

TSA OVERSIGHT PART I: WHOLE BODY IMAGING

HEARING

BEFORE THE
SUBCOMMITTEE ON NATIONAL SECURITY,
HOMELAND DEFENSE AND FOREIGN OPERATIONS
OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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TSA OVERSIGHT PART I: WHOLE BODY IMAGING

WEDNESDAY, MARCH 16, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL SECURITY, HOMELAND
DEFENSE AND FOREIGN OPERATIONS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2154, Rayburn House Office Building, Hon. Jason Chaffetz (chairman of the subcommittee) presiding.

Present: Representatives Chaffetz, Mica, Gosar, Farenthold, Issa, Tierney, Braley, Yarmuth, Lynch, Quigley, and Cummings.

Also present: Representative Jackson Lee and Holt.

Staff present: Ali Ahmad, deputy press secretary; Erin Alexander, fellow; Thomas A. Alexander, senior counsel; Robert Borden, general counsel; Molly Boyd, parliamentarian; Kate Dunbar, staff assistant; Adam P. Fromm, director of Member liaison and floor operations; Linda Good, chief clerk; Christopher Hixon, deputy chief counsel, oversight; Mitchell S. Kominsky and Rafael Maryahin, counsels; Justin LoFranco, press assistant; Mark D. Marin, senior professional staff member; Laura L. Rush, deputy chief clerk; Jeff Wease, deputy CIO; Sang H. Yi, professional staff member; Ronald Allen, minority staff assistant; Carla Hultberg, minority chief clerk; Lucinda Lessley, minority policy director; Scott Lindsay and Brian Quinn, minority counsels; Dave Rapallo, minority staff director; and Suzanne Sachsman Grooms, minority chief counsel.

Mr. CHAFFETZ. The committee will come to order. I would like to thank everybody for being here today as we tackle this important subject. I would like to begin this hearing by stating the Oversight Committee mission statement.

We exist to secure two fundamental principles: first, Americans have a right to know that the money Washington takes from them is well spent and, second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers because taxpayers have a right to know what they get from their government. We will work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and to bring genuine reform to the Federal bureaucracy. This is the mission of the Oversight and Government Reform Committee.

Again, I want to thank everybody for being here and our witnesses today for today's hearing, TSA Oversight Part 1: Whole

Body Imaging. This is the first in a series of hearings that we will have relating to the TSA.

In essence, one of my fundamental concerns is the need to secure our airports. We have a true threat in the United States of America, but at the same time we also need to uphold our freedoms and our liberties, our civil liberties. Oftentimes I think there is a false choice that is given that we need to give up our personal privacy in the name of security, and that is the part we are going to talk about today.

I would like to welcome Ranking Member Tierney and members of the subcommittee and those of you watching our live Web cast at Oversight.House.Gov. I want to thank you all for joining us.

We will seek testimony from private sector and government witnesses on the U.S. security programs and policies and their relationship to the Fourth Amendment of our Constitution. The United States continues to face real and serious threats from Al Qaeda and other terrorist groups. Since 9/11, terrorists have exploded American airport security checkpoints and, by all accounts, will continue to try to do so.

On December 22, 2001, a terrorist boarded a flight from Paris to Miami, where, in-flight, he attempted to detonate explosives packed in his shoes. If not for the heroic efforts of passengers, flight attendants, and a malfunctioning device, he may very well have succeeded.

In 2006, British intelligence foiled a plot to detonate liquid explosives aboard 10 different transatlantic flights, plots that would have undoubtedly caused a tremendous loss of life and terror.

On December 25, 2009, another terrorist, also known as the Christmas Day bomber, attempted to blow up a Northwest flight over Detroit. Again, passengers aboard the flight, along with a faulty device, thwarted another tragedy.

On October 29, 2010, Al Qaeda operatives packed a printer cartridge full of explosives and shipped them to the United States aboard a UPS airplane. Good intelligence, not effective screening, saved the day.

In each of these instances brave passenger, effective intelligence, and a little bit of luck averted mass tragedies, but this is not good enough. The Federal Government has reacted to each of these events with programmatic reforms and recommendations, the creation of the Department of Homeland Security being the most notable. These actions opened new lines of communication between agencies and redirected American efforts to protect the flying public. The American public is familiar with many of these reforms enacted at our Nation's airports. These changes are what bring us here today.

Over the past 10 years, Americans have sacrificed freedom and convenience for greater airport security. We remove shoes, surrender our sunscreen, submit to full body scans and enhanced pat-downs. The committee has an obligation to ask whether these policies actually truly enhance security. We have an obligation to ask tough questions and, when needed, find solutions. We must assess whether Federal screening procedures can be done with greater efficiency and greater effectiveness. We must examine whether Federal Government has a common sense layered and threat-based ap-

proach to airport security and is it truly securing the American public. We must also determine whether the Department of Homeland Security is maximizing available resources, alternative strategies, and innovative techniques.

We need to look into behavior detection, intelligence gathering and analysis, explosive trace detection; looking into vapor weight dogs and how they could be effective in airports. These are some of the other security-based techniques that should be included in the discussion.

What separates the United States of America from the rest of the world is our ability as a people to ask tough questions of those in the public policy arena. We will examine effectiveness and health risks associated with full body imaging devices. We will hear from privacy experts and average Americans about the naked images that are secured in those whole body imaging machines and talk candidly about the enhanced pat-downs that are now being implemented. We will ask tough questions about alternative screening methods and their role in the debate. We will examine the evidence and look at what has been said by the TSA and compare it to what is actually being done.

In short, I am proud of the United States of America and the ability to have this type of interaction in an open and transparent way. I appreciate everybody that is here and joining us in this discussion.

At this time I would like to recognize Mr. Tierney for his opening statement.

[The prepared statement of Hon. Jason Chaffetz follows:]

**Opening Statement of Jason Chaffetz, Chairman
Subcommittee on National Security, Homeland Defense, and Foreign Operations
“TSA Oversight Part 1: Whole Body Imaging”
March 16, 2011**

Good morning. Welcome to today’s hearing: “TSA Oversight Part 1: Whole Body Imaging.”

I would also like to welcome Ranking Member Tierney, members of the Subcommittee, and those of you watching our live webcast on oversight.house.gov. Thank you for joining us.

Today is the first in a series of hearings designed to examine airport security. Over the coming months, this Subcommittee will document the evolution of airport security since the tragic events of 9/11.

We will seek testimony from private sector and government witnesses on United States security programs and policies.

The United States continues to face real and serious threats from Al Qaeda and other terrorist groups. Since 9/11, terrorists have exploited American airport security checkpoints on four separate occasions.

On December 22, 2001, Richard Reid boarded a flight from Paris to Miami. While in flight, he attempted to detonate explosives packed in his shoes. If not for the heroic efforts of passengers, flight attendants, and a malfunctioning device, he may have succeeded.

In 2006, British intelligence foiled a plot to detonate liquid explosives aboard 10 different transatlantic flights – plots that would have undoubtedly caused a tremendous loss of life.

On December 25, 2009, Umar Farouk Abdulmutallab [pronounced “Oomar Fah-rook Ab-dool-moo-tah-lub”) – also known as the Christmas Day Bomber – attempted to blow up a Northwest flight over Detroit. Again, passengers aboard the flight, along with a faulty device, thwarted another tragedy.

On October 29, 2010, Al Qaeda operatives packed a printer cartridge full of explosives and shipped them to the U.S. aboard a UPS airplane. Good intelligence, not effective screening, saved the day.

In each of these instances, brave passengers, effective intelligence, and a little bit of luck averted mass tragedies. This is not good enough.

The federal government has reacted to each of these events with programmatic reforms and recommendations. The creation of the Department of Homeland Security

being the most notable. These actions opened new lines of communication between agencies and rededicated America's efforts to protect the flying public.

