
NOMINATION OF JOHN S. PISTOLE

HEARING

BEFORE THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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JUNE 17, 2010
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NOMINATION OF JOHN S. PISTOLE TO BE ASSISTANT SECRETARY, U.S.
DEPARTMENT OF HOMELAND SECURITY

Available via the World Wide Web: <http://www.fdsys.gov>

Printed for the use of the Committee on Homeland Security
and Governmental Affairs



U.S. GOVERNMENT PRINTING OFFICE

58-036 PDF

WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
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CONTENTS

Opening statements:	Page
Senator Lieberman	1
Senator Collins	2
Senator Carper	14
Prepared statements:	
Senator Lieberman	19
Senator Collins	21

WITNESS

THURSDAY, JUNE 10, 2010

John S. Pistole to be Assistant Secretary, U.S. Department of Homeland Security	
Testimony	4
Prepared statement	23
Biographical and financial information	26
Responses to pre-hearing questions	35
Letter from the Office of Government Ethics	70
Responses to post-hearing questions for the Record	71

NOMINATION OF JOHN S. PISTOLE

THURSDAY, JUNE 17, 2010

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:59 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Carper, and Collins.

OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. The hearing will come to order. Welcome to everybody. Today the Committee takes up the nomination of John Pistole to be the Assistant Secretary of Homeland Security in charge of the Transportation Security Administration (TSA), known as TSA to many millions of Americans. Mr. Pistole, welcome, and thanks for your willingness to serve.

Mr. Pistole has been nominated to administer an agency of almost 50,000 employees with a \$7 billion annual budget whose mission, of course, is to protect the safety of passengers and cargo traveling by road, rail, or air. This is an agency that, given its strategic importance to our homeland security, has gone far too long without permanent leadership.

This nominee is the Administration's third nominee for the post. I hope and believe this third try will be the charm, so this Committee plans to vote on your nomination as soon as possible, probably sometime next week. I also hope the Senate confirms you quickly so that TSA's workforce can get the leadership that it really needs and deserves.

Mr. Pistole has 27 years of experience in law enforcement, intelligence, and counterterrorism as a Federal Bureau of Investigation (FBI) special agent, inspector, assistant director of operations, assistant director of counterterrorism, and, for the past 5 years, as FBI Deputy Director, second only, of course, to Director Bob Mueller.

In rising in this way through the FBI ranks, you have had important management responsibilities directing the day-to-day operations of an agency of 34,000 employees, 56 field offices around the country, and a budget of \$8 billion. And, of course, that experience should serve you well, if confirmed, to lead TSA. Your work with State and local law enforcement and with international law enforcement and intelligence officials adds, I think, further to your qualifications to head this agency.

(1)

If you are confirmed as TSA Administrator, you will be taking charge of an agency that has made enormous strides, in my opinion, in the last 8 years to strengthen the security of the commercial aviation sector. But it is an agency that still faces important, not fully met challenges, including improving the security of other forms of transportation here in America, particularly mass transit and rail.

I was pleased by the Administration's proposed budget for fiscal year 2011, which adds \$900 million to key aviation security programs, including money for more whole-body imaging machines and the personnel needed to operate them. And, remember, we were all focused on that need after the Christmas Day terrorist attack on the plane over Detroit.

We know from hard experience that attacking commercial aviation remains a goal of our Islamist terrorist enemies. That is why the next TSA Administrator must ensure the smooth operation of a program known as Secure Flight, TSA's program to match passenger names against watchlists, and the development and implementation of new screening technologies as they arise.

While the aviation sector remains a target, as I said, other forms of transportation must also be better protected because we know they have been targets in other countries in the world. TSA, I think, could do a better job to ensure that the Transit Security Grant Program is fair and effective as it works with State and local authorities to secure mass transportation systems and, of course, generally that we do a better job at securing our rail and bus systems.

But bottom line, Mr. Pistole, you have been a superb public servant, in my opinion, and while others have left for the private sector, you continue to devote your career to keeping our country safe. I presume that is your family behind you, and this means that you have overridden their desire to go out into the private sector, if your family is anything like mine. But I want to thank you for your service and willingness to take on this critically important new assignment.

Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you. Mr. Chairman, I want to join you in welcoming Mr. Pistole to the Committee. He is an individual who is well known to this Committee. We have had the privilege of working with him closely over the past many years.

The attempted bombings on Christmas Day of 2009 and just last month in Times Square remind us that terrorists remain committed to attacking our Nation. TSA performs a critical role in protecting us from these attacks.

Following the Times Square bombing attempt, the suspect boarded a flight destined for the Middle East after his name was added to the No-Fly List. This suspected terrorist was literally minutes away from escaping through a gap in our aviation security system. At the time, airlines were required to update their No-Fly Lists only once every 24 hours; TSA has now ordered that this lag time be reduced to 2 hours in response to this very incident.

But TSA could do more. Indeed, TSA should be directly responsible for comparing passenger names against the No-Fly List. Currently, TSA performs this role only for domestic flights. Although TSA has said that it will have Secure Flight implemented for all international flights by the end of this year, the new leader of the TSA must ensure that this goal is met.

As demonstrated by the failed Christmas Day bombing attempt, our passenger checkpoint screening technology needs to constantly be improved to thwart terrorists' latest tactics. To that end, TSA plans to install 1,000 Advanced Imaging Technology (AIT) machines in American airports by the end of fiscal year 2011. TSA announced its latest procurement of these machines last month, purchasing another 300 machines, bringing the total to close to 500.

I know that the Department of Homeland Security (DHS) is also reviewing Automatic Target Recognition (ATR), the auto-detection software for these imaging machines. ATR identifies potentially threatening objects on a person going through AIT screening and eliminates the need for a second TSA employee to review the passenger's image in a separate room. This has the obvious benefits of addressing legitimate privacy concerns with this technology, reducing the space needed in airports, and lowering the installation and operational costs to the government and, thus, to taxpayers.

I have observed the auto-detection technology in action in Amsterdam earlier this year. Dutch security officials expressed confidence in the technology's ability to detect concealed explosives of the nature used by the Christmas Day bomber. The next TSA Administrator should pursue this important advancement for the imaging program.

Because foreign governments must be our partners in improving aviation security, TSA also must continue its international outreach, which has, to be fair, accelerated in recent months. This should include increased information sharing with foreign governments, which is uneven right now, and with air carriers about individuals who warrant more scrutiny in the screening process.

But as the Chairman correctly has pointed out, aviation is not the only sector of transportation that merits TSA's vigilant efforts. The agency's mission extends to other modes of transportation, including our mass transit system. We have to be careful about focusing all of our resources on terrorist threats to aviation alone, as the threat clearly does not stop there.

Mr. Pistole's nearly three decades of service with the FBI, including more than 5 years as Deputy Director, demonstrate significant law enforcement experience and leadership. He also has substantial experience in the management of law enforcement officers. If he is confirmed as the new TSA Administrator, these skills should serve him well in an agency that performs a law enforcement function. I look forward to discussing these and other issues with our nominee today. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator Collins.

Mr. Pistole has filed responses to a biographical and financial questionnaire, answered pre-hearing questions submitted by the Committee, and had his financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made part of the hearing record, with the exception of the finan-

cial data, which are on file and available for public inspection in the Committee offices.

Mr. Pistole, as I think you know, our Committee rules require that all witnesses at nomination hearings give their testimony under oath, so I would ask you to please stand now and raise your right hand. Do you swear the testimony that you are about to give to this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. PISTOLE. I do.

Chairman LIEBERMAN. Thank you. Please be seated.

We would be happy to hear an opening statement if you have any and introductions if you would like of the long-suffering people behind you.

**TESTIMONY OF JOHN S. PISTOLE¹ TO BE ASSISTANT
SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. PISTOLE. Chairman Lieberman and Ranking Member Collins, thank you for the opportunity to appear before you today. I appreciate the opportunity to appear as the nominee for the Assistant Secretary of the Transportation Security Administration. I am honored by the President's call to service and by Secretary Napolitano's support.

And with your kind indulgence, I would like to recognize my wife, Kathy, of nearly 31 years, and our daughters, Lauren and Jennifer, and thank them for their unwavering love and support. Also some family friends who are with us today, so I appreciate them being here.

I would also like to express my appreciation to not only the men and women of the FBI that I have had the privilege of working with, but all those in Federal, State, local, and tribal law enforcement and the U.S. intelligence community, with whom I have had the privilege to work since becoming an FBI agent in 1983. And I would be remiss if I did not acknowledge our international partners without whose help we would be unable to fully address global terrorist threats which may impact the homeland. And to the men and women of TSA, I would like to say that I am eager to join your ranks and work with you in securing our Nation's transportation systems.

I also appreciate the outstanding work Gale Rossides has done these last 18 months as Acting Administrator, along with all the senior staff who run the business of TSA every day. I would also just note the outstanding work that the Committee staff and the DHS and TSA staff have done to prepare for this hearing.

As we know, since its creation after September 11, 2001, TSA has played a vital role in helping protect our national security. Never has that responsibility been more critical than today, noting, as you have, all the attacks and attempts we have seen in the last year, both here and abroad. Given these threats, it is critical that TSA be a risk-based, intelligence-driven agency that anticipates threats and works closely with all of our partners to defeat the threats as part of a multilayered security discipline. Leadership in

¹The prepared statement of Mr. Pistole appears in the Appendix on page 23.

these areas, specifically national security and counterterrorism, are familiar territory for me in my nearly 27-year career with the FBI.

For example, in 1999, I helped lead the investigation and recovery efforts of Egypt Air Flight 990 after it crashed off the coast of New England, killing over 230 people. In May 2003, I led an FBI team to Riyadh, Saudi Arabia, investigating the al Qaeda-affiliated, vehicle-borne bombings of three Western housing compounds in which 40 individuals were killed, including eight Americans. And as you have noted, for the last 5 years, I have served as the Deputy Director of the FBI, overseeing all FBI efforts to protect the homeland.

These experiences and the years I spent as a street agent in Minneapolis and New York, particularly on a FBI-New York Police Department Organized Crime Task Force, and also as a field supervisor in Indianapolis, an Assistant Special Agent in Charge in Boston, in addition to other areas, the great State of Maine, an inspector leading and conducting audits and evaluation of FBI offices, and an instructor at our FBI Academy and at the International Law Enforcement Academy in Budapest—all of these have taught me the critically important lessons of developing key partnerships designed to protect our citizens from those who would cause us harm.

My familiarity with and respect for field operations is combined with years in senior management. I understand complex organizations and am dedicated to leading TSA to the next level.

Like the FBI, TSA relies upon a dedicated workforce, including over 47,000 Transportation Security Officers (TSOs) at airports throughout the Nation. They are TSA's field officers, the front lines in a layered network protecting our aviation sector. If confirmed, I will dedicate myself to supporting all of TSA's workforce and ensuring the highest standards of professionalism achieved through multiple disciplines such as comprehensive training, mentoring, and opportunity for professional development.

I will also assess TSA's non-aviation surface transportation efforts in concert with other Federal agencies and State and local authorities. I will engage and work in close collaboration with all stakeholders, including other government agencies, private industry, our international partners, and, of course, the traveling public.

Finally, throughout my FBI career, I have focused on the need to identify those who wish to do us harm while protecting individual civil rights and civil liberties. We should be judged not only by our ability to defend our Nation from terrorism, but also by our commitment to protect and defend the rights and freedoms we all enjoy.

If confirmed, I look forward to a close working relationship with this Committee and Congress overall. I would be honored to serve with the dedicated men and women of TSA, and I applaud the challenging work they do each and every day.

Mr. Chairman, Ranking Member Collins, I thank you again for the opportunity to appear before you today, and I look forward to your questions. Thank you.

Chairman LIEBERMAN. Thank you very much, Mr. Pistole, for that excellent opening statement. I am going to start my questioning with the standard three questions we ask all nominees.

First, is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. PISTOLE. No.

Chairman LIEBERMAN. Second, do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. PISTOLE. No.

Chairman LIEBERMAN. And, third, do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Mr. PISTOLE. Yes.

Chairman LIEBERMAN. I am not going to add, "Will you comply with subpoenas issued by this Committee?"

Mr. PISTOLE. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Let us start the serious questioning.

Because of our reliance as a Nation on the domestic and global transportation networks to move goods and people, as I said in my opening statement, the transportation sector obviously continues to be a potential target for terrorist attacks. I wanted to ask you what your top priorities for TSA are if you are confirmed to be its next director?

Mr. PISTOLE. Thank you, Mr. Chairman. The first priority is to ensure that TSA has the latest intelligence to inform the individuals to perform the operations that TSA is charged with, and by that I mean to ensure that as a threat- and risk-based intelligence agency, it not only is able to pull information from the entire U.S. intelligence community and our foreign partners, but that information is being pushed on a daily, if not hourly, basis. That is the top priority. The second—

Chairman LIEBERMAN. That is really interesting. Excuse me for stopping you there. In other words, because we think of the TSA basically as, you might say, a reactive organization or an organization that checks people as they get on planes, or screens cargo. But you are suggesting something else.

Mr. PISTOLE. Yes, Mr. Chairman. My perspective on it is that TSA is one component in a much larger continuum, which should start, I would suggest, for example, as the Najibullah Zazi investigation did out of Denver and New York.

Chairman LIEBERMAN. Right.

Mr. PISTOLE. Informed by the intelligence on the front end so hopefully the plots are disrupted before people ever get to screening. For example, in the Zazi case, obviously there was a thorough investigation that was predicated on excellent information sharing not only within the United States, but internationally. And so by the time Zazi and his two co-conspirators were ready to construct the backpack devices to go in the New York City subways, the plot was disrupted. So it never got to the screening part. So in that continuum, TSA plays a critical part obviously in that screening. If nothing has been developed, such as with Mr. Shahzad from Times Square, if he had been going on a flight, but then also, for example, even if somebody does get through screening somehow, we have the

Federal air marshals on the flights, we have the hardened cockpits, and all those other things.

Chairman LIEBERMAN. Yes. So do you think now that there is an inadequate link between TSA and the intelligence community?

Mr. PISTOLE. I do not know that, but if confirmed, that will be the first thing that I look at when responding to your priorities.

The second priority is to look at the workforce development issues. Again, you mentioned over 50,000 employees, a lot of moving parts, a lot of people dedicated to doing the mission each and every day, as I mentioned. I want to ensure that I can work with all the employees of TSA to hear their concerns, hear their issues, and make sure that they have the tools, the techniques, the training, and technology to do the best job possible. So those are the top two priorities.

Chairman LIEBERMAN. I do not know whether you said this at the Commerce Committee hearing or to somebody else somewhere, but I have heard that you are thinking about spending a day or two as a TSA employee or a TSO.

Mr. PISTOLE. That is correct.

Chairman LIEBERMAN. Tell me about what you are thinking.

Mr. PISTOLE. Well, because I have been an FBI agent for nearly 27 years, I do not have, I think, a sense of appreciation for what the TSOs or the Federal air marshals or the behavior detection officers do. So if confirmed, I plan to spend some time doing those jobs just to get a sense—I have read the job descriptions online, seen the printed material to know what the job requirements are, the ability to do those jobs. So in order to really be fully informed, I plan to do that.

Chairman LIEBERMAN. That is great. I think obviously the TSOs and all the TSA employees will appreciate that. The morale seems good as we go through the line, but maybe I would see otherwise. I do remember one time about 6 months ago I went through the line, and one of the TSOs followed me and said, in a very respectful way, that he felt that the regional management was not listening to the TSOs in terms of some of their thoughts about how to better do the job.

Obviously we have come a long way post-September 11, 2001, and this agency has developed and grown very rapidly, and there is a certain amount of fixed hardware there now. But you have enough law enforcement, preventive, and administrative background that I hope you will approach this as if you can imagine nothing existed and figure out how you would best fulfill the mission that TSA has, and then maybe you can come back to reality and adjust it in some way.

Mr. PISTOLE. Thank you, Mr. Chairman. Obviously one of my jobs as the Deputy Director of the FBI is helping run the business of the FBI every day, making sure that we are being good stewards of the taxpayers' dollars and making sure that we are allocating our resources to where the threats are. And that is exactly the management philosophy I intend to take to TSA, if I am confirmed.

Chairman LIEBERMAN. I wanted to ask you a quick question in my remaining time in this round about rail and transit security, and it does take me back to the Zazi case and obviously the attacks in London, Madrid, and Mumbai on mass transit. What is your

general assessment, given your FBI experience, of the threat to rail and transit systems, including buses, in the United States today? And what do you think we can do in these non-aviation areas of transportation, on which millions of Americans travel every day, to better secure them?

Mr. PISTOLE. I think as you have noted, there are a number of threats based on what we have seen since Madrid in 2004 and in London in 2005 and in Mumbai in 2007 and a number of other attacks in India, and then in Moscow 2 months ago with the two female suicide bombers in the subway.

Clearly, we know from intelligence that al Qaeda and other related terrorist groups have an interest in attacking soft targets. Obviously, the success of September 11, 2001, emboldened them, but we know that as we harden targets, they look for softer targets, and clearly rail and, as we know from Israel, buses, at least there—in fact, tomorrow is the eighth anniversary of attacks on June 18 or 19, 2010, where over 60 people were killed and 100 injured in bus attacks in Israel. We know that they will look for soft targets, and so if confirmed, one of the things I want to do is ensure that a very comprehensive rail and surface transportation threat assessment is completed—there have been portions of that done—and ensure that, again, we are putting our resources where the threats are, recognizing we cannot be all things to all people at all times, all places, but that we are allocating resources based on risk.

