. The subject of the Subcommittee's hearing was progress in consolidating terrorist watch lists.

We hope that this information is helpful to you. If we may be of additional assistance, we trust that you will not hesitate to call upon us.

Sincerely,

William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable Bobby Scott
Ranking Minority Member

Responses of Donna Bucella
Director, Terrorist Screening Center
Federal Bureau of Investigation
Questions for the Record

Subcommittee on Crime, Terrorism, and Homeland Security
Committee on the Judiciary
and the
Subcommittee on Intelligence and Counterterrorism
Select Committee on Homeland Security
United States House of Representatives

Regarding the Terrorist Screening Center

March 25, 2004

1. I understand each agency that contributes data to the TSC uses its own databases and that these databases are primarily case management systems, not terrorist watch lists. With that in mind, how does TSC integrate records in a way that ensures that the data about suspected terrorists is as accurate as possible?

Response:

Any federal agency can nominate an individual for terrorist watch listing. Nominations for inclusion of international terrorists will go to the Terrorist Threat Integration Center (TTIC), which will determine whether to forward the nomination request to the Terrorist Screening Center (TSC). Nominations for purely domestic terrorists will go to the Federal Bureau of Investigation (FBI), which will determine whether to forward the nomination request to the TSC. The records that are nominated by the TTIC and the FBI will be adjudicated by the TSC to determine whether they are appropriate for inclusion in the TSC database.

The TSC was created to facilitate identity matches of known or suspected terrorists. The TSC database is law enforcement sensitive but unclassified, and therefore does not contain any of the underlying derogatory information regarding why a person's name is on the list. The TSC does, however, review the names through a nomination process before they are entered into TSC's database. The TSC also continuously reviews and updates the records and communicates with the originating agency each time there is an encounter.

2. Has the transfer of the TIPOFF terrorist watch list function and corresponding staff been accomplished? How many permanent staff does TSC have now? Does the Terrorist Screening Center have sufficient operational and staff support from participating agencies/ departments?

Response:

The transfers of the TIPOFF terrorist watch list function and corresponding staff have been accomplished. Approximately 85 people are currently assigned to the TSC through a combination of full-time, temporary duty, and contract support assignments. The TSC works with the FBI and DHS to ensure a sufficient number of operational and support staff are working at the TSC at all times. This has been accomplished primarily by 30 to 90-day temporary duty assignments and the use of contract support personnel.

3. Will information about U.S. persons relating to domestic terrorism with no link to foreign intelligence, counterintelligence, or international terrorism bypass the TTIC and be input directly into the TSC? If so, how will you ensure that the information will bypass TTIC and go directly into TSC and what safeguards are in place with respect to information about U.S. citizens?

Response:

The TSC database is continuously updated using information derived from two different sources: information related to international terrorism (IT) comes to TSC from the TTIC, and domestic terrorism (DT) information comes to TSC from the FBI. TTIC is not involved in purely DT cases and will not have access to this information.

4. Have procedures been implemented to correct or delete erroneous or outdated information? Are resources sufficient to ensure that these watch lists are continually reviewed to prevent inaccuracies in the list?

Response:

There are procedures in place to correct or delete erroneous or outdated information and, to date, at least six persons have been removed from the TSC database. The TSC communicates continuously and works directly with the originating agencies to remove names when appropriate. The TSC will have a team of personnel dedicated solely to this purpose in the future.

5. Has the TSC entered into any Memorandum of Agreements (MOA) with the respective agencies regarding the uniform submission of watch list information? Have procedures and policies been implemented to address the uniform flow of information between federal, local, and state law enforcement? Please describe those procedures.

