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THE PRESIDENT'S FISCAL YEAR 2006 BUDGET REQUEST FOR THE DEPARTMENT OF HOMELAND SECURITY ADMINISTRATION AND RELATED PROGRAMS

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

APRIL 26, 2005

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ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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CONTENTS

	Page
Hearing held on April 26, 2005	1
Statement of Senator Ensign	18
Statement of Senator Inouye	1
Prepared statement	1
Statement of Senator Lautenberg	20
Statement of Senator Pryor	22
Statement of Senator Stevens	1

WITNESSES

Barclay, Charles, A.A.E.; on behalf of the American Association of Airport Executives/Airports Council International-North America	4
Prepared statement	5
May, James C., President/CEO, Air Transport Association of America, Inc.	11
Prepared statement	13

APPENDIX

Letter, dated April 25, 2005, to Hon. Ted Stevens and Hon. Daniel K. Inouye from: Marc Rotenberg, Executive Director; Marcia Hofmann, Director, Open Government Project; and Melissa Ngo, Staff Counsel, Electronic Privacy Information Center (EPIC)	27

THE PRESIDENT'S FISCAL YEAR 2006 BUDGET REQUEST FOR THE DEPARTMENT OF HOMELAND SECURITY ADMINISTRATION AND RELATED PROGRAMS

TUESDAY, APRIL 26, 2005

U.S. SENATE,
SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 2:30 p.m. in room SR–253, Russell Senate Office Building, Hon. Ted Stevens, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

The CHAIRMAN. There are a few extra-curricular activities going on around here today, but we'd like to start the hearing, if we may. We want to welcome back the witnesses who were scheduled to appear on February 15th. Today's focus will be on the effect of the Fiscal Year 2006 Transportation and Security Agency budget request on the aviation industry and the American economy.

Now, some time ago, 15 members of our Committee signed a letter to the Appropriations Committee requesting that the passenger fee increase not be included in the Homeland Security Appropriations bill. Chairman Gregg is aware of our concerns, and has raised similar issues in the Appropriations hearings. We look forward to learning more about the impact of this proposal from our witnesses.

Let me yield to Senator Inouye at this time.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Senator INOUYE. Thank you, Mr. Chairman. I have a prepared statement I'd like to have made part of the record.

The CHAIRMAN. It will be.

Senator INOUYE. May I just say that I concur with you, and I was 1 of the 15 who signed the letter in opposition of the security fee.

[The prepared statement of Senator Inouye follows:]

PREPARED STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Mr. Chairman, as we begin this new session, I rank our oversight of the Transportation Security Administration as one of our highest priorities. As the primary Committee of jurisdiction for transportation security, I'm looking forward to a spirited

and consistent review of TSA's work as we continue to make progress securing all modes of transportation.

I have three principal areas of concern:

1) Congress agreed in 2001, by nearly unanimous votes in the House and Senate, that transportation security must be a national security function. However, between TSA's endless reorganizations and the recent rhetoric about returning to private security screening companies, it is becoming apparent that this central, guiding principle is being eroded. If we lose sight of this principle, we will forget one of the most important lessons of September 11th.

2) Aviation security has received 90 percent of TSA's funds and virtually all of its attention. There is simply not enough being done to address port, rail, motor carrier, hazardous material, and pipeline safety. That must change, quickly.

3) The Administration is proposing to increase aviation security fees. This makes no sense to me. The airline industry is bordering on total bankruptcy, and the Administration wants to add to its costs. Yet at the same time, the Administration is demanding that its unaffordable tax cuts be made permanent. I don't follow their thinking, and quite frankly, I don't believe the proposal will go far.

Mr. Chairman, over the years, and particularly since 9/11, this Committee has led the effort to make transportation security a matter of national security. We crafted two landmark bills, the Aviation and Transportation Security Act of 2001 and the Maritime Transportation Security Act of 2002, to ensure that funding and programs were developed to completely change the way we address security. The September 11th tragedy, the Madrid train bombing and many other attacks remain locked in our conscience as we try to do all we can to avoid another attack.

The continued threat risk is real and the vulnerabilities are real, across all modes of transportation.

We recently witnessed a rail tank cargo accident—not a terrorist attack—in Graniteville, SC. An entire town had to be evacuated, demonstrating the potential harm if someone does target a rail tank car. The District of Columbia was so concerned about rail cars carrying hazardous materials traversing the city, they adopted a resolution to ban them.

Port security is of particular interest to me. My state of Hawaii is entirely dependent upon shipping and the steady flow of maritime commerce. The dock strike at the port of LA/Long Beach in 2001 caused people in my state to begin running out of basic supplies. If an attack occurs, it could be weeks before service is renewed.

It is important to remember that 95 percent of the Nation's cargo comes through the ports, so a port incident will send devastating shockwaves through the entire economy, impacting every state. Yet the security initiatives at most ports have been, to this point, woefully underfunded, and most ports are ill-prepared for an attack. Unfortunately, our maritime system is only as strong as its weakest link. If there is an incident at any one port, the whole system will screech to a halt, as we scramble to ensure security at other ports. If we had to shut down our entire port system, the economic damage would be widespread, catastrophic and possibly irreversible.

Considering these simple observations, I cannot comprehend the Administration's lack of serious attention and commitment to port, rail, motor carrier, hazardous material and pipeline safety initiatives.

Security funding for all modes of transportation beyond aviation has been desperately lacking. The 9/11 Commission found, "over 90 percent of the Nation's $5.3 billion annual investment in the TSA goes to aviation . . . [and] . . . current efforts do not yet reflect a forward-looking strategic plan." And according to Senate Banking Committee estimates, the Federal Government has spent $9.16 per airline passenger each year on enhanced security measures, while spending less than a penny annually per person on security measures for other modes of transportation.

But considering the real threat risk and the constant talk about our War on Terror, I find it even harder to understand how the Administration has forgotten that, in a post-September 11th world, transportation security is national security.

Based on the President's Budget, there are apparently some in the Administration who seem to believe that our work is done. Their budget proposal suggests a wholesale dismantling of the Transportation Security Administration. In the last 2 years, we have witnessed a near constant reorganization that, under the current proposal, now makes Maritime and Land security virtually nonexistent at TSA. The changes suggest either a fundamental lack of understanding of what it will take to ensure the security of all transportation modes, bureaucratic mismanagement, or worse yet, the Administration's complete loss of a sense of national urgency.

The President's Budget recommends shifting critical work away from the Transportation Security Administration (TSA) to other organizations within DHS that have neither the expertise nor the necessary authority to be effective. In my view, further decentralizing the responsibilities of TSA will destroy the remaining, limited accountability that TSA provides for transportation security.

The problems with the Budget proposal go further: it offers inadequate funding for the U.S. Coast Guard to meet both its increased homeland security responsibilities and its traditional missions like search and rescue and enforcement of coastal laws; it creates an odd rearrangement of the security grant programs that not only defies Congressional directives, but adds bureaucracy and decreases accountability; it cedes TSA's regulatory authority of the Transportation Worker Identification Credential (TWIC) program; and the list goes on.

On aviation security, the Administration's proposal creates as many problems as it aims to solve. While TSA spending in FY06 would increase by $156 million, this funding level depends on $1.5 billion generated by increased security fees on airline passengers. Since this proposal was unveiled, there has been no shortage of airline and industry analysts that have raised deep concerns over what effect this may have on the future of existing air carriers.

The Administration cannot satisfy its budget needs on the backs of one industry. I know that several other countries and airport authorities impose security fees, but with perhaps one or two small exceptions, no one imposes all of the national security costs on the airlines. We can debate how much we need for security, but it does not make any sense to place the burden for new DHS revenue on an airline industry that is bordering on total bankruptcy, when at the same time the Administration is demanding that its unaffordable tax cuts be made permanent.

The U.S. economy depends on a strong commercial aviation industry. Since September 11th, the U.S. air carriers have taken unprecedented steps to cut their costs, and their employees have been true heros. In the face of steep layoffs and cuts in pay and benefits, the workers have been selflessly supportive of the industry and still manage to provide the highest level of service possible day in and day out. I think we must be very careful in dealing with issues that will have wide ramifications for the aviation industry and its workers.

TSA should be aggressively seeking improvements to the current transportation security regimes for all modes and promoting the technological and capital improvements that will save considerable money in the long run while improving security. Instead, we have been given a budget that seeks short-term solutions that, I believe, will have negative consequences in the long term.

Given the many misplaced priorities that I see in the President's Budget proposal, it is clear that the Congress needs to help refocus the Department.

I have been discussing the real needs of the U.S. transportation security system with my fellow Committee members, and we have been developing a transportation security reauthorization proposal to provide further direction to the Department's cargo security functions, to strengthen aviation, maritime, rail, hazardous materials, and pipeline security efforts, and enhance interagency cooperation. The proposal will incorporate several Commerce Committee-reported and Senate-passed bills from the prior Congress and will also put forth new ideas to enhance transportation security across all modes of transportation.

We expect a fully funded, effective operating Administration that can:

- Provide security to the traveling public and instill confidence in the first line of defense—be it an airport screener or a seaport agent;
- Establish secure, efficient cargo systems for air, land and sea;
- Deter people that seek to do harm.

It is easy to set the goals, but often difficult to achieve them. I speak for my colleagues when I say that this Committee is fully committed to achieving these goals. And we have a record that demonstrates our ability to deliver a bipartisan, broadly supported result.

The difficult work of securing all of our major modes of transportation, including our ports, railroads, intercity buses, pipelines, and motor carriers, is just beginning and the country demand a robust agency within DHS dedicated to that task.

I thank the witnesses for their participation and I look forward to their testimony.

The CHAIRMAN. May we have the witnesses, Mr. Barclay and Mr. May, come to the witness table. If it's agreeable, we'll put the statements in the record, if anyone has statements, and proceed to this hearing.

As I said, these are the gentlemen who waited for us at the previous hearing, and we didn't get to them, so we agreed to have a hearing so we can put into the record their comments.

Chip, let's call on you first.

STATEMENT OF CHARLES BARCLAY, A.A.E.; ON BEHALF OF THE AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES/ AIRPORTS COUNCIL INTERNATIONAL–NORTH AMERICA

Mr. BARCLAY. Thank you, Mr. Chairman.

It's always a personal pleasure to appear before the Commerce Committee, airports are grateful for the Full Committee focus on transportation security, and thankful for the exceptional experience and knowledge that the Chairman and Ranking Member bring to the Committee leadership at this critical time for our industry. I'd also like to thank former Chairman McCain for his leadership through one of the most difficult periods in our industry's history.

I want to discuss just three quick points on the TSA budget from our testimony, but given their critical nature, I'd like to first preface those remarks by saying that we appreciate very much the leadership at DHS, and TSA, and the service of all the men and women of TSA.

Our members have formed important partnerships with TSA, both locally and nationally. We've solved a number of difficult problems with TSA, and we have some important policy disagreements, a few of which I want to talk about today.

First, nothing frustrates our members more than seeing a cost increase being sold as a budget cut. Every time we incur the capital cost of building in-line explosive detection systems at airports, the operating cost savings that TSA realizes in personnel, pays off that capital cost exceptionally quickly, just over a year, according to GAO's analysis. And then that savings continues on into the future for TSA.

The Administration's proposed cut in LOIs for EDS installations is just not smart government. It may be clever Federal budgeting in the very, very, very short term, but in the real world of economic effects, it increases TSA's costs, rather than lowering them. Smart government would be to increase LOIs and earn the permanent reduction in TSA's costs that that brings, and our testimony has a number of examples of how that occurs.

Second, airports also disagree with the Administration proposal to increase security fees. Fighting a war on terrorism isn't the job of one industry that happens to be a popular target of terrorists due to its importance to our modern economy. Certainly users of any industry should pay for the costs they impose, but wars need to be fought by nations, not unlucky target industries. We think this user fee proposal gets that allocation philosophy wrong, and we would also question the wisdom of the timing of this proposal's impact on a seriously financially ailing industry.