Chairman LIEBERMAN. I appreciate that. I hope you will make that a priority. It is one, as I said to you when we talked before, that concerns me. I know that the conventional wisdom is that we could never practically apply the same kind of screening techniques to people getting on trains or buses that we do to people getting on planes. But I hope you will push that envelope a little bit, at least to explore it, because I know other countries have moved forward on some of that. Some of it costs money, and that is something to consider. But I think we should ask you as the new TSA Administrator just to view it as a security problem and a challenge. If you have some fresh ideas about how to better secure rail and bus transportation before an attack as opposed to after, then please come forward and let us know, and we want to work with you on it. Thank you.

Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

Mr. Pistole, I want to ask you a series of questions related to the FBI's use of National Security Letters and what are called "exigent circumstances letters." The Inspector General (IG) at the Department of Justice issued three reports between 2007 and 2010 that were critical of FBI management for abuses of this authority. Now, as I understand it, National Security Letters are essentially administrative subpoenas that are used to collect some limited types of information in terrorism investigations.

The FBI, after September 11, 2001, adopted a practice of sending exigent circumstances letters, which were supposed to be used in emergency situations, and they are supposed to be followed up with a National Security Letter. These exigent circumstances letters were not authorized by law, and some of them were not followed

up by a National Security Letter. The IG found problems in roughly half of the 4,400 cases that were reviewed, indicating at least a technical violation of the law. So with that background, let me ask you some questions since you were Deputy Director during part of that period.

First, did you personally have any involvement in the approval or the issuance of exigent circumstances letters?

Mr. PISTOLE. No.

Senator COLLINS. When did you first become aware of the use of these letters?

Mr. PISTOLE. During the course of the first Inspector General report when they notified the senior leadership of the FBI.

Senator COLLINS. Although the IG found fault with many levels of management at the FBI for allowing this practice, was there any finding of individual wrongdoing on your part?

Mr. PISTOLE. No, Senator.

Senator COLLINS. What actions, once you became aware of this problem and the IG's reports, did you take to remedy the practices?

Mr. PISTOLE. I took three steps, the first being to issue an immediate directive to both the Counterterrorism Division and all 56 field offices to immediately cease and desist the use of the exigent circumstances letters. Exigent letters is what we called them.

Second, we instituted a rigorous process and protocol review and implemented a new policy for redundant layers of review that we did not have by the Chief Division Counsel of each office and then the Special Agent in Charge of each of our field offices.

And then, third, we instituted a rigorous inspection review on a periodic basis for all 56 offices and the Counterterrorism Division in particular to assess whether they were in compliance with the new protocols that we put in place.

Senator COLLINS. Thank you.

Let me turn to a different issue. As those of us who travel a great deal know, there have been times when TSA has rushed the deployment of new screening technologies only to later recognize that they have not worked very well. For example the "puffer" machines that we had in Washington were here for several months and then ended up having so many problems that they were pulled from operation. This costs a lot of money every time technology is rushed before there is thorough operational testing. I am told that in this case, the puffer machines worked wonderfully well in a sterile laboratory environment, but did not work well in the real-life environment of an airport.

The Government Accountability Office has been very critical of TSA for not doing sufficient operational testing before deployment. Given the agency's very mixed record with screening technology deployment, what steps will you take to ensure that there is operational testing before we make a major investment?

Mr. PISTOLE. Well, Senator, obviously on any major deployment of technology, personnel systems, information technology (IT) systems, there needs to be a thorough and rigorous testing, and not just in the lab, as you mentioned, but in reality, to account for all the challenges that would be encountered. So if confirmed, I would pledge to work with the Committee, but particularly to institute that type of review, to do a deep dive on anything that is currently

planned or anything for future planning to ensure that type of testing is done, that things are not rushed out because of some urgency that is driven by other than operational necessity, and that there is rigorous adherence to the process and protocols that should be in place.

Senator COLLINS. Thank you.

In other cases, it appears that DHS is not quick enough to adopt new technologies. I mentioned in my opening statement and in my office when we had our meeting that when I went to Schiphol Airport in Amsterdam, I saw the new technology that has been implemented there in the wake of the Christmas Day bomber. And I was very impressed with the software because it took an element of human judgment out of the equation in a useful way by scanning the body for hidden materials or problematic concealments in a way that the officials in Amsterdam told me they were confident would have detected the concealed explosives on Abdulmutallab. It also avoided a lot of the privacy issues that have been problematic with full-body imaging. I was astounded that the Dutch seemed to be so far ahead of us.

What can we do to ensure that we are aware of the best technology and share information with our foreign partners?

Mr. PISTOLE. Thank you, Senator. I am very interested in that technology, to learn more about it, and if confirmed, I would like to use the opportunity, based on my extensive experience in international law enforcement security services and activity and the great work that has already been done both at TSA and the DHS Science and Technology Directorate, to make an assessment fairly early on as to the propriety of that equipment, the pros and cons, and making sure that the operational testing is done sufficiently to assess if this is the best technology that is available today and if it is helping to not only assess for today but inform for future threats, trying to anticipate what those threats may be, as opposed to building technologies for yesterday's threats.

Senator COLLINS. Exactly. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator Collins. Maybe we will do one more quick round.

I am also going to go back to the December 25, 2009, attack since the Committee, as a result of activities in the Abdulmutallab case, has been reviewing the processes the Federal Government employs in developing and utilizing the numerous terrorism watchlists. And, of course, this has been something I know you have been involved in through the Terrorism Screening Center in the FBI, but now will be in TSA.

Over 400,000 individuals have been identified as known or suspected terrorists—and I know they get to this in various ways—the Terrorist Screening Database (TSDB) list, but only a small subset of those people currently meet the standard of the Selectee List, which means that they are taken out of line and they face enhanced physical screening and other measures at our airports.

I think that we need to expand the number of people that we subject to that secondary screening, perhaps the entire TSDB watchlist. I understand that may be a substantial change and entail additional responsibilities. But to me, the risk of allowing someone on the watchlist to board a plane without being subjected

to at least a secondary physical screening for a bomb or weapons concealed or anything else is really intolerable. And I am thinking about this in terms of public credibility. God forbid if such a person ends up carrying out an attack on a plane, the public's confidence in our screening systems would be severely compromised.

I know in your response to the Committee's pre-hearing questions you assured the Committee that you would work to identify and utilize an appropriate larger subset of the Terrorism Screening Database. I wanted to ask you, to the extent you have thought about it, what criteria you think you will use as you review this matter to determine the travelers appearing in the broader database who should be subjected to, as I say, at least enhanced physical screening?

Mr. PISTOLE. Thank you, Mr. Chairman. Obviously, there are a number of factors involved. One of the key factors, as I see it from my FBI experience, and which I would take, if confirmed, to TSA, is what specific information do we have, obviously, about the identity of the individual, making sure not only to have as full a name as possible, but a plus-one identifier, if at all possible, which is one of the things we look for on the Selectee or No-Fly Lists to make sure that we do not have a high number of false positives, the Bill Smiths of the world or whatever, if we do not have that plus-one identifier.

Coupled with that, though, is the general requirement of there being some derogatory information about the individual to ensure that this is not what we call a poison pen, that somebody has just written in about a business competitor or a jilted lover or all these things—and we see these all the time, obviously, in the line of business I am in. So is there some derogatory information that can be ideally independently corroborated, which is usually not the case.

But you make a good point about ensuring and erring on the side of preventing things from happening, and the more we can do—there are obviously redress procedures for people who should not be on there. So if confirmed, I would look forward to digging into that more and seeing it from the TSA side of things rather than the FBI side.

Chairman LIEBERMAN. I appreciate that, and I stress it again because as you know, anytime anything happens there are immediate investigations done by the media, by Congress, and by the agency itself.

Mr. PISTOLE. I am familiar with that.

Chairman LIEBERMAN. You sure are. [Laughter.]

And it is just hard to explain why somebody who did enough to get onto that screening list—maybe part of what you are saying is that there ought to be a filter before a person gets on that list, or even on a lesser list, but if that person got on and carried out an attack, it would be hard to explain to people why we did not stop it.

In 2009, I know that there were disputes between the Department of Homeland Security and the FBI about how much information to share with State and local law enforcement officials about ongoing investigations, including the Najibullah Zazi and David Headley cases. I gather that the FBI was reluctant to share information about the investigations, and DHS was more inclined, even

pushing to share the information, given the belief that heightened awareness might have raised the vigilance of State and local law enforcement officials and perhaps led them to uncover related plots.

As an example, I want to ask you what steps have the FBI and DHS taken to come to a better understanding, if any, about how to share information with State and local law enforcement officials related to ongoing investigations.

Mr. PISTOLE. So the first part of that is that there is a dynamic tension between how much to share, with whom, and at what point. And, obviously, within DHS's enabling legislation, they are required to share with State, local, and tribal law enforcement officials, something that the FBI has been in the business of doing for over 100 years now.

Part of the challenge is—and it really comes down to a case-by-case determination, but, for example, Deputy Secretary of DHS Jane Lute, the former Deputy Attorney General, Mike Leiter from NCTC, and I sat down during this time frame you are talking about, between Zazi and then Christmas Day, to try to find the best way forward on that case-by-case determination, noting that there are a number of people, as you say, that may benefit from that information. For example, with Zazi, are there other people out there acquiring hydrogen peroxide or just peroxide from beauty supply stores that we would like to be informed about? We have a number of trip wires between FBI and DHS across the country on things like that, and ammonium nitrate fertilizer, large purchases, things like that, which we rely on the cooperation of the American people to help inform us.

The challenge then becomes at what point, again, do we say that there should be broad dissemination for people who may or may not have a need to know versus the compromise of an ongoing investigation as we see from time to time where the FBI will share, for example, with all 106 Joint Terrorism Task Forces, and at some point, the information gets out in the media, so there is something that happens as a result of that.

So the agreement that we have worked out is to ensure that the Secretary, Deputy, and others have the information on an ongoing basis, but then that we work very closely before there is a broad dissemination of sensitive ongoing operational information.

Chairman LIEBERMAN. Understood. It is a balance. TSA is a very different kind of agency in its relations with State and local law enforcement officials. Or is it? How do you contemplate those relationships?

Mr. PISTOLE. As I mentioned, Mr. Chairman, I see TSA as being one of those multiple layers of security that has obviously tremendous interaction with, for example, the almost 2 million Americans or people traveling in the United States every day by aviation. It is a different relationship than the FBI has, for example, on the trip wires, reaching out to the private sector, or DHS has in terms of trying to have intelligence information provided.

But that being said, the behavior detection officers, the TSOs, and the Federal Air Marshals (FAMs) all have opportunities to observe and to pass on information, which may be of intelligence

value. So I want to make sure that is happening as opposed to information just being one-off and nothing being done with it.

Chairman LIEBERMAN. Good. Thank you, Senator Collins.

Senator COLLINS. Thank you. Mr. Pistole, I remember a couple of years ago the head of the sea port in Portland, Maine, showing me an array of identification (ID) cards and special credentials that he was required to have in order to access the port that he directed every day. It included a Transportation Worker Identification Credential (TWIC) card, but it included many other kinds of credentials.

Many commercial truck drivers have to comply with multiple credentialing and background check programs, which includes the TWIC card and a hazardous materials endorsement threat assessment. There are all these different and overlapping credentials.

Now, the programs are important because we want to know who is getting access to sensitive areas, and we want to control that. But there does appear to be quite a bit of duplication, and that involves additional costs, and it is time-consuming.

What would you do as head of TSA to take a look at those credentials to see if there is a way to harmonize them, to combine them, to avoid some of the duplication that now occurs?

Mr. PISTOLE. Thank you, Senator Collins. Obviously, all these forms of ID are designed for the good purpose of trying to keep people from doing bad things, and part of it, obviously, is designed to look at the possible insider threat, somebody who may obtain employment with bad intent or who already has employment and has access to the port in Portland or elsewhere and then is co-opted and encouraged to do something bad. So the intent is good.

If confirmed, what I would pledge to do is a deep dive on all the types of identification, including the TWIC, and to assess what is the best business model for moving forward to have the effectiveness and efficiency to achieve the outcomes that they are designed for.

So I do not know at this point whether that redundancy can be eliminated or not, but I pledge to look into it.

Senator COLLINS. The final issue that I want to raise with you is one that we have also discussed in my office, but I want to get on the record, and that has to do with the issue of collective bargaining. As you know, currently the law gives TSA the authority to shift resources and to implement new procedures at will. And that authority is important because it allows TSA to respond to emergencies and changing circumstances. It allows TSA to make the best use of its workforce, and we have seen the concrete benefits of this authority, both in the aftermath of Hurricane Katrina and the thwarted airline bombing plot that originated in Great Britain in 2006. In both cases, TSA was able to change the nature of its employees' work and even the location of that work very quickly, without having to go through any kind of collective bargaining procedure.

It has also been very useful to TSA when it has not been a terrorist plot but it has been a blizzard, for example. That happened in December 2006.

I believe that we need to ensure that TSA employees have a process for appealing adverse actions, and I suggested to the Ad-

ministration that the way to do this is to formalize a process where the Merit Systems Protection Board would hear and rule on adverse actions so you can protect employees from perhaps an unfair or arbitrary development or action by a supervisor that was not warranted without giving full collective bargaining rights.

What are your views on the issue of collective bargaining rights for TSA employees?

Mr. PISTOLE. Obviously, Senator, there are a lot of complex issues inherent in everything that you have just noted. That being said, Secretary Napolitano has asked that I conduct a review and assessment, and that is what I am planning to do.

Based on my experience in the FBI, where we did not have unions or collective bargaining or anything, I need to obtain more information. That is part of listening to all the stakeholders, to hear what the issues are—you have articulated a number of them—and to then be able to make that assessment.

One of the things I am focused on and will continue to focus on is making sure that the security and safety of the American people are not adversely affected by anything that would come out of these discussions.

Senator COLLINS. That does have to be the priority, and I think it is also important to remember that we are dealing with a law enforcement function here. So your experience with the FBI is directly relevant.

We have seen public service employees be members of unions and collectively bargaining without it impairing their ability to carry out their duties. But I am very concerned about preserving what I believe to be absolutely essential flexibility, and I think the fact that the FBI does not have collective bargaining is telling.

Let me just in a final comment say that I was particularly pleased when the President posted your nomination because it showed that the President understood the value of having someone with a law enforcement background in this critical position. So I do think that was an appropriate move by the President.

Mr. PISTOLE. Thank you, Senator.

Senator COLLINS. I also want to apologize to you because had I not asked that last question, we might have adjourned the hearing before Senator Carper came. [Laughter.]

Senator COLLINS. And goodness knows what he is going to ask you. Thank you, Mr. Chairman.

Mr. PISTOLE. Thank you, Senator.

Senator COLLINS. And my apologies.

Chairman LIEBERMAN. Thank you, Senator Collins.

There is part of Senator Carper, our dear and beloved friend and colleague, that is like a force of nature, so we never quite know how he is going to begin. In any case, we always welcome him and look forward to his participation.

With that, Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. I am so glad to be here. [Laughter.]

And we are glad that you are here, too, and that you are willing to take a shot at this. There is an old saying: "The third time is a charm." In your case we sure hope so.

I presume when the President and his folks were prevailing on you to be willing to have your name submitted, somebody somewhere along the line must have raised why they felt our first two nominees did not make it through and why the Administration thought that you just might. What kind of encouragement did they give you that you just might make it through?

Mr. PISTOLE. Well, Senator—

Senator CARPER. What is different about you?

Mr. PISTOLE. I do not know about the first two candidates. They did not talk to me about that. But they obviously talked about my background and the fact that I have the leadership and management experience and all those things that they thought would be beneficial for the Administrator position.

Senator CARPER. When you came to visit me, I asked you if your wife knew you were doing this, and you said yes.

Mr. PISTOLE. I replied affirmatively, and she would testify under oath to that. So, yes. [Laughter.]

Senator CARPER. You say she testified under oath?

Mr. PISTOLE. She would.

Senator CARPER. How about your kids? Do they know?

Mr. PISTOLE. They know also, yes, and they are all in agreement.

Senator CARPER. That is good. It is nice to see you all. Thanks for your willingness to continue to share your husband and your dad with the people of our country.

When you and I met, one of the things I raised with you—and I have raised this, I think, in an earlier hearing of our Committee—is the issue of behavior pre-screening, which the Israelis are particularly adept at, as folks come into airports and are checking in, getting their tickets, checking their luggage, and going through security. And not just Israel. A couple of other countries are pretty good. I think Great Britain is pretty good at this sort of thing as well. But these officials will try to identify and prevent the bad guys, as you know, from boarding aircraft by watching the way that they behave before they get to the gate. And the airports position well-trained personnel throughout their terminals, including, I guess even in some cases, outside of their terminals, to maybe politely ask questions and to watch facial expressions, watch body language, and watch speech patterns.

What are your thoughts on our current behavior detection capabilities within U.S. airports? And would you make it a priority to continue to enhance these behavior screening programs?