Response:

The TSC has not entered into any formal Memoranda of Agreement with any of the agencies that submit watch list information to it regarding the uniform submission of this information. The TSC does, however, have constant dialogue with these agencies through their assignees to the TSC. These assignees are in daily contact with their agencies regarding watch list procedures and policies, as well as regarding individual watch list submissions. DHS's Interagency Border Inspection System, Department of State's Consular Lookout and Support System and TIPOFF, the Transportation Security Administration's No-Fly and Selectee Lists, and the FBI's Violent Gang and Terrorist Offender File are all updated at the TSC. State and local law enforcement authorities may recommend that individuals be placed on the watch lists ("nominate" these individuals) by sending IT-related information to TTIC and DT-related information to the FBI, as indicated above with respect to Question 3.

6. With greater information sharing, there is often a greater risk that the system or its information could be compromised. What steps has TSC taken to maintain the security of the terrorist watch list data? What measures will TSC take to ensure the security of the TSDB?

Response:

The TSC has taken several steps to ensure and maintain the security of terrorist watch list data. The TSC itself is located in a secure facility and environment. All personnel assigned to TSC who handle data possess the appropriate high-level security clearances. The current TSC database is internal and is accessible only by TSC personnel. Additionally, TSC is currently developing security parameters for the next generation database that will be accessible by other agencies through their own case management systems in order to ensure the proper security of that information.

7. Under HSPD-6, the Administration has elevated and expanded the TIPOFF terrorist identification and watch list functions. This system is only as good as the data searched. Should other consular, border management, criminal history record, and biometric systems be upgraded and integrated? Will the TSC Director have a role in evaluating the security and adequacy of the systems used by screening agencies?

Response:

Although Homeland Security Presidential Directive 6 (HSPD-6) elevated and expanded the TIPOFF terrorist and identification watch list functions, it is unclear what role, if any, the TSC Director will have in evaluating the security and adequacy of consular, border management, criminal history, and biometric record systems used by screening agencies. While the TSC appropriately has access to these systems, it is, as a new Center, still

identifying the entire universe of available information; it is not yet at a point where it can evaluate the security and adequacy of the available information systems. As described above, the TSC is developing its database to allow eventual access to TSC databases by other agencies, such as the Department of State, through their own case management systems. This will ensure that, when TSC begins to incorporate biometric information, other agencies that access the TSC system will have the same functionality.

8. It appears from the testimony today, that TSC will use the National Crime Information Center (NCIC) to disseminate terrorist watch list records to state and local law enforcement. Is NCIC designed for such a robust name search capability? With regards to terrorist screening, have any measures been taken to improve the name search capabilities of NCIC? Has any thought been given to the idea of setting baseline system standards?

Response:

The TSC facilitates the identification of known or suspected terrorists and does not disseminate terrorist watch list records. Classified information regarding individuals that is contained in databases accessible by TSC personnel is not disseminated to the National Crime Information Center (NCIC). The NCIC system is, however, the mechanism used to communicate to state and local law enforcement the fact that the individual with whom they are interacting may be a known or suspected terrorist. Currently, NCIC has the capability to conduct sound index name search inquiries.

9. When state and local law enforcement use the National Crime Information Center (NCIC) to access TSC, what terrorist watch list records will be shared? How will TSC protect classified information through this process?

Response:

NCIC does not contain any classified information. The process by which state and local law enforcement officials make inquiries is relatively simple. For example, a police officer queries NCIC on a routine traffic stop and is subsequently asked to call the TSC because the identifying information of the person stopped is similar to that of a known or suspected terrorist listed in NCIC. When the officer calls TSC through the police department's dispatcher, the TSC call center verifies the caller's identity, receives relevant information (including the circumstances of the encounter), and checks the individual's name through the TSC database. The TSC database includes the name, date of birth, and other identifying information with respect to a known or suspected terrorist. The TSC call center quickly researches the underlying information, including classified and sensitive information. None of this underlying information is shared with the state or local law enforcement officer. The TSC determines whether the individual encountered is the same person as the one in the TSC database. TSC informs the officer of the positive, negative, or inconclusive result and engages the operational component of the

FBI's Counterterrorism Division, known as Counterterrorism (CT) Watch when appropriate. When CT Watch is engaged, it then works with the local Joint Terrorism Task Force (JTTF) to assist the state or local officer in responding. All of the information on terrorism in the Terrorist Screening Database is unclassified and considered law enforcement sensitive.