The American public is familiar with many of the reforms enacted at our nation's airports. These changes are what bring us here today.

Over the past 10 years, Americans have sacrificed freedom and convenience for greater airport security. We remove our shoes, surrender our sunscreens, submit to full-body scans, and enhanced pat-downs.

The American public makes these sacrifices with the understanding security is enhanced.

This Committee has an obligation to ask whether these policies enhance security. We have an obligation to ask tough questions; and when needed, to find solutions.

We must assess whether federal screening procedures can be done with greater efficiency and effectiveness.

We must examine whether the federal government has a common-sense, layered, and threat-based approach to airport security.

We must also determine whether the Department of Homeland Security is maximizing available resources, alternative strategies, and innovative techniques

Behavior detection. Intelligence gathering and analysis. Explosive trace detection. Vapor wake dogs. These are some of the other security based techniques that should be included in the discussion.

Today we will ask tough questions. We will examine the effectiveness and health risks associated with whole body imaging devices. We will hear from privacy experts and average American's about naked images and enhanced pat-downs. We will ask the questions about alternative screening methods and their role in the debate.

We will examine the evidence. We will look at what has been said by the TSA, and compare it to what has been done.

We had hoped to resolve and confront some of the discrepancies between the actions and words of the Administration and the TSA.

Unfortunately, the TSA pulled the plug. During last minute preparation, the TSA declined to testify - despite previously confirming through both verbal and written confirmation that they would appear.

Sadly, this is yet another failure by TSA and the Administration to be straight with the American people. We gave them an opportunity to help the American people

understand the complex, yet vital, issues surrounding airport security. Unfortunately, they refused.

The American people will sacrifice a great deal in the name of security. But it is irresponsible to expect these sacrifices from a government agency that is misleading, secretive, and not here today.

I look forward to hearing from our panel of witnesses.

Mr. TIERNEY. Thank you, Mr. Chairman, and thank all the witnesses for being present here today.

Past incidents have demonstrated that Al Qaeda and its affiliates are looking for other more creative ways to attack the U.S.' commercial airline industry and our traveling public. As a Nation, I think it falls on us to determine what human, economic, and psychological costs of a terrorist attack on a commercial airline warrants extraordinary defense measures and how costly, intrusive, and inconvenient we are willing to have those measures be. None of us likes to take off our shoes or throw away our water bottles or empty our pockets of change simply in order to board a plane, but most would be willing to take the sacrifice if there is a reasonable certainty that such actions would help prevent other terrorist attacks.

Following the Christmas Day bomber attack in 2009, with funding and some encouragement from some in Congress, TSA procured and deployed body scanning machines on a national scale. According to the TSA administrator and two TSA witnesses that were scheduled to be here today, these scanners represent the best available method to detect metallic and nonmetallic threat items concealed on a passenger such as the Christmas Day bomber. We should be willing to explore whether or not that is in fact the case.

We must also weigh this technology against Americans' legitimate privacy interests. By now we have all seen copies of body scan images that show much more than any of us would like to publicly reveal. Has the TSA taken significant enough steps to address these concerns? I understand that there is also additional technology available and in testing as we speak that would likely obviate these concerns altogether. If this is the case, I would encourage TSA to expedite the testing of that technology and deploy it as rapidly as possible if it is effective in identifying anomalies.

It is worth noting that according to a CBS poll conducted in November 2010, an overwhelming majority of Americans, 81 percent, approve of the use of whole body scanning devices at U.S. airports. That fact doesn't take away from legitimate privacy concerns that we all share, but it is a helpful data point about how much sacrifice most Americans are willing to make to prevent terrorist strikes from happening again.

One of our witnesses, Dr. Brenner, has also raised serious concerns about the potential health risks associated with wide-scale employment of body scanners. I look forward to discussing with Dr. Brenner his analysis that is seemingly at odds with studies conducted by the National Academy of Sciences, the Food and Drug Administration, the American College of Radiology, and the British Health Protection Agency.

TSA has a difficult and unenviable task. At one moment they are criticized for not doing enough to detect and stop potential threats; at another moment they are criticized for doing too much or not doing it in the proper way. Our role is to provide constructive oversight that can help TSA strike the right balance of security, privacy, cost, and convenience. I encourage my colleagues and our witnesses here today to provide solutions, rather than just heap on criticism.

Thank you, Mr. Chairman.

Mr. MICA. Mr. Chairman, parliamentary inquiry.

Mr. CHAFFETZ. Yes.

Mr. MICA. Mr. Chairman, I came today with the intent of questioning witnesses from the second panel, from the Transportation Security Administration, about this subject, and I appreciate, first of all, you and the ranking member conducting this hearing. I appreciate our first panel of witnesses, but I have since been informed that we will not have representatives today of the Transportation Security Administration.

I would like to request of the Chair and maybe in consultation with the ranking member, how we can proceed in the future to have—and I understand they have submitted some written testimony, but for the purposes of appearing before this subcommittee, answering appropriate questions, and some of them will evolve from the testimony that will be presented here today, but in-person representatives of the TSA, either by subpoena or by, and again if you would consult with counsel on both sides of the aisle, how we can demand and ensure their appearance before the committee in the future.

That is the nature of my parliamentary inquiry or my inquiry at this time, but I think it is very important that this subcommittee hear from those individuals who are involved with, again, the question before us today, and this is the TSA Oversight Part 1: Whole Body Imaging, so for the future, either by subpoena or requiring their attendance before this subcommittee.

Mr. CHAFFETZ. I appreciate the gentleman is correct that despite early assurances, confirmation of their attendance and participation in this hearing by two members of the TSA, senior members of their administration that they would attend, we were given notice late last night, something that I physically was able to see yesterday, that it was their intention now not to attend. I find that to be an embarrassment to the agency, I think it is highly inappropriate, and I assure you that the TSA will appear before this committee. They should appear today.

I will give them the benefit of the doubt until we begin to swear in the second panel, but at that time, should they choose not to attend at their own choice, after confirming that they would attend, having people fly in from around the country as far away as Alaska and other, I think it is inexcusable and embarrassing that it is now their intention not to show up.

Mr. CUMMINGS. Would the gentleman yield?

Mr. CHAFFETZ. Yes.

Mr. CUMMINGS. The gentleman is well aware—he said he got a letter yesterday. The letter is dated March 14, 2011, and the TSA had no problem with testifying before this committee. As a matter of fact, they wanted to testify before the committee. The problem is that the majority insisted that they be seated alongside non-governmental witnesses who represent the Electronic Privacy Information Center, and that organization is actually engaged in multiple lawsuits with the TSA. Now, they have assured us and have assured you that they are willing to testify. They want to testify. But to sit at the same table where people are suing you is just probably not appropriate. So I think with some flexibility you could have them in here at any moment.

And I think that we need to be very careful and I think Mr. Issa has been most cooperative with regard to dealing with subpoenas. If subpoenas are necessary, that is one thing, but when you have somebody suing you and you are sitting at the same table, as a lawyer, I can tell you that complicates matters quite a bit down the road. So I think there is a way to resolve this. The minority will cooperate in working with the majority to accomplish this. We all want them to appear. They want to appear. They have a great story to tell.

I yield back.

Mr. CHAFFETZ. Thank you.

In response to the gentleman, if I may, if they wanted to appear, they could, they should, and they would. The problem is that they have elected not to appear. As the gentleman knows, members on the panel take questions from Members of Congress; they don't take questions from the person seated next to them. In order to give Members the proper opportunity to question both those that are criticizing the TSA and then allow for a timely response from the TSA I think is most productive for this committee and, therefore, I had elected to seat them on the same panel.