Third, Mr. Chairman, as you pointed out in the new Secretary's confirmation hearings earlier this year, DHS cannot keep looking forward to ever-increasing funding to carry out all the missions that are on their plate. Airports agree, and we have more to offer than just criticism of the Administration's proposed budget cuts. As branches of local governments, with local law enforcement powers,

and local police divisions, airports are willing and able to share security responsibilities. TSA and local law enforcement need to allocate more responsibilities through local mutual aid pacts, as occurs throughout the law enforcement field, rather than spending our time focused on each other as regulator and regulated party. We should both be pointed outward, looking for the bad actors, not inward watching each other. This simply takes the allocation of logical responsibilities among law enforcement agencies, rather than a regulatory approach. Some responsibilities have been allocated. They've saved TSA money. Our members tell us that more can be saved by operating precisely as multiple law enforcement agencies do, outside the boundaries of an airport.

In closing, I'd like to mention the airports' strong objection to another Administration-proposed budget cut that's part of this Committee's jurisdiction, even though it's not subject to today's hearing—the exceptionally large proposed cut for the Airport Improvement Program would hit small airports and small airport states which can least afford it—the hardest. Larger airports would be forced to choose between offering inadequate future capacity, or passing new costs on to financially ailing tenants when they can least afford it.

We understand the need to cut the Federal deficit, and the moral imperative not to pass along debts to future generations, simply because we wanted to consume more than we could produce. But there is an equal imperative to pass along and invest in infrastructure that will allow those future economies to grow and prosper. Public infrastructure facilities that create wealth over their full, useful life are—we respectfully submit—the wrong places to cut. We owe it to future generations not to leave them broke, and we owe it to them not to leave them with broken infrastructure.

Mr. Chairman, I'll be happy to answer any questions that I can.

[The prepared statement of Mr. Barclay follows:]

PREPARED STATEMENT OF CHARLES BARCLAY, A.A.E.; ON BEHALF OF THE AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES/AIRPORTS COUNCIL INTERNATIONAL-NORTH AMERICA

Thank you for the opportunity to share with the Committee the views of the airport community on the President's Fiscal Year 2006 budget request for the Transportation Security Administration. I am testifying today on behalf of the American Association of Airport Executives (AAAE), Airports Council International—North America (ACI–NA), and our Airport Legislative Alliance, a joint legislative advocacy organization. AAAE represents the men and women who manage primary, commercial service, reliever, and general aviation airports. ACI–NA represents local, regional and state governing bodies that own and operate commercial airports in the United States, and Canada.

Before moving to some of our specific thoughts and concerns on the TSA budget, I would be remiss if I didn't take the opportunity to tell you how delighted we are to be working with you, Chairman Stevens, as well as with Senator Inouye and the other distinguished Members of this Committee during this Congress to address the wide range of challenges facing the aviation industry. The depth of experience, particularly on the part of the Chairman and Ranking Member of this Committee, is unparalleled, and we look forward to having those talents at work on the important issues before us all.

I also want to commend you, Mr. Chairman, for focusing attention on the TSA budget so early in the process. In a world of limited resources, it is absolutely critical that the TSA establish priorities within its budget that enable the agency to meet its core mission, offer the greatest benefits in terms of enhanced security, and effectively utilize taxpayer dollars. At a recent hearing before the Senate Homeland Security and Governmental Affairs Committee, Chairman Stevens, you said that the

Department of Homeland Security needed to focus on doing more with the resources it has been given rather than relying on ever increasing budget allocations. Recognizing that there are limits to the amount of funding DHS and TSA will receive, it is imperative that TSA's provision of aviation services be made more efficient. Unfortunately, the President's Fiscal Year 2006 budget does not meet this test. It remains silent on the critical issue of more efficiently managing checked baggage screening, it reduces the general fund support available for aviation security, and proposes to pass along a $1.5 billion bill to the travelers who use our Nation's airports.

The airport community, backed by a recommendation of the 9/11 Commission, continues to believe that TSA can realize important savings if they would quickly move forward with the permanent installation of in-line explosive detection equipment in airports. Other personnel savings can be achieved through the rapid development, certification, and deployment of new technology. More can be done to focus on dangerous people rather than dangerous things so that the most effective screening takes place before a suspect individual ever has access to critical transportation assets. More can be done also by reducing the TSA's plethora of non-screening, overhead, liaison, and regulatory personnel who occupy offices at just about every commercial airport in the U.S. and some international locations as well. TSA and the department can also avoid unnecessary duplication and costly delays on key programs like Registered Traveler by working more closely with its industry partners.

Additionally, TSA can be more proactive in partnering with airports and deferring to them to address security concerns such as perimeter security and access control, for which local airport operators have superior expertise and experience as well as ongoing responsibilities. Keeping these traditionally local duties in local hands allows TSA to leverage airport and local resources and enables the agency to better focus on its core missions of baggage and passenger screening and providing intelligence to local law enforcement.

EDS Installation: In-Line Systems Enhance Security and Reduce Personnel Requirements

The greatest area of opportunity in terms of enhanced security and potential long-term TSA budget savings comes from the permanent installation of explosive detection equipment in the Nation's airports. In order to meet Congressional deadlines to screen all checked baggage placed aboard commercial aircraft, TSA quickly placed thousands of explosive detection system (EDS) and explosive trace detection (ETD) machines in airports across the country. Many of those machines have been placed in airport ticketing lobbies without the kinds of integrated approaches that take maximum advantage of their certified throughputs and alarm reconciliation capabilities. The result, too often, is crowded airport lobbies (a safety and security hazard), major backups at a number of security screening checkpoints, and a huge increase in the number of TSA personnel necessary to operate the equipment.

While virtually everyone agrees that the best solution at many airports is to move EDS equipment from crowded lobbies and place it "in-line" as part of an airport's integrated baggage system, making the necessary changes at airports—reinforcing flooring, electrical upgrades, building new facilities, etc.—are neither easy nor inexpensive. Current cost estimates run in the $4 billion to $5 billion range for airports nationwide. These upfront capital costs are modest, however, when compared to the extraordinary expenses necessary to pay for literally thousands of extra screeners year after year using today's model. In-line screening, in airports such as Tampa International Airport, has also been shown to reduce the rate of TSA screener on-the-job injuries. The handful of airports that currently have "in-line" baggage systems report that they have paid for themselves with personnel cost reductions in as little as 16 months.

The case of the Lexington Blue Grass Airport in Lexington, Kentucky, offers a perfect example. In Lexington, a $3.5 million investment to make the terminal modifications necessary to establish an in-line baggage system instead of the terminal lobby explosive trace detection (ETD) protocol that was offered as an alternative has resulted in annual personnel savings of more than $3 million. The TSA has been able to use four screeners for the in-line system per shift rather than the 30 that would have been necessary for primary checked bag screening using the ETD configuration. In addition, the in-line EDS option in Lexington allows for reduced congestion in terminal areas, a result that improves security and enhances passenger convenience. Large airports stand ready to achieve even bigger gains. Modeling in San Francisco, for example, shows savings of tens of millions of dollars annually for an in-line EDS solution.

The Government Accountability Office in its February 15 appearance before the Committee noted that at the nine airports where the TSA has issued Letters of In-

tent (LOIs) to begin moving EDS equipment in-line, the agency estimates that the move will save the Federal Government $1.3 billion over seven years and that TSA will recover its initial investment in in-line systems at those airports in just over a year. GAO further noted that in-line EDS systems at those nine airports will reduce by 78 percent the number of TSA baggage screeners and supervisors required to screen checked baggage from 6,645 to 1,477.

Through Fiscal Year 2005, Congress has appropriated $1.783 billion for EDS-related terminal modifications, although significant portions of those funds were used by TSA on the short-term challenges associated with getting EDS machines in airports to meet the original statutory deadlines. Conservative estimates show that the Federal Government needs to commit a total of $4 billion to $5 billion to get the job done at airports that require these solutions. The Federal Government has met less than half of that need since September 11.

Unfortunately, the prospects for quickly addressing the existing funding gap remain bleak. The TSA budget request for FY 2006 calls for only $250 million for EDS installation projects, the amount mandated in law by VISION–100 FAA reauthorization legislation. While $250 million is certainly a significant amount of money, the fact is that it will allow TSA to move forward at only a handful of airports.

TSA has estimated that roughly $240.5 million of the $250 million requested will be used to meet existing commitments at the nine airports covered by the existing eight LOIs with the agency (the LOI for Los Angeles World Airports covers both Los Angeles International Airport and Ontario International Airport). The $240.5 figure assume that the agency is allowed once again to ignore provisions in law that require the Federal Government to pay for 90 percent of the costs of those projects, otherwise it will be much higher.

As you recall, the LOI process allows interested airports to provide immediate funding for key projects with a promise that the Federal Government will reimburse the airport for those expenses over several years. At Dallas-Fort Worth International Airport, for example, the airport used its strong rating in the financial market to leverage the LOI and to issue bonds to install these systems. This approach takes advantage of professional airport management capabilities and maximizes the use of limited Federal resources to ensure that key construction projects get underway as soon as possible.

Under the LOI process, the Federal Government has committed to reimbursing airports for these projects over a three- to five-year period. The following lists the LOI airports and the total project cost at those airports:

LOI Airports

Airport	Total Cost
Atlanta	$125 million
Boston Logan	$116 million
Dallas/Fort Worth	$139 million
Denver International	$95 million
Las Vegas McCarran	$125 million
Los Angeles/Ontario	$342 million
Phoenix	$122 million
Seattle/Tacoma	$212 million
Total LOI Airports:	$1.276 billion

Although airports contend that the cost of these projects should be met *entirely* by the Federal Government, given its direct responsibility for baggage screening established in law, in light of the national security imperative for doing so, and because of the economic efficiencies of this strategy, airports have agreed to provide a local match of 10 percent in the case of large and medium hubs and 5 percent for smaller airports. We continue to strongly oppose proposals by the Administration to dramatically increase the local share beyond the levels established in VISION–100.

While the projects at those eight airports are necessary, critical, and a top priority, the simple fact of the matter is that incremental installments of $250 million a year will not get projects started at additional airports in the foreseeable future. Clearly, more resources are needed to address the dozens of other airports that do not currently have LOIs with the TSA. To give the Committee an idea of the scope of current needs that exist beyond the LOI airports, we have included the latest data we have from a number of airports that have identified EDS installation as a major challenge facing their facility.

Airports Currently Without Funding in Place for EDS Installation

Airport	Project Cost Estimate
Albuquerque	$48 million
Anchorage	$27 million
Biloxi	$5 million
Bismarck	$20 million
Bradley	$35 million
BWI	$65 million
Charlotte	$40 million
Chicago Midway/O'Hare	$90 million
Cincinnati	$20 million
Cleveland	$45 million
Colorado Springs	$15 million
Detroit	$100 million
Elgin AFB	$2 million
El Paso	$15 million
Ft. Lauderdale	$85 million
Grand Rapids	$20 million
Guam	$14 million
Honolulu/Kahului	$78 million
Houston	$115 million
Jackson	$9 million
John Wayne	$12 million
Kansas City	$34 million
Memphis	$42 million
Miami	$200 million
Milwaukee	$35 million
Minneapolis/St. Paul	$30 million
Nashville	$40 million
Newark	$99 million
New Orleans	$14 million
New York LaGuardia	$98 million
New York JFK	$250 million
Oakland	$30 million
Omaha	$18 million
Orlando	$140 million
Palm Beach	$30 million
Panama City	$10 million
Philadelphia	$65 million
Portland	$45 million
Port Columbus	$22 million
Providence	$38 million
Raleigh-Durham	$40 million
Richmond	$30 million
Rochester	$10 million
St. Louis	$90 million
St. Thomas	$10 million
Salt Lake City	$20 million
San Antonio	$40 million
San Diego	$20 million
San Francisco	$22 million
San Jose	$172 million
San Juan	$130 million
SW Florida	$28 million
Tampa	$124 million
Tucson	$10 million
Washington Dulles	$121 million
Washington Reagan National	$52 million
Total:	$3.019 billion

We believe that there are dozens of additional airports not listed here that have yet to develop comprehensive cost estimates or that have not responded to our requests for information.