10. If a person is identified as a known or suspected terrorist through TSC, what protocols have been established for state and local law enforcement? There may be cases where a person is linked to a terrorist group, but law enforcement has no grounds for arrest or detainment. In those cases, what action could be taken by TSC and by the local law enforcement officials?

Response:

Established protocols govern the response when the TSC identifies a person as a known or suspected terrorist. As required by U.S. law, known or suspected terrorists may generally not be placed under arrest unless these individuals are the subjects of formal criminal charges or indictments. In addition, known or suspected terrorists, like other individuals, may be arrested on the authority of a material witness warrant issued pursuant to 18 U.S.C. § 3144. In all cases in which the TSC review indicates a relationship to terrorism, the TSC will contact the FBI's CT Watch. CT Watch provides operational advice to law enforcement through the local JTTFs, whose members will assist the officer during the traffic or other stop. This process allows for coordination among local, state, and federal entities.

11. The Terrorist Screening Center has been up and running now for just under 4 months. TSA Administrator Stone recently testified before the Congress that a consolidated terrorist screening database is expected to be up and running by March 31st. What is the timeline for a fully implemented biometrics program that will track the entry and exit of foreign visitors by using electronically-scanned fingerprints and photographs?

Response:

Although the TSC's database has been up and running for nearly four months, the inquiry regarding a time line for a fully implemented biometrics program that tracks the entry and exit of foreign visitors by using electronically scanned fingerprints and photographs would be better answered by the Department of Homeland Security (DHS), which has authority over the US-VISIT entry-exit system.

12. If persons identified as known or suspected terrorists are not arrested or detained, what governmental entities will be notified of their presence in the United States?

Response:

Records regarding encounters with known or suspected terrorists who have been identified and who have not been arrested or detained are maintained at the TSC. The information regarding the encounter is distributed to DHS, the FBI, TTIC, and any other appropriate government entity authorized to receive the information.

13. How many DHS employees are currently at the Terrorist Screening Center? What percentage are DHS employees? How many from other Departments? What training is being offered to TSC Analysts? Is this training offered to all TSC employees regardless of the agency from which they come?

Response:

85 employees are assigned to the TSC, including representatives from DHS, the FBI, the State Department, and the Office of Foreign Assets Control. 18 full-time DHS employees are assigned to the TSC, which constitutes approximately 20 percent of the TSC's staff. Currently, there are no analysts at TSC. With regard to training, the staff members are provided with instruction on TSC policies and procedures, call center operations, privacy awareness, security measures, and system operations.

14. In a statement you gave before the 9-11 Commission this past January, you said that TSC is able to access to all of the information contained in the FBI and the Terrorist Threat Integration Center (TTIC) databases electronically. Is this reach-back that you have to TTIC and the FBI automatic? Do you have to request this information?

Response:

Those on the TSC staff have direct access to the FBI and the TTIC databases. TSC personnel need not submit separate requests to the FBI or to TTIC for this information, but can, instead, access the information directly.

QUESTIONS AND RESPONSES FOR THE RECORD FROM JIM MCMAHON

James W. McMahon
Director

NEW YORK STATE
OFFICE OF PUBLIC SECURITY
3 Empire State Plaza
Suite 2170
Albany, NY 12223-2170

June 8, 2004

Dear Mr. Coble:

I am in receipt of your correspondence regarding my testimony at a legislative hearing that was conducted on March 25, 2004. Members of my staff have reviewed the post-hearing questions posed to me following my testimony. Attached, please find the answers to your questions. I hope you find my response helpful.

If I can be of any further assistance please do not hesitate to contact my office at (518) 402-2227.