Just 2 weeks ago we had the State Department, we had the Department of Defense, we had the Special Inspector General all seated together on the same panel. Both complained, oh, they wanted special treatment, they wanted to go first, they didn't want to have to wait, they didn't want to have to—but we talked to them, explained the situation, and as was complemented, I hope this is a fair characterization, a complement from the ranking member saying this was a swift and efficient hearing, it was a productive use of the Members' time. And we got through that hearing without incident. I think that is a good precedent. It happened 2 weeks ago from people that had contradictory points of view, and it is the way we will conduct this subcommittee.

Mr. TIERNEY. Will the gentleman yield?

Mr. CHAFFETZ. Yes, happy to yield.

Mr. TIERNEY. That is a reasonable characterization of what I would have said. I don't recall saying it, but I certainly would have said that, and indicated to you that I thought the hearing went well. When I was chair, we would go back and forth with both administrations, Bush administration and the subsequent administration, Obama administration, about their wanting to be first, they wanted to be on a separate panel and all that, and really believe strongly in the prerogatives of the House; it is our hearing, we control it and we go.

I think what is unique about this, and where I separate from you on that, is the litigation issue, and I think Mr. Cummings is right. When you are advising a client, not only do you not want them to be on the same panel with people who are suing you, you don't want the optics of having to say, I am not going to answer that question, or that is an inappropriate question given these circumstances. I don't think that is fair to put people in that position.

I think in this case, where there is litigation, putting them on the panel with the other litigant probably is a step too far, and I think we can reach an accommodation on making sure the prerogatives of the House are retained in getting witnesses to take what

panels we want them on, in what order we want them on, but making an exception in the matter of litigation and giving them a separate opportunity. And if that were the case here today, I think they would have come, they would have testified, we would have gotten the information we want, and it would have been better.

So I just ask that perhaps in the future you consider that aspect of it and we try to find a way to cooperatively move forward on that and give the agency a chance to say its case as well. Yield back.

Mr. CHAFFETZ. Duly noted.

Mr. ISSA. Would the gentleman yield?

Mr. CHAFFETZ. Gentleman from California, sir.

Mr. ISSA. Thank you, Mr. Chairman. I will be brief, as the others have been.

This committee has a long history of doing it right and doing it wrong. Under two chairmen ago, the Fallujah four litigation subjects were brought in here and, quite frankly, they were brought in to promote a lawsuit that the chairman was very well aware of. The Pat Tillman case, the same thing happened.

It is not our intention, as the chairman knows, and as I know he worked hard to facilitate any confrontation about a litigation. This will not happen on my watch or the chairman's watch. What we will do is we will insist on our right to seat people on a panel we believe is appropriate. We make exceptions. Current Members of the House and Senate, current full cabinet officers, and certainly any persons directly from the executive branch would be seated separately out of deference to their current status. We will continue to work with the ranking member, and Mr. Cummings has been very reasonable in supporting us when he thought we were right and asking for changes when he thought we were wrong.

The gentlelady from Alaska has come a long way; I want to hear what she has to say. I would have happily had TSA sitting next to her. My understanding is there is no lawsuit, but there certainly is a legitimate claim that TSA is not living up to the promises they made for how these scanners would be used and how they would do their job. So I look forward to that. I will work with the ranking member.

I would note that although every Member has the testimony from TSA, it will not be placed in the record since they did not appear. There will not be any unanimous consent to place it in the record. You will all have the opportunity to read it and we will look forward to that testimony and appropriate rebuttal when the TSA comes.

Mr. Chairman, I thank you for holding this hearing. Certainly, with 57,000 and counting TSA employees, countless people, including the gentlelady from Alaska, who comes from a city in which you can only leave the city in the winter, I guess, by dogsled, but most of the year by ship or by aircraft, it is essential that those air travelers have an opportunity to efficiently, effectively, and privately be able to go through screening and get onto the aircraft that bring them to the rest of Alaska and the lower 48.

So, Mr. Chairman, this is important. As we all heard here today, this is a very bipartisan issue that we get right after what we after, merely a decade, have not gotten right, and I thank you for your attention, your continued attention. As this title says, this is

No. 1. We will be back here as long as it takes in our oversight role to get it right.

I yield back.

Mr. CHAFFETZ. I thank the gentleman.

At this time, I would like to ask unanimous consent that Sheila Jackson Lee and Rush Holt be allowed to participate in this hearing and ask questions of the witnesses. Without objection, so ordered.

The Chair will entertain any additional opening statements that Members would like to make. Does any other Member wish to make an opening statement? Mr. Cummings. The gentleman is recognized, ranking member of the full committee.

Mr. CUMMINGS. I want to thank you, Mr. Chairman, and I want to thank you for the discussion that we just had, to you and our ranking member, Mr. Tierney.

On the subject of today's hearing, we all share the same goal. Let me emphasize that. We share the same goal: keeping airline passengers safe and secure with as little inconvenience or invasion of privacy as possible.

The whole body imaging technology we are examining was introduced following a terrorist attempt to blow up a Northwest Airlines flight in December 2009 using nonmetallic explosives. Let that sink in. In response to the threat posed by the so-called Christmas Day bomber and others, TSA introduced a number of new security measures, including whole body imaging.

By the way, Congress fully supported this effort by funding the procurement of hundreds of these machines. Because the TSA witnesses are not here to speak for themselves, let me read from their written testimony, which I hope that we will hear. It says that based upon our analysis of the latest intelligence, and after studying available technologies and other processes, TSA has concluded that advanced imaging technology is an effective method to detect threat items concealed on passengers while maintaining efficient checkpoint screening operations. TSA continually evaluates these technologies, their software and associated screening procedures to ensure that they are effective against established and anticipated threats, while continuing to protect passenger privacy, civil rights, and civil liberties.

Now, I think it was our ranking member of the subcommittee who said, he didn't say it like I am about to say it, but he said it, that TSA is damned if they do and damned if they don't. If you have an incident, particularly coming after the Christmas Day bomber incident, and if they did not try to address that issue in the most effective and efficient way, and the most noninvasive way as possible, and somebody was harmed or, God forbid, killed, then people would be screaming at them.

So as we conduct our oversight, it is important to understand that the TSA professionals charged with protecting the traveling public have determined that this technology is necessary to detect the very real threats posed by Al Qaeda and their affiliates. Our role in this effort should be to provide constructive oversight to help TSA strike the right balance between the need for security and concerns about convenience, cost, health, and privacy.

And I want to make it clear, as our ranking member has, every Member on this side of the aisle, and I am sure on the other side of the aisle, our No. 1 concern is the safety of our traveling public and, at the same time, striking a balance so that we have procedures that protect them, but do not go too far with regard to invading their privacy and making sure that they can have a wonderful traveling experience.

I want to thank our witnesses for being here today. Sorry that you have gone through what you have gone through, but, again, we need to strike this balance and get it right.

With that, Mr. Chairman, I look forward to working with you, Mr. Chairman, and our ranking member to make sure that we get TSA here so that they can testify appropriately. With that, I yield back.

[The prepared statement of Hon. Elijah E. Cummings follows:]

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WASHINGTON, DC 20515-6143

Majority (201) 225-5074
Facilities (202) 225-3974
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<http://oversight.house.gov>

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STEPHEN F. LYNCH, MASSACHUSETTS
JIM COOPER, TENNESSEE
GERALD E. CONNOLLY, VIRGINIA
MIKE DUGLEY, ILLINOIS
DANNY K. DAVIS, ILLINOIS
BRUCE L. BRALEY, IOWA
PETER WELCH, VERMONT
JOHN A. YARMUTH, KENTUCKY
CHRISTOPHER S. MURPHY, CONNECTICUT
JACKIE SPEER, CALIFORNIA

Opening Statement

Rep. Elijah Cummings

Ranking Member, Committee on Oversight and Government Reform

**Hearing on “TSA Oversight Part I: Whole Body Imaging”
Subcommittee on National Security, Homeland Defense, and Foreign Operations**

March 16, 2011

This hearing raises important questions about the United States' last line of defense against terrorists who target our nation. Before I address the substance of today's hearing, however, I want to address why the two TSA witnesses are not here.