Mr. PISTOLE. In response to your latter question, Senator, yes, I would enhance those efforts. I have not had a detailed briefing on the current capabilities, outcomes, but I know from my experience at the FBI, where we have a Behavioral Analysis Unit at the FBI Academy at Quantico, that there is a lot that can be gleaned from assessing somebody by their behavior. And so I want to look into that. I am a strong supporter of the possibilities, recognizing the Israeli model, as you mentioned, as probably the premier one, and also recognizing that there is a scalability issue there between one major airport and the relatively low number of air travelers every day versus the nearly 2 million at over 450 airports here in the United States every day. So recognizing those challenges, I am a supporter and look forward to reviewing it in more detail.

Senator CARPER. Thank you.

If confirmed, you are going to be responsible for leading a workforce, I think, of over 50,000 security officers, inspectors, and air marshals whose job it is to protect our Nation's transportation systems from criminal and terrorism threats. Can you just take a moment and share with us some lessons learned that you plan on bringing to the job that you found successful in your 35 years of Federal service? We would like to hear that.

Mr. PISTOLE. Sure, Senator. Thank you. There are several. One, with such a large workforce, there has to be obviously some matrix management in terms of regional management of offices and people. So I see that as very similar to what the FBI currently has with our 34,000 employees in 56 field offices and 76 offices overseas. Those individuals are responsible for their area of responsibility, obviously, but they have a direct reporting to FBI headquarters, which is what I currently do. And it is headquarters-driven so you do not have all these different independent operators out there. And so everybody has to have some consistency, uniformity, and predictability in how they go about their business, and so I am currently the rating official, the person in charge for the heads of all of our 56 offices and an additional 12 or so senior executives at FBI headquarters. So I have experience in knowing how to run the business, if you will, and plan to do the same thing, if confirmed, at TSA.

Senator CARPER. In closing, please share with us your basic leadership principles that you try to subscribe to.

Mr. PISTOLE. Sure. It really comes down to a couple basic things, and that is, trying to empower people with the tools and in many cases technology to do their job, to obviously praise in public, reprimand in private, doing things that encourage people to live up to their potential, and as part of that, for TSA, I hope to take what I see at the FBI in my 27 years of experience there in terms of really having a strong sense of mission and commitment to duty. And I see TSA being similarly situated in terms of having the national security mission on this continuum that I was speaking with the Chairman and Ranking Member earlier about. There is intelligence on the one end that hopefully will interdict the plot before it ever gets to screeners or behavior detection officers or canines or any of those issues, but to ensure that they are empowered to do their work. So it is really trying to identify the best people, surround myself with those people, and then turn them loose and let them do their jobs.

Senator CARPER. Great. Any questions we did not ask you that you think maybe we should have?

Mr. PISTOLE. No, Senator. Thank you, though. [Laughter.]

I did hesitate just briefly there.

Senator CARPER. Thank you very much. I look forward to meeting your family.

Mr. PISTOLE. Thank you, Senator.

Chairman LIEBERMAN. Thanks, Senator Carper.

Did you ever try that last question on somebody you were interrogating?

Mr. PISTOLE. Many times, Mr. Chairman. And sometimes they will respond, so you never know. [Laughter.]

Chairman LIEBERMAN. That is most interesting.

Thank you very much for appearing before the Committee today and for your responsive answers to our questions. While we teased before about your family, really we appreciate, both from your wife and your children, their support of your career and your willingness to take on this latest assignment as we appreciate your willingness to do so.

We are going to try to move this through as quickly as we can. Our goal is to make sure you get confirmed before we break for the July 4th recess.

Mr. PISTOLE. Thank you, Mr. Chairman.

Chairman LIEBERMAN. So hopefully we will get you out of the Committee sometime next week and then passed on the floor as soon thereafter as possible. And so far I do not know whether it is your qualities or just people are generally intimidated by a Deputy FBI Director, but I have not heard much opposition yet. Have you, Senator Collins?

Senator COLLINS. No.

Chairman LIEBERMAN. It is always possible, but you deserve to have unanimous support, and I hope that is what you will have.

Mr. PISTOLE. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Do you want to say anything more, Senator Collins?

Senator COLLINS. No.

Chairman LIEBERMAN. Without objection, the record will be kept open until the close of business tomorrow for the submission of any written questions or statements. I thank everyone who has been here. The hearing is adjourned.

[Whereupon, at 3:57 p.m., the Committee was adjourned.]

A P P E N D I X

Opening Statement for Chairman Joseph Lieberman
"Nomination of John S. Pistole"
Homeland Security and Governmental Affairs Committee
June 17, 2010

Good afternoon. Today the Committee takes up the nomination of John Pistole to be Assistant Secretary of Homeland Security in charge of the Transportation Security Administration. Welcome Mr. Deputy Director.

Mr. Pistole has been nominated to administer an agency of almost 50,000 employees with a \$7 billion annual budget whose mission is to protect the safety of passengers and cargo travelling by road, rail, or air. This is an agency that, given its strategic importance to our homeland security, has gone far too long without permanent leadership.

Mr. Pistole, of course, is the Administration's third nominee for the post. I hope number three will be the charm, so, this Committee plans to vote on Mr. Pistole's nomination as soon as possible. I also hope the Senate confirms him quickly after that so TSA's workforce can get the leadership it so richly deserves.

Mr. Pistole, you have 27 years of experience in law enforcement, intelligence, and counterterrorism as an FBI special agent, inspector, assistant director of operations, assistant director of counterterrorism, and, for the past five years, as FBI deputy director, second only to Director Mueller.

In rising through the FBI ranks, you have had important management responsibilities directing the day-to-day operations of an agency of 34,000 employees, 56 field offices, and a budget of \$8 billion. Your work with state and local law enforcement and with international law enforcement and intelligence officials adds further to your qualifications to head TSA.

You not only have dealt with the risks this country faces from terrorism but had a major hand in leading the government's efforts to prevent terrorism within our homeland. During your tenure at the counterterrorism division, you oversaw the bureau's domestic and international terror investigations and built the division from less than 200 employees to over 1,000. The FBI's work with local law enforcement agencies over the past two years to investigate and arrest would-be homegrown terrorists – including Najibullah Zazi and Faisal Shahzad - has been particularly brilliant.

If you are confirmed as TSA Administrator, you will be taking charge of an agency that has made enormous strides in the last eight years to strengthen the security of the commercial aviation sector but that still faces important challenges, including improving the security of other forms of transportation, particularly mass transit and rail.

I was pleased by the Administration's proposal for Fiscal Year 2011 to add \$900 million to key aviation security programs, including money for more whole body imaging machines and the personnel needed to operate them. The failed Christmas Day terrorist attack is the most recent evidence justifying this increase, as well as the increase in the number of Federal Air Marshalls, behavioral detection experts, and canine units.

We know from hard experience that attacking commercial aviation remains a key terrorist goal. That's why the next TSA Administrator must ensure the smooth operation of Secure Flight, TSA's program to match passenger names against watch lists, and the development and implementation of new screening technologies.

While the aviation sector remains a target for terrorists, other forms of transportation must also be better protected. TSA could do a better job to ensure the Transit Security Grant Program is fair and effective as it works with state and local authorities to secure mass transportation systems.

Mr. Pistole, you have been a superb public servant, and while others have left for the riches of the private sector, you continue to devote your career to keeping our country safe. Again, thank you for your service and your willingness to take on this new assignment.

Statement of
Senator Susan M. Collins

“Nomination of John Pistole to be Assistant Secretary of Homeland Security”

Committee on Homeland Security and Governmental Affairs
June 16, 2010

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I join the Chairman in welcoming John Pistole, the nominee to be Assistant Secretary for the Transportation Security Administration.

The attempted bombings on Christmas Day 2009 and just last month in Times Square remind us that terrorists remain committed to attacking our nation. TSA performs a critical role in protecting us from these attacks.

Following the Times Square bombing attempt, the suspect boarded a flight destined for the Middle East after his name was added to the No Fly list. This suspected terrorist was literally minutes away from escaping through a gap in our aviation security. At the time, airlines were required to update their “No Fly” lists only every 24 hours; TSA has now ordered that the lag time be reduced to two hours in response to this very incident.

But TSA could do more. Indeed, TSA should be directly responsible for comparing passenger names against the No Fly list. Currently, TSA performs this role only for domestic flights. Although TSA has said it will have Secure Flight implemented for all international flights by the end of 2010, the new leader of the TSA must ensure TSA meets that goal.

As demonstrated by the failed Christmas Day 2009 bombing attempt, our passenger checkpoint screening technology needs to constantly improve to thwart terrorists’ latest tactics. To that end, TSA plans to install 1,000 Advanced Imaging Technology (AIT) machines in U.S. airports by the end of Fiscal Year 2011. TSA announced its latest procurement of AITs last month, purchasing another 300 machines, which brings the total number purchased close to 500.

I know that DHS is also reviewing Automatic Target Recognition (ATR), the auto-detection software for AITs. ATR identifies potentially threatening objects on a person going through AIT screening and eliminates the need for a second TSA employee to review the passenger’s image in a separate room. This has the obvious benefits of addressing legitimate privacy concerns with this technology, reducing the space needed in airports to accommodate

AITs, and lowering the installation and operational costs to the government and, thus, to the taxpayers.

I observed the auto detection technology in action at Schiphol Airport in Amsterdam earlier this year. Dutch security officials expressed confidence in the technology's ability to detect concealed explosives of the type used by the Christmas Day bomber. The next TSA Administrator should pursue this important advancement for the AIT program.

Because foreign governments must be our partners in improving aviation security, TSA also must continue its international outreach, which has accelerated in recent months. This should include increased information sharing with foreign governments and air carriers about individuals who warrant more scrutiny in the screening process and the deployment of advanced technology.

But aviation isn't the only sector of transportation that merits TSA's vigilant efforts. The agency's mission extends to other modes of transportation as well, including our mass transit system. We cannot focus all our resources on terrorist threats to aviation alone, as the threat does not stop there.

Mr. Pistole's nearly three decades of service with the FBI, including more than five years as Deputy Director, demonstrate significant law enforcement experience and leadership. He also has substantial experience in the management of law enforcement officers. If he is confirmed as the new TSA Administrator, these skills should serve him well in an agency that performs a law enforcement function.

I look forward to discussing these and other matters with Mr. Pistole today.

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Statement of John S. Pistole
Nominee for Assistant Secretary
Transportation Security Administration
U.S. Department of Homeland Security
Before the
Committee on Homeland Security and Governmental Affairs
United States Senate
June 17, 2010

Good Morning, Chairman Lieberman, Ranking Member Collins, and distinguished Members of the Committee. I am deeply privileged to appear before you today as the President's nominee to be Assistant Secretary of the Department of Homeland Security (DHS) for the Transportation Security Administration (TSA). I am honored by the President's call to service and by the support of Secretary Napolitano.

With your kind indulgence, I would like to recognize my wife of nearly 31 years, Kathy, and our daughters, Lauren and Jennifer, who are with me today, and thank them for their unwavering love and support. I would also like to express my appreciation to those in federal, state, local and tribal law enforcement communities and the U.S. Intelligence Community, with whom I've had the privilege to work since becoming a Special Agent of the FBI in 1983. And to the men and women of TSA, I would like to say that I am eager to join your ranks and to work with you in safeguarding our nation's transportation system, should I be confirmed.

Since its creation after 9/11, TSA has played a vital role in securing our nation's transportation systems, and never has that responsibility been more critical than today. We have seen increased attacks not only worldwide, but also in our own country with incidents like the Christmas Day attempt or, more recently, Times Square. With this combination of international and homegrown terrorists who continue to be inspired by messages of hatred and violence, it is critical that TSA be a risk-based, intelligence-driven agency that anticipates these threats. Advances in technology, workforce training development, and an ever-increasing sense of the national security mission are crucial to achieving this goal. Leadership in these areas, specifically national security and counterterrorism, are familiar territory for me in my 26-year career with the FBI. Nearly nine years ago, as I helped restructure the FBI to deal with the terrorist threat in the wake of 9/11, it was evident that our success depended upon a multi-pronged approach that combined a variety of disciplines, including risk assessment, intelligence, and security initiatives, as well as

law enforcement. If confirmed, I look forward to bringing this knowledge and experience to lead TSA forward.

After the tragic events of September 11, 2001, I was put in charge of helping transform the mission and focus of the FBI's new and greatly expanded counter-terrorism program, culminating in my appointment as the Executive Assistant Director for Counterterrorism and Counterintelligence. In 2003, I led an FBI team to Riyadh, Saudi Arabia, investigating the bombings of three housing compounds in which 40 people died, including eight Americans.

In my current position as Deputy Director, I was involved in the investigation of the December 25, 2009, attempted attack on Northwest Flight 253 in addition to overseeing the investigative efforts leading to the apprehension of Najibullah Zazi in connection with a plot against New York City subways. Additionally, I was involved in the investigation of Faisal Shahzad related to the attempted car bombing last month in Times Square. In these and all other efforts during my career with the FBI, I have worked steadfastly to expand and improve efforts to ensure the security of the homeland.

The years I spent as a Special Agent in the Minneapolis and New York Divisions, as a field supervisor of a White Collar Crime (WCC) and Civil Rights Squad in Indianapolis, as Assistant SAC in Boston overseeing WCC and Computer Intrusion programs, and as an instructor of Organized Crime matters at the International Law Enforcement Academy taught me the valuable contribution of the men and women who work on the front line in protecting our homeland. Like the FBI, TSA relies upon a dedicated workforce including about 47,000 TSOs at airports throughout the nation. They are TSA's field officers, the front line in protecting our aviation domain from our adversaries. I believe in mentoring, both in the field and in the classroom, and I will pursue it as one of my priorities. If confirmed, I will dedicate myself to supporting TSA's workforce that continues to meet the highest standards of professionalism through comprehensive training, respect, and opportunity for advancement.

My familiarity with and respect for field operations is combined with years in senior management. Following my detail to help lead the Information Security Working Group (ISWG) on security and vulnerability issues, I was appointed by Director Mueller following the tragic events of 9/11 as Deputy Assistant Director for Operations of the Counterterrorism Division, then as Assistant Director, and afterwards as Executive Assistant Director for Counterterrorism and Counterintelligence before being promoted Deputy Director in October 2004. I understand complex organizations and, if confirmed, I am dedicated to leading TSA to the next level.

As part of the U.S. Intelligence Community, I understand the importance of information sharing and I am committed to building upon the Administration's efforts to counter terrorism. It is vital for TSA to not have to pull information from the Intelligence Community, but to have critical information pushed to them. In order to respond to the threats of today and tomorrow, TSA must

have the latest intelligence information to inform their security actions, and that is dependent upon the collaboration with other federal partners. My current position as Deputy has provided me with many opportunities to improve collaboration and enhance partnerships, which will be critical to TSA in this area. If confirmed, I look forward to advancing TSA's critical mission in close collaboration with all of our partners – other federal agencies as well as state, local and tribal governments, private industry, our international partners, and, most importantly, the traveling public.

Moreover, based upon my counterterrorism and international experience at the FBI, I understand that our nation's defenses must begin beyond our borders through strong international partnerships. Our aviation security also depends upon the commitment of our foreign partners to enhance aviation security measures. I look forward to building upon the progress made by Secretary Napolitano and Deputy Secretary Lute in their aggressive global outreach initiative to enhance international aviation security, particularly for international flights bound for the United States. If confirmed, I will build upon these efforts to make the international aviation system safer and ensure the security of our homeland.

In the transportation domain, TSA also employs a layered approach to security, including its Transportation Security Officers and advanced screening technologies at airport checkpoints, Federal Air Marshals patrolling domestic and international flights, canine patrols in both aviation and transit rail domains, and participation in Joint Terrorism Task Forces (JTTFs), to name just a few. If confirmed, I look forward to partnering with this Committee in deploying enhanced screening technologies, both at domestic airports and by our international partners. Advanced technologies are critical to detect evolving threats such as explosives. At the same time, TSA must remain respectful of personal privacy, dignity and civil rights and liberties, areas that are priorities for me. If confirmed, I will use the lessons I learned in restructuring our counterterrorism efforts within the FBI to further enhance TSA's counterterrorism efforts across all modes of transportation to keep the traveling public safe.

Finally, throughout my years of service as a law enforcement official, I have remained mindful of the need to identify those who wish to do us harm and also protect individual civil rights and liberties. We should be judged not only by our ability to defend our nation from terrorism, but also by our commitment to defend the rights and freedoms we all enjoy. If confirmed, safeguarding the civil liberties and privacy interests of all Americans will remain a top priority.

If confirmed, I would like a close working relationship with Congress and with this Committee. I would be honored to serve with the outstanding men and women of TSA as their Assistant Secretary, and I applaud the work they perform each and every day, along with the outstanding work performed by Gale Rossides in her role of Acting Administrator.