Sincerely,

James W. McMahon
Director

Post-Hearing Questions for Jim McMahon, Director of the Office of Public Security for New York, 3-25-04 Joint Hearing on the Terrorism Screening Center

1. The Terrorist Screening Center makes watch list records available to state and local law enforcement through the FBI's National Criminal Information Center (NCIC). NCIC is linked to the Interstate Identification Index (III) accessing federal, state, and local criminal records. Do all law enforcement officers, including patrol officers have the resources to send and receive data via the NCIC system? One of the improvements to the NCIC is digitized finger prints and mug shots. Do officers in the field have hand-held fingerprint scanners?

2. Is the TSC your primary resource for terrorist watch list information? Do you receive similar types of information from sources other than the TSC?

3. You mention in your testimony an officer might get a VGTOF "hit" after entering the name of a suspicious person in the NCIC and that when this happens he is instructed to call a toll free number for additional guidance from the TSC. What if a terrorist hasn't yet been placed in the VGTOF watch list?

4. Once you have a VGTOF "hit," how long does it take, on average, to confirm that this is a person we're looking for? Then, subsequently, how long does it take to bring in CT Watch to dispose of the matter?

Mr. James W. McMahon
Director of the Office of Public Security
Joint Hearing on the Terrorism Screening Center - March 25, 2004
Response to Post-Hearing Questions

1) Generally, speaking all law enforcement officers have access to the NCIC system. This system has been the backbone of law enforcement communications for decades and has been the primary system to conduct wanted checks on individuals. The addition of digitized fingerprints and mug shots would be an excellent enhancement to this system and one that would greatly assist law enforcement officers in identifying persons who may be the subject of these "hits" in an expeditious manner. Very few officers in this state currently have access to hand held fingerprint scanners.

2) The TSC is the primary source of terrorist watch list information. As previously stated it is the NCIC system that all law enforcement officers are familiar with and use most frequently. The Upstate New York Regional Intelligence System also has access to these watch lists through the FBI's Counter Terrorism Watch.

3) If the subject has not bee placed in the VGTOF system the New York State Police and the FBI's Counter Terrorism Watch has in place a program that has been in effect since October 1, 2003. This program allows for an inquiring law enforcement officer to phone the UNYRIC to make an inquiry through this program. Once the inquiry is made a check is made with the Counter Terrorism Watch and a response is provided to the requesting officer. This program has resulted in several hits on individuals who were not in the VGTOF system.

4) The time to complete this inquiry is unknown at this time. This matter is currently under advisement and attempts are being made to construct a system that will allow for this type of information being identified. Having said that, I have not received any information that would indicate that there was a problem with this current system.

QUESTIONS AND RESPONSES FOR THE RECORD FROM CHARLES BARTOLDUS

Post-hearing Questions for Director Charlie Bartoldus of the National Targeting Center at Customs and Border Protection for the Department of Homeland Security
3-25-04 Joint Hearing on the Terrorism Screening Center

1. Has the Department of Homeland Security taken any steps to improve the capabilities of IBIS in regard to identifying known and suspected terrorists? Have such efforts been dovetailed with new programs like the National Security Entry-Exit Registration System (NSEERS) and the US Visitor and Immigrant Status Indicator Technology (US-VISIT) program?

Answer:

Customs and Border Protection's (CBP)/Office of Information Technology (OIT) has several initiatives underway to improve the capabilities to identify terrorists.

We are in the process of refining the name search algorithm within TECS to be more robust. Specifically, we are working with the Language Analysis Systems Corporation (LAS), to use their name search and name parsing software to process specific ethnic name types. We had our initial meeting with LAS in April 2004 and hope to have a pilot of their software up and running this summer.

The Treasury Enforcement Communication System (TECS) database, in which IBIS resides, is being updated to include "fragmentary names" and identifiers of terrorists in the database and to have the passenger processing software hit against these names. The TIPOFF fragmentary names (50,000+) are currently being vetted by the Office of Field Operations and the Office of Intelligence and will be loaded into TECS as soon as this vetting is complete.