Mr. Chairman, there is no mystery to their absence. On Monday, TSA Administrator John Pistole sent a letter to the Subcommittee explaining exactly why both TSA officials, Mr. Kane and Mr. Kair, would not be here to testify. I ask unanimous consent that Mr. Pistole's letter be made part of the hearing record. Here is what he said:

I am committed to working with Members of Congress and Committee members in their efforts to conduct oversight and enhance the ability of TSA to fulfill its mission—and this hearing is no exception. I am willing to provide the requested witnesses at the requested time. However, I have strong concerns over the Subcommittee's intention to seat Mr. Kane and Mr. Kair alongside a non-governmental witness who represents the Electronic Privacy Information Center, an organization that has multiple lawsuits pending against the agency.

Mr. Pistole then went on to describe five different lawsuits that EPIC filed against TSA. He concluded that “it would be inappropriate to place both sides of a lawsuit on the same panel at a public hearing to discuss matters subject to litigation.” And he offered to make these TSA officials available on a different panel or even a different day.

Mr. Chairman, I take no position on the merits of EPIC's lawsuits, but I have heard no rational explanation for refusing Mr. Pistole's request. And I have heard no rational reason for abandoning the longstanding congressional practice of allowing agency officials to testify on their own panels. In 65 hearings held by this Subcommittee over the last two Congresses, only twice have government witnesses not had their own panels.

By refusing to accommodate Administrator Pistole's request in this specific case, we distract from the real issues before us today. Frankly, it is impossible to conduct responsible oversight of TSA when TSA is not here.

On the substance of today's hearing, we all share the same goal – keeping airline passengers safe and secure with as little inconvenience or invasion of privacy as possible. The "whole body imaging" technology we are examining was introduced following a terrorist attempt to blow up a Northwest Airlines flight in December 2009 using non-metallic explosives. In response to the threat posed by the Christmas Day bomber and others, TSA introduced a number of new security measures, including "whole body imaging." Congress fully supported this effort by funding the procurement of hundreds of these machines.

Because the TSA witnesses are not here to speak for themselves, let me read from their written testimony, which I would like to submit for the record. Here is what they stated:

Based upon our analysis of the latest intelligence, and after studying available technologies and other processes, TSA has concluded that [Advanced Imaging Technology] is an effective method to detect threat items concealed on passengers while maintaining efficient checkpoint screening operations. ... TSA continually evaluates these technologies, their software, and associated screening procedures to ensure that they are effective against established and anticipated threats, while continuing to protect passenger privacy, civil rights, and civil liberties.

As we conduct our oversight, it is important to understand that the TSA professionals charged with protecting the traveling public have determined that this technology is necessary to detect the very real threats posed by al Qaeda and their affiliates.

Our role in this effort should be to provide constructive oversight to help TSA strike the right balance between the need for security and concerns about convenience, cost, health, and privacy.

Mr. TIERNEY. Mr. Chairman.

Mr. CHAFFETZ. Yes.

Mr. TIERNEY. Mr. Chairman, at this time I would like to ask unanimous consent that the statement of Robin Kane, who is the Assistant Administrator for Operational Process and Technology, and Lee Kair, who is the Assistant Administrator for Security Operations, Transportation Security Administration, U.S. Department of Homeland Security, be admitted into the record.

Mr. MICA. Reserving the right to object. Well, I don't have the Chair here now, but I do think that since they have chosen not to appear today, that I would prefer that when they appear we submit that to the record. We would also, at that time, have the opportunity to examine and question those witnesses based on the submission of their testimony. So I will continue to object to the submission of their testimony at this time.

Mr. ISSA. Mr. Chairman.

Mr. CHAFFETZ. Yes.

Mr. ISSA. I too would reserve. The intention is for that to be placed in at a time in which the witnesses can be made available, and I look forward to that opportunity and yield back.

Mr. TIERNEY. Mr. Chairman, if I may speak to the objection.

Mr. CHAFFETZ. Yes.

Mr. TIERNEY. I think we all understand that we want the TSA people to come back and testify. That is a given and I don't think anybody objects to the notion that they will be back and testify. I think we have sort of unique circumstances that they ended up not being here today. They did circulate their testimony last night by email to all the Members.

I think it is helpful for us, in questioning here today, if we are going to ask a question, to be able to refer to something that is on the record and keep the record intact. I think it is helpful also for people that might look back at this hearing to have a full account of all of the different positions that might be available here and still reserve the right to bring them back.

But I do note that it wasn't the fact that they wouldn't testify, it was the fact that they had circumstances with confronting litigants on the same panel that we may or may not disagree on. I think it is extraordinary in this case and I think for the panel itself and for this hearing it would be appropriate to have those materials on the record.

Mr. CHAFFETZ. The chair would disagree somewhat with the characterization, but fair enough. There has been an objection to the unanimous consent request; therefore, it is denied. As there has been an objection, we do not have unanimous consent. The statements will not be entered into the record.

Mr. TIERNEY. Mr. Chairman.

Mr. CHAFFETZ. Yes.

Mr. TIERNEY. Then I would move that we enter those records on the statement and ask for a vote.

Mr. ISSA. Mr. Chairman, point of parliamentary inquiry. Is a vote in order during a hearing? I don't believe it is.

Mr. CHAFFETZ. I don't believe it is. We have not yet got to the second panel. We have not yet confirmed whether or not they are going to indeed show up. There was a unanimous consent request;

there was an objection. That has been denied. Consequently, we are still in the opening statement mode. The chair is now going to recognize the gentleman from Florida, the chairman of the Transportation Committee, Mr. Mica.

Mr. MICA. Thank you. And I am here in the capacity as a member of 18 years spending of the Government Reform and Oversight Committee. Again, I thank both the ranking member and the Chair for conducting this oversight hearing. This is a very important responsibility, I think, of this committee.

Transportation security, and I started some of this as Chair of the Aviation Subcommittee. You never know what the good Lord has in store for us, but I was made the Chair in 2001, somewhat later than usual in the appointment of chairs, but then we were confronted with the attacks of September 11th and had to put in place a security system for transportation for our country. Travel is one of the most important things we can do, particularly for aviation. We have seen the threat still exists. I think that these folks have seen the damage they can do to our economy, to our society, to our way of life, and they are still determined to come after us; and I think, therefore, it is very important that we have in place systems that work.

I helped initiate a number of the programs, in fact, asked them to look at advanced imaging technology, and I am supportive of using advanced technology for determining threats and risks. My concern is, well, first, the manner in which—and I don't have the opportunity to question the TSA representatives, the manner in which these pieces of very expensive equipment were acquired, and I would hope that the committee and committee staff, if they are listening, would review very carefully the acquisition. This was somewhere in the neighborhood of half a billion dollars.

Furthermore, I am very concerned about the testing. In the past, when we worked, and I see Mr. Cummings there, we were always consulted by TSA in the major acquisition and deployment of new screening technologies. I don't think that was adequately done in this purchase.

I am concerned about the testing results, and every member of this panel should have a classified briefing. I had the equipment tested by GAO in December of this past year and then I had the pat-downs tested in January. Everyone should be required, every Member of Congress, to see the extensive failure rate, I can't disclose it, but it really concerns me when you spend half a billion dollars and then another half a billion dollars for additional personnel and it doesn't work as it should.

Even the initial deployment of portals is a joke. Even a seventh grader, I think, could come up with a better plan for deploying and utilizing this equipment, and it doesn't have to be used for everyone like we have seen it deployed. And then again I have great concern of the failure of its use and even implications of its use. People in this country are protected by the Fourth Amendment. They shouldn't be subject to illegal search and seizure and embarrassment and assumed guilty. We can and we must do better, especially for aviation security, and I am disappointed.