Despite these overwhelming needs, the Federal Government does not yet have a long-term EDS solution at a significant number of airports across the country. The

TSA's task has not been made any easier by opposition from the Office of Management and Budget (OMB) to the issuance of additional LOIs to airports for these projects. It is our sincere hope that OMB will quickly move past what we believe is a short-sighted view of this problem and focus on the long-term benefits that can be achieved by immediately investing to make the terminal modifications necessary to accommodate EDS equipment.

In-line systems require up-front capital expenditures, but they pay for themselves in short-order through major reductions in personnel costs. This is an example of budget rules that are "penny-wise and pound foolish." One need only look to the real-world example of the dozen or so airports where EDS systems have been properly installed to get real examples of the dramatic personnel savings that can be achieved by moving forward with these projects. We appreciate the interest that you and Senator Inouye have shown in this problem, Mr. Chairman, and we look forward to continuing our work together to find creative approaches to addressing the existing EDS installation funding shortfall. Airports stand ready to support the LOI process and airport managers have repeatedly expressed to TSA their ability to accommodate a wide variety of financing options to help the Federal Government fulfill its responsibility.

Beyond additional resources, we urge TSA to continue its work with airport operators and managers to ensure that proposed solutions and changes are really the best course at an individual facility. Airport professionals understand the configuration and layout of their facilities better than anyone and are uniquely suited to highlight where pitfalls lie and where opportunities exist. In addition, TSA must continue to work with airport operators to optimize the use of limited space in airport facilities and to pay airports for the agency's use of space in accordance with the law.

Airports are pleased to see funding in the TSA budget request for ongoing maintenance of EDS machines. As the machines age and as their use continues to grow and their warranties expire, it is critical that funding is provided to keep the existing machines in operation and to restore machines that fail.

Encouraging Development and Deployment of New Technology

In addition to investing in necessary infrastructure improvements and maintenance, the Federal Government needs to look toward the promise of new technology and invest in making those promises a reality. We remain convinced that there are a number of additional applications for new technology to improve baggage screening, for example. The key is for the Federal Government to encourage innovation in these areas and to make it a priority to investigate and approve new technology as quickly as possible. "On-screen" resolution using EDS equipment, for example, offers great promise in enhancing the efficiency of integrated in-line baggage systems, and the utilization of technology to achieve that goal should be encouraged.

We must also look beyond our borders to learn from the experiences of the rest of the world. In many instances, the goals that we have been discussing over the course of the past several years both in terms of operations and technology are already a reality in many places. We would be wise to study those successes and incorporate best practices where appropriate.

It is our hope that the proposed move of TSA research and development programs to the Science and Technology Directorate will achieve synergies and avoid duplication as the Department contends. As this process moves forward, however, we must ensure that research and development efforts are driven by real needs in the field and that efforts to centralize the process do not lead to a disconnect between research and system needs or a dilution of effort.

Screening Coordination and Operations Office

The budget also includes a sweeping proposal to consolidate several critical programs under the Screening Coordination and Operations Office, which is an important and ambitious step toward a more focused approach on terrorist-related screening programs. As pointed out by the 9/11 Commission Report and in the recommendations of Transportation Secretary Mineta's Aviation Industry Rapid Response Team, which was formed in the days immediately after the 2001 terrorist attacks, focusing on the people who know and can do harm by using our systems against us is the key to both protecting critical transportation assets and maintaining the efficiency that is critical to the aviation industry and the economy.

Verifying and credentialing people who work in and pass through our transportation system and borders is the critical piece in allowing us to beat terrorists at their own game, and so we fully support the goals of the SCO. The key in moving forward will be to develop a common vision and to ensure that information is shared between these conceptually similar yet fundamentally different operations. At the same time, the SCO must design a process that gives members of the traveling pub-

lic and the industry confidence that privacy rights are protected. This includes a process for allowing workers and travelers falsely identified by one of the systems to clear their names. In addition, these programs must always be managed by industry- and application-specific needs, an outcome made easier by consultation with industry and technology experts.

The programs that are proposed to move from TSA to the newly created SCO have long histories with the aviation industry in development, deployment and daily operations. While gaining consistency through a coordinated SCO is important, we cannot allow centralization or reorganization-related distractions take programs and applications back to the starting line. Our experiences in the past three years have taught us that organizational realignments can stymie progress, so the challenge moving forward will be to ensure that we build upon the work that has been conducted to this point rather than recreate new systems and processes from scratch. The result will be better programs, brought on-line more quickly, at a lower cost.

Additionally, the Department must take advantage of government/industry partnerships as a way of moving programs forward. The Registered Traveler program for frequent flyers is a particular area of opportunity, and it is our hope that DHS will build on existing TSA pilot programs, make them interoperable, and expand them to a broader, standards-based cooperative program working with industry. We owe it to the traveling public to quickly deploy programs that improve security and reduce unnecessary delays. Cooperative approaches can likewise jump-start other long-stove-piped programs. We need more success stories of working together if we are to achieve greater security and improve efficiency and convenience for our citizens when they work and travel.

Focusing on TSA's Core Mission

Given the enormous task that TSA has been given to ensure the security of the Nation's transportation system, the agency must rely on its airport partners to continue performing important functions that we have successfully performed for decades such as perimeter security and access control. Airports are organizations owned and operated by state and local governments and, therefore, have the necessary and appropriate incentives to perform security responsibilities at the highest levels. The primary mission of an airport is to establish and maintain a safe and secure environment for travelers and the general public and to serve the community and the national aviation system by encouraging competitive air service. Airports have always been responsible for the safety and security of their facilities and the people who use them, and this will continue to be so.

Despite those facts, we continue to see efforts to expand TSA's mission into areas traditionally performed by airport operators and to expand the regulatory enforcement personnel at airports. This creates a natural conflict of interest by giving a single entity operational and oversight responsibilities. Clearly, there are a number of ways to better utilize limited TSA resources. Our members have been pursuing every opportunity to refine and improve our working relationship with TSA to avoid duplication and to develop more productive working relationships, and we will continue to do so. We firmly believe that these efforts will ensure that limited TSA resources are reserved for other priorities.

Additional Fees Should Be Rejected

While more can be done to enhance the partnership between TSA and the aviation industry, that does not mean that the aviation industry and the traveling public should shoulder the entire burden of paying for aviation security as has been proposed in the President's budget request with the addition of $1.5 billion in new passenger security fees toward what the budget calls a full "cost-recovery" model for aviation. If enacted, this would set the stage for security fee increases as far as the eye can see. This is totally unacceptable. In addition to adding to the financial woes of an already beleaguered industry, the imposition of new fees ignores the national security implications of aviation security—a fact that was evident on 9/11—and breaks faith with the commitments the Federal Government made as part of the Aviation and Transportation Security Act to assume responsibility for passenger and baggage screening. Congress should reject the President's proposal and push TSA toward adopting more efficient means of using technology and personnel.

Proposed Cuts to AIP Will Impact Ability of Airports to Address Security, Safety, Capacity

Before closing, I want to highlight a related area of the budget where we cannot do more with less and that is the Airport Improvement Program, which the President has targeted for a $600 million cut from the authorized level and a nearly $500 million reduction from last year's enacted level. While I recognize that the FAA budget is not the topic of today's hearing, proposed cuts in AIP will have a profound

impact on the ability of airports to address ongoing safety and capacity needs. In addition, at a time when congestion is returning to our airports and our skies, a reduction of airports' authorized share of the Airport and Airway Trust Fund is ill-advised.

Under AIR–21 formula levels, for example, the minimum entitlement at smaller commercial service airports would be reduced to $650,000 from $1 million and all primary entitlements would be halved if AIP is funded below $3.2 billion. Additionally, the cargo entitlement would be reduced, the set-aside for general aviation and non-primary commercial service airports would be scaled back and the general aviation entitlement of up to $150,000 per facility would be eliminated. It also is certainly worth noting that the Alaska supplemental entitlement would be halved as well.

While these cuts would affect all airports, they would obviously have the greatest impact on smaller facilities that rely more heavily on AIP entitlements to support capital programs. As members of this Committee are well aware, smaller airports are already struggling to deal with a number of burdensome Federal security mandates. Dramatic cuts to AIP as proposed in the President's budget will exacerbate those problems and call into question these facilities' long-term viability. Even if entitlement cuts are restored, which is no guarantee, the overall reduction in AIP funding will have a ripple effect throughout the aviation system.

Taken together, the President's budget is a $2.1 billion "one-two punch" on the aviation industry. Travelers and air carriers should not be asked to shoulder the burden of the $1.5 billion increase in security fees, and airports throughout the country cannot sustain a $600 million reduction in AIP from authorized levels.

Conclusion

Mr. Chairman, thank you for the opportunity to appear before you today. We have highlighted a number of areas in which we believe limited TSA resources can be leveraged to produce enhanced security and better results for America's taxpayer and the traveling public. We look forward to working with you and the TSA to ensure that our nation's aviation system is the most secure and efficient in the world.

STATEMENT OF JAMES C. MAY, PRESIDENT/CEO, AIR TRANSPORT ASSOCIATION OF AMERICA, INC.

Mr. MAY. Thank you, Mr. Chairman, I appreciate being here, and I appreciate the Committee's indulgence in letting us come back to finish this abbreviated hearing, from our perspective.

I'd like to thank you and the other members of this Committee who really have, a clear majority, really, who have expressed their clear opposition to the Administration's proposed tax increase. CBO has scored it at $2 billion, if it were enacted and passed through, it would add to the $3.2 billion the carriers are already paying, and it would mean that at that junction, through our Aviation Security Fees, we would be paying some 85 percent of the overall operating budget of the TSA, and I think that's wrong. You should know that it's a tax that would not just hit legacy carriers, but regional and small carriers equally hard, and we deeply appreciate your opposition.

Perhaps what's most disappointing is that this tax is contrary to a well-established public policy that aviation security is a critical component of maintaining national security of our country. Your Co-Chairman, Senator Inouye, authored an article that appeared in *The Hill* newspaper not long ago, and I'd like to quote from it, "We all recognize that after September 11 transportation security is a matter of national security. It had to become national security. The vote in Congress to make this fundamental change was 100–0 in the Senate, 410–9 in the House." Co-Chairman Inouye went on in the article to say, "After reviewing the Administration's budget request for the DHS and TSA, it becomes clear that the airline fee

proposal is but one example of the Administration's failure to equate transportation security with national security."

Mr. Chairman, in fact, all Americans benefit from a secure aviation system, whether or not they happen to be on an airplane at a given time or shipping goods. In addition, the U.S. economy benefits broadly from a safe and vigorous air transportation system, and for these reasons, the ATA and its members vigorously oppose this tax.

It's probably equally disturbing that TSA, in proposing this tax, has also failed to demonstrate a need for it in the face of well-documented and continuing weak financial management. Neither the security nor the business case for this tax increase was ever made to this Committee or anywhere else.

Consequently, the net effect is that airlines would be confronted with the worst of two worlds, an additional $2 billion tax on top of the $3.2 billion I mentioned a moment ago, with no apparent increase or enhancement to aviation security. It's equally troublesome that TSA wants to raise taxes without improved managerial oversight of its activities. As the GAO pointed out in a very recent report, managerial improvement is indispensable if important programs that will benefit the public are to move from the drawing board to reality. We've all read the stories, I don't need to repeat them here today.