Under US-VISIT, the primary passenger processing operations were modified to display the visa application and digitized visa photo to the primary inspector. This was an effort to identify possible terrorists in visa fraud. For the initial implementation of US-VISIT, the Department of State (DOS) gave Customs and Border Protection (CBP) a data load of all Non-Immigrant Visas (NIV) from December 2001, to January 2004. This data gets updated in a daily feed from the DOS. After the initial January NIV load, DOS provided another file of NIV data, going back to January 2000. That has been loaded into TECS for use by the primary inspector. DOS anticipates providing CBP/OIT with another 11 Million NIV records within the next few months. This will be all of the automated NIV records that DOS has.

CBP is working with DOS to obtain the digitized photo and application data for all U.S. issued passports. Like the NIV data, this will be displayed for the primary inspector. This effort will improve the capability of identifying fraudulent passport use.

The coordination with US-VISIT is inherent in passenger operations. TECS is the biographic segment of passenger processing under US-VISIT; with IDENT being the biometric segment of US-VISIT. All modifications to the passenger processing techniques are either requested by US-VISIT or coordinated with US-VISIT. We have staff permanently assigned to the US-VISIT project to ensure that this coordination continues.

NSEERS information resides in the ENFORCE database. CBP's National Targeting Center has established access to the ENFORCE database, and thus can access NSEERS information for law enforcement purposes.

2. In your written testimony, you state that the National Targeting Center contributes information on international crew lists to the TSC consolidated watch list through an information sharing arrangement with the Transportation Security Administration. Please explain how that works and tell us whether that information is jeopardized by the recent European Parliament's declarations about not sharing flight information with the U.S.

Answer:

The Transportation Security Administration (TSA) performs security threat assessments on crewmembers for certain international flights. In some cases, the National Targeting Center and TSA may share results of the threat assessment with the Terrorism Screening Center. The exact process is Sensitive Security Information, however, the Department can provide more detailed information in the appropriate setting, if necessary. This process is not affected by the European Parliament's declaration.

The carriers transmit the crewmember names via the Advanced Passenger Information System (APIS). This transaction allows the carriers to communicate to CBP and TSA all employed crewmembers using the same mechanism used to communicate crew member(s) of scheduled flights. This transaction does not constitute an arrival, departure or overflight. Its sole purpose is to allow TSA to electronically receive and "certify" a carrier's crew member(s). This process is not affected by the European Parliament's declaration.

3. Mr. Bartoldus, Mr. McMahon testified that a "patrol officer queries the name and date of birth of the suspicious person through the NCIC system. If the individual is a 'person of interest,' the patrol officer receives a Violent Gang and Terrorist Organization File (VGTOF) 'hit' that directs the officer to call a toll free number for additional direction from the Terrorist Screening Center. Once the Terrorist Screening Center is contacted, additional information is provided which places that 'hit' into any one of four (4) classifications; arrest, detain, investigate, or query. This interaction also expands to include the FBI's Counter Terrorism Watch that has the ability to provide detailed direction and information on what action to take next in addition to providing further identifying data." Could you please describe in detail how a Customs agent will use the TSC.

Answer:

A CBP Officer goes through the National Targeting Center (NTC) to contact the TSC. The NTC verifies the information from the Interagency Border Inspection System (IBIS) and will then contact the TSC to aid in determining whether the subject at the Port of Entry or apprehended by the Border Patrol is a match to the record. The TSC reviews the underlying record, including any additional biographical details, to determine whether the subject is a positive match. If a positive match is made, the TSC provides relevant derogatory information to aid in the CBP determination of admissibility.

4. Mr. Bartoldus, according to your written testimony, the TSC enhances CBP's effectiveness as it provides for one consolidated watch list rather than the multiple lists that were maintained by different departments and agencies prior to TSC's existence. Would you please describe in greater detail how one list will enhance the Customs and Border Patrols effectiveness? How much more effective would you say CBP is with the creation of TSC?