There are more fundamental problems with TSA, and I ask the members of the panel to work with me. For a long period we did

not have an administrator. We have had five administrators in 5 years. This administration chose not to appoint someone. Actually, I think they named several who were cast aside, but the first appointment didn't come until about 8 or 9 months into the President's term. That needs to be changed.

There are more than 200 personnel in TSA making more than the administrator. The administration now has an army of 3,770 personnel in Washington, DC, making an average of \$105,000 a person. I was taken aside the other day by someone who just left TSA. He said he worked in a department where 10 secretaries made more than \$100,000. This is an agency crying out for reform and I think it is very sad that they would choose not to show up today. I hope that we can get them—I know we will get them at a future hearing, and I would be glad to participate in questioning them at that time.

I thank you again for your convening this hearing and yield back.

Mr. CHAFFETZ. The gentleman yields back.

The Chair will now recognize the gentleman from Iowa for 5 minutes.

Mr. BRALEY. Thank you, Mr. Chairman.

The challenges facing the TSA are not a Democratic problem or Republican problem; they are a problem that faces every American who travels. And those of us who travel frequently know that this is one of those difficult balancing acts that we face in a country that treasures its privacy, treasures its liberty, but also wants to protect its citizens; and that is the challenge we face in this subcommittee today.

With each successive terrorist attempt against our airports and airplanes, the TSA has responded with new and usually more inconvenient technology to address the threat, from removing our shoes at the x-ray machines to limiting liquids and gels to advanced imaging technologies that are able to screen whole bodies for suspect material. I don't deny there is a clear need for security, as the attempts by would-be terrorist Richard Reid and Umar Farouk Abdulmutallab show, but I have serious concerns over protecting the rights of our citizens and ensuring that the technologies we use are fully effective and safe.

Recent studies suggest that the whole body imaging technology currently in use may be ineffective at detecting concealed explosives such as those used in the Christmas Day bombing attempt in 2009, as well as suggesting that the backscatter x-ray technology in these AIT devices could be a higher risk to health than indicated. I believe that we should work together to find more effective screening mechanisms through the greater deployment and use of explosive trace detection technology that could better detect explosives and preserve the modesty and personal rights of American citizens.

That is why I was proud to introduce the Protect the Lives of Americans Now Through Enhanced Screening [PLANES] Act, last Congress. This legislation calls for more intelligent use of screening technology to ensure safety at airports. I look forward to the testimony of the witnesses today and I hope that this hearing sheds light on why technology has to be the best answer to terrorist

threats from the TSA and how we work together to protect the rights and health of our citizens, and I yield back.

Mr. CHAFFETZ. The gentleman yields back.

We now recognize the gentleman from Arizona for 5 minutes for his opening statement.

Mr. GOSAR. Thank you, Mr. Chairman and ranking member, for holding this important hearing on the Transportation Security Administration's use of whole body imaging at airport security.

A series of hearings starting today to analyze TSA's efforts to increase airport security since the Christmas Day bomber incident is the type of hearing this committee should hold to ensure the Government is working on the best interests of our constituents. In light of the thousands of constituent concerns and alarming press accounts we have heard, it is critical this committee revisit airport security policy. TSA must develop effective policies and processes that keep the traveling public safe and maintain our Nation's security, while keeping in mind passenger safety.

Air transportation is one of our Nation's most essential infrastructures, and the policies and activities to the Transportation Security Administration have a direct impact on more of our constituents than almost any other Federal agency.

In my home State of Arizona, Phoenix Sky Harbor International Airport is a primary airport, one of the 10 busiest in the Nation and among the top 20 busiest in the world. Sky Harbor Airport has a \$90 million daily economic impact. Last year they saw 38,554,530 passengers come through the airport and 276,338 tons of cargo coming in and out, and over 440,000 aircraft passing through. With the heavy volume of passengers, cargo, and aircraft, Phoenix Sky Airport was one of the first test sites for the whole body imaging scanners in 2007. Today there are nearly 500 imaging technology units at 78 airports.

The implementation of the whole body imaging scanners in Phoenix Sky Airport has not been without controversy. There have been numerous press accounts documenting passengers and these new scanners, and I have heard concerns from many of my constituents directly. There have been various local press reports mentioning that passengers are concerned with the lack of privacy and who may be viewing these images. I think we can all agree that we need to effectively protect air passengers while at the same time respecting passengers' rights.

As a medical professional practicing for over 25 years, I am also concerned about the potential health risks posed by the machines. TSA reports on radiation exposure have been challenged by a variety of independent studies. I look forward to hearing the witnesses' testimony on the scientific data, as it is critical that the health of our constituents are carefully considered when analyzing TSA's security efforts.

It is important to note that the whole body imaging technology is not cheap. It is estimated that the total cost for this program will be about \$50 million for 2013. At a time when everyone is forced to cut back, I think it is only fair to ensure that if the Federal Government is going to spend the money on this initiative, it better be very effective.

Finally, we must ensure that we have a consistent fair and uniform policy across the board. No one airport should operate any differently when it comes to security or how to handle passengers. My constituents are telling me that simply is not the case. The Federal Government must strike the proper balances between security and policy.

I would like to thank the witnesses for appearing before the committee today and contributing to the committee's work to reexamine TSA's travel security policies. I look forward to hearing your testimony and discussing what is and isn't working regarding airport security. Thank you.

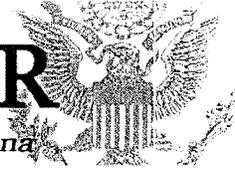
I yield back.

[The prepared statement of Hon. Paul A. Gosar follows:]

CONGRESSMAN

PAUL GOSAR

Representing the 1st District of Arizona



FOR IMMEDIATE RELEASE:
CONTACT:

March 14, 2011
Stefani Zimmerman
202-225-2315

Congressman Paul A. Gosar – Opening Statement

Oversight and Government Reform Subcommittee on National Security, Homeland Defense, and
Foreign Operations

“TSA Oversight Part I: Whole Body Imaging.”

Wednesday, March 16 - 9:30a.m.

2154 Rayburn House Office Building

“Good morning,

First, I would like to thank Chairman Chaffetz for holding this important hearing on the Transportation Security Administration’s use of the whole body imaging at airport security. The series of hearings, starting today, to analyze TSA’s efforts to increase airport security since the “Christmas Day Bomber” incident is the type of hearing this committee should hold to ensure the government is working in the best interest of our constituents.

In light of the thousands of constituent concerns and alarming press accounts we have heard, it is critical this committee revisit airport security policy. TSA must develop effective policies and processes that keep the traveling public safe and maintain our nation’s security, while keeping in mind passenger privacy.

Air Transportation is one of our nation’s most essential infrastructures and the policies and activities of the Transportation Security Administration have a direct impact on more of our constituents than almost any other federal agency. In my home state of Arizona, Phoenix Sky Harbor International Airport is the primary airport. One of the ten busiest in the nation, and among the top 20 busiest in the world, Sky Harbor airport has a \$90 million daily economic impact. Last year, they saw 38,554,530 passengers come through the airport, 276,338 tons of cargo come in and out, and 449,351 aircraft pass through.

With the heavy volume of passengers, cargo and aircraft, Phoenix Sky Harbor was one of the first test sites for the Whole Body Imaging Scanners in 2007. Today, there are there are nearly five hundred imaging technology units at 78 airports.

The implementation of the Whole Body Imaging Scanners in Phoenix Sky Harbor has not been without controversy. There have been numerous press accounts documenting passengers and these new scanners and I have heard concerns from many of my constituents directly. There have been various local press reports mentioning that passengers are concerned with the lack of privacy and who may be viewing these images. I think we can all agree that we need to effectively protect air passengers, while at the same time respecting passenger rights.