At the same time, continuing problems with the no-fly list and selectee list make headlines on a regular basis, and the effort to put into place a system to augment CAPPS I is beginning to look a little bit like the search for the Holy Grail. First it was CAPPS II, then it was reborn as Secure Flight. And after some two years of effort, numerous missteps and an unknown amount of employee time and money, TSA has still not moved past the testing phase. So, you've got CAPPS I, CAPPS II, Secure Flight. Now, in addition, we're in the testing phase of a Registered Traveler program. There are five different programs set up at five different airport locations with five different airlines, none of which talk to one another, or conveniently communicate in a central system. And let's not overlook the lack of coordination with an effort to test on an international arrival passenger system, initiated not by TSA, but by Customs and Border Protection. And then there's the APIS, the Advanced Passenger Information System for passengers on inbound international flights.

In short, DHS is undertaking a wide variety of very important efforts that are simply not coordinated. And what's the solution? Two suggestions. First, to spend more wisely DHS needs the right plan and a strong management focus on coordination. Tell us what information you need, keep it within a central collection point, make it consistent, whether it's the State Department, or the Department of Homeland Security, or TSA, or Customs and Border Protection, so that we have a system that allows us to attack people, not things, which I think most of our security experts think is an important goal.

I think it's also time for TSA, DHS and the Committee to take a step back to develop an analytical, risk-based approach to guide how it spends its limited resources. This view was echoed by a task force on homeland defense chaired by The Heritage Foundation,

and CSIS. A key recommendation from that report is to rationalize government spending by establishing a risk-based mechanism for DHS-wide resource allocation and grant making. The 9/11 Commission made a nearly identical recommendation on making hard choices, we agree.

In conclusion, three suggestions, three principles that the Committee and DHS and TSA need to keep in mind. One, establish once and forever that aviation security is a function of national security, and should be paid for accordingly. Two, make the hard choices using risk-based mechanisms in order to allocate resources more wisely, and three, manage the homeland defense structure more effectively to realize the efficiencies anticipated by Congress when they created TSA.

Thank you, again, Mr. Chairman, for your strong support of our issue, and the leadership that you provide, along with Senator Inouye for this Committee.

[The prepared statement of Mr. May follows:]

PREPARED STATEMENT OF JAMES C. MAY, PRESIDENT/CEO, AIR TRANSPORT ASSOCIATION OF AMERICA, INC.

Mr. Chairman, at the outset I want to thank you and the Members of this Committee—a clear majority—who have expressed opposition to the Administration's increase of the September 11th Passenger Security Fee. This proposal has been scored by the CBO at $2 billion. Let me be clear, all carriers—low-cost, network and regional—will be harmed if this tax increase is approved. We appreciate your opposition.

Perhaps what is most disappointing is that this tax is contrary to well established public policy that aviation security is a critical component of maintaining the national security of our country. A recent article penned by Co-Chairman Inouye published in The Hill brings home this point more than once. In his article, Senator Inouye observed:

> "We all recognized after Sept. 11 that transportation security is a matter of national security . . . It had to become a national-security function. The vote in Congress to make this fundamental change was 100–0 in the Senate and 410–9 in the House." Co-Chairman Inouye goes on to note that "After reviewing the administration's budget request for the DHS and TSA, it becomes clear that the airline-fee proposal is but one example of the administration's failure to equate transportation security with national security."

In fact, all Americans benefit from a secure aviation system, whether or not they fly or ship goods. In addition, the U.S. economy benefits broadly from a safe and vigorous air transportation system. For these reasons, the cost of aviation security should be borne just as broadly.

No Justification

Equally disturbing is TSA's failure to demonstrate the need for this tax increase in the face of well-documented and continuing weak financial management. Neither the security nor the business case for the tax increase has been made.

Consequently, airlines will be confronted with the worst of two worlds—a national security tax increase added to an already crushing $3.2 billion tax which holds no promise to enhance aviation security.

Also troublesome is that TSA wants to raise taxes without improved managerial oversight of its activities. As the GAO has pointed out in recent reports, managerial improvement is indispensable if important programs that will benefit the public are to move from the drawing board to reality. We have all read the stories—I need not repeat them here.

At the same time, continuing problems with the no-fly and selectee lists make the headlines on a regular basis, and the effort to put into place a system to augment CAPPS I is beginning to look like the search for the Holy Grail. First it was CAPPS II, and then it was reborn as Secure Flight. But after some two years of effort, numerous missteps and an unknown amount of employee time and money, TSA has not moved past the testing phase. In addition, the testing phase of the Registered Traveler program has made little sense, with five different systems unable to inter-

face or lay the groundwork for a national system. Also not to be overlooked is the lack of coordination with the effort to test an international arrival passenger information system initiated by Customs and Border Protection, and the Advance Passenger Information System for passengers on inbound international flights. In short, DHS is undertaking a wide variety of important efforts that are simply not coordinated. What is the solution? Let me make two suggestions.

First, to spend more wisely DHS needs the right plan and a strong management focus on coordination, and must establish an overall plan that identifies how the operations of each entity fit together without duplication and work on the basis of agreed upon data that can be collected by a single entity.

Second, and most importantly the time has also come for TSA, supported by this Committee, to take a step back and develop an analytical, risk-based approach to guide how it spends its limited resources. This view was echoed by a task force on homeland defense chaired by The Heritage Foundation and The Center for Strategic and International Studies. The key recommendation from that report is to rationalize government spending by establishing a risk-based mechanism for DHS-wide resource allocation and grant making. The 9/11 Commission made a nearly identical recommendation on making hard choices in allocating precious resources. We agree.

Conclusion

In the post-9/11 world, the number of projects which no doubt would improve security by some degree is virtually unlimited. The challenge is to determine where to draw the line. In our view, three principles must guide the Congress and TSA: (1) establish once and forever that aviation security is a function of national security and should be paid for accordingly, and (2) make the hard choices using a risk-based mechanism in order to allocate resources more wisely, and (3) manage the homeland defense structure more effectively to realize the efficiencies anticipated by Congress when it created DHS.

The CHAIRMAN. Thanks very much to the two of you for returning. I know that it was a difficult time in the first hearing, and you sat with us patiently, so we appreciate you taking the time to come back and complete the hearing.

Mr. Barclay, have your people worked on the Registered Traveler and Transportation Worker Identification Credential programs? Are you working with TSA on that?

Mr. BARCLAY. We are, Mr. Chairman, and together with Jim and his folks and most of the people in the industry couldn't agree more with the necessity to get a program like that going, in order to know more about people willing to volunteer information on themselves. It helps us do a much better job of spreading resources.

If I could just pass on, too, we have a number of important partnerships with TSA, one of which is on the background checks of airport workers, both airport and airline workers. One of the things that's happened since 9/11 is that good news has not been news, and we've worked together with TSA to do background checks on 1.6 million workers. Pre-9/11 that process used to take 52 days to do the check on a worker, now it takes 4 hours to do it. And that's a success story, that's saved hundreds of millions of dollars to the industry. It's a success story that we've worked together with TSA on, and we think there are more partnerships like that with Jim's organization and with ours, and with TSA on programs like Registered Traveler that can greatly benefit the system.

The CHAIRMAN. You're familiar with the GAO report concerning the adequacy of the security of airport perimeters and the various access controls, you're familiar with that, aren't you?

Mr. BARCLAY. Yes, sir.

The CHAIRMAN. Have airports and TSA done enough to meet the comments of GAO, to respond to that report?

Mr. BARCLAY. Airports, again, have local law enforcement there at each airport, and if we can get some consistent rules on how we want those local police departments to operate, you'll find very, very good compliance out there among local governments. So, we are working with TSA to respond to the specifics on that. On access control, we're way ahead of all other industries, because virtually every major airport already has a highly developed access control system to and from the secure areas of airports. We need to add biometrics to that, but we have to get standards out of the government before we can add those biometrics so we don't have to do it twice, and there is more we can do, but airports are determined to do that in the future.

The CHAIRMAN. Are you satisfied there is a sufficient worker identification credential program? Is the one in place right now?

Mr. BARCLAY. Well, there is at each airport, and we're doing the criminal history record checks, as I say, with the Federal Government. I do think there's more that needs to be done there, we—for example, when you run checks, even after you run people through the FBI process with a criminal history record check, you'll still find about 5 percent of people whose names won't match their Social Security number and their address. Now, folks that are not telling you the truth about who they are, that's a risk group I want to take a very, very close look at, as opposed to somebody who simply has been guilty of a crime when they were in college. We need to, and airports want to do more on these checks, particularly of our workers, but many of those same concepts apply to security in the system in general.

The CHAIRMAN. Do we need to go further to mandate TSA to work with your industry on these issues: access, worker security, and basic transportation security?

Mr. BARCLAY. We have proposals on that, Mr. Chairman, we'd like to share with the Committee that we do think that would be helpful. It would be helpful for TSA and DHS. It would be helpful for us, and they build on the example of successful partnerships I was mentioning earlier.

The CHAIRMAN. Well, there seems to be some disconnect, so we'd like to have those. I'm sure the rest of the Committee would like to have a chance to look at those. With regard to the airlines themselves, we have some problems about passenger fees. I think that's the subject here, but why does the industry take the position that, with the current economy, that these fees would really be a greater detriment to travel? Isn't that your position?

Mr. MAY. Well, sir, I think our position is that one, aviation security is national security and ought to be paid for accordingly. Two, we are already contributing $3.2 billion annually to the TSA. On top of that, we have about another $2 billion in out of pocket expenses, that according to the enabling legislation were to have been reimbursed, that have never been reimbursed. Issues like cargo security, catering, screening and a whole range of other activities. So, we don't feel like we're not paying our fair share, since we're the only people paying into DHS or TSA of any industry. And I think that needs to change. And the idea that you're going to levy another $2 billion on an industry that just finished losing $10 billion last year, $33 billion over the last 3 years, and expect us to pass

it through to the passenger in an environment where we literally don't have any pricing power, is just wholly unrealistic. It's going to come directly from the bottom line.

Our carriers have done a terrific job of managing the costs they can manage. The ones they can't are the taxes, the fees, and the price of oil.

The CHAIRMAN. Last question, as I understand it, this fee, if we approved it, would not increase the amount of money available to TSA, it would just replace some of the current sources of funds. Now, what if we said, OK, we'll approve the fee, but it all has to go to TSA, do you think it's needed?

Mr. MAY. I think that TSA would have to prove that they've got a real use for that money that's going to substantially improve aviation security, number one, and they're going to have to demonstrate that they've got a functioning management team that knows what they're doing, number two, and I don't think those two hurdles can be achieved.

The CHAIRMAN. Thank you.

Senator Inouye?

Senator INOUYE. Mr. May, if I may follow up on my Chairman's questioning, isn't it true that at this moment, most of the legacy airlines have fiscal problems?

Mr. MAY. Sir, we've got a number of carriers in Chapter 11, as I indicated a moment ago. We lost $10 billion last year as an industry. We've got $33 billion in losses over the past 3 years, and we're projecting if oil stays where it is today or near it, that we'll lose another $5 billion this year.

Now, the good news is that confluence of tough economic news has given carriers the opportunity to make changes to their operations, the likes of which they've never made. We've re-negotiated our labor contracts, we've achieved fuel efficiency, we've changed our routing systems, we've gotten all sorts of productivity gains in place, we've eliminated, unfortunately, 130,000 employees just from the airlines business, we've cut capital spending by billions of dollars annually. But there are some things that we can't control. Taxes and fees imposed by the Federal Government amount to $15 billion annually on this industry, which only generates about $80 billion in revenue a year. So, that's a huge percentage of our annualized revenue. And on top of that, we've got oil prices that are probably $20 higher than any expert would have predicted a year and a half ago.