In closing, I again thank President Obama and Secretary Napolitano for their confidence and faith in my ability to lead TSA. Mr. Chairman, Ranking Member Collins, I thank you for the opportunity to appear before you today and I look forward to answering your questions.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES**A. BIOGRAPHICAL INFORMATION**

1. **Name:** (Include any former names used.)
John S. Pistole
2. **Position to which nominated:**
Assistant Secretary of Homeland Security, Transportation Security Administration
3. **Date of nomination:** May 17, 2010
4. **Address:** (List current place of residence and office addresses.)
Home: REDACTED
Office: Federal Bureau of Investigations, 935 Pennsylvania Avenue, N.W., Washington, D.C. 20535
5. **Date and place of birth:**
6/1/56, Baltimore, MD
6. **Marital status:** (Include maiden name of wife or husband's name.)
Married to Kathleen M. Harp
7. **Names and ages of children:**
Lauren E. Pistole, 20
REDACTED
8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.
Anderson University, Sept. 1974 – June 1978; B.A. *cum laude*, 1978
Indiana University School of Law-Indianapolis, Aug. 1978 – May 1981; J.D., 1981
9. **Employment record:** List all jobs held since college, and any relevant or significant jobs held prior to that time, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

1981-1983: Attorney, Teague, Cole, Hamer, and Pistole, P.C., Anderson, IN

1983-present: Federal Bureau of Investigation

Sept. 1983-Jan. 1984:	FBI Academy, Quantico, VA
Jan. 1984-Mar. 1986:	Special Agent, Minneapolis Field Office
Apr. 1986-Nov. 1990:	Special Agent, New York City Field Office
Nov. 1990-Mar. 1994:	Supervisor, FBI Headquarters, Washington, DC
Mar. 1994-July 1999:	Supervisor, Indianapolis Field Office
July 1999-July 2001:	Assistant Special Agent in Charge, Boston Field Office
July 2001-May 2002:	Inspector, Inspections Division, FBI Headquarters, Washington, DC
May 2002-Sep. 2003:	Deputy Assistant Director for Operations, Counterterrorism Division, FBI Headquarters, Washington, DC
Sep. 2003-Dec. 2003:	Assistant Director for Operations, Counterterrorism Division, FBI Headquarters, Washington, DC
Dec. 2003-Oct. 2004:	Executive Assistant Director for Counterterrorism and Counterintelligence, FBI Headquarters, Washington, DC
Oct. 2004-present:	Deputy Director, FBI Headquarters, Washington, DC

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

None

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

None

12. **Memberships:** List all memberships, affiliations, or offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable or other organizations.

International Association of Chiefs of Police, Executive Committee, 2004-Present
(service in official FBI capacity)
International Security Management Association, Government Associate, 2006-Present
(service in official FBI capacity)
Centreville United Methodist Church, 2002-Present

Indiana Bar Association, 1981-1983

13. **Political affiliations and activities:**

- (a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

- (b) List all memberships and offices held in and services rendered to any political party or election committee during the last 10 years.

None.

- (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more during the past 5 years.

None.

Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Presidential Rank Award for Distinguished Executive, 2005.

Honorary Doctor of Law degree, and Commencement speaker for Anderson University, 2006.

Edward H. Levi Award for Outstanding Professionalism and Exemplary Integrity (DOJ), 2007.

Outstanding Alumni award and Commencement speaker at Indiana University School of Law, Indianapolis, 2009

14. **Published writings:** Provide the Committee with two copies of any books, articles, reports, or other published materials which you have written.

"Safeguards are in Place," *USA Today* (Nov. 9, 2005) (with Rachel Brand).

"Tools Against Spies and Terrorists," *Washington Post* (Nov. 12, 2005) (with Rachel Brand).

"An FBI That Changes with the Times," letter to the editor, *Washington Post* (July 8, 2005).

15. **Speeches:**

- (a) Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated. Provide copies of any testimony to Congress, or to any other legislative or administrative body.

See attached list of speeches and testimony. Not all speeches were written or transcribed; I have provided copies of all speeches that could be located through a search of my records and available databases.

- (b) Provide a list of all speeches and testimony you have delivered in the past 10 years, except for those the text of which you are providing to the Committee. Please provide a short description of the speech or testimony, its date of delivery, and the audience to whom you delivered it.

See attached list of speeches and testimony.

16. **Selection:**

- (a) Do you know why you were chosen for this nomination by the President?

I believe I was chosen for this nomination by the President because of the extensive experience with the U.S. Intelligence Community and federal, state, and local law enforcement that I have gained through more than 26 years of experience with the FBI. In addition, I have international experience and contacts in both law enforcement and intelligence services around the world.

- (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I have over 26 years of experience with the FBI in increasing positions of responsibility, including the last 5 years as Deputy Director. Since 9/11, I have played a key role in the FBI's mission of preventing terrorist attacks in the U.S. I am part of and intimately familiar with the U.S. Intelligence Community, along with federal, state, local and tribal law enforcement, all of which are key drivers for carrying out this mission. I have helped lead the transformation of the FBI into a threat-based, intelligence-driven organization.

As Deputy Director, I have extensive leadership and management experience helping lead a 34,000 employee agency with a nearly \$8 billion budget. I am the rating official for all 56 Special Agents in Charge (SACs), along with 12 key executives at FBIHQ. I chair the bi-monthly SES Board, which reviews SES positions and makes recommendations to the Director for selection. I have represented the FBI domestically and internationally, briefing the President, testifying before Congress, participating in National Security Council (NSC)

Deputies Committee meetings, and the Office of the Director of National Intelligence (ODNI) Executive Committee (EXCOM) or Counterterrorism (CT) Resources meetings chaired by the DNI.

B. EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

Yes.
2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

No.
3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization, or to start employment with any other entity?

No.
4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No.
5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.
6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

No.

C. POTENTIAL CONFLICTS OF INTEREST

- i. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent,

that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Homeland Security's Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

None.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

In June 2009, while traveling on vacation, a loose bullet was found in my briefcase during security screening in the Frankfurt airport. I had inadvertently left the bullet in my briefcase, and I had been unaware it was there. When I returned to the United States, I reported the incident to the FBI. I was reminded of the applicable rules, but received no formal reprimand or censure.

From 2007-2010, the Department of Justice Office of the Inspector General (OIG) published three reports examining the FBI's use of National Security Letters and "exigent letters." The reports criticized the FBI's past practices, but also noted that the FBI had taken appropriate remedial actions beginning in 2007. OIG subsequently communicated to FBI's Office of Professional Responsibility that it found no misconduct on my part, and that every level of the FBI bears some responsibility for the problems cited.

During my tenure as a senior official at the FBI, DOJ OIG has issued reports relating to the FBI's operations. None of these reports were the result of complaints filed against me, and I have not been disciplined or reprimanded in any of the matters. These reports are available at <http://www.justice.gov/oig/reports/FBI/index.htm>.

In addition, please see the EEO matters discussed in my response to Question 3, below.

2. Have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

No.

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

As Deputy Director of the FBI, I chair the Personnel Board and serve as the rating official for much of the FBI's Senior Executive Service. As a result, I have been responsible for making hundreds of personnel decisions. In a few instances, described below, employees have filed EEO complaints related to these personnel decisions or related personnel actions. In one case, also below, an employee named me in a lawsuit related to a personnel decision.

- In 2009, an employee who received a negative performance inspection brought an EEO complaint alleging gender discrimination. Although I had decided against reassigning the employee based on the inspection, the employee alleged that the inspection and related processes were conducted improperly. This matter is in discovery before the EEOC.
- In 2007, an employee who had unsuccessfully sought a specific position within the FBI brought an EEO complaint alleging gender discrimination. The FBI General Counsel's office settled the case in June 2008.
- In 2008, an employee brought an EEO complaint alleging gender discrimination. The employee claimed to have been passed over for promotion and subject to disparate treatment and harassment by officials conducting a performance review. The employee also alleged that I had stated that the employee should consider retiring to avoid being removed from the employee's position. I did not make such a statement; in fact, I had determined that reassignment of a particular case from the employee was a sufficient remedy, and decided against reassigning the employee. The matter is in discovery before the EEOC.
- In 2008, an FBI employee who did not receive a performance bonus brought an EEO complaint alleging gender and race discrimination. Performance bonuses are

recommended by the Executive Assistant Directors and Associate Deputy Director based on employee ratings. This employee was not rated highly enough to receive a bonus. The matter is pending before DOJ's Complaint Adjudication Office.

- In 2009, a former FBI employee brought an EEO complaint alleging gender and race discrimination. An inspection had revealed multiple performance issues and potential criminal violations on the part of the employee, and the employee had retired rather than face transfer. The matter is pending before DOJ's Complaint Adjudication Office.
- In 2006, an FBI employee brought an EEO complaint alleging discrimination based on reprisal when the Special Agent Middle Management Selection System (SAMMS) Board denied the employee's request to participate in the Inspector-in-Place program. I concurred with the Board's decision. The FBI's Complaint Adjudication Board found no discrimination based on reprisal, and the employee did not appeal the ruling.
- In 2008, a former FBI employee named me as a codefendant in a suit alleging civil rights violations and discrimination related to being reassigned. The plaintiff had been transferred after an OIG investigation found that the plaintiff had retaliated against a subordinate for being a whistleblower, and a subsequent inspection revealed additional performance issues. As Deputy Director, I made the decision to reassign the employee. FBI's Office of Professional Responsibility subsequently recommended dismissal, but the employee retired. The FBI has filed a motion to dismiss the case, Tabman v. FBI, which is pending in D.C. District Court.

In addition, I recently became aware that during my service at the FBI, I have been named in two additional lawsuits:

- Khan v. Chertoff was a mandamus complaint alleging delays in the processing of immigration applications. I was named as a codefendant in my official capacity, along with Michael Chertoff, Jonathan Scharfen, and Alberto Gonzalez. The case was dismissed on March 20, 2008. To the best of my knowledge, I had no personal involvement in this matter.
 - In 2006, in Godinez v. Pistole, a prisoner brought a pro se suit alleging civil rights violations. The case was dismissed on December 21, 2006. To the best of my knowledge, I was never served in this case.
4. For responses to question 3, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

Please see my response to Question 3, above.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

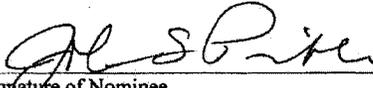
None.

E. FINANCIAL DATA - REDACTED

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

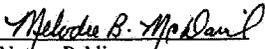
AFFIDAVIT

JOHN S. PISTOLE being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

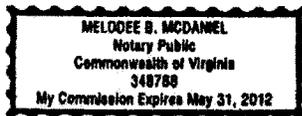

Signature of Nominee

Commonwealth of Virginia
County of Arlington

The foregoing instrument was subscribed and sworn before me this 24th day of May, 2010 by John S. Pistole


Notary Public

My Comm. Exp. 5/31/2012



**U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire
For the Nomination of John S. Pistole to be
Assistant Secretary, Department of Homeland Security**

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as Assistant Secretary of Homeland Security?

I believe I was nominated by the President because of the extensive experience with the U.S. Intelligence Community and federal, state, and local law enforcement that I have gained through more than 26 years of working with the FBI. In addition, I have international experience and contacts in both law enforcement and intelligence services around the world.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. What specific background and experience affirmatively qualifies you to be Assistant Secretary of Homeland Security?

I have over 26 years of experience with the FBI in increasing positions of responsibility, including the last 5 years as Deputy Director. Since 9/11, I have played a key role in the FBI's mission of preventing terrorist attacks in the U.S and I have helped lead the transformation of the FBI into a threat-based, intelligence-driven organization. I am part of and intimately familiar with the U.S. Intelligence Community and federal, state, local and tribal law enforcement – key partners of TSA.

As the Deputy Director of the FBI, I have extensive leadership and management experience, helping to lead a 34,000 employee agency with a budget of nearly \$8 billion. I am the key rating official for all 56 Special Agents in Charge (SACs), along with 12 key executives at FBI Headquarters. I chair the bi-monthly SES Board, which reviews SES positions and makes recommendations to the Director for selection. I have represented the FBI domestically and internationally, briefed the President, testified before Congress, and have worked extensively with the National Security Council (NSC) Deputies Committee, and the Office of the Director of National Intelligence (ODNI) Executive Committee – entities with which TSA frequently collaborates in order to fulfill its mission.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as Assistant Secretary of Homeland Security? If so, what are they and to whom have the commitments been made?

No.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Homeland Security's Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

No.

7. In your responses to the biographical questionnaire, you mentioned that while traveling in June 2009, a bullet was found in your briefcase during passenger screening at the Frankfort airport. You stated that you reported the incident to the FBI upon return to the United States and received no formal reprimand.

- a. Please provide a detailed account of the incident, including how the bullet came to be in your briefcase while overseas, the response of the Frankfort airport security, and the ultimate outcome of the incident.

I had inadvertently left the bullet in my briefcase following a firearms qualification session. Not realizing it was there, my wife and I flew from Dulles to Frankfort en route to Barcelona. During the rescreening of my briefcase, the Frankfort screeners found the bullet. I was asked if I would forfeit the bullet as it was not permitted in Germany, which I agreed to do, and signed a form to that effect.

- b. Please describe the reasons given by FBI officials for not issuing a formal reprimand after you informed them of the incident.

I was not given any reasons. I was counseled for my mistake, and I committed and admonished to not let such a mistake happen again.

8. In your responses to the biographical questionnaire, you mentioned that from 2007 to 2010, the Department of Justice's Office of the Inspector General (OIG) published three reports regarding the FBI's use of National Security Letters and "exigent letters," and that the reports were critical of the FBI's past practices.

- a. Do you agree with each of the findings made by the Inspector General in those reports?

Yes.

- b. What was your involvement in approving, or reviewing the use of, National Security Letters or "exigent letters" while at the Counterterrorism Division of the FBI, as the Executive Assistant Director for Counterterrorism and Counterintelligence at the FBI, and as Deputy Director of the FBI?

I never approved (signed) an NSL or exigent letter. My review of the use of these letters was focused on corrective actions the FBI should take in light of the Inspector General's findings.

- c. You noted that the OIG reports found that the FBI had taken steps to remedy the identified problems in 2007. Please explain what actions the FBI took to address the problems with regard to National Security letters and "exigent letters" as well as your involvement, if any, in recommending or implementing these reforms.

I, along with the Director and General Counsel, led the efforts to address these problems by issuing several directives: 1) we eliminated the use of exigent letters altogether; 2) we instituted a rigorous review and approval protocol for the issuance of NSLs, coupled with an extensive audit and evaluation follow-up; and 3) we directed our Inspection Division to conduct follow-up audits to ensure compliance.

II. Role and Responsibilities of the Assistant Secretary of Homeland Security

9. What is your view of the role of the Assistant Secretary of Homeland Security and head of the Transportation Security Administration (TSA)?

The Assistant Secretary of Homeland Security plays a key role in securing our nation's transportation systems. In addition to leading the most visible workforce within the Department, the Assistant Secretary must focus on risk-management, establishing strong working relationships with counterparts in the intelligence and law enforcement community and external stakeholders while overseeing TSA's efforts to stay ahead of emerging threats to our nation's transportation systems.

10. In your view, what are the major internal and external challenges facing the Department of Homeland Security ("DHS" or "the Department") and TSA? What do you plan to do, specifically, to address these challenges?

TSA is a multifaceted agency with a critical mission -- protecting the nation's transportation systems while ensuring freedom of movement for people and commerce. Achieving that mission means overcoming internal and external challenges.

First, we know that we face a determined adversary that has shown a consistent interest in targeting transportation systems. TSA must address this challenge by working closely with the intelligence community to understand the threat, improving information sharing with law enforcement and key stakeholders and functioning as a threat-based, intelligence-driven organization. By continuously strengthening information sharing, we can better inform TSA employees and key law enforcement partners about the threats we face to disrupt and deter them on the frontlines.

Second, TSA must effectively address and mitigate today's threats while preparing for tomorrow's. That means continuing aggressive efforts to develop and deploy cutting-edge technology that detects and disrupts attempted attacks.

Third, TSA's highly-trained workforce is an incredible asset in our counterterrorism efforts. We must ensure that the workforce has the support, training, and resources they need to succeed.

Finally, TSA must inform and engage the traveling public. By educating the traveling public about why security procedures are in place, our nation can better prepare for and respond to the threats we face, while more effectively facilitating legitimate travel.

If confirmed, I welcome the opportunity to address these challenges.

11. How do you plan to communicate to TSA staff on efforts to address relevant issues?

My management experience with the FBI has taught me the importance of having open, two-way communication with employees across the agency, from senior leadership to employees serving on the front lines. If confirmed, I plan to communicate regularly with employees through frequent messages, airport and site visits, and in person and online town hall sessions to engage and hear from them directly. Additionally, I will utilize TSA's tools like the Idea Factory and the TSA blog to solicit ideas from the workforce and engage staff on important issues.

III. Policy Questions

General

12. What are your views on how the Department can best strike the appropriate balance between the need to protect the traveling public while not disrupting the flow of people and commerce in each of the transportation sectors (aviation, surface, maritime)?

Security of the traveling public will always be TSA's top priority; yet, effective security and facilitating the flow of people and commerce are not mutually exclusive. When implementing a security program, we must take into account the needs of travelers and businesses on all modes of transportation. If confirmed, I am committed to meeting with leaders in affected industries to hear their views and concerns on the best ways to both

protect the traveling public and promote robust and efficient transportation systems.

13. To what extent should TSA focus more on building, or encourage system operators to build on, resiliency – the ability to recover quickly from an incident or “bounce back” – rather than protection?

I understand that the recently issued Quadrennial Homeland Security Review identified ensuring the nation's resilience to disasters as a critical mission of the Department of Homeland Security. I understand that this includes all hazards, encompassing natural disasters, terrorist attacks, and other threats. If confirmed, I will ensure that TSA incorporates fundamental notions of resiliency into the nation's transportation networks, particularly as it relates to the ability to deter and respond to terrorist attacks.

14. If you agree that more resiliency is desirable, how could TSA better incorporate resiliency and protective measures into its operations?

If confirmed, I will work with TSA's program offices and stakeholders to incorporate resilience and protection throughout the program development, planning, and evaluation processes – from inception to completion.