As a medical professional practicing for over twenty-five years, I am also concerned about the potential health-risks posed by the machines. TSA's reports on radiation exposure have been challenged by a variety of independent studies. I look forward to hearing the witnesses' testimony on the scientific data as it is critical that the health of our constituents are carefully considered when analyzing TSA's security efforts.

It is important to note that the whole body imaging technology is not cheap; it is estimated the total cost for this program will be \$500 million by 2013. In a time when everyone is forced to cut back, I think it is only fair to ensure that if the federal government is going to spend the money on this initiative, it better be for effective.

And finally, we must ensure that we have a consistent, fair and uniform policy across the board. No one airport should operate any differently when it comes to security or how to handle passengers. My constituents are telling me that simply is not the case.

The federal government must strike the proper balance between security and privacy. I'd like to thank the witnesses for appearing before the committee today and contributing to the Committee's work to re-examine TSA's travel security policies. I look forward to hearing your testimonies and discussing what is and isn't working regarding airport security."

Mr. CHAFFETZ. The gentleman yields back.

We now recognize the gentleman from Massachusetts, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman. I want to thank the members of the panel for appearing before the committee, when they eventually do appear.

Just a point on that. As former subcommittee chair, it has been the practice that we have taken agencies singly to allow them to avoid conflict with other parties, and also just to give them a basic courtesy. But I respect the Chair's decision on how to handle that. It is not necessarily how it has been handled in the past.

To the substance of today's committee hearing, I do want to amplify the concern about health risks, and not only for the traveling public, but we have TSA workers, TSOs, as they are called, Transportation Security Officers, who may indeed screen anywhere from 200 to 400 or 500 people in a shift. We have some very, very busy airports that handle huge volumes of people, so one of the areas of interest that I have is on their behalf, on behalf of our TSOs, to make sure that this repetitive exposure, even though it is alleged to be low level exposure, to the radiation, the low level radiation given off by these scanners, I am concerned about their safety.

I have heard from a couple of the employer groups, I guess it is not their official union yet, but the NTEU and also the American Federation of Government Employees, who have asked that some of these workers, just to allay their fears, be allowed to wear a dosimeter, which is a device which will record the levels of exposure to radiation which the wearer encounters. And I think that is a reasonable approach; however, it has not been embraced by TSA.

That resistance is similar to the resistance that we had a couple years ago when we had the H1N1 epidemic, which emanated in Mexico City, it started there, and yet we would not allow our TSOs in Brownsville and a number of the airports along the Mexico border, we would not allow them to wear masks, we would not allow them to use Purell on their hands in between the screenings and pat-downs of people coming across the border.

So we allowed those officers to be exposed to a hazard that I think they should not have been exposed to. And when I say we would not allow it, the Department of Homeland Security and TSA leadership would not allow those workers to protect themselves. And yet those workers were going home every day to their families. So you see the lunacy in that policy. So that experience does not lead me to believe that responsibility is being taken by TSA.

The other issue is the privacy issue. This is a serious issue and there has to be a way that we can protect the public during these imaging screens, and I think the most profound deterrent to recklessness with respect to the screening process and the images that can be stored on these systems is to provide a cause of action for the public.

If TSA knows that they can be sued and serious damage can result to them as a result of their lapse handling of privacy issues, then they will be diligent about protecting the public's privacy. If they can do it, if they can mishandle private information like that and these images, and there is no consequences, then they will do exactly that. Experience and reason agree on that point.

So on those points, health risks and privacy issues, I hope that we will get some helpful direction and instruction from our witnesses.

Mr. Chairman, I yield back.

Mr. CHAFFETZ. The gentleman yields back.

Would any other Members wish to make an opening statement?

[No response.]

Mr. CHAFFETZ. Members may have 7 days to submit opening statements for the record.

We will now recognize our first panel.

We are honored to have Sharon Cissna, who is a member of the Alaska State Legislature. She represents the 22nd District there in Alaska. She is a Democrat, and I appreciate the length and the short notice that she has taken to travel a great distance to be here today, so we thank you for your presence.

Pursuant to committee rules, all witnesses will be sworn before they testify. Would you please rise and raise your right hand?

[Witness sworn.]

Mr. CHAFFETZ. Let the record reflect that the witness answered in the affirmative. Thank you.

Thank you again for being here. We will now recognize you for five minutes.

**STATEMENT OF REPRESENTATIVE SHARON CISSNA, ALASKA
STATE HOUSE OF REPRESENTATIVES**

Ms. CISSNA. Chairman Chaffetz and Ranking Member Tierney and also fellow members of the subcommittee.

I wanted to first of all introduce myself. My name is Sharon Cissna and, yes, I am a State representative, State House, and have been with the legislature now seven terms, I am in my seventh, and represent District 22, which is in fact the district in the State that has the universities and medical systems that actually serve the whole State. So my focus really is health and education; those are the two focuses I have.

I have another thing that actually brings me here, and that is that I fit a profile of the people that are harmed by the present TSA, and those are initials that I haven't actually used very often before, but suddenly found myself actually, starting in November of this last year, in a situation where, like so many other Alaskans, I went down for a second opinion to Seattle and got back that medical procedure done, went out to the airport not having a clue that there had been any changes in the screening devices, and SeaTac had just put it in. This was in early November. And because in fact I am what I like to consider a veteran of breast cancer, I fit that profile that instantly is going to have the full, very invasive hand search.

And this is not something that I have talked to many people about, but I am going to talk to you now about it because I think it is really important, and I think this actually, as I have listened to your conversation, brings something that we really don't oftentimes look at when we are talking about the total world of our country. We don't often. We look at the economy, we look at statistics, we look at that kind of thing, but oftentimes we don't look at

the individual lives of the people that we are serving and what actually is affecting them and how.

It isn't oftentimes in the research that we see, and we see this especially in Alaska because we don't have enough numbers to really make it work, and that is the research that shows what kind of harm is really being done when. If you have very few numbers, it doesn't fit into research. And yet people are being harmed.

In my case it was because, as a teenager, I experienced bad touch, and have spent my adult life working on making sure that assault doesn't happen to the kids that I have come in contact with, which, having worked in the mental health field for a number of years, starting in, actually, 1962, which, of course, shows that I am not new at all of this, really has been something that is a lot larger than we ever talk about or think about or even test. I am fairly sure of that.

So when in fact I went through the screening device, I was in front of the woman who tried to tell me that I simultaneously was going to go through the new hand pat. I consider it feeling up and, I am sorry, but I am going to refer to it that way. Please accept that. I went through this and that is the way I feel about it.

She was also telling me, very rudely, as a matter of fact, that I had to be simultaneous to whatever she was going to do to me, and she wasn't really explaining that because I think she was trying to remember. She had just been trained; she was learning. It showed. But simultaneously I was supposed to be watching my baggage, and at that point I look over at my baggage and other people's bags are now piling on top of mine and someone is going through my bag trying to figure out, I am sure, if it was theirs. I start moving toward it and she yanks me back and very rudely tells me stand still, keep your eye on your bags. Yet I am supposed to now sit, stand, and put my hands in certain ways to have her feeling me up. And it was very intensive.

All right, that happened. For several weeks after that, I would love to know if there is someone I could bill for the time I lost because of my emotional state, that actually was, I think, the emotional state that happened after that was very similar to what happens with probably anyone who has been through assault. And I even wonder if in fact—am I running way past the time here? I am sorry.

Mr. CHAFFETZ. We would like to ask unanimous consent to allow her to continue with this testimony for another 2 minutes. Without objection.

Please.

Ms. CISSNA. OK. Thank you.

So what happens is that I went through 2 weeks of very disrupted time over the response to that.

All right, moving forward again very quickly to February the 20th, not very long ago, I suddenly find myself having gone back to the doctor and finding myself at the airport again and thinking something had changed at the airport, find myself with the full body scan, which I haven't worried about. I have heard many people worry about it. But what happened after that was I faced the woman and my husband and I had talked about it. I had vowed that I was not ever going to go through that again. I said no.