Senator INOUYE. Can the passenger transportation security fee be easily passed on?

Mr. MAY. Not a prayer, Senator, not a prayer. It will come right from the carrier, bottom line.

Senator INOUYE. And from what you've described as to the fiscal position, to absorb that would be disaster.

Mr. MAY. It would be absolutely disastrous and it would be an impact, not just on the so-called "legacy" carriers, but on regional airlines, on small carriers, independents, the so-called low cost carriers.

Senator INOUYE. You've also indicated that you've had to re-negotiate your contract with labor, and I know that some of the airlines

have had three pay cuts, and one, I think, had four pay cuts. Do you expect labor to keep on cutting?

Mr. MAY. Sir, I think anybody that knows anything about this business has to feel the pain of the employees that work for our carriers. They have been major participants in the process of trying to keep us in business, but at some point, others that sit on your side of the desk have to understand—and I think you clearly have demonstrated that, along with your colleagues here today—that proposals like this coming out of government are going to have a direct impact on the individual employees of these carriers.

We've laid off, as I said a minute ago, 130,000 of those employees, $2 billion more in revenue out of the bottom line for these carriers is going to mean untold more employees are going to have to get laid off because we don't have the pricing power to put those charges through.

Senator INOUYE. If this fee becomes law, that would mean that you would be absorbing about 85 plus percent of the costs of security?

Mr. MAY. Senator Inouye, that is exactly right. We would, if this went through, account for—in direct funds paid—for about 85 percent of TSA's budget.

Senator INOUYE. We have no idea as to what the other countries have done, but is this typical of what you find, say, in Europe?

Mr. MAY. No, sir, it is not. It's not typical of Asia——

Senator INOUYE. How do the French handle this?

Mr. MAY. I can not tell you specifically how the French handle it, but I know that there are very different regimes across the EC.

Senator INOUYE. They're much more helpful in the sense that they consider this a national security item?

Mr. MAY. I think that is the case, sir, and I think overall, people in other parts of the world do not have the intense level of security that we see here in the United States. I think there's a different metric that gets used, they tend to worry more about people than they worry about things. You're an international traveler who spends a good bit of time in different parts of the world, and I know that as you go through security in other major airports, you'll see it's a very different environment than that which you find here in the United States.

Senator INOUYE. Mr. Barclay, it's been suggested by many that we're not looking into appropriate technology, we rely too much upon human power, is there any credence to that?

Mr. BARCLAY. There is on the screening we're doing of baggage. As we were saying, there is actually technology out there right now, and if we build it in, we get enormous savings in personnel costs at TSA that can more than pay for the building in of that equipment. It speeds up the process, and not only does a better job of checking the bags, but it makes the experience much more convenient, and it saves personnel for the Federal Government, so, it's hard to come up with an argument against doing it, except that in a one-year appropriation process, you don't have enough money to do the capital costs in order to earn the return on the savings you get, and that's a formula we've been arguing we should figure out.

Senator INOUYE. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Ensign?

STATEMENT OF HON. JOHN ENSIGN, U.S. SENATOR FROM NEVADA

Senator ENSIGN. Thank you, Mr. Chairman.

I would like to start by addressing the Registered Traveler program, from both of your perspectives. It's something you both talk about supporting. The concept of it sounds good, that you move people through more quickly. How do you see it working? Right now I look at the employees at the airport, who are supposedly trusted travelers, but yet they go through this same security line the same way that everybody else does. They may have separate security lines, but it's still a security line. Is that what is foreseen? Are these lines just special because there are fewer registered people, so they'll have shorter lines? Kind of like a first class line? Or, do they actually go through less of a screening process? How do you foresee it working? Either one of you can start.

Mr. BARCLAY. You're dead on, Senator, that with the Registered Traveler program, the thing to keep in mind is that we let hundreds of people every day on airplanes with guns, because we've done background checks on them, and we know they're not a threat to the system. The issue is not spending more of our resources looking for dangerous people rather than dangerous things. A trusted person with dangerous things on them is not a threat to the system, and an untrustworthy person with nothing on them is a threat to the system, and the lesson of 9/11 was that the powerful weapon there was knowledge. It was the hijackers' knowledge that the policy of that day was to do whatever it took to get the plane on the ground, be passive in the face of a hijacking, and they used that policy against us, and that frankly was a good policy, because it had saved thousands of lives in the decades prior to 9/11.

So, you had people that, it wasn't the box cutters, as the fourth airplane showed, it was that knowledge that was used against us of our own system. So, it's those dangerous people we need to be looking hard for. The relationship to Registered Traveler is, if we can get people to volunteer lots of information on themselves, and we can be confident through biometrics that those people are not dangers to the system, having them take laptops out of their bags and take their shoes off when we're using background checks to let people on the planes with guns doesn't make any sense. We need to start a Registered Traveler program so we can explain some of these things more clearly to the public, I think, and get the public to understand that if you are volunteering information on yourself and you are part of a Registered Traveler program, you're really doing a lot for everybody's security.

Senator ENSIGN. From what you've seen at the airports where TSA is trying this, is that what they're doing?

Mr. MAY. No.

Senator ENSIGN. That was the point that I was making. From my conversations with TSA—all they seem to be doing is gathering information in order to lessen the lines. The reason you can get somebody to sign up for a Registered Traveler program is so they can speed through a line faster, but if they're going through exactly

the same thing they went through before, how does that get them through the lines?

Mr. MAY. Sir, we've said the same thing, if you don't provide an incentive then you're not going to have people volunteer the information. The systems, we've got five in place today, they don't talk to one another, there were five different carriers, five different airports, and the sixth one is about to start.

Senator ENSIGN. Let's take that a little bit further, regarding the whole way that TSA operates. TSA, it would seem to me, has identified risk from security checkpoints to the airport. OK, but they don't identify any of the lines they create in back of those security checkpoints. As you just talked about, the terrorists take advantage of their knowledge of where the weaknesses in the system are. Well, the weakness in the system now is the lines. If you walk in with a suitcase bomb, you're going to kill a lot of people. When you've got a couple of thousand people in line, like at Dulles airport or any of the other major airports during peak times, the CAPP system and all of these other various things that they're doing keep adding on. Like you have talked about, trying to go after that miniscule little cigarette lighter, or whatever it is that they're going after, slows the lines down, backs them up, and creates another opportunity for terrorists. It would seem to me that we need to start looking at a risk-based system. You're never going to get rid of everything, so how can you minimize the overall risk to the greatest degree for the amount of funding that you have to work with, because you can't have unlimited screeners and unlimited lines if you want to get people through quickly. Given what we have, it would seem to me that, using various computerized models where nobody could predict it, you let certain people through to keep the lines down at certain times. It seems to me that we need more feedback from the people on the ground, like yourselves, to put pressure on lawmakers, because lawmakers aren't thinking this way now. TSA is a bureaucracy. They're not going to take chances. They're not going to take a risk by themselves. As lawmakers, we have to make those choices. We have to tell TSA that we're the ones who created the monster in the first place, and we have to be the ones to fix it. But, we can only do that with your help, giving us the input that we need.

Mr. MAY. Senator, I couldn't agree more, it's one of the principal three tenets I closed my remarks with, it's what the 9/11 Commission said, it's what Heritage has said, it's what CSIS has said. Everybody who's looked at it says you have to have a risk-based assessment. We can have perfect security for airlines, nobody will fly, and that's the risk.

I would suggest that there are probably some folks in your hometown that are pretty good at security, that are also very good at moving people and customer service that we could take some lessons from at TSA.

Senator ENSIGN. All right, I appreciate that. Mr. Chairman, thank you. I know that for my state, and states like Hawaii that depend so much on tourism, it seems like every time that we start getting a handle on moving lines through, TSA comes out with a new rulemaking process. As we've seen with all of the reports, they're not doing any better of a job, but they keep adding new

rules which make the lines back up again for a while. Until we get more resources, Mr. Chairman, we really need—as a Congress—to take a hard look at what we're doing with the money that we're spending. In the long run, we're just costing more and more in fees, we're costing the economy more, and we're making it a pain in the rear end to travel for anyone who does it on any kind of a regular basis. And I thank you.

Mr. MAY. If I might, Mr. Chairman, the scary part is that we've got advanced bookings for the summer that are record bookings. We're going to have a lot of people at airports, a lot of people traveling on planes, and we're delighted for that good news, but it also means that if something doesn't happen soon to expedite that load of passengers through these airports headed to Hawaii and Las Vegas and New York and other places, then we're going to have a summer that both we and you hear from both of our collective constituents and customers as to why they've missed a flight because they couldn't get through security on time.

The CHAIRMAN. Add Alaska next time.

Mr. MAY. Yes, sir. Well, that's where I'm going, personally.

The CHAIRMAN. Senator Pryor? Oh, pardon me, Mr. Lautenberg. Sorry about that, Senator Lautenberg.

STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM NEW JERSEY

Senator LAUTENBERG. When age takes over, and all three of us have the same exact vintage problem, so—all three veterans of the Big War, two heroes and me.

[Laughter.]

The CHAIRMAN. My professors once told me I wouldn't make any money until my hair got grey, they were right. You did.

Senator LAUTENBERG. I'm afraid to step out here, because he is still the Chairman, and probably going to be around for the next 20 years while I'm running.

To get to a very serious subject and concern that we all share—the solutions are where we get to the problems. And when we hear, Mr. May, about the losses that the airlines have in front of them, a question for me is—is it primarily the costs for security? How about the costs for fuel? How about the fact that new airlines can come in with a lot less capital burden than the "legacy" airlines as we call them—isn't that where a lot of the problem is created, is that it's very hard for the well-established airlines, the names that we all know, to compete with the so-called upstarts, the newer airlines?

Mr. MAY. Senator, your observations are very much on target, as always. I mentioned fuel in my testimony as one of the critical elements. There are really two—we've taken on all of those costs over which we have some degree of control, if you will—there are two areas where we have little or no control. One is the price of oil, which we had hoped would be in the high thirties, maybe low forties and is now, clearly as we all know, in the low fifties, and that's having just a devastating impact on the business. It is the difference between break-even and having lost a lot of money for most of our carriers. Add to that an unconscionable tax burden that, as I said, we're paying as an industry, and we don't have the luxury

of paying income taxes in this mix, we're paying literally $15 billion a year on $80 billion in revenue. There's something wrong with that equation. That's a higher tax load than alcoholic beverages, tobacco, a variety of other sin products where the tax load is intended to discourage consumption. So, I think we need to address those areas where we have control. As to the other operational parts of the business, there are no effective barriers to entry, the market is awash in money. We've got some 16 to 18 applications at the FAA, as you and I are sitting here today, of people wanting to come into the business, as bad as it is. They've got a plan that they figure they're going to make some money, so you've got pressure on the FAA to issue new 121 certificates, and we've got a level of competition in the business that creates overcapacity on seats that is such that it is having a dramatic impact on pricing.

Senator ENSIGN. But with your expectations for the summer, as robust as they are, it would sound like there won't be enough seats at the rate that we're going. It's really a long-term question about whether or not in the days of regulation things operated a little better, there were fewer problems in terms of scheduling, et cetera. Now we've reduced the separation. We know more people are flying and that delays are not uncommon. I get delayed a lot when I fly out of Washington National. When I go north to Newark or New York, we've got to wait until they clear the decks up there, reduce the traffic volume. I chide the pilots often and say, "You've got to get faster airplanes here." The fact of the matter is, you sit and wait an hour and a quarter to take off—as I did the other day—for a 36-minute flight, as it's advertised. We just can't seem to keep up with it. There's finite space in the sky and you just can't keep throwing more airplanes up there. In particular, Mr. Chairman, if one of the goals currently is to get rid of Amtrak, which carries 25 million passengers a year, that would raise problems that could not be dealt with except by some kind of re-regulation, and we don't want to go into that.