15. Implementing transportation security policy requires strong coordination between TSA and stakeholders at all levels of government and the private sector. Nonetheless, the Government Accountability Office (GAO) has reported that, despite TSA efforts to strengthen stakeholder collaboration, additional progress is needed.

- a. What strategies might be considered to ensure that TSA builds on its successes while employing innovative approaches to strengthen collaborations with stakeholders?
- b. How could TSA work more effectively with international partners to, for example, enhance the security of air cargo transported into the United States?
- c. How can you ensure that policies, operations, and future plans are seamlessly coordinated with the rest of DHS?

(a-c). I believe that strong stakeholder relations are essential to the effective implementation of transportation security initiatives and, if confirmed, I will make this a top priority. TSA's stakeholders span all modes of transportation – including aviation, air cargo, freight rail, mass transit, pipelines, trucking, and highway infrastructure. The most effective strategy we can employ is to meet frequently with these stakeholders and to proactively solicit and engage their views wherever possible. If confirmed, I will also work to forge even closer relationships with Customs and Border Protection (CBP) and other key federal partners to integrate processes to ensure air travel safety and security. As the Deputy Director of the FBI, I currently am actively engaged in the coordination of policies, operations and plans throughout a large agency. If confirmed as TSA Administrator, I will take that same approach in working with other senior managers

and leaders within the Department of Homeland Security to promote unity of effort in all of our initiatives.

16. DHS and TSA have repeatedly said they would employ risk management principles to better target its security programs, activities, and resources, yet recent GAO reports (including a report on the Transit Security Grant Program, GAO-09-491; and another on Mass Transit and Passenger Rail Security, GAO-09-678) show that more could be done to fully implement these principles in key program areas. If confirmed, to what extent will risk management play a role in designing and funding future security programs and activities at TSA? Are there particular areas or programs where you believe TSA should focus on improving its utilization of risk management?

I believe that the use of risk management principles is critical to the management of TSA programs. If confirmed, I intend to make sure that risk management principles are incorporated into the design, execution, and management of TSA's security programs.

17. Information security continues to be a serious and growing problem throughout government. TSA has suffered from several security breaches and vulnerabilities over the past several years, including a notable security vulnerability with TSA's traveler redress program which was the subject of a 2008 House Committee on Oversight and Government Reform report.

- a. Are you familiar with the responsibilities for agency heads that were established under the Federal Information Security Management Act of 2002 (FISMA) (P.L. 107-347)?

Yes. If confirmed, I would work to ensure that TSA information and information systems are protected in accordance with Federal requirements.

- b. Please describe your experience with developing information security procedures for large organizations.

My information security experience, which includes helping to lead the Information Security Working Group to address security and vulnerability issues at the FBI following the espionage arrest of FBI Agent Robert Hanssen, along with my experience in counterintelligence and counterterrorism, provides me with the foundation to address information security at TSA. My experience in information security and intelligence also gives me a strong understanding of the types of threats that are posed to the infrastructure of the transportation sector and to systems used by TSA. I also oversee the Cyber Division of the FBI, which deals with intrusions, impairments, and denial of service attacks and, with the Security Division, which deals with the insider threat. Using these experiences as a reference point, if confirmed, I will work to continue improving TSA's efforts to protect sensitive information.

- c. What will you do, if confirmed, to ensure that TSA is meeting its responsibilities under FISMA and protecting its information and information systems overall?

If confirmed, I would comply with all FISMA requirements and ensure that TSA is proactively protecting its systems and infrastructure from the growing threat of cyber-attack.

18. In 2008, TSA posted a copy of its "Screening Management Standard Operating Procedures" on fedbizopps.gov, the government-wide website for procurement postings. The document was designated as "Sensitive Security Information" (SSI), and was supposed to have the information TSA considered most sensitive redacted. Unfortunately TSA did not properly redact the information and in December 2009, TSA was made aware that the public was able to read the entire document. The DHS Inspector General (IG) determined that TSA and DHS internal controls for reviewing, redacting and coordinating the protection of SSI are deficient. From your experience, how can TSA improve its handling and protection of SSI? Do you think TSA should post redacted versions of SSI documents on public websites?

I have extensive experience in the handling of the most sensitive classified documents and compartmented programs, criminal investigative files, law enforcement sensitive information, and documents that are for official use only. If confirmed, I will apply my over 26 years of experience and knowledge to ensure that TSA takes appropriate measures to protect all sensitive documents, including those marked as Sensitive Security Information.

19. In May 2009, GAO issued a report (GAO-09-292) which stated that Secure Flight had generally achieved nine statutory conditions, but one condition related to life-cycle costs and schedule estimates was only conditionally achieved. If confirmed, will you use GAO's best practices for cost and schedule estimates when developing or improving programs?

It is my understanding that subsequent to the issuance of the May 2009 report, GAO issued another report stating that TSA generally achieved the condition related to the life-cycle costs and schedule estimate. If confirmed, I will direct TSA to follow GAO's applicable best practices to the extent that they are consistent with the needs of the agency and support its mission to protect the nation's transportation system and the traveling public.

Aviation Security

20. On December 25, 2009, Umar Farouk Abdulmutallab attempted to ignite an explosive as a commercial aircraft was approaching Detroit. While intelligence has long indicated that the transportation network continues to be a key and attractive target for those wishing to harm U.S. interests, this event served as a stark reminder that DHS must continue to adapt and evolve to ensure the aviation sector is secure. DHS has made considerable

progress in strengthening the security of commercial aviation since September 11, 2001, but must continue to adapt security measures to counter evolving threats, balance resources across missions, and enhance technologies to strengthen security.

- a. Please describe any experience you have with aviation security.
- b. In your view, what are the most significant challenges facing the Department in its efforts to secure the nation's aviation system?
- c. Is there a need to reassess TSA's layers of aviation security, and if so, how would you propose doing so?
- d. How can TSA better ensure that the flying public's experience is as seamless and comfortable as possible without sacrificing greater security?
- e. How do you propose to use cost-benefit, feasibility, alternatives or other analyses to assess the success or failure of TSA's layers of aviation security?
- f. What metrics should the DHS and TSA use to properly evaluate the effectiveness of operations and technological solutions?
- g. If confirmed, what efforts would you undertake to become more proactive in identifying security vulnerabilities and emerging threats?

(a-g). My experience in aviation security dates back to 1999, when, as an Assistant Special Agent in Charge (ASAC) in Boston, MA, I participated in the investigation and recovery efforts involving Egypt Air Flight 990 after it crashed off the coast of New England. In my current position as Deputy Director of the FBI, I was involved in the investigation of the attempted attack on Northwest Flight 253 on December 25, 2009, and I oversaw the investigative efforts leading to the apprehension of Najibullah Zazi in connection with a plot against commuter railroads and subways in New York and of Faisal Shahzad in connection with the attempted car bombing on May 1, 2010, in Times Square.

I also have been involved in or briefed on the classified details of transportation attacks around the world since 9/11, including the March 11, 2004, train attacks in Madrid; the July 7, 2005, and attempted July 21, 2005, London subway and bus attacks; the August 2006 liquids plot of airliners traveling from the U.K. to the U.S.; the 2007 Mumbai train attacks; and the recent Moscow subway attacks involving two female suicide bombers.

If confirmed, I look forward to leading TSA in continuing to secure our nation's transportation systems against a sophisticated enemy that has shown a consistent interest in transportation targets. If confirmed, I will work with officials across the agency, the department, and the government in evaluating our existing systems to

ensure we remain ahead of that adversary by safeguarding our aviation domain and all other transportation modes.

The best way to promote seamless, comfortable travel without sacrificing security is to engage industry and the public in developing and implementing security initiatives. Homeland security is a shared and participatory responsibility for all Americans. The traveling public and individual citizens are critical partners in our security efforts, as demonstrated by the effectiveness of the "See Something, Say Something" efforts that proved so critical to averting the attempted bombing in Times Square.

TSA must continue to integrate cost-benefit, feasibility and alternative analyses into best practices for program and acquisition management. If confirmed, I will lead the effort to develop and implement the best means to monitor our effectiveness in addressing the ongoing threat faced in the transportation sector. I will be proactive in communicating with the public; working with our stakeholders and industry partners; collaborating with DHS leadership and sister agencies; reaching out to local, state and federal offices; and leveraging intra-agency, interagency and intelligence community resources to continue to develop a comprehensive and dynamic transportation security system.

21. Over 400,000 individuals have been identified as known or suspected terrorists on the Consolidated Terrorist Screening Database (TSDB), but only a small subset of these people, about 12,000, face enhanced physical screening measures at our airports. In the wake of the December 25th attack, do you think TSA should consider pre-screening passengers against the TSDB, and not just the no-fly or selectee list, to determine if they should be subjected to enhanced physical screening measures? What, if any, implications are there for expanding pre-screening and screening in this manner for international flights to the U.S., versus domestic flights and outbound flights, prior to the full implementation of Secure Flight?

The TSDB contains many partial names and/or names without positive identifiers. If confirmed, I will work with our partners in the intelligence and law enforcement communities, TSA's program office and stakeholders to identify and utilize the appropriate subset of TSDB and other related data in our screening processes to protect the traveling public.

22. In early 2009, TSA began assuming responsibility for checking airline passenger data against the No-Fly and (automatic) Selectee Lists when it began implementation of the Secure Flight Program. As of April 2010, 44 domestic airlines and four foreign airlines have been relying exclusively on TSA's ability to pre-screen passengers under the Secure Flight program, and the agency's stated goal is to have all domestic airlines using Secure Flight by the end of May 2010, and full implementation, including foreign airlines, by the end of 2010.
- a. If confirmed, what will you do to ensure TSA continues the smooth implementation of Secure Flight?

If confirmed, I look forward to presiding over the final steps that will complete implementation of Secure Flight as recommended by the 9/11 Commission. I understand that TSA is near completion for all domestic air carriers and expects all foreign air carriers to comply with Secure Flight by the end of this calendar year. If confirmed, I will ensure TSA continues to work with foreign airlines and governments to keep the implementation of Secure Flight on schedule throughout the remainder of 2010.

- b. As the Faisal Shahzad case demonstrated, until the Secure Flight program is fully implemented, a security gap may exist when airlines are slow to update their lists, or use less sophisticated means of matching names on the watchlists to the passenger manifest. TSA recently changed its requirements for how quickly airlines must update their lists, shortening the timeframe from 24 hours of notification of a change, to within just two hours of notification. Do you believe this change ensures airlines will update their lists quickly enough, and do you believe TSA's processes for notifying airlines of changes is sufficient?

As is noted above, TSA has reduced the amount of time that air carriers have to address exigent additions to the No Fly List from 24 hours to 2 hours. If confirmed, I will review this directive to ensure that it provides sufficient protection to the aviation security system. I also understand that issues of comparison of passenger information to the most current version of the watchlist can be mitigated through cutover to the Secure Flight program. If confirmed I will work to ensure that air carriers that have not transferred to Secure Flight do so as quickly as possible.

- c. If it was determined that passenger manifests should be checked against the TSDB would TSA need to recalibrate its false positive-false negative performance targets?

If national security requirements determine that passengers should be matched against a larger subset of the TSDB, I will work with TSA's program offices and stakeholders to determine the optimum performance target to balance the responsiveness of the Secure Flight system with the security of the traveling public.

23. The development and implementation of many of TSA's programs, including Secure Flight and its cargo screening program, have required extensive outreach with stakeholder entities and foreign governments. For example, Secretary Napolitano has begun working with International Civil Aviation Organization (ICAO) and foreign governments to begin developing heightened international aviation security standards. Have you had experience in working with stakeholder groups or foreign countries on divisive issues? If confirmed as Assistant Secretary, what would be your strategy for reaching out to these groups?

As Deputy Director of the FBI, and before that as a leader of the FBI's Counterterrorism Division and a participant in many criminal investigations, I have had significant experience in issues that span both domestic and international arenas. As a

result, I have collaborated with law enforcement, intelligence and security services around the world on threats, gaps and vulnerabilities. I fully understand that the homeland security and transportation security enterprise is a shared responsibility and that it is necessary to work cooperatively with many partners in order to protect domestic and international transportation networks – in fact, such collaboration is a major facet of my current position. If confirmed, I will work closely with Secretary Napolitano and TSA's stakeholders to raise security standards and reduce risk.

24. Every day, nearly 2,000 daily commercial flights around the world depart for America. They depart from 270 locations in over 100 countries. In addition, there are more than 80 general aviation flights and over 180 cargo flights bound for America on a daily basis. Nearly 2,300 flights departing daily from a foreign airport bound for America represents an impressive security challenge. However, TSA has only 21 Transportation Security Administration Representatives, or TSARs, and only four TSA International Industry Representatives around the world. For such an important role and large number of flights, 21 TSARs and four International Industry Representatives seems like a small number of people responsible for enhancing and directly coordinating international aviation security activities.
- a. Generally, what is your impression of TSA's international capabilities and are there areas that you think need to be improved?

Throughout the course of my career, I have recognized the importance of partnerships at all levels, including federal, state, local, tribal, international, and private sector. The events of December 25, 2009, served as a clear reminder of the need to work with our international and private sector partners to secure the global transportation network. If confirmed, I plan to work closely with the Secretary and TSA staff to continue building upon our international outreach efforts and partnerships to advance transportation security worldwide.

- b. Specifically, do you have any plans to increase the number of on-the-ground TSA personnel at overseas airports?

If confirmed, I will conduct a review to identify locations where TSA personnel are most needed after weighing factors such as risk and its component elements of threat, vulnerability, and consequence.

25. GAO, the DHS IG, and TSA covert tests have identified vulnerabilities in TSA's baggage and passenger screening process.
- a. How can TSA ensure better implementation of uniform procedures for personnel responsible for screening bags and people?

If confirmed, I look forward to an in-depth review of these programs, including uniform training and implementation of procedures among screening operators.

- b. How can TSA hold personnel responsible for not following uniform procedures?

If confirmed, I will review current TSA procedures for retraining or disciplining employees that do not follow standard operating procedures.

- c. If confirmed, would you set minimum detection rates for the detection of simulated threat objects or falsified travel documents?

I understand that all technologies currently procured for passenger screening at security checkpoints currently have established minimum standards for the probability of detection.

- d. Should TSA's covert testing program be expanded to include other layers of security, such as Visible Intermodal Prevention and Response (VIPR) teams or travel document checkers?

If confirmed, I will thoroughly explore TSA's covert testing program with a view towards determining whether it should be expanded to other areas of transportation security.

26. Through its ENGAGE training for Transportation Security Officers and its Screening of Passengers by Observation Techniques (SPOT) program, TSA has taken steps to expand its security efforts to screen for passengers with suspicious behaviors in addition to screening for prohibited items.

- a. How will you gauge the effectiveness of this layer of security?

If confirmed, I plan to work within TSA and with leadership in the Department of Homeland Security to ensure SPOT is an effective, science-based program that enhances transportation security. I will explore how to best use both internal and external data to help make decisions on program effectiveness and further refine areas of deployment across multiple modes of transportation.

- b. How can TSA ensure passengers' rights are protected under this program, and what protections do you believe TSA should have in place to ensure the program does not rely on profiling?

The protection of civil rights and civil liberties has been a key responsibility of mine in my position as Deputy Director of the FBI. TSA does not permit ethnic or racial profiling – a standard I am committed to upholding if confirmed.

- c. In November 2009, TSA was forced to re-train all 75 behavior detection officers (BDO) working for the SPOT program in Newark Liberty Airport. Do you believe TSA has an effective system in place for training and overseeing the 3,000 BDOs? Are additional training, oversight, and quality control personnel or resources needed?

If confirmed, I will ensure the appropriate level of training, oversight, and quality control personnel and resources are in place for the SPOT program.

- d. What guidance would you provide for BDOs to input information on encounters with suspicious persons into the SPOT database and share this information with TSA's Transportation Security Operations Center?

It is my understanding that TSA is currently working on this issue. If confirmed, I will work to ensure the appropriate guidance is provided to Behavior Detection Officers.

- e. How would you then ensure that the information gathered by the BDOs and shared with TSA's Transportation Security Operations Center will be utilized and cross-checked with other intelligence and criminal databases?

I understand the Transportation Security Operations Center (TSOC) personnel use reported information to conduct analysis and cross check databases that are necessary to "connect the dots." If confirmed, I will ensure that this important and fundamental process continues. I will also ensure that, moving forward, the processes are refined and streamlined, as necessary, to ensure optimum information sharing.

27. TSA has begun deploying 150 backscatter x-ray passenger screening technology, a type of Advanced Imaging Technology (AIT), that were procured using funds from the American Recovery and Reinvestment Act (ARRA) of 2009. These machines will be deployed to 39 airports with 24 of those airports already having received 58 units as of mid-May. In addition, TSA has begun to procure 100 more backscatter machines and 202 millimeter wave machines, another type of AIT.

- a. How should TSA monitor and evaluate wait times at airports or checkpoints with backscatter machines compared to other airports? How should TSA monitor and evaluate the efficacy of this equipment, individually or compared with other types of currently available screening technology?

I have received preliminary briefings on Advanced Imaging Technology (AIT). If confirmed, I will evaluate the most appropriate method to ensure passenger throughput and security at all checkpoints.

- b. Deployment of these machines requires TSA to work with airports to reconfigure checkpoints and make additional space available for the remote viewing locations. Please explain the steps that you would take to ensure deployment plans are developed and executed as quickly and effectively as possible, and appropriately account for the level of risk associated with each airport.