What I found out, after having said no and having really felt better after that, because I actually was starting to protect myself, and I, to this moment, feel very proud of having done that, I suddenly put myself right in with all of the huge numbers of people who have been harmed, and I have received well over 1,000 letters, emails, Facebook is alive with this. It is amazing how many people have stopped me. Every single day, many times a day, with their stories of how they have been harmed, and I sent in my statement that I emailed you folks many of the comments that were made.

But I have also witnessed exactly how Alaska does deal with this. And the minute that I got back to Alaska, the thing that was amazing to me was that my legislature had passed a sense of the House on how I had done the right thing, that it was the right thing for me to have done, and they have put out a resolution that is to come to you; and it goes through all of the different things that—and the most important is how important air travel is to us, but how our Alaskans have been harmed. We travel four times what the rest of the United States does, all the other members of our citizens that travel.

And I think I am supposed to be ending here. I hope you will read the rest of my comments and any other questions, please ask.

[The prepared statement of Ms. Cissna follows:]

United States House of Representatives
Committee on Oversight and Government Reform
Subcommittee on National Security, Homeland Defense, and Foreign Operations

Hearing on

TSA OVERSIGHT PART I: WHOLE BODY IMAGING

Washington, DC
March 16, 2011

Statement of Representative Sharon Cissna
Alaska House of Representatives

On the evening of February 20, 2011, I departed to the airport with a sense of relief because I was returning to the important work of the Alaskan Legislature. Upon entering the security area of Seattle Tacoma's airport with my fellow passengers, I was upbeat. I had blocked from my mind the horror of my previous experience with TSA's new security policies three months earlier. Unfortunately, after the pleasant TSA agent checked my ticket and Driver's license, I found myself being directed to the airport's full-body image scanning machine. The horror experience began again. A female agent had placed herself in such a way that she blocked my passage causing me to feel confined, scared and threatened. I knew from my previous experience that the scanned image would display the irregularity from my mastectomy due to breast cancer. In order to resume my legislative duties, I would have to tolerate the invasive, probing hands of a stranger over my body.

Facing the TSA agent, memories of violation would consume my thoughts as my role as a public servant and elected representative disappeared. The TSA agent began to tell me what would soon happen regarding where she was going to touch me and the force-forgotten memory of the previous intensive physical search returned. I also remembered that my husband and I had spoken about what we would do if I found myself having to experience the intrusive policies again. It would be difficult, but I would never have to submit to that horror again! I had the choice to say, "No." This twisted policy and its traumatic results did not have to be the price of returning to Juneau or any other Alaskan community! I looked at the TSA agent and said, "No."

Once I uttered that powerful word, the process began that led to being encircled by more and more TSA agents, police, airline and airport employees. This act should have been very intimidating because of their positions of authority and the difference in height between me and those surrounding me. I listened to them while feeling proud that I was actively protecting myself. It was going to be difficult-but I believed I could have the strength to keep my right to refuse the mandatory, invasive procedure in order to fly.

As the TSA agents and other airport personnel repeatedly 'explained' why I must submit to being felt up, a feeling of peace grew with my repetitious response, "No. I will not be physically touched. I will leave the airport. There will be another way to return to the State House in Juneau."

For nearly fifty years I've fought for the rights of abuse survivors and it is this population that are the most harmed by unwanted physical touch. My wonderful state of Alaska depends on air flight as a mandatory means of transportation, both intra and interstate of our vast land. We also sadly rank first in the nation for both men and women who have been abused. Logic suggests that the recent introduction of the full body scan (itself a potentially harmful source of radiation) is the very last thing a molested person could deal with because it would result in yet more trauma from the groping of strangers. Most tragic of these policies are the silent masses that are traumatized and dishonored at the hands of their own government in the name of 'safety' policies. As a state lawmaker, I believe in government. I believe government must constantly protect the welfare and improve the wellbeing of its citizens. We can do better, we

the people must demand that our government meets its own moral and constitutional obligations for safety while maintaining the virtues of Democracy.

Part II.

My return trip to Juneau, Alaska after the February 20, 2011 incident required me to use a rental car, a small plane and the Alaska Marine Highway. It felt like a trip of pride as well. The TSA's threat of, "Do you want to fly?" means something very different to Alaskans. Flying in Alaska is not a choice, but a necessity. The freedom to travel should never come at the price of basic human dignity and pride.

I have received many emails from people across the country in support of my stance against the new TSA policies as well as personal stories of re-victimization they experienced. The following reflects the emails my office received during just the first three days after I declined TSA's offer of secondary screening.

From 30 states, a total of 402 emails:

Alaska: 111	Arizona: 10	California: 12
Colorado: 12	Connecticut: 4	Washington D.C.: 2
Florida: 3	Georgia: 5	Idaho: 2
Hawaii: 3	Illinois: 3	Indiana: 3
Kentucky: 3	Kansas: 2	Massachusetts: 6
Missouri: 5	Montana: 1	Mississippi: 5
North Carolina: 3	New Jersey: 3	Nevada: 2
New York: 3	Ohio: 3	Oregon: 3
Pennsylvania: 1	Tennessee: 1	Texas: 5
Virginia: 3	Washington: 38	Wisconsin: 1
Canada: 1	Europe: 1	Unknown: 46

Additional comments were discovered by Rep. Cissna on FaceBook: 500

These emails were then catalogued by subject and the following issues were mentioned:

TSA's Policies were Ineffective: 26
Other/Better Methodology was Available: 10

Concern for Health Regarding the Scanner: 10
TSA's Policies Considered Bullying: 6
TSA's Policies Considered Humiliating/Indecent: 54
TSA's Policies were Illegal Intrusion: 26

The emails were also sorted by reason given for further scanning:

Mastectomy: Mother 5; Self 19; Wife 4
Implant/prosthetic: Spouse 2; Self 16; Co-Worker 1
Autistic son: 2
Rape/Assault Survivor: 9

Professions or trades specifically mentioned we heard from:

Physician: 2
Airline Pilot: 4
USMC Veteran: 4
USAF Major (Ret): 1
Military: 1
Military Reserves: 2
Airline: 1
Law Enforcement Officer: 1
Medical Nurse: 1
Air Force: 1
Travel for Work: 3
Railroad Personnel: 2
High Security Clearance (Vet): 1

The breakdown with gender specifically mentioned showed approximately 100 men, 93 Women and 9 of unknown gender contacted our office in the first three days.

The ages of who sent emails were between 20 years to 72 year old.

People that stopped flying because of TSA's scanning machines: 28

Below are some of the emails that I have received. They have been sanitized to preserve their privacy.

"I had two very aggressive TSA officers insist that they were going to rifle through my bandages to look for explosives. I finally just pulled up my shirt and let them look at the tubes, bandages and blood collectors, and felt completely humiliated. It had been less than a week since my double mastectomy and removal of my ovaries, (in fact I still had drains in, and my hospital ID bracelet on my wrist) and I was not in the mood for any of it. I just wanted to get home, as I was in soooo much pain from all of the traveling."

This was two years ago - before the new enhanced 'pat-downs.'"

Dr. Steven Aufrecht: "But why are the normal TSA workers willing to rub their hands in the groins and on the breasts of elderly women and men who clearly are not terrorists? I suspect that for the normally non-abuser TSA employee, the [Stanford Prison Experiment](#) is relevant here."

"In that controversial experiment, Dr. Philip Zimbardo set up a mock prison using Stanford students who had been chosen because of their emotional and psychological stability. They were divided into prisoners and guards. They very quickly got into their roles and the guards were soon abusing the prisoners so that six days into the two week experiment it had to be called off. Dr. Zimbardo explains what happened - with footage of the experiment - in the YouTube video I found posted by [mr1001nights](#)."