Answer:

The single list aids CBP in the following ways: most importantly it is the single Government list compiled with input from the Intelligence and Law Enforcement Communities for agencies such as CBP, which have the vital role of securing United States borders. This compilation of persons of concern for terrorism associations greatly amplifies CBP's ability to focus on persons who represent threat to the U.S, through use of long-held legal and regulatory authorities related to border inspections. Secondly, because the TSCs' primary mission is dedicated to watchlisting, they are able to gather and disseminate data, in a very timely manner. Thirdly, the TSC, and NTC, as 24/7 operations, are well-equipped to resolve encounters, in a timely fashion, 'round the clock. Lastly it aids in resolving cases in which an individual is improperly identified as a match

to a record. All of these factors make CBP more effective as it works closely with the TSC each day.

5. According to a recent GAO report, watch list sharing is governed by varying policy and procedures. This was attributed to the fact that each agency has developed its own policies and procedures in response to its own specific needs. Under the TSC, have you modified any of your policies and procedures?

Answer:

Yes. With the creation of the TSC, CBP components direct requests for watchlisting nominations to the Terrorist Threat Integration Center (TTIC), which processes the requests and sends the nominations to the TSC. Our policies do further direct that we engage with both Immigration and Customs Enforcement (ICE) and the Joint Terrorism Task Forces (JTTF) in the field upon interception of watchlist hits. It is important to note that ICE and JTTF agents have independent access to derogatory information on watchlisted persons and do not rely upon CBP for that data.

6. Your written testimony mentioned that the National Targeting Center includes Food and Drug Administration personnel and that you maintain a round the clock enforcement of the Bio Terrorism Act. Just how do you do that? Do you provide information to the TSC on potential bio terrorists, and if so, what terrorist organizations are of most concern?

Answer:

Section 307 of The Bioterrorism Act mandates that Notice be given to the Food and Drug Administration in accordance to section 801(m) of the FD&C Act, for any article of food that is being imported or offered for import into the United States. The Act requires that this Notice be provided in advance of the importation of the article of food involved or the offering of the food for import, which will provide adequate time, for the Secretary to receive, review, and appropriately respond to such notification.

To accomplish this, the Food and Drug Administration established an office called the Prior Notice Center (PNC) that operates 24hrs a day 7 days a week to receive, review, and respond to these notices as they are submitted. The purpose of prior notice is to enable FDA to conduct inspections of imported foods at U.S. ports and target foods that may pose a significant risk to public health, based on the information submitted.

Prior Notice is submitted electronically to FDA through either CBP ABI/ACS or the FDA Prior Notice System Interface (PNSI). Regardless of the mode of transmission the prior notice information will undergo both a validation process and a screening in FDA's

Operational and Administrative System for Import Support (OASIS) for food safety and security criteria. If the FDA system does not indicate that further evaluation of or action on the notice or article of food is necessary for prior notice the system will transmit a message back through OASIS to ABI/ACS interface for CBP that the article of food may be conditionally released. However, if the additional evaluation of the prior notice information is necessary, personnel at the FDA's PNC will access the information provided and determine if that information suggests the potential for a significant risk to public health.

FDA personnel are able to make this determination by using their experience of imported foods, utilizing the expertise within the Center for Food Safety and Applied Nutrition (CFSAN), the Center for Veterinary Medicine (CVM), the inspectional information obtained by the Office of Regulatory Affairs (ORA) and utilizing the expertise of the CBP/NTC targeters and CBP's Automated Targeting System (ATS).

ATS, in conjunction with OASIS, plays a major factor in the final decision that is being made. ATS takes information submitted regarding the source, destination, and other characteristics of the shipment and screens it against historical data and established rules to provide a numerical value of the potential terrroist risk that is associated with that incoming shipment. This information is combined with FDA health screening information provided by OASIS, and if the combined result indicates that a potential health risk is present, FDA will advise CBP to place a hold on that article so that an examination or other actions can be taken by either FDA or CBP at the border of the United States before the product enters domestic commerce.