If confirmed, I will ensure that TSA works closely with airport stakeholders to design configurations that meet local needs. I will also support the continuation of ongoing dialogue with stakeholders on the national deployment of AIT.

c. Schiphol Airport in Amsterdam is one of a growing number of airports employing Automated Target Recognition (ATR) in its AIT machines, an auto-detection technology that indicates potential threat items on a featureless human form that can be viewed at the AIT machine by the passenger and a TSA screener. Secretary Napolitano has stated that the Department has been in contact with Dutch security officials regarding this new screening technology. TSA, however, has yet to approve ATR for use in US airports. DHS has stated that development of ATR is underway and that TSA intends to deploy the auto-detection technology once the software meets detection capability standards.

i. How should TSA determine the standards ATR should meet before deployment?

If confirmed, I will work closely with TSA's technology experts to determine the appropriate testing of ATR capabilities.

ii. Do you believe that upgrading AITs in U.S. airports with auto-detection software would provide greater privacy protections than having a second TSA official view the scan images in a separate room and relay the findings to the TSA official at the passenger screening checkpoint (as is the current practice)?

I understand that TSA is working with vendors to develop ATR capabilities. If confirmed, and once ATR is available, I will continue to evaluate its use to improve operational efficiencies and privacy protections.

d. An October 2009 GAO (GAO-10-128) report found that TSA's rushed deployment of explosives trace portal (ETP) technology, the so-called "puffer" machines, had to be halted in June 2006 because of performance problems. GAO found that TSA had conducted operational capabilities testing on earlier ETP models, but had not demonstrated adequate performance by those models in an airport environment. TSA also failed to test the newer model ETPs that were actually deployed. What steps would you take to ensure that the appropriate operational testing is successfully completed prior to deployment of all models of AIT machines that TSA intends to install in U.S. airports in Fiscal Year (FY) 2010 and FY 2011?

I understand that TSA has conducted extensive laboratory, field tests, and pilot programs of Advanced Imaging Technology, which have demonstrated that the equipment meets TSA's security standards.

28. On February 18, 2010, Joseph Andrew Stack flew a small plane into an Austin, TX, office building where almost 200 IRS employees worked, confirming that general aviation planes are capable of damaging targets. Some experts have suggested that general aviation security is under-resourced and warrants increased attention. Do you believe TSA has done enough to secure general aviation? What resources would you advocate be dedicated to improving general aviation security?

As Deputy Director of the FBI, I am very familiar with the investigation into this tragic incident in Austin, Texas that resulted in the loss of life of an IRS employee. If confirmed, I look forward to exploring how, in conjunction with the general aviation community, we can enhance general aviation security. Our goal will be to incorporate security measures and procedures that will mitigate the risk to general aviation community, maintain flexibility to address emerging threats and facilitate the movement of people and goods via general aviation.

29. DHS proposed a Large Aircraft Security Program (LASP) rule which would subject general aviation passengers and crew to a prescreening process similar to the one used for commercial aviation. The general aviation community has argued that the implementation of such a rule could require significant investments from the general aviation community, which includes many small businesses.

- a. Do you support a requirement for prescreening general aviation passengers and crew?

I understand that TSA already vets all Federal Aviation Administration (FAA) certificate holders against federal watchlists. This is a crucial piece of risk management for general aviation. If confirmed, I look forward to discussing the proposed vetting process for general aviation operations with TSA leadership as well as with stakeholders.

- b. As TSA assumes responsibility for reviewing passenger records for commercial flights, do you believe it would be appropriate for TSA to require general aviation operators be responsible for checking passenger and crew lists against the watchlists?

These crewmembers and passengers are currently being vetted by TSA or the transportation provider based on the type of operation and classification of airspace. If confirmed, I would continue to support the vetting of these operations and seek ways to improve the process as appropriate.

- c. Do you think DHS should consider helping the general aviation community implement such a rule in some manner? If so, how?

Yes. I understand TSA is conducting outreach with the general aviation community, and that TSA's General Aviation Working Group is dedicated to developing a positive working relationship with the general aviation community. The success of this working group and other outreach efforts are vital to the implementation of any rule specific to general aviation. If confirmed, I plan to monitor the progress of this working group and provide any necessary resources to ensure its success.

- d. Would you support a review of the efficacy and scope of the LASP in light of the February 18, 2010 attack in Austin, TX?

I understand that TSA has taken the initiative to work with other investigative agencies to formulate an analysis and study on the Austin, TX incident. The incident

is still under review and will be compared to previous studies on similar occurrences. If confirmed, I will work to ensure that any results from the analysis and study will be considered in the formulation of future general aviation security programs.

30. TSA, through its Crewmember Security Training Program, requires and certifies that all training provided by aircraft operators to its crewmembers include security and anti-hijack subject areas. TSA also offers the Crewmember Self Defense Training Program, and although it is not required, TSA is supposed to make it available to any crewmember who requests it. Some crewmembers have expressed concern that TSA doesn't require this training that the locations and times for such classes are too limited, and that airlines sometimes make it difficult for crewmembers to take time off for this training.

- a. Do you believe TSA's Crewmember Security Training Program provides sufficient information and training to crewmembers? Do you believe TSA's self defense training program for flight crew should be mandatory?

I have received preliminary briefings on security training for flight crew members. If confirmed, I will coordinate with Department of Homeland Security leadership and industry stakeholders to assess the quality and availability of the training.

- b. As Assistant Secretary, how would you work with airlines and flight crews to ensure that all crewmembers who wish to receive self defense training are able to do so?

I understand that TSA is in the process of expanding Crew Member Self Defense Training locations to encourage participation. If confirmed, I will work with the airlines, industry stakeholders and DHS leadership to examine the program's availability in order to ensure that the training course is accessible to all who wish to receive it.

- c. Should TSA work with airlines and flight crews to test wireless emergency communication systems onboard aircraft, to improve flight crew security and aviation security generally?

If confirmed, I will support continued cooperation between airlines, pilots, flight attendants, and federal law enforcement officers to achieve effective emergency communications while in flight. It is my understanding that these stakeholders have historically coordinated emergency communications issues, including the testing of wireless communication systems, through a public-private sector Working Group chaired by the Federal Air Marshal Service.

31. The Federal Air Marshal Service (FAMS) is an important layer in our nation's approach to aviation security. In the past, however, their policies and procedures have come under intense public scrutiny and internal debate.

- a. What is your view of the FAMS role within TSA?

As the Deputy Director of the FBI, I am very familiar with the important work that the Federal Air Marshal Service (FAMS) performs to secure our nation's aviation and transportation systems. As the primary law enforcement component of TSA, the FAMS and FBI work very closely together on a daily basis. From my experience, I understand the FAMS is an intelligence-driven, risk-based, rapidly deployable force that is able to respond and adapt to a variety of dynamic threats in the transportation environment. It is my understanding that the FAMS is a key element in TSA's multi-layered security approach.

The FAMS also leads an interagency Aviation Domain Law Enforcement Working Group of which the FBI, Department of Justice, and other key federal law enforcement agencies are key members, that meets to discuss efforts to improve aviation security law enforcement. If confirmed, I will continue this important effort.

- b. How will you work to properly support and integrate FAMS operations, while maintaining a proper balance between the vital layers they provide and the other layers of aviation security?

I am aware that the Federal Air Marshal Service (FAMS) is not only well incorporated within TSA, but also coordinates its security efforts with many other external law enforcement and intelligence organizations, including the FBI. I appreciate the value of having Federal Air Marshals assigned to FBI-led Joint Terrorism Task Forces, the National Joint Terrorism Task Force, the Terrorist Screening Center, and other intelligence entities. These efforts enable the FAMS to maintain a strong and functional relationship with federal, state, and local organizations. If confirmed, I will explore further opportunities to integrate FAMS seamlessly into joint operations and strengthen the coordination with TSA's other layers of security.

- c. The practice of allowing armed federal law enforcement officials on aircraft, in addition to FAMS, is another potential layer of aviation security. How do you propose working with other federal law enforcement services, the airlines, airports, and other stakeholders to better coordinating policies, trainings, and operational procedures with regards to this security practice?

It is my understanding that the Office of Law Enforcement/Federal Air Marshal Service (OLE/FAMS) administers the Law Enforcement Officer Flying Armed (LEOFA) program. This program maintains operational and training standards for all federal agents flying armed. As the Deputy Director of the FBI, I am very familiar with the importance of this program to TSA's layered security strategy.

Additionally, I understand the Federal Air Marshal Service (FAMS) Liaison Division is committed to proactively coordinating with air carriers and other law enforcement agencies. The FAMS stations supervisors within major airports to coordinate with FBI airport liaison agents and on issues related to the LEOFA program. If confirmed, I will work to strengthen these liaison and outreach efforts.

32. The Federal Flight Deck Officers Program, which was established in 2002, allows commercial airline pilots to be trained to carry firearms and use force to defend the flight deck against criminal and terrorist threats. How can TSA evaluate this program to determine if it should be altered, enhanced or expanded?

I understand that the Federal Flight Deck Officer (FFDO) program is a vital part of TSA's layered approach to aviation security. These pilots contribute significantly to the protection of U.S. commercial aircraft. I also understand that TSA works closely with airlines, industry associations, stakeholders, and other law enforcement counterparts to constantly evaluate and improve this program's effectiveness. If confirmed, I will work with leaders within the FFDO community to ensure participants continue to receive the best possible training and support.

Traveler Redress

33. A recent DHS Office of Inspector General report entitled, *Effectiveness of the Department of Homeland Security Traveler Redress Inquiry Program* (OIG-09-103), cited numerous concerns with DHS's Traveler Redress Inquiry Program (TRIP). TSA concurred with most of the recommendations, but many of the projects required for implementing the recommendations will not be complete until the end of FY 2010.

- a. If confirmed, will you ensure that TSA continues to place sufficient emphasis on the Traveler Redress Inquiry Program and completes the tasks laid out in the report in a timely manner?

If confirmed, I will work with Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE) and leadership of the Department of Homeland Security in implementing the Office of the Inspector General's (OIG's) recommendations as quickly as possible.

- b. The OIG reports that Customs and Border Protection (CBP) and TSA share related information about redress results, but do not use the information effectively, leading to increased screening difficulties that could be prevented for misidentified travelers. The OIG recommended that TSA utilize CBP's Primary Lookout Over-Rides to help rule out possible No Fly and Selectee list matches identified through Secure Flight. While DHS concurred with this recommendation, it is still open. If confirmed, how will you ensure that TSA is adequately using CBP information on misidentified travelers?

I have extensive experience working with Federal, state and local officials for the purpose of information sharing. If confirmed, I will work with CBP and the Terrorist Screening Center (TSC) leadership as well as other screening stakeholders, such as ICE and the Department of State, to explore how to share information about the results of screening encounters as reflected in the Primary Lookout Over-Rides and Cleared List.

- c. Another security concern that was raised in the OIG report was that TSA does not check its cleared list against the No Fly or Selectee list frequently enough to ensure that individuals on the cleared list have not been subsequently added to one of the watch lists. DHS concurred with the OIG's recommendation to automatically compare the cleared list with the watch lists when changes are made to the lists, but it was unclear how TSA would implement the recommendation. How will you work to ensure that the cleared list does not have names on it that are added to the watch list?

If confirmed, I will work with agency leadership to implement the automated process to ensure the Cleared List remains accurate.

Air Cargo

34. The Implementing Recommendations of the 9/11 Commission Act of 2007 (the 9/11 Commission Recommendations Act) (P.L. 110-53) required that TSA establish a system to enable the screening of all air cargo transported by passenger aircraft, and mandated that 50% be screened by February 1, 2009 and 100% be screened by August 2010. However, the legislation gave TSA some flexibility in determining who screens the cargo. To meet the deadlines, TSA has established a Certified Cargo Screening Program, which has already certified more than 100 facilities, and continues to certify more. Do you consider TSA's oversight mechanisms to verify that facilities stay in compliance with the program sufficient?

At this point, I have not yet had the opportunity to evaluate TSA's oversight mechanisms to verify that facilities will stay in compliance with the Certified Cargo Screening Program. If confirmed, I will review the TSA's air cargo security program to ensure that the congressional mandates are met, the traveling public is safe, and there is a proper system in place to verify compliance.

Registered Traveler Program and U.S. Visit-Exit

35. The Registered Traveler Program allows passengers who voluntarily submit themselves to a more thorough background check to utilize faster screening checkpoints at the airport.
- a. Do you believe the Registered Traveler Program places sufficient emphasis on ensuring individual participants do not present a risk to aviation security?

It is my understanding that participants in the program are subject to the same degree of rigorous screening as other passengers. If confirmed, I will evaluate the Registered Traveler Program in detail.

- b. In June 2009, one of TSA's authorized service providers under the Registered Traveler Program abruptly ceased operations. Participants in this particular provider's program expressed concern that personally identifiable information may not have

been adequately protected as a result of the abrupt end of the program. Would you support a requirement under the Registered Traveler Program for authorized service providers to prearrange and pay for the secure disposal of personally identifiable information?

The protection of personally identifiable information is critical to keeping the trust of the traveling public and to the integrity of government programs. If confirmed, I will review the Registered Traveler Program in depth in order to evaluate specific program proposals regarding the security of personally identifiable information.

36. In a 2008 notice of proposed rulemaking, DHS proposed that the airlines be responsible for collecting biometrics from passengers as part of a US-VISIT exit solution. However, Congress subsequently required that DHS conduct pilot programs designed to test potential biometric exit solutions for the US-VISIT program, prior to the issuance of a final rule. TSA's pilot was conducted in Atlanta's Hartsfield Jackson International Airport, and required TSA staff to collect biometric information with handheld devices from foreign travelers subject to the US-VISIT requirement. A final decision about where the US-VISIT biometric exit system will be deployed in the airport environment is still pending; however, concerns already have been raised about the TSA version's feasibility. For example, once a traveler enters the secure part of an airport after a TSA screening, that traveler may connect through a number of airports before ultimately boarding an international flight without being screened again. This likely means that, should TSA be required to collect the US-VISIT exit data, it would have to do so at every airport in the nation. This also likely means that there is no way to verify that the individual who was screened by TSA actually exited the country. Requiring TSA to conduct biometric screening of foreign travelers could also adversely impact checkpoint wait times at airports throughout the country.
- a. Do you believe that TSA should have a role in collecting biometric data for the US-VISIT exit component?

Border control is a key mission of the Department of Homeland Security. If confirmed, I will conduct an in-depth review on this subject

- b. Given your long experience working in the intelligence arena, what in your opinion would be the intelligence and law enforcement value to being able to biometrically verify that an individual has left the country?

I am of the opinion that biometric identity verification of an individual could potentially have significant value; however, I would like the opportunity to review this issue in more detail. If confirmed I will work with Immigration and Customs Enforcement, US-VISIT, and other agencies to determine the best path forward.

Privacy and Civil Liberties

37. Actions to increase transportation security may have the potential to implicate privacy and civil liberties concerns. As Assistant Secretary, you will frequently be required to evaluate programs to determine how best to protect the homeland while at the same time protecting individuals' privacy, civil rights, and civil liberties. What basic principles do you believe should guide such evaluations?

As Deputy Director of the FBI, I can categorically state that the protection of privacy, civil rights, and civil liberties is a keystone to the FBI's culture. For over five years, I directly supervised a White Collar Crime squad that investigated Civil Rights matters, and, if confirmed, I am committed to upholding the public trust in this critical area. At every step of their development, security programs must take into account their impact on individual civil rights.

38. Secure Flight is one example of an initiative that has had to be substantially restructured when a privacy assessment revealed significant privacy and civil liberties concerns. Early and active involvement by the DHS Privacy Office in the development of such initiatives might have avoided costly mistakes by building privacy protections into the program from the ground up. How will you ensure that privacy and civil liberties concerns are considered early on and throughout the development of new programs and policies?

Based on my more than 26 years of experience at the FBI, I am very much aware of the necessity to embed privacy, civil rights, and civil liberties concerns into the core values of an agency's mission, and to ensure that those representing these concerns have a seat at the table from the outset of every program and initiative. If confirmed, you have my assurance that TSA will appropriately address these issues from the onset of program and policy development.

39. TSA has begun the deployment of AIT equipment at primary checkpoints, to improve the agency's ability to detect both metallic and non-metallic threats. Some privacy advocates have expressed concerns about the privacy implications of using such equipment, leading TSA and the equipment manufacturers to adopt a number of safeguards to protect a traveler's privacy.

- a. Do you support the use of AIT equipment, provided current safeguards remain in place? Do you have experience with this equipment?

Based on the lessons learned from the attempted terrorist attack on December 25, 2009, and the briefing and demonstration I have received at Reagan National Airport on Advanced Imaging Technology (AIT), I support the use of AIT equipment as important technology in protecting the traveling public by enhancing TSA's ability to detect nonmetallic threats, including explosives. From my preliminary observation, TSA operating protocols for the technology provide strong privacy protections for the traveling public.

- b. Do you believe TSA has a sufficient process in place to regularly review the privacy implications of this equipment, or any other screening technologies which may affect

a traveler's privacy? What safeguards do you believe are necessary, at a minimum?

Based on the information I have received, I believe that TSA has a strong privacy program and reviews the privacy implications of the technologies used. I understand that TSA privacy safeguards were implemented before the AIT technology was deployed. If confirmed, I look forward to reviewing this and other screening technology and programs to ensure that privacy safeguards remain strong.