Mr. MAY. Senator Lautenberg, I just spent 2 days at a conference sponsored by the FAA dealing with the whole business of funding for the Aviation Trust Fund and that expires in 2007—September of 2007. I think one of the classic opportunities, as well as challenges, that this Committee is going to face, is what to do about the national air space, how do we collapse a system that was built in the 1950s and the 1960s that is terribly antiquated that can't handle the capacity that we've got coming online. Put with it a reasonable, realistic funding mechanism, add in bonding authority where it's appropriate to do that, and that would become one of the great challenges of our time, to make the changes that are necessary in that system. And I think that if we don't do it, that hour and 30-minute wait, or 15-minute wait is going to be 2 hours and 15 minutes, because we have more planes in the system today than it can handle. The explosion of planes coming out of Teterboro, coming into the mess, and we've got to find a way to handle that, and it means new technology, getting rid of the old, duplicative, antiquated systems that we've got, finding new funding alternatives and making the changes that are going to be very difficult to make politically, because there are constituent jobs at stake and so forth.

But I think it is going to be one of the great challenges this Committee faces.

Senator LAUTENBERG. Mr. Barclay, could the airports pick up some of this increased cost that is being proposed? I sit here and I speak, not for my colleagues, but I haven't heard anybody speak up on behalf of adding this tax for security, purportedly. Can the airports come up with a way to fund it out of their revenue somehow?

Mr. BARCLAY. I know that with your experience as a Board Member of the Port Authority, you know that airports really don't make money. If new costs come on, they figure out who to charge to pass that cost along, but you still wind up with the major airports back at the airlines and they'd have to then figure out, could they pass it along to the passengers.

Senator LAUTENBERG. Having been a Board Member of the Commission of the Port Authority before I got here, it's always been my view that the best place to handle security would be at the airports themselves, by the airport management, people that are experienced with all of the movements that take place in that airport, instead of having to create an organization outside, amorphous, and I really think that TSA is trying its best. We've got a new Secretary, and I talk to him fairly frequently. He comes from New Jersey, that doesn't mean that he caters to New Jersey, but the fact of the matter is, he's trying to get the job done and we wish him well, and we just can't add costs without realizing that we will never, ever, ever, capture everyone who has malice intended for us, whether it's through their shoes or through some other system. Except, I now feel better, Mr. Chairman, flying better, the cockpit doors are fortified, for the most part, and I'll never understand why, simply—and I've mentioned this before—that we don't have a TV camera in the cabin and a monitor in the cockpit for at least the pilot or the flying crew to understand if something is wrong in the back.

Thank you, Mr. Chairman, I appreciate it.

The CHAIRMAN. Thank you very much, Senator. I don't know why we don't get some money out of people who have businesses in railroad terminals, or money from the people who ride railroads to provide their own security. But this is for another day, right?

Senator Pryor?

STATEMENT OF HON. MARK PRYOR,
U.S. SENATOR FROM ARKANSAS

Senator PRYOR. Mr. Barclay, I'd like to talk to you about in-line explosive detection systems, and I think the installation of in-line EDS systems at our airports is the single most important thing that we can do to increase efficiency in the baggage screening, while also improving safety and security at our airports. Do you agree with that?

Mr. BARCLAY. Absolutely.

Senator PRYOR. OK, now let me ask this, if we had to make the initial investment in in-line EDS systems, or we make the investment now for in-line EDS systems now and we were to achieve all of the savings and efficiencies that we've seen at some of the participating airports, would it be necessary to continue increasing air-

line security fees? And let me give you a little background on that so you understand the context of my question. It just seems to me that this is one of those areas where if you make the initial investment, you have some upfront costs; we acknowledge that, that you do reap a lot of long-term savings. In fact, I think one of the things you talked about in your statement a few moments ago, was Lexington, Kentucky and that airport there, and if I understand your facts and figures and the facts coming out of Lexington is that, in a little over a year, a year and a few months, maybe the investment in the in-line EDS would have paid for itself. Am I understanding that correctly?

Mr. BARCLAY. Exactly. They spent $3.5 million to build the in-line system, and they save $3 million a year, so in the second year, you're making money.

Senator PRYOR. So, that was my question, if we did make the initial investment, would we have to, over the long haul, increase the security fees because it seems that this investment does pay for itself rather quickly, do you agree with that?

Mr. BARCLAY. Yes, sir. We'll do a calculation and get back to the Committee on what the savings over, like a ten-year period would be, and compare that to what the charges are. What we've been doing, mostly, is just trying to justify the initial building in. You can easily cover the $3 to $5 billion—depending on whose estimate it is—to build them in, but you then earn the ongoing savings for TSA. I mean, in just the airports that have them, I think the numbers, I was trying to find them here, went from like 6,500 employees down to 1,400 employees. It was an enormous drop in employment, so there are big savings there to be had over time.

Senator PRYOR. I did want to ask about Lexington, I don't know all the airports that are participating in this, but that's one that seems to be, you know demographically somewhat similar to the two biggest airports in my state at least, a little difference probably here and there, but nonetheless, some, a lot of similarities. And I was curious if there's something about Lexington that makes it unique, or could you take that Lexington model and sort of put it across the whole system, and apply what we've learned at Lexington to the whole system.

Mr. BARCLAY. In fact, I was just recently down at Little Rock, and they've got a model in-line system. I don't have the numbers on what it cost and what they saved, but GAO examined just nine airports, and found that at those airports, over 7 years you'll save $1.3 billion, after you pay for the cost of building, everything to build them in. So, it is across the system that you get this savings.

Senator PRYOR. Wait a minute, that's nine airports, and you save $1.3 billion over 7 years?

Mr. BARCLAY. After you pay for the cost of installing, so if you extrapolate that in the system, you're talking about some big numbers. That's why we're saying it's smart government to earn that ongoing savings by doing upfront costs. We've had some people in governments say to us, "Well you airports should go pay the cost to build those in." And the problem with that is the savings go to TSA, so you can't tell one party to absorb the capital costs, and then pass it on to your tenants, while somebody else is getting the savings, you've got to connect up that revenue stream of the sav-

ings. Airports will go out and float bonds to build in these systems at the bigger airports, but they need to know they've got a revenue stream coming in to pay that bond off, but then TSA gets a permanent savings in personnel for doing that.

Senator PRYOR. OK, well I think we in the Congress need to really think through that, and like you said, come up with the smartest approach on that because I think if we are smart, we can be efficient and effective at the same time.

Mr. May, let me ask you now if I may, and I want you to be careful about how you answer this question, because you have three Senators here who have some small airports in their states, so we're all concerned about how what you all do impacts small airports, and I'm an advocate for small airports and smaller communities being able to access air travel, but how will increased fees affect small airports? Affect communities with small airports?

Mr. MAY. Senator, I've never been very good about being careful about what I say, and so I guess just being right out with it, there is a thing—you're very familiar with it, I'm sure, called Essential Air Services—and there are subsidies that are effectively provided to provide service to a lot of small airports. I don't have to look any further than what's going on in my industry today to tell you what's going to happen. The first places that get cut from the service schedule are the places that are the least profitable, and then we begin to cut back on frequency to larger places, and all of that is happening, we're shutting down hubs, that's all part of the reorganization of the industry, and I will guarantee you that the people who get hit hardest by this tax, just in the way it would be collected, if you will, will be people in small communities. I will also guarantee you that, to the extent it has the devastating effect on our industry that we suggest it will, then the next place to go will be those least profitable, frequently smaller communities that we're serving today. And it's a pure economic choice. Do we eliminate service or do we let the company go bankrupt?

Senator PRYOR. So, not to put words in your mouth, but in summary, it sounds like what you're saying is that these increased fees may lead, or may be one of the factors in the closure of smaller airports.

Mr. MAY. Senator, when you put those words together, you can put them in my mouth anytime you want. That's exactly right.

Senator PRYOR. Thank you.

The CHAIRMAN. Senator, I'm told that the fees now collected, $2.3 billion, which support about $23 billion in bonding, assume that you don't have any of the screening processes for passengers, I was going to ask the question, whether there would be the opposition to the fees if we dedicated them to the payment of the bonding for the new baggage screening concepts that are before us.

Mr. MAY. I suspect that you might have a difference of opinion at the table here on that, Senator. We very firmly believe that we're at the max of what we're paying into the TSA right now, we don't disagree that they need to have more equipment, and that it needs to have higher volume and that they need to be able to handle greater size of packages going through for cargo, in particular, and greater in-line EDS screening, but we very firmly don't believe that that ought to come out of the hides of the airlines.

Mr. BARCLAY. Mr. Chairman, let me add that there wouldn't be a disagreement. We do, again, think the first place you want to look to for the funding source for building in-line are the people who are going to get the savings end of the cost of their personnel, because that savings more than pays back the cost of building them in. So, we really should look for a creative financing mechanism within government, because government's going to earn that savings, and it's going to be real and valuable to them in very short order, and airports will make it, will use their capital financing capabilities to make it even easier for government to do that.

The CHAIRMAN. That would be all right, if we could find what portion that we could take away from TSA now to dedicate now to those bonds. Perhaps the next version of "Aviation News Today" will give us a solution.

[Laughter.]

The CHAIRMAN. You want another question, Senator?

Senator INOUYE. I want to make a motion.

The CHAIRMAN. Oh, that's right, I was just going to say this hearing is over.

Senator INOUYE. But before I make a motion, I think it should be noted that we are not imposing any passenger security fee on railroad companies.

The CHAIRMAN. Yes.

Senator INOUYE. Mr. Chairman, subject to the presence of a quorum, and that this motion be operational, after the first vote in the Senate chamber, I move that the Committee go into Executive Session to consider the nominations of Maria Cino to be Deputy Secretary of Transportation, Phyllis Sheinberg to be Assistant Secretary of Transportation, Joseph Boardman to be Administrator of the Federal Railroad Administration, Nancy Nord to be Commissioner of the Consumer Products Safety Commission, and William Cobey to be a member of the Board of Directors of the Washington Metropolitan Airport Authority. Will you second the motion?

Senator PRYOR. Seconded.

The CHAIRMAN. Thank you very much gentlemen, that will mean that after the first vote on the floor that takes place after this Committee recesses today, we'll meet in the President's Room to vote on Senator Inouye's motion, that will be to consider them all in block, all of the nominations that have been put before the Committee by the Senator from Hawaii, our Co-Chairman. It will be our intent to hold the usual concept of members making their vote in person in the President's Room.

We do thank you very much, gentlemen, I think we should find some way to deal with this question in the next generation of screening for baggage. That will save some money, as you indicated, but we have to find somebody to put it in before you save it, and I think we in this Committee should work with you to work it out so there isn't this apparent conflict, and somehow, there has to be an answer to that. And we will work with you to do that.

I think also you should know that we're continuing our conferences with TSA on a security basis, and on a confidential basis to review the whole TSA program, and the classified portion of that program, so that we can find some way to reduce the costs of

what's going on now. We will keep you informed of the outcome of that.

Thank you very much, and we will announce our next scheduled hearing.

[Whereupon, at 3:45 p.m., the hearing was adjourned.]

A P P E N D I X

ELECTRONIC PRIVACY INFORMATION CENTER (EPIC)
Washington, DC, April 25, 2005

Hon. TED STEVENS,
Chairman,

Hon. DANIEL K. INOUYE,
Co-Chairman,

Senate Committee on Commerce, Science, and Transportation,
Washington, DC.

Dear Chairman Stevens and Co-Chairman Inouye,

We are writing on behalf of the Electronic Privacy Information Center (EPIC) concerning the proposed Transportation Security Administration (TSA) budget for Fiscal Year 2006. We would like to bring to your attention the significant increase in surveillance funding requested by TSA. We ask that this letter be included in the hearing record.