Evaluations of inbound cargo shipments are made on a shipment-by-shipment basis. CBP and FDA are continuously working together to incorporate further intelligence. To date, the TSC has not been consulted, because no shipments have risen to that level.

7. Please walk us through a scenario where a CBP agent, either at a port of entry or a Border Patrol officer, encounters a terrorist suspect. How do they communicate and receive information with the NTC and the TSC? Is this an electronic communication? What databases does a field officer screen through and what might signal them to contact your Center? Do these agents ever contact the TSC directly?

Answer:

At a POE, the arriving passenger will be routed to a primary inspection booth where his documents will be checked, intentions determined and initial database queries completed. The Advanced Passenger Information System (APIS) is the basic primary inspection database tool. This system lists the arriving passengers for each APIS flight and indicates

whether they are a match, or possible match, for any type of lookout, including terrorism related lookouts. If the CBP officer conducting the primary inspection ascertains that there is a terrorist lookout, or otherwise suspects the subject is involved in terrorist activities, the passenger is electronically referred to Passport/Document secondary inspection and is physically escorted there by the primary CBP officer. If the passenger is the subject of a terrorist lookout the CBP secondary officer contacts the NTC telephonically and is assigned an activity log number. It is mandatory for CBP officers at a POE to contact the NTC for all lookouts that are terrorist related. CBP officers at the POE do not normally contact the TSC directly.

Border Patrol Agents who encounter a terrorist suspect also contact the NTC, generally telephonically, for assistance in determining whether the subject is a match and for coordination with the TSC.

8. In your testimony, you mention that the NTC has a support mission with other agencies within DHS (TSA, Coast Guard, Immigration and Customs Enforcement), and outside DHS (Department of Energy, the FBI and the CIA). Please further describe the type of support NTC provides these agencies. To what degree do or should these agencies have access to information in NTC databases? I understand that TSA uses the NTC to check passenger lists on incoming flights, but under what circumstances might ICE or Coast Guard personnel use NTC databases? Within DHS, how do CBP, ICE, TSA, and Coast Guard personnel contact the NTC? Is this a manual or phone communication or are databases linked to field operations? If not, when will this automation occur? Is there planning in the FY05 budget or out years to accomplish this?

Answer:

Coast Guard and ICE personnel (including Federal Air Marshals at NTC) have access to various systems, including our Activity Log and Automated Targeting System-Passenger. The Coast Guard Intelligence Coordination Center (ICC) has direct access to the ATS-P (People) system from the watch floor. ICC also has access to ATS-N (Cargo) through an exchange of personnel with NTC. Access to these systems is strictly granted for purposes of enabling those staff to accomplish their mission at NTC. Circumstances in which they need access to databases include name queries of crewmembers and removal of individuals from Ports of Entry. Within DHS, most contact is telephonic, though email is used as well. The IBIS database is linked to field operations in that it reflects Advance Passenger Information System names from air and sea carriers, queries of individuals at Ports and other live information.

9. The FY 2005 budget request for the NTC is $3.1 million dollars and 15 FTE's (30

positions). How many positions do you currently have filled at the NTC? How many temporary duty (TDY) positions do you have? Do you have sufficient resources and personnel to provide the level of support necessary to all of the agencies that may rely on your information?

Currently, the NTC has a core staff comprised of 31 permanent CBP Officers and Supervisors supporting around the clock operations, with 3 additional permanent Officers having been recently selected with their arrivals pending relocation from their current CBP assignments. Throughout the course of fiscal year 2004 NTC has supplemented permanent staffing with an average of 23 to 25 CBP Officers and Supervisors on temporary duty assignments (TDYs). NTC had a peak of 48 CBP Officers on TDY assignments supporting operations during the December-January elevation of the Homeland Security Threat Advisory Level. The additional staff requested in the FY 2005 budget will result in a reduced need for TDY support, the ability to focus on threat specific issues without significantly impacting routine operations, and will enable NTC to continue providing CBP field personnel with immediate responses to targeting and research inquiries.