- c. How can TSA ensure that the public is aware of the privacy protections in place without jeopardizing the efficacy of the technology?

I understand that TSA published a Privacy Impact Assessment describing the privacy protections and this has not jeopardized the efficacy of the technology. I also understand that TSA has engaged in outreach through the media and interaction with various affected communities. If confirmed, I will continue a sustained outreach program for this important technology.

Research and Development

40. Harnessing the nation's research and development prowess is essential to strengthening our domestic defenses against a variety of threats. DHS's Science and Technology Directorate (S&T) has been given the responsibility for directing research and development efforts and priorities in support of the Department's mission.

- a. Please describe your experience in overseeing the development and implementation of new technology systems.

In my current position, one of my direct reports at the FBI is the Executive Assistant Director for S&T, who has responsibility for the development and implementation of new technology systems, including advanced biometrics, advanced communications intercept technology, FBI Laboratory equipment in the fields of DNA and trace explosives detection equipment. Several years ago, I conducted an in-depth review and assessment of the Special Technologies and Applications Office (STAO), one of the premier FBI offices for developing and implementing technical systems, and gained valuable insights in this area.

- b. What is your vision of how S&T and TSA should work together to develop and deploy advanced technologies to address challenging homeland security missions?

If confirmed, I will work closely with S&T to develop technology that enables TSA to keep the traveling public safe while facilitating commerce. From my experience with the FBI, I understand that technology is an essential element of an overall security strategy.

- c. How can S&T and TSA better use technology goals and transparent standards as a

means of challenging industry to be more innovative?

Please see response to (b) above.

41. S&T funds several Centers of Excellence, whose purpose is to bring together experts and researchers to conduct research and education into particular homeland security portfolios. In response to a concern that DHS was not doing enough to improve the security of surface transportation, Congress mandated the creation of a National Transportation Security Center of Excellence. However, the Center has only received a fraction of the funding authorized for it. Do you believe TSA and S&T are sufficiently investing in transportation security research and development?

If confirmed, I will review the transportation security research and development investments to ensure that TSA is identifying threat-driven capability gaps to drive research investments.

42. TSA has been working with S&T on a program to determine how much threat material, stored in various places within a commercial aircraft, could take down an airplane. TSA and DHS could then use this information to develop an updated standard for explosives detection equipment used at airports. It is currently using a standard based on (and modified as additional data has become available) data from the Lockerbie bombing, more than 20 years ago. To date, the Department has accumulated data from testing on one, older airframe. S&T advised DHS to acquire data from tests and modeling of additional airframes in order to accumulate more comprehensive data.

- a. Do you agree that DHS should pursue a more aggressive study?

If confirmed, I will ensure that TSA and the Department of Homeland Security's Science and Technology Directorate work with the National Laboratories to address explosives detection standards. If confirmed, I hope to review the results of the existing studies in detail to determine the best path forward.

- b. DHS received \$1 billion for new explosive detection equipment for airports, as part of the stimulus bill passed earlier this year. The equipment purchased with stimulus funding will have improved capabilities over existing equipment, but it will still be measured against the explosives detection standard developed almost two decades ago. Do you believe the development of an updated standard should be a priority for the Department?

I understand that TSA has recently initiated a new acquisition effort for next generation explosives detection systems that are based on an updated threat-based standard.

43. In recent years, TSA has conducted a number of pilot programs to identify new technologies and new ways of using technology. Some of these pilots have expanded or developed into long-term programs. Is there a process for evaluating pilots and

determining if they should become permanent programs? Should there be? Do you believe TSA is doing enough to facilitate the transfer of information or technologies, developed under its various pilot programs, to the system operators and law enforcement authorities that, more often than not, are primarily responsible for the safety and security of a system?

If confirmed, I will work with leadership in TSA and the Department of Homeland Security (DHS), particularly its Directorate of Science and Technology, to determine the best path forward for initiating pilot programs, evaluating them, and effectively using the results. I am aware that a key outcome of the attempted attack on December 25, 2009 was the forging of a closer relationship between DHS and the Department of Energy, including the National Laboratories. I recently met with the Deputy Secretary of Energy and discussed these threat/risk/technology/mitigation issues and look forward to working with all subject matter experts, as well as the Committee, on these topics.

Transportation Security Grants

44. Although the Federal Emergency Management Agency (FEMA) awards transit and rail security grants, TSA provides the subject matter expertise for the Department when helping to evaluate the merits of proposed projects. Several years ago the Department began awarding transit security grants on a regional basis, reflecting the fact that a single transit system may run through more than one state. However, regional cooperation and the process for allocating awards among jurisdictions within a single region remains a concern, and local officials have expressed a concern that TSA still lacks a viable process for coordinating and mediating regional working groups.
- a. If confirmed, would you review TSA's involvement in rail and transit security grant programs and look for ways for TSA to ensure regional cooperation within these programs is improved?

If confirmed, I will work with TSA and Federal Emergency Management Agency (FEMA) senior leadership to examine the current process.

- b. Another grant program, the Port Security Grant Program, addresses the challenges of regional coordination by requiring that grant applications meet the objectives of the area security plan previously agreed to by all stakeholders, and by requiring that an impartial DHS official – in this case, the local Captain of the Port – rank the local projects in accordance with the risks to the port. If confirmed, would you commit to work with FEMA to evaluate whether a similar model should be adopted for the Transit Security Grant Program and make a recommendation to the Secretary on such an approach?

If confirmed, I will examine the model adopted by the Port Security Grant Program with the Federal Emergency Management Agency (FEMA) and Coast Guard leadership to determine how or if the model utilized by the Port Security Grant

Program could be used for the Transit Security Grant Program. I will consider this information when making a final recommendation to the Secretary on the approach for the Transit Security Grant Program.

Surface Transportation Security

45. Since 9/11, there have been several terrorist attacks around the world on rail and mass transit systems, such as the attacks in Spain (2004), London (2005), Mumbai (2006), and more recently in China (2008). These attacks suggest that mass transit systems could be a target of future terrorist action. In addition, freight rail is the primary mode by which hazardous materials are transported throughout the nation, with railroads typically carrying about 1.8 million carloads of hazardous materials annually. These materials also serve as a potential target for terrorists.

- a. What experiences, if any, do you have with protecting surface transportation systems, such as mass transit and passenger and freight rail?

As head of the FBI's Counterterrorism Division from 2003–2004, and more recently as Deputy Director for the last five years, I have participated in daily threat briefings dealing with domestic and worldwide threats, including threats to surface transportation.

- b. What changes, if any, do you envision making in TSA's current organizational approach for addressing the security needs of the surface transportation and aviation modes in a limited resource environment?

If confirmed, I will be responsible for implementing all of the recommendations included in the recently released Surface Transportation Security Priority Assessment for which TSA is designated as the lead. I will also ensure that the security needs of the aviation and surface modes are fully evaluated and that an appropriate risk analysis is applied to each mode.

- c. What additional capabilities, if any, should TSA develop to better support mass transit, passenger, and freight rail operations?

Rail security is of vital importance to our economy, and identifying and implementing capabilities that would further reduce the risk of terrorism for our security partners is and should continue to be a key goal of TSA's. If confirmed, I will support efforts to improve stakeholder relations, information sharing, and the application of new technologies with regard to surface transportation. I am also committed to continuing efforts to build stronger relationships with our international partners in this area so that we can share information, lessons learned, and best practices.

46. Historically, DHS has adopted a different approach to rail and mass transit security than it has adopted for aviation security, more often embracing a regulatory role, rather than an operational one, when it came to rail and mass transit security. With the Administration's recent proposals to expand the Visible Intermodal Protection and Response (VIPR) teams, and the hiring of additional Surface Transportation Security Inspectors, TSA appears to be embracing a greater operational role, though it necessarily assists local officials who retain the primary operational responsibility. TSA has also recently engaged New York City in a pilot program to screen passenger baggage at subway stations. Another area where DHS might be able to do more to protect local transit systems is in fostering or certifying security technologies that local operators could then purchase and deploy. What do you consider the highest priority gaps in mass transit protection, and what do you think TSA and DHS can do to address these gaps expeditiously?

If confirmed, I would welcome the opportunity for a more in-depth review of mass transit security needs. From my experience with the FBI, I believe that training, information sharing, and extensive use of drills and exercises are important components of a robust security system. I was closely involved in the disruption of the plot by Najibullah Zazi and others to detonate bombs in the New York City subway system, and I fully understand the many challenges involved in protecting a system as open as mass transit is in the United States.

47. In June 2009, GAO released a report regarding mass transit and passenger rail security programs (GAO-09-678), which highlighted a number of unmet requirements of the Implementing Recommendations of the 9/11 Commission Act of 2007. If confirmed, how will you work with stakeholders and others to ensure these requirements are expeditiously met?

If confirmed, I will make completing any 9/11 Act requirements that are not yet met a TSA priority. I will ensure that completion of these requirements will occur in coordination with appropriate stakeholders inside and outside of the federal government.

48. TSA's Surface Transportation Security Inspection Program faces several key challenges. GAO has reported that the Surface Transportation Security Inspection Program is at risk of being unable to meet its expanding responsibilities because TSA does not have a workforce plan for the program. A recent report by the DHS OIG found that TSA's complement of Transportation Security Inspectors – Surface (TSIs) is woefully inadequate for the responsibilities they are expected to fulfill. In fact, it found that TSIs have only been able to profile about half of the mass transit stations in the United States, and this workforce will be further strained when TSA begins using more inspectors to oversee pipeline security matters. By comparison, the Department of Transportation employs more than 1,350 surface safety inspectors for the same infrastructure that TSA must help protect. This year the President proposed increasing the number of TSIs, though even with the increase included in the FY 2010 appropriations bill, TSA will still have approximately 1,000 fewer inspectors than the Transportation Department.

- a. If confirmed, will you prioritize the development of a workforce plan?

If confirmed, I will review these issues and assess appropriate staffing levels.

- b. Do you support further increasing the number of TSI's, to strengthen TSA's role in surface transportation security?

If confirmed, I will review this matter.

Establishing a Backup to GPS

49. The Administration has proposed terminating the LORAN-C program because it is costly, rarely used, and, by itself, cannot be a backup to GPS since it has no timing element to its signal. However, prior to this proposal, the federal government invested \$160 million over the last 10 years to modernize LORAN-C infrastructure in an effort to facilitate the deployment of eLORAN as a national Position, Navigation, and Timing (PNT) back-up to GPS. GPS, because it uses a low-power satellite signal, is vulnerable to atmospheric interference and jamming. DHS is currently reviewing the needs of the federal government, private sector, and critical infrastructure for a backup to GPS, and has sought guidance from these stakeholders.

- a. If confirmed as Assistant Secretary of Homeland Security, how would you assist the Department's efforts to collect information from the transportation sector and analyze that information?

If confirmed, I will work with the Department of Homeland Security, other federal agencies, and stakeholders to assist in this effort as appropriate.

- b. TSA has worked with the trucking and rail industry to test monitoring systems for the transportation of hazardous materials. These systems typically rely on GPS to provide visibility into the movement and location of hazardous materials. Do you believe TSA has a large stake in the determination of a need for a backup to GPS?

I defer to the expertise of those agencies with the responsibility of ensuring the resilience of national navigation and communication systems.

- c. Do you believe that DHS should refrain from disposing of federal property, or otherwise dismantle infrastructure, that could be used for the deployment of eLORAN or some other system to back up GPS, until a final determination has been made on a backup to GPS?

My understanding is that the United States Coast Guard (USCG) terminated the transmission of all LORAN-C signals on February 8, 2010. I respectfully defer any questions involving LORAN to the USCG.

Intelligence and Information Sharing

50. The National Infrastructure Protection Plan and TSA's Transportation Systems Sector-Specific Plan emphasize the importance of working with private sector partners to coordinate protection activities and share information. However, the transportation sector has had difficulty establishing an overarching Sector Coordinating Council (SCC) – an entity called for in these plans to coordinate these efforts – in part because there are several different transportation mode sub-sectors. How will you better coordinate TSA's efforts among the various transportation modes and establish an SCC?

If confirmed, I will work with TSA's transportation sector stakeholders, in particular the modal Sector Coordinating Councils (SCC) that have already formed, to explore whether a transportation sector-wide SCC is feasible. I am a strong proponent of information sharing and will look for opportunities to promote and expand that practice, particularly with the private sector, where appropriate.

51. In addition to the structures and mechanisms under the National Infrastructure Protection Plan, are there other ways for TSA to coordinate with its private sector partners?

If confirmed, I will ensure that TSA takes advantage of all opportunities to coordinate with private sector partners, including intelligence sharing, risk assessments, sharing best security practices and incorporating stakeholders into security planning activities. I understand that there are Sector Coordinating Councils, Information Sharing and Analysis Centers, and fusion centers, as well as many associations representing transportation sector stakeholders. All should be used to continue to broaden TSA's outreach. If confirmed, I will also ensure that TSA engages in regular and robust communication, including briefings, regularly scheduled conference calls, auto notification/alert systems, web boards, and other Internet tools for collaborating with our stakeholders.

52. Based on your experience at the FBI, what is your perspective on TSA's current relationship with the FBI and with the intelligence and law enforcement communities more broadly? Do these relationships need to be strengthened or enhanced? If so, what steps would you take as TSA Administrator to strengthen or enhance them?

TSA's current relationship with the FBI is strong, and includes sharing of intelligence information, direct support for the Terrorist Screening Center (TSC), support for TSA's vetting and credentialing programs, and the actual embedding of TSA FAMS in the National Joint Terrorism Task Force (NJTTF) and local Joint Terrorism Task Forces (JTTFs). If confirmed, I would look for opportunities to further strengthen this relationship by such means as establishing additional exchange and detail opportunities for TSA intelligence and security personnel within JTTFs and the FBI's National Security Branch. I would also explore whether FBI intelligence personnel could be assigned to TSA's Office of Intelligence to enhance information sharing.

53. What do you believe are TSA's top intelligence priorities today, and how can TSA improve its efforts to address them?

If confirmed, one of my top priorities will be to fully and comprehensively examine the current capabilities of TSA's intelligence operations to develop a well-informed opinion on any needed improvements. As a member of the Intelligence Community, I will bring my experience to bear in analyzing this critical issue.

54. Under Section 201 (6 U.S.C. 121) and Section 207 (6 U.S.C. 124d) of the Homeland Security Act of 2002, the TSA Office of Intelligence is considered an intelligence component of the Department of Homeland Security and is responsible for working with the DHS Under Secretary for Intelligence and Analysis and the other intelligence components within DHS to develop and support the broader homeland security intelligence enterprise.

- a. What is your view of the relationship between the TSA Administrator and the DHS Under Secretary for Intelligence and Analysis?

If confirmed, I will work to ensure that there is a strong relationship that improves TSA's ability to better protect the traveling public and transportation networks.

- b. TSA is a non-Title 50 agency but has relationships with a number of elements of the intelligence community – some direct, and some working through the DHS Office of Intelligence and Analysis. To what extent, and on what issues, should TSA have a direct relationship with elements of the intelligence community (e.g. FBI, NSA, NGA), and to what extent should TSA work through DHS I&A to facilitate its relationship with the intelligence community?

If confirmed, I would welcome the opportunity to assess this issue in detail. I believe it is important for TSA to work closely with the intelligence community on all issues related to transportation threats and the identification of individuals for watchlisting. If confirmed, I will explore collaboration with the Office of Intelligence and Analysis to determine how best to maximize the use of the Department's intelligence assets and coordinate with the rest of the intelligence community to identify intelligence gaps and detect and disrupt threats.

55. TSA is an agency with a diverse set of imperatives and requirements for information sharing, including with its frontline employees, local law enforcement agencies at airports and other transportation facilities, the private sector, and the general public.

- a. As Administrator, what steps would you take to improve information sharing within TSA and with its key partners and stakeholders?

Based on my experience with the FBI, I believe that the ability to share threat information within TSA and with partners and stakeholders is critical for the identification and implementation of threat mitigation processes and procedures. If

confirmed, I will seek to strengthen these efforts. I will also encourage the intelligence community to continue its efforts to "write for release" when providing threat information to TSA and its stakeholders.

- b. The FBI has been criticized in recent years by the DOJ Inspector General for weaknesses related to information sharing. As a senior official within the FBI, what efforts did you take to improve information sharing within the Bureau and with its key partners and stakeholders? What were the most significant challenges or impediments that you faced in carrying out these efforts?

Since 2002, I have worked to maximize information sharing while protecting sources and methods. One of our senior intelligence executives developed the maxim, "share by rule, withhold by exception," which I believe captures what we have tried to do since 9/11. Through a series of transformational initiatives instituted by Director Mueller, we have made significant progress toward this goal, recognizing that it is and will likely always be a continuing effort. There have been a number of policy, cultural and technology challenges to accomplishing this goal, and I have invested considerable time and energy to overcome many of these challenges.

- c. How would your experiences at the FBI inform your efforts to improve information sharing at TSA?

If confirmed, I will take the lessons learned from my years of senior leadership in the FBI and apply the same sense of urgency to information sharing initiatives at TSA.

Human Capital Management

56. What do you consider to be the principal challenges in the area of human capital management at TSA? If confirmed, how do you intend to address these challenges?

If confirmed, I will be able to fully evaluate TSA's human capital management needs. More generally, however, based on my career experience with the FBI, I know that it is important to recruit and retain a well-trained, well-equipped, and well-motivated workforce. If confirmed, I will work closely with the human capital leadership and staff to ensure that TSA prioritizes this important goal.