EPIC strongly opposes this increase in Federal funding for TSA's surveillance programs. In its development and implementation of these surveillance programs, TSA has frustrated efforts to obtain openness and transparency under the Freedom of Information Act, and the agency has violated the spirit if not the letter of the Privacy Act. TSA also has shown a proclivity to using personal information for reasons other than the ones for which the information was gathered or volunteered. In addition, the public has had considerable difficultly with the agency's redress procedures. Furthermore, TSA has shown poor management of its financial resources.

We urge you to inquire what steps the agency will take to protect privacy and ensure transparency in data collection and use. We also urge you to scrutinize TSA's current redress procedures. Finally, we recommend against funding the Office of Screening Coordination and Operations.

President Bush's proposed budget would increase TSA spending by $156 million to $5.6 billion for FY 2006, but this increase is contingent upon $1.5 billion that will be generated by a 120 percent jump in security fees assessed to airline passengers.[1] Assistant Secretary David M. Stone defended the increase at the February 15, 2005, hearing before the Senate Committee on Commerce, Science and Transportation saying air passengers, not the general public, should pay for air travel security.[2] However, this money will not go toward new security measures, but will replace funds now provided by the government for current air traveler security programs.[3]

Assistant Secretary Stone also testified that this increased fee would mean "resources from the general taxpayer could be used for more broadly applicable homeland security needs," but he did not define what these needs would be.[4] Other programs under TSA that are receiving an increase in funding in the proposed FY 2006 budget include surveillance programs that have significant privacy implications for tens of millions of American citizens and lawful foreign visitors.

When it enacted the Privacy Act, 5 U.S.C. § 552a, in 1974, Congress sought to restrict the amount of personal information that Federal agencies could collect and required agencies to be transparent in their information practices.[5] The Privacy Act is intended "to promote accountability, responsibility, legislative oversight, and open government with respect to the use of computer technology in the personal information systems and data banks of the Federal Government[.]"[6]

The Supreme Court as recently as last year underscored the importance of the Privacy Act's restrictions upon agency use of personal information to protect privacy interests, noting that:

> "[I]n order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary . . . to regulate the collection, maintenance, use, and dissemination of information by such agencies." Privacy Act of 1974, § 2(a)(5), 88 Stat. 1896. The Act gives agencies detailed instructions

for managing their records and provides for various sorts of civil relief to individuals aggrieved by failures on the Government's part to comply with the requirements.[7]

It is critical for TSA's programs to adhere to these requirements, as the programs have a profound effect on the privacy rights of a large number of American citizens and lawful foreign visitors every year. However, TSA has failed to follow the spirit of the Privacy Act during development of these surveillance programs.

Recent Government Reports Show Problems Within TSA Programs

The Government Accountability Office (GAO) and the Department of Homeland Security Inspector General last month released reports that were critical of the Transportation Security Administration.[8] These reports highlight the agency's failures concerning privacy rights, transparency, and redress procedures.

The GAO's March report examined the Transportation Security Administration measures for testing the use of commercial data within Secure Flight, the agency's passenger prescreening program currently under development. The report, commissioned by Congress, found that the agency still has many issues to address before the viability of Secure Flight can be determined.[9] The GAO was unable to assess, among other things, the effectiveness of the system, the accuracy of intelligence data that will determine whether passengers may fly, safeguards to protect passenger privacy, and the adequacy of redress for passengers who are improperly flagged by Secure Flight.[10] The GAO specifically found that TSA "has not yet clearly defined the privacy impacts of the operational system or all of the actions TSA plans to take to mitigate potential impacts."[11]

TSA is requesting an increase of $49.3 million for its Secure Flight program to bring its FY 2006 budget to $94 million.[12] The Secure Flight passenger prescreening program could affect the tens of millions of citizens who fly every year, but in the creation of the program, TSA has frustrated efforts to obtain information under the Freedom of Information Act, and its actions concerning openness and transparency have violated the spirit of the Privacy Act.

Also in March, the Department of Homeland Security Inspector General issued findings on TSA's role in collecting and disseminating airline passenger data to third party agencies and companies. The report revealed that the agency has been involved in 14 transfers of data involving more than 12 million passenger records.[13] The Inspector General found, among other things, that "TSA did not consistently apply privacy protections in the course of its involvement in airline passenger data transfers."[14] Furthermore, TSA did not accurately represent to the public the scope of its passenger data collection and use.[15]

The Inspector General's critical report comes almost a year after the agency's admission that it had acted improperly with regard to passenger data collection and use. In June 2004 then-TSA Acting Administrator Admiral David Stone admitted to the Senate Governmental Affairs Committee that in 2002 TSA facilitated the transfer of passenger data from American Airlines, Continental Airlines, Delta Airlines, America West Airlines, Frontier Airlines, and JetBlue Airways to TSA "cooperative agreement recipients" for purposes of CAPPS II testing, as well as to the Secret Service and IBM for other purposes.[16] Stone also stated that Galileo International and "possibly" Apollo, two central airline reservation companies, had provided passenger data to recipients working on behalf of TSA.[17] Further, TSA directly obtained passenger data from JetBlue and Sabre, another central airline reservation company, for CAPPS II development.[18] TSA did not observe Privacy Act requirements with regard to any of these collections of personal information.[19] Stone's admission followed repeated denials to the public, Congress, GAO, and Department of Homeland Security Privacy Office that TSA had acquired or used real passenger data to test CAPPS II.[20] TSA exhibited a proclivity for using personal information for reasons other than the ones for which the information was gathered or volunteered.

Another example of TSA's failure to operate its programs with the openness and transparency necessary under the Federal open government laws is its recent creation of an Aviation Security Advisory Committee Secure Flight Privacy/IT Working Group. It appears to EPIC that, based upon the little public information that is currently available, the working group is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 1, which includes the requirement that the working group publish notices of their meetings in the Federal Register. However, the formation of this working group was not announced in the Federal Register, and neither TSA nor the Department of Homeland Security has publicly acknowledged its existence or defined its mission. EPIC sent a letter in January to TSA's privacy officer, Lisa Dean, to ask for an explanation as to why this working group is not operating with the transparency and openness required under FACA.[21] In her March re-

sponse letter, Ms. Dean advised us that Transportation Security Administration's position was that the work and materials of working group are subject to FACA.[22] The agency was noncommittal about the FOIA status of the material.[23]

TSA's Lapses in Public Accountability

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, establishes a legal right for individuals to obtain records in the possession of government agencies. The FOIA helps ensure that the public is fully informed about matters of public concern. Government agencies are obligated to meet the requirements of open government and transparency under the FOIA, but TSA has frustrated efforts to obtain information under the FOIA during the creation of these surveillance programs.

In September 2004, TSA announced plans to test the Secure Flight program. Secure Flight is intended to replace the now-defunct CAPPS II, but it includes many elements of the CAPPS II program, which was abandoned largely due to privacy concerns.[24] TSA said that "Secure Flight will involve the comparison of information for domestic flights to names in the Terrorist Screening Database (TSDB) maintained by the Terrorist Screening Center (TSC), to include the expanded TSA No-Fly and Selectee Lists, in order to identify individuals known or reasonably suspected to be engaged in terrorist activity."[25]

On September 28, 2004, EPIC submitted a FOIA request to TSA asking for information about Secure Flight.[26] EPIC asked that the request be processed expeditiously, noting the intense media interest surrounding the program. Specifically, EPIC demonstrated that 485 articles had been published about the program since TSA announced its plans for Secure Flight. EPIC also mentioned the October 25, 2004, deadline for public comments on the test phase of the system, explaining the urgency for the public to be as well informed as possible about Secure Flight in order to meaningfully respond to the agency's proposal for the program. TSA determined these circumstances did not justify the information's immediate release, and refused EPIC's request that the information be made public prior to the October 25 deadline for these comments. TSA also denied EPIC a fee waiver, which the agency has never done before in its three-year existence. This maneuver imposed a significant procedural barrier to EPIC's ability to obtain the information. EPIC appealed TSA's decision, noting that the agency's actions were unlawful. Rather than defend its position in court, TSA has released a minimal amount of the information that EPIC requested. EPIC continues to seek from TSA information about the program that will affect tens of millions of airline passengers each year.

Problems With TSA Redress Procedures

The recently enacted Intelligence Reform and Terrorism Prevention Act of 2004 directed TSA to create a system for travelers to correct inaccurate information that has caused their names to be added to the no-fly list.[27] TSA maintains that it has an adequate redress process to clear individuals improperly flagged by watch lists; however, it is well known that individuals encounter great difficulty in resolving such problems. Senators Ted Kennedy (D–MA) and Don Young (R–AK) are among the individuals who have been improperly flagged by watch lists.[28] Sen. Kennedy was able to resolve the situation only by enlisting the help of then-Homeland Security Secretary Tom Ridge; unfortunately, most people do not have that option.

In March, Rep. Loretta Sanchez (D–CA) highlighted problems that everyday Americans have with the current TSA redress procedure. At a hearing of the House Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity concerning the proposed Fiscal Year 2006 budget, Rep. Sanchez reported that many of her constituents continue to face lengthy delays, questioning, and at times are prohibited from boarding flights because they are misidentified as people sought on no-fly lists.[29] Her constituents continue to face these roadblocks even after they apply for, receive and then display to screener personnel the official Federal Government letters that establish their innocence. Rep. Sanchez questioned TSA officials about why current redress procedures have failed these American citizens. This issue remains important, as the GAO's March report examining Secure Flight found that "TSA has not yet clearly defined how it plans to implement its redress process for Secure Flight, such as how errors, if identified, will be corrected, particularly if commercial databases are used."[30]

TSA Has Violated the Spirit of Federal Privacy Laws

The proposed FY 2006 budget accords TSA's Registered Traveler program $22 million.[31] This is a pilot program TSA began conducting in July 2004 and is now operating at five airports.[32] The preliminary results are being examined by TSA to determine whether the program should be expanded to other airports. Registered Traveler allows frequent travelers to submit digital fingerprints, iris scans and undergo a background check in exchange for receiving a fast pass through the airport

checkpoint. (The International Registered Traveler program was announced in January.)[33]

TSA first published a Federal Register notice about the program in June 2004.[34] In July 2004, EPIC submitted comments to address the substantial privacy issues raised by the Registered Traveler program and the new system of records established to facilitate the program.[35] EPIC requested that TSA substantially revise its Privacy Act notice prior to implementation of the final phase of Registered Traveler. TSA's subsequent Federal Register notice of the implementations of Privacy Act exemptions in the Registered Traveler program did not solve any the privacy right threats that EPIC highlighted in its comments.

TSA's notice for the Registered Traveler system of records, however, exempts the system from many protections the Privacy Act is intended to provide.[36] As proposed in the notice, Registered Traveler is a program for which TSA is asking individuals to volunteer information that will be used to conduct potentially invasive background checks in exchange for the determination that they have a relatively low likelihood of being terrorists or connected to terrorists, and may be subject to less security screening than others prior to boarding airplanes. However, TSA has unnecessarily exempted the system from crucial safeguards intended to promote record accuracy and secure the privacy of individuals whose information is maintained within the system. TSA will be under no legal obligation to inform the public of the categories of information contained in the system or provide the ability to access and correct records that are irrelevant, untimely or incomplete. The program will contain information that is unnecessary and wholly irrelevant to the determination of whether an individual poses a threat to aviation security.