57. As Assistant Secretary, how will you balance the interests of both labor and management, while improving the overall state of labor-management relations within TSA?

If confirmed, I plan to maintain an open dialogue with labor and management to guarantee fair, consistent, and respectful treatment of all employees.

58. The 2009 Best Places to Work in the Federal Government survey, conducted by the Partnership for Public Service, ranked TSA 213 out of the 216 agency subcomponents, even though it increased its score from 40.6 in 2007, to 49.7 in 2009. If confirmed, how would you assess the nature and causes of such a low ranking at TSA and how would you

determine what steps are needed to address them so that TSA could rise to a higher ranking?

If confirmed, I would seek to ensure all TSA employees have the same sense of mission and dedication to that mission as what I have seen and experienced in the FBI, noting that both agencies play a critical role in protecting the national security of our great country.

59. The human resource system applicable to Transportation Security Officers (TSOs), who perform security screening at airports for the TSA, does not allow collective bargaining, but does include certain employee rights and protections, similar but not identical to those generally available to federal employees. TSA also has established a pay-for-performance system for TSOs. If confirmed, will you reconsider TSA's current workforce system and, in so doing, what criteria will you apply?

If confirmed, I intend to review the human resources systems for TSA employees, including Transportation Security Officers, as part of an overall review of security performance and requirements.

Contract Management

60. GAO found in its report, *Department of Homeland Security: Billions Invested in Major Programs Lack Appropriate Oversight* (GAO-09-29), that major investments that were not subject to appropriate milestone reviews experienced cost, schedule, and performance problems and, therefore increased program risk. For example, between FY 2007 and the second quarter of FY 2008, TSA's Electronic Baggage Screening Program experienced 10 percent cost growth. What will you do to ensure that major TSA investments receive appropriate oversight and that actions are taken to mitigate cost, schedule, and performance risks?

If confirmed, I will ensure that the TSA has a strong acquisition management program, working with Department of Homeland Security leadership on key investment decisions on major acquisitions, as well as oversight processes and procedures for those acquisitions.

61. TSA is responsible for a number of major investments, that is, programs with estimated acquisition costs of at least \$50 million, such as the Electronic Baggage Screening Program and the Secure Flight Program. Please explain what experience you have had in overseeing the management of large acquisition programs. How will it enable you to successfully oversee TSA's major investments and acquisitions?

At the FBI, I have had experience overseeing the management of large acquisition programs. I strongly believe in the adage, "what gets measured gets done," and know that the larger the investment, the more time, energy and focus I will need to invest in oversight if confirmed.

62. Last month, DHS estimated that over 200,000 contractors worked at the Department. This astonishing number exceeds the 188,000 civilian employees at DHS (not including the uniformed personnel in the U.S. Coast Guard) and heightens concerns that contractors may be performing “inherently governmental functions,” from which they are prohibited, work closely supporting “inherently governmental functions,” or other core functions. While the Committee, GAO, and many outside observers recognized the need for DHS’s heavy reliance on contractors during its early days, more than six years later, many offices remain heavily staffed by contractors who perform a variety of tasks at the core of DHS’s operations, including policy planning, the drafting of regulations, intelligence analysis, preparation of budget requests, and even the drafting of an IG report.
- a. What will you do to strengthen TSA’s own ability to perform those tasks at the core of its operations, whether inherently governmental, closely supportive of “inherently governmental functions,” or other core functions?
 - b. Given the government’s extensive reliance on contractors, what would you suggest are the key considerations in determining the appropriate role for contractors in supporting government operations (particularly, in the areas that border on “inherently governmental functions,” such as rulemaking and awarding contracts)?
 - c. Government contractor employees often work side-by-side with federal employees, and also perform the same or similar functions as their federal employee counterparts. Please discuss any experiences that you have had managing such augmented workforce and your views on ensuring that government agencies establish appropriate safeguards to prevent conflicts of interest by contractor employees.
 - d. Do you believe that contracting out of work, even if not “inherently governmental,” can reduce essential staff expertise or otherwise diminish the institutional strength of agencies? If so, how should such considerations be taken into account in determining whether work should be contracted out or done in-house?
- (a-d): As a career member of the FBI, I am well versed in the complicated issue of determining which functions must be or are best performed by federal employees and when it is appropriate to use contract personnel. I also am aware that the Office of Management and Budget, through the Office of Federal Procurement Policy, is in the process of further review and guidance to all federal agencies on this matter. I also understand that the conversion of many contract employees to federal employees is a key objective of Secretary Napolitano and Deputy Secretary Lute. If confirmed, I will work closely with staff of TSA and DHS on this issue, and I look forward to further discussions with the Committee.*
63. In July 2008, TSA awarded a contract to Lockheed Martin for human resource services. The total value of the contract for services to TSA is approximately \$1.2 billion, and the contract also provides flexibilities for DHS headquarters use of Lockheed Martin human resource services, creating a possible contract worth \$3 billion. Given the enormity of the

contract, there is a risk that work will be transferred from federal employees to the contractor without DHS going through the required competition requirements under OMB Circular A-76.

- a. Will you commit to reviewing whether any A-76 requirements are violated by the terms of the contract itself, and whether precautions are in place to prevent work of TSA employees from being shifted to the contractor in circumvention of A-76 requirements in the future?

It is my understanding that the Office of Federal Procurement Policy (OFPP) is preparing to issue guidance relating to inherently government activities which requires all federal agencies to consider the government's ability to continue core government functions without contractor support. If confirmed, I will ensure that the policies contained in the final OFPP guidance are fully implemented at TSA.

- b. Contractors are prohibited by law from performing so-called "inherently governmental functions." However various sources define inherently governmental differently and in any event, it is not unusual for contractors to provide services that, even if they do not technically meet the definition, closely support inherently governmental functions. What will you do to strengthen TSA's own ability to perform those tasks at the core of its operations, whether inherently governmental or closely supportive of inherently governmental functions?

I respectfully refer to my answer for Questions 62 a. – d. above.

- c. Based on your experience and given TSA's extensive reliance on contractors, what would you suggest are the key considerations in determining the appropriate role for contractors in supporting the agency (particularly, in the areas that border on inherently governmental functions, such as policy making or human resources management)?

I respectfully refer to my answer for Questions 62 a. – d. above.

- d. Contractor employees often work side-by-side with TSA employees, and also perform the same or similar functions as their government counterparts. Have you had any experiences managing an intermingled workforce?

My experience with government contractors has been primarily in the field of strategic planning and mission execution. Many FBI divisions, especially those with an Information Technology responsibility, have an "intermingled workforce." As a result, I am familiar with the importance of carefully managing "inherently governmental functions" issues to ensure that federal work is performed by federal employees.

- e. If confirmed, what safeguards would you ensure were in place, to prevent conflicts of interest by contractor employees?

The Federal Acquisition Regulation, which I understand now applies to all new procurements of TSA, contains strict guidelines to prevent organizational conflicts of interest with contractors. If confirmed, I will ensure that TSA fully complies with these requirements. Furthermore, I will hold TSA employees that work with contractors and bidders to the highest ethical standards in how they comport themselves.

IV. Relations with Congress

64. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

Yes.

65. Do you agree, without reservation, to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

Yes.

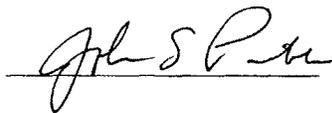
V. Assistance

66. Are these answers your own? Have you consulted with DHS or any interested parties? If so, please indicate which entities.

Yes. I have consulted with senior staff within the Department of Homeland Security (DHS), the TSA, and the FBI and have participated in pre-confirmation subject matter briefings. I have had standard pre-confirmation discussions with staff at DHS, the Office of Government Ethics, and the White House Personnel Office.

AFFIDAVIT

I, JOHN S. PISTOLE, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.



Subscribed and sworn before me this 10th day of June, 2010.


Notary Public EXP 11/14/2012



United States
Office of Government Ethics
1201 New York Avenue, NW, Suite 500
Washington, DC 20005-3917

MAY 25 2010

The Honorable Joseph I. Lieberman
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by John S. Pistole, who has been nominated by President Obama for the position of Assistant Secretary, Transportation Security Administration, Department of Homeland Security.

We have reviewed the report and have also obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert I. Cusick".

Robert I. Cusick
Director

Enclosures - REDACTED

Senator Joseph I. Lieberman
Additional Question for the Record
Nomination Hearing of John S. Pistole
June 17, 2010

1. After September 11, 2001, Sikh Americans worked closely with the Department of Transportation and the Federal Aviation Administration to develop sound policies for screening religious attire, including religious head coverings, in U.S. airports. The policy prohibited enhanced searches of religious headwear unless a traveler sounded an alarm while passing through a metal detector.

On August 4, 2007, the TSA revised its screening procedures for religious head coverings without consulting the impacted communities. According to revised guidelines, individuals who wear religious head coverings are subject "to the possibility of additional security screening, which may include a pat-down search of the head covering," and "may be referred for additional screening if the security officer cannot reasonably determine that the head area is free of a detectable threat item."

Reports have emerged over the last three years that Sikh and Muslim travelers are subjected to enhanced security screening at airport checkpoints at high rates. One recent study suggests at some U.S. airports, Sikh travelers are subjected to enhanced security screening consistently. Furthermore, TSA representatives have reportedly informed members of the Sikh community that the new headwear procedures specifically list the turban as an item that can be subjected to secondary screening, regardless of whether a metal detector has been set off. Under the current policy, it appears that enhanced screening is not merely a "possibility" but often inevitable for travelers with religious head coverings.

TSA has stated that it is against its policy to profile on the basis of religion and that such profiling undermines national security. Unfortunately, the current criteria for determining whether to subject an individual with religious headgear to additional screening is both vague and highly subjective, leaving enormous discretion to the individual Transportation Security Officer (TSO). This may lead to inconsistent treatment and unlawful profiling, as advocacy groups have reported.

What measures should TSA take to establish a clear and consistent standard for determining whether individuals with religious headgear should be subject to additional screening, and to prevent unlawful profiling?

Response: I understand that since the 2007 revision of screening procedures, TSA has conducted outreach with Sikh, Muslim, Orthodox Jewish, and other communities whose members wear religious headwear. If confirmed, I will evaluate and continue outreach to these communities and work in partnership with the Department's Officer for Civil Rights and Civil Liberties to ensure that our screening practices are respectful of the religious practices of the traveling public and comply with the Constitution and the laws of the United States.

Senator Daniel K. Akaka
Additional Questions for the Record
Nomination Hearing of John S. Pistole
June 17, 2010

1. A well-trained workforce will support TSA's national security mission and improved training may also help boost morale and retention. It has been reported that all training on operating Advanced Imaging Technology equipment is currently done online. Would you please discuss your overall approach to training and whether you would review the effectiveness of current training methods for AIT equipment in particular?

Response: I am committed to a strong training program for TSA's officers and, if confirmed, I will review AIT operator training. I understand that current AIT training includes live instructor training at the airport with the equipment, as well as an online component. As for training programs in general, if confirmed, I will apply lessons learned from my experience with the FBI, which provides training not only to its own agents, but also to law enforcement officers from other federal agencies, foreign governments, and state, local, tribal, and territorial officers to the Transportation Security Administration.

2. FAMS has sometimes faced personnel challenges, particularly because of its rapid post-9/11 growth. Air Marshals face unique pressures like frequent air travel, which can cause stress and fatigue, and impact the agency's ability to carry out its mission. What role do you think the agency should play in soliciting and incorporating feedback from its Marshals?

Response: As a career FBI employee who began as a field agent, I have frontline experience in this area and know the critical importance of soliciting feedback from personnel in the field. I am committed to fostering a collaborative atmosphere within the Federal Air Marshals Service (FAMS) that values input from all levels. If confirmed, I will work to ensure that FAMS remain a well-trained, high performing organization.

3. I am a strong supporter of both diversity and veterans' employment in the Federal workforce. Once the U.S. economy recovers and airline travel returns to higher levels of growth, TSA may need to increase staffing to minimize wait times at airport screening checkpoints. How will TSA incorporate diversity and hiring plans for this increase of staff?

Response: I am also a strong supporter of both diversity and veterans' employment. I understand diversity and veteran's hiring have been embedded into TSA's processes from its inception, and, if confirmed, you have my commitment to enhance these programs wherever possible.

Senator Claire McCaskill
Additional Question for the Record
Nomination Hearing of John S. Pistole
June 17, 2010

1. You stated during the June 17, 2010 hearing that, if confirmed, one of your top priorities is to ensure that TSA employees performing operations have the latest intelligence information, and that you would like TSA to be a threat and risk based intelligence driven agency, not only able to pull intelligence information (foreign and domestic), but to push it on a daily and hourly basis. What kind of intelligence changes are you recommending for TSA? Do you believe that TSA has the necessary resources to carry out additional roles?

Response: During my tenure as Deputy Director of the FBI, I have had an opportunity to meet many of TSA's intelligence professionals and am very impressed with their experience, knowledge, and abilities. As I indicated during the Committee's hearing on June 17, if confirmed, I will ensure they have the necessary tools and resources to succeed.

While I have not had the opportunity to explore TSA's current intelligence capabilities in detail, if confirmed, I would welcome the opportunity to follow up with you on your questions once I have had the opportunity to complete a detailed assessment.

2. The response to the attempted Times Square Bombing by Faisal Shahzad demonstrated cooperation and communication between several Federal, State, Local, and international communities, as well as associating lessons learned. I understand that you were directly involved in the FBI's investigation and manhunt for Faisal Shahzad. What were some of the lessons learned between these communities from your perspective? If confirmed, what would you improve in the communications between these communities and their work with TSA?

Response: There are several lessons that can be learned from the Shahzad investigation. The ability to share classified and law enforcement sensitive information across jurisdictions and agencies was critical to the success of the investigation.

I understand that TSA, through its Federal Air Marshal Service, participates in 56 local Joint Terrorism Task Forces as well as the National Joint Terrorism Task Force. These serve as the main inter-governmental law enforcement components to investigate and disrupt terrorist plots. If confirmed I look forward to further expanding TSA's cooperation with federal, state, local, tribal, and territorial law enforcement, and in further engaging with international partners as well as local communities to protect the homeland.

3. The Screening Partnership Program (SPP or Opt-Out) allows for airport operators to contract out screening services for air passengers and baggage. Do you believe these screener positions are inherently governmental and should not be contracted out? Please explain. What are your thoughts on the expansion of the Screening Partnership Program?

Response: I have only had preliminary briefings on the Screening Partnership Program (SPP), thus, I have not yet had the opportunity to fully review the program. If confirmed, I will review the SPP to determine whether it is an appropriate and cost-effective method of providing aviation screening functions.

4. A March 25, 2010 DHS OIG Report on TSA's Acquisition of Support Services Contracts reported that contractors were performing inherently governmental functions. Specifically, for 3 of the 13 contracts reviewed, contractors reviewed invoices to determine whether they were reasonable, correctly charged, and allowable, and then recommended the invoices for approval and payment. The program officials interviewed felt that these professional and management support services that closely supported the performance of inherently governmental functions was common practice. Do you believe that it is acceptable for contractors to be providing this type of oversight? If not, how would you work to change this dynamic within TSA?

Response: If confirmed, I am committed ensuring that TSA maintains the proper balance between federal employees and contractors, adhering to appropriate contracting procedures as outlined in the Federal Acquisition Regulation and in accordance with policy directed by the Office of Federal Procurement Policy within the Office of Management and Budget. I understand that the Department recently launched an Office dedicated solely to ensuring a properly balanced workforce, and, if confirmed, I look forward to working closely with this Office.

5. I understand that the Department of Justice's Office of Inspector General (OIG) recently investigated the FBI's improper use of National Security Letters (NSLs) to obtain private information. Handling of privacy information is a sensitive topic within TSA especially with Advanced Imaging Technology (AIT) and the various passenger manifests, no-fly lists, and selectee databases. Can you explain how your experience with the improper use of the NSLs can help strengthen the way TSA handles privacy information?

Response: I am absolutely committed to respecting the rights and the privacy of the traveling public. I understand these are complicated issues, and, if confirmed, I will institute the necessary procedures and review protocols to ensure that TSA follows well-recognized procedures to protect individual privacy. In addition, I will ensure that TSA exercises transparency in addressing these issues with the public.

**Senator Jon Tester
Additional Questions for the Record
Nomination Hearing of John S. Pistole
June 17, 2010**

1. Under current regulations, individuals piloting vessels that carry for hire more than six (6) passengers on a navigable waterway are required to obtain a Transportation Worker Identification Credential (TWIC). TSA administers the TWIC program.

The TWIC obligation extends to tour boat operators in Montana. In order to obtain a TWIC, these tour boat operators must travel to the nearest available enrollment processing center, which is often more than 500 miles away in Seattle. Furthermore, they must make a return trip weeks later once their card is issued. This burdensome situation also applies to individuals living in states like Idaho, Wyoming, North Dakota, South Dakota, Nebraska, Colorado, and Utah and leads to millions of dollars and thousands of hours in lost productivity as workers must travel to distant locales to obtain their TWIC.

How do you plan to rectify this problem?

Response: If confirmed, I will review the TWIC program to ensure that it not only meets statutory and regulatory requirements, but is administered in a balanced, cost-effective manner that takes into account the needs and specific challenges of the various communities it serves, including tour boat operators and individuals who live further away from the TWIC processing centers.