Questions Remain About the Transportation Worker Identity Credential Program

TSA is requesting $244 million for its pilot Transportation Worker Identity Credential program (TWIC) for FY 2006.[37] TWIC is an identification card given to transportation workers, authorized visitors and all other persons requiring unescorted access to transportation infrastructure secure areas. The program is operating at 34 sites in six states, but TSA hopes to eventually extend the program to workers in all modes of transportation, which could encompass as many as 6 million people.[38] Persons required to have the identification card submit sensitive personal and biometric information to a central TSA database used to validate a person's eligibility to access these areas. EPIC submitted comments in November 2004 highlighting the dangers to travelers' privacy rights inherent in the program.[39] TSA has not released information clearly explaining to the public how it intends to safeguard the sensitive personal information gathered on program participants. The lack of transparency and openness about TWIC is against the spirit of Federal open government laws.

Another important reason not to increase the funding for TWIC is because TSA has not used its current funding judiciously. The GAO reviewed TWIC in December 2004, and found that because of program delays, some port facilities are forced to proceed "with plans for local or regional identification cards that may require additional investment in order to make them compatible with the TWIC system. Accordingly, delays in the program may affect enhancements to port security and complicate stakeholder's efforts in making wise investment decisions regarding security infrastructure."[40]

The financial problems encountered in TSA's TWIC program are emblematic of TSA's troubles managing its finances, according to the GAO. Cathleen Berrick, GAO Director of Homeland Security and Justice, told the Senate Committee on Commerce, Science, and Transportation on February 15, 2005, that TSA had not always "conducted the systematic analysis needed to inform its decision-making processes and to prioritize its security improvements."[41] Examples include the fact that in FY 2005, TSA was forced to transfer about $61 million from its Research and Development budget of $110 million, to support its operations, such as personnel costs for screeners.[42]

A significant issue is that these surveillance programs are receiving substantial funding and TSA manpower while the current aviation program to screen passengers and their luggage for dangerous objects is woefully inadequate. Ms. Berrick reported at the February 15 hearing that there has been only modest progress in how well screeners detect threat objects following a report last year that documented gaps in screener security.[43] The increased funds that TSA has earmarked for surveillance programs can also be used in another important program: Threat Assessment of General Aviation. The GAO reported that "though the Federal Bureau of Investigation has said that terrorists have considered using general aviation to conduct attacks, a systematic assessment of threats has not been conducted."[44]

TSA has cited cost as the reason that TSA has conducted vulnerability assessments at only a small number of the 19,000 general aviation airports nationwide.

Office of Screening Coordination and Operations Raises New Privacy Problems

The Department of Homeland Security (DHS) has proposed the creation and funding of the Office of Screening Coordination and Operations (SCO), which would oversee vast databases of digital fingerprints and photographs, eye scans and personal information from millions of Americans and foreigners. This office would be responsible for United States-Visitor and Immigrant Status Indicator Technology (US–VISIT), Free and Secure Trade, NEXUS/Secure Electronic Network for Travelers Rapid Inspection, TWIC, Registered Traveler, Hazardous Materials Trucker Background Checks, and Alien Flight School Checks.[45] This mass compilation of personal information has inherent dangers to citizens' privacy rights and it is imperative that SCO fulfill its legal obligations for openness and transparency under the FOIA and Privacy Act.

According to the proposed FY 2006 budget, the mission of the proposed SCO is "to enhance the interdiction of terrorists and the instruments of terrorism by streamlining terrorist-related screening by comprehensive coordination of procedures that detect, identify, track, and interdict people, cargo and conveyances, and other entities and objects that pose a threat to homeland security."[46] The budget goes on to say that "the SCO would produce processes that will be effected in a manner that safeguards legal rights, including freedoms, civil liberties, and information privacy guaranteed by Federal law."[47] It is unclear, however, what steps the office intends to take to protect these rights.

There is a significant risk that the creation and funding of the SCO would allow for mission creep—a risk that the data collected and volunteered by airline passengers, transportation workers and foreign visitors will be used for reasons not related to their original aviation security purposes. Though TSA has stated that it will not use the sensitive personal data of tens of millions of Americans for non-aviation security purposes, TSA documents about the CAPPS II program collected by EPIC under the FOIA clearly show that TSA had considered using personal information gathered for CAPPS II for reasons beyond its original purposes. For example, TSA stated that CAPPS II personal data might be disclosed to Federal, state, local, foreign, or international agencies for their investigations of statute, rule, regulation or order violations.[48] Again, TSA exhibited a proclivity for using personal information for reasons other than the ones for which the information was gathered or volunteered.

The Transportation Security Administration has frustrated efforts to ensure openness and transparency under the Freedom of Information Act and has violated the spirit of the Privacy Act for the protection of privacy rights in the development of the above programs. TSA also has shown a proclivity for using personal information for reasons other than the ones for which the information was gathered or volunteered. The agency's current redress procedures have failed to resolve valid grievances of innocent citizens flagged by the no-fly lists. TSA also has shown poor management of its financial resources. For these reasons, EPIC strongly opposes the sharp increase in funding for TSA's surveillance programs proposed in the president's FY 2006 budget, and specifically opposes funding of the Office of Screening Coordination and Operations.

Thank you for your consideration of these issues.

Sincerely yours,

MARC ROTENBERG,
Executive Director.

MARCIA HOFMANN,
Director, Open Government Project.

MELISSA NGO,
Staff Counsel.

ENDNOTES

[1] Transportation Security Administration Statement of Assistant Secretary David M. Stone Before the Committee on Commerce, Science, and Transportation (Feb. 15, 2005).

[2] *Id.* at 6.

[3] *Id.*

[4] *Id.*

[5] S. Rep. No. 93–1183, at 1 (1974).

[6] *Id.*

[7] *Doe* v. *Chao*, 540 U.S. 614, 618 (2004).

[8] Government Accountability Office, *Secure Flight Development and Testing Under Way, but Risks Should Be Managed as System Is Further Developed*, GAO–05–356 (March 2005) (hereinafter "GAO Report"). Department of Homeland Security Inspector General, *Review of the Transportation Security Administration's Role in the Use and Dissemination of Airline Passenger Data (Redacted)*, OIG–05–12 (March 2005) ("OIG Report").

[9] GAO Report, *supra* at 53. *See generally* EPIC's Secure Flight page *at http://www.epic.org/privacy/airtravel/secureflight.html*.

[10] GAO Report, *supra* at 53–62.

[11] *Id*. at 7.

[12] Department of Homeland Security, Budget-in-Brief Fiscal Year 2006, at 21 (Feb. 7, 2005) ("DHS Budget").

[13] OIG Report, *supra* at 6–7.

[14] *Id*. at 40.

[15] *Id*. at 42–48.

[16] *See U.S. Senate Committee on Governmental Affairs Pre-hearing Questionnaire for the Nomination of Admiral David Stone to be Assistant Secretary of Homeland Security, Transportation Security Administration 17, 19, available at http://www.epic.org/privacy/airtravel/stone*__answers.pdf.

[17] *Id*.

[18] *Id*. at 19.

[19] *Id*. at 18.

[20] *See*, e.g., Ryan Singel, *More False Information From TSA*, Wired News, June 23, 2004 ("After the JetBlue transfer was brought to public attention in September 2003, TSA spokesman Brian Turmail told Wired News that the TSA had never used passenger records for testing CAPPS II, nor had it provided records to its contractors. In September 2003, Wired News asked TSA spokesman Nico Melendez whether the TSA's four contractors had used real passenger records to test and develop their systems. Melendez denied it, saying," 'We have only used dummy data to this point.' "); *U.S. Representative John Mica (R–FL) Holds Hearing on Airline Passenger Profiling Proposal: Hearing Before the Aviation Subcomm. of the House Transportation and Infrastructure Comm*., 105th Cong. (March 2004) (Admiral Stone testifying that CAPPS II testing was likely to begin in June 2004); GAO Report at 17 ("TSA has only used 32 simulated passenger records—created by TSA from the itineraries of its employees and contractor staff who volunteered to provide the data—to conduct [CAPPS II] testing"); Department of Homeland Security Privacy Office, *Report to the Public on Events Surrounding jetBlue Data Transfer* (Feb. 2004) 8 ("At this time, there is no evidence that CAPPS II testing has taken place using passenger data").

[21] Letter from David Sobel, General Counsel, EPIC, and Marcia Hofmann, Staff Counsel and Director, Open Government Project, EPIC, to Lisa Dean, Privacy Officer, Office of Transportation Security Policy, TSA, Jan. 31, 2005 (on file with EPIC).

[22] Letter from Lisa S. Dean, Privacy Officer, Office of Transportation Security Policy, TSA, to David Sobel, General Counsel, EPIC, Mar. 2, 2005 (on file with EPIC.)

[23] *Id*.

[24] *See* Sara Kehaulani Goo and Robert O'Harrow Jr., *New Screening System Postponed*, Washington Post, July 16, 2004, at A02.

[25] System of Records Notice, Secure Flight Test Records, 69 Fed. Reg. 57345 (Sept. 24, 2004).

[26] Letter from Marcia Hofmann, Staff Counsel, EPIC, to Patricia Reip-Dice, Associate Director, FOIA Headquarters Office, TSA, Sept. 28, 2004 (on file with EPIC).

[27] P.L. No. 108–458 (2004).

[28] *See, e.g*., Sara Kehaulani Goo, *Committee Chairman Runs Into Watch-List Problem*, Washington Post, Sept. 30, 3004; Leslie Miller, *House Transportation Panel Chairman Latest to be Stuck on No-Fly List*, Associated Press, Sept. 29, 2004; Richard Simon, *Iconic Senator Is Suspicious to Zealous Airport Screeners*, Los Angeles Times, Aug. 20, 2004; Shaun Waterman, *Senator Gets a Taste of No-Fly List Problems*, United Press International, Aug. 20, 2004.

[29] Shaun Waterman, *No Redress Mechanism in New DHS Terrorist Screening Office*, United Press International, Mar. 2, 2005.

[30] GAO Report, *supra* at 7.

[31] DHS Budget, *supra* at 21.

[32] Press Release, *U.S. Department of Homeland Security TSA, Secretary Ridge Unveils Registered Traveler Pilot Program At Reagan National Airport* (Sept. 3, 2004).

[33] Press Release, *U.S. Department of Homeland Security, Secretary Tom Ridge Announces Enhancement of Expedited Traveler Program Through New York's JFK Airport* (Jan. 13, 2005).

[34] Privacy Act Notice, 69 Fed. Reg. 30948 (June 1, 2004).

[35] Comments of the Electronic Privacy Information Center on Registered Traveler Operations Files Privacy Act Notice, June 1, 2004, *available at http://www.epic.org/privacy/airtravel/rt_comments.pdf.*

[36] Privacy Act Notice, 69 Fed. Reg. 54256 (Sept. 8, 2004).

[37] DHS Budget, *supra* at 21.

[38] TSA's fact sheet on the Registered Traveler program, available at *www.tsa.gov/interweb/assetlibrary/RT_Factsheet.pdf.*

[39] Comments of the Electronic Privacy Information Center on Transportation Security Threat Assessment System and Transportation Worker Identification Credentialing System Privacy Act Notice, Sept. 24, 2004, available at *http://www.epic.org/privacy/airtravel/twic_comments.pdf.*

[40] Government Accountability Office, *Transportation Security: Systematic Planning Needed to Optimize Resources, Statement of Cathleen A. Berrick, Director Homeland Security and Justice*, GAO–05–357T (Feb. 15, 2005).

[41] *Id*. at 2.

[42] *Id*. at 31.

[43] *Id*. at 11.

[44] *Id*. at 17.

[45] DHS Budget, *supra* at 6.

[46] DHS Budget, *supra* at 19.

[47] *Id*.

[48] Transportation Security Administration, Department of Homeland Security, *Draft Privacy Impact Statements (CAPPS II)*, April 17, 2003, July 29, 2003, and July 30, 2003, obtained by EPIC through FOIA litigation, *available at http://www.epic.org/privacy/airtravel/profiling.html.*

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