"I'd note there has been a lot of criticism about the ethics of this experiment which is addressed in the [Stanford Prison Experiment link](#)."

"The [Milgram experiment](#) have a similar result - where people off the street are found to give greater and greater electric shocks (or so they think) to learners who miss the questions. Unlike in the Stanford experiment, Milgram's 'learners' were actors who were not actually being shocked. But Milgram's experiment demonstrated how normal people would stray way beyond the bounds of appropriate behavior if told to do so by an authority. [YouTube has footage of the Milgram experiments too](#)."

"I think the TSA workers have similarly strayed way beyond acceptable behavior in their intrusive pat-downs of people who have absolutely nothing to link them to terrorism except that their artificial hips set off the metal detector or their mastectomies looked strange in the scanner."

Back in my office I read and am including parts of some of the emails:

"Thank you for standing up for your privacy rights and those of other women" - Daughter of a Breast Cancer Victim, Connecticut

"I would like to visit Alaska this year, but at this time I decline to fly. Please do what you can to push back against the TSA, and to beat back this obtrusive and unconstitutional procedure"
Colorado

"How can any legislator in any state or any of our US Senators and Congressional members allow this stupidity to continue?" Fairbanks, Alaska

"With two titanium knee joints, I am a 'victim' every time I fly, which has been four to eight times a month" unknown

"Good for you standing up against the thugs at TSA!" Juneau, Alaska

"It's not acceptable, it simply defies common human decency." Seattle, Washington

"I have two young children who should never be touched as these TSA people touch them!"
Juneau, Alaska

"I regret for you what must surely have been an embarrassing and upsetting incident; not to mention the publication of your personal health matters! But that is what we all face these days." North Carolina

"I was always told that the terrorists only won if they forced us to change the way we live and altered the freedoms Americans enjoy. What goes on today in US airports leads me to believe they won. By the way, I am a retired US Air Force Master Sergeant that was once cleared to work on Air Force One. Yep. I'm a real threat." Washington State

"I'm an Oregon conservative and registered nurse who wants to thank you for standing up to TSA. . . However, you may not be aware that the scanning you underwent is dangerous to your health." Oregon

"If more of us refused and chose other forms of transportation, this rubbish would end. Thanks for standing up for your rights and dignity and by doing so, the rights and dignity not only of Alaskans but of all Americans." Arizona

"It's a very sad state of affairs we have reached when TSA has to subject a traveler to a pat down because the nude-o-scope reveals that the passenger had major surgery." New Jersey

"It is utterly obscene that so many elderly, disabled and medically challenged people are disproportionately subjected to repeated enhanced physical searches at the hands of this out of control and wasteful government agency. It is my fervent hope that there are more people like you who are willing to step up and say "enough is enough". Florida

"I am a retired law enforcement officer with both domestic and foreign experience. I find these procedures to be largely a waste of resources and time." unknown

"For many of us who travel frequently this so-called "Security Theater" has finally gone too far. . . This should be a bipartisan issue on which we can agree as Americans that these latest search "procedures" have gone too far, from the X-Ray scanners to the euphemistically and inaccurately named "pat-downs," which in truth are groping and invasive searches to which my wife and I have already been subjected a total of three times in 2011, including once each at SEA-TAC." unknown

"Is there ANYTHING myself, friends, family, and colleagues can do to stop this disgusting intrusion into our personal privacy?" unknown

"American women such as myself, and I am 60 years of age, need a spokeswoman to cut off the balls of the TSA and DHS. I'm not asking you to do it single-handedly, but your sisters across the country are going to stand with you if you decide to go viral on all the news media with the truth about the outrageous procedures which made you cancel your flight plans." unknown

"I live in California and am almost embarrassed to have my daughters fly in to visit us from Kansas. By simply declining the search you have taken a stand and I for one appreciate it." California

"My wife is now disabled and has had neck surgery. As a result, she has plates and screws in her neck. We are pretty sure that they would want to do an enhanced pat-down screening as a result of her medical situation. So. . .we have decided to not fly anymore. I just can't believe that our country has come to this. It is so degrading, humiliating, and really unnecessary. Bless you and take good care." unknown

"I just made myself space out and pretend I was on another planet while having this woman poke in my crotch from front and back, run circles with her hands around both of my breasts, make me lift my blouse so she could put her hands inside my waistband. . . I traveled through several airports in Europe all through the month of October and not once did I have to endure this humiliating experience." unknown

"[After having a bad experience with TSA, she writes] That next month, I showed up to fly, and stripped down to nothing but my speedo swimsuit at 6 am so they could get a better look. NEVER regretted my decision! I am a survivor of cancer and sexual abuse, and being touched sends me to the deep end." unknown

"You should be ashamed of yourself and the way you represent the State of Alaska." unknown and only negative email received

"I travel with a co-worker with a prosthetic leg, he experiences similar personal invasion and loathes the experience." Georgia

"When I (a chubby grandmother) have been pulled out for extra observation it burns me up." Unknown

"Like you, I have decided not to endure this anymore. If I never fly again, so be it." Kentucky

"My husband has an artificial hip, carries a card stating such, but every time he flies the TSA attendant says "I'm not interested in your card, please step over here for a more thorough search." He has to unbutton his slacks and turn the waist band out and the attendant runs his hands around his waist and down his groin on both sides, and down the insides of his legs. My husband is 71 yrs. old." Washington

"Our family is in [the prosthetic business]. . . Due to HIPPA regulations, we could lose our

Medicare accreditation if we were to tell 'anyone' the private medical diagnosis of a client. So why is TSA allowed to "out" passengers' medical conditions for all the world to hear and know about?" unknown

"I have a leg amputation . . . I had a female TSA agent literally shove her hand aggressively up between my legs. I am not a person who has a big personal space issue, but this went way beyond anything decent. If I had been outside the airport I could have had this woman arrested. I was so shaken that I asked the TSA supervisor if this was standard procedure. I was given a very abrupt "yes" and sent on my way." unknown

"Thanks for your willingness to stand up against the charade." Virginia

"Since Gov. Parnell is so keen on thumbing his nose at the federal government over the health care law perhaps you could introduce a resolution or bill urging him to do the same over the TSA:s invasive and probably unconstitutional procedures." unknown

"I am a rape survivor and have PTSD and can't imagine what kind of state I might be in when groped by these thugs." unknown

Meanwhile there was a lively forum at flyertalk.com Here's a post that apparently was also sent to Rep. Cissna:

"Dear Rep. Cissna,"

"I wish to congratulate you on your bold stand against the TSA at SEA as recently reported in the Seattle press. Please know that a number of your fellow Americans stand behind you, and we, too, are tired of the ongoing abuse leveled by this agency. No one wants less security. What we do want is security that is safe, sane, effective, respectful, and doesn't make people like Michael Chertoff richer. Instead what we have at the hands of the TSA are expensive machines that can't detect guns (recently reported in Dallas), thieves who have stolen a combined total of nearly \$300,000 from innocent travelers (Newark and New York - JFK), and people who are literally sticking their hands in our pants. The images created by the full body scanners would make decent people blush, and as you are unfortunately aware do not protect anyone from an invasive body search demanded under threat of authority. I wish you good health, and as a fellow Democrat hope for your continued political success."

The Alaska State House passed a "Sense of the House" resolution on February 24th, while I was in transit to the Capitol by ferry. The resolution was offered by Rep. Chris Tuck:

His introduction was:

"Last weekend the long-time member of this body from District 22 chose respect. She stood up for her rights, her sense of decency, and her prior commitments to herself at the Seattle airport by not submitting to an intrusive search of her body."

The Sense of the House that passed stated:

"It is the Sense of the House that efficient travel is a cornerstone of the economy and our quality of life, especially in Alaska, and that no one should have to sacrifice their dignity in order to travel."

There are three basic questions that I have developed to discuss with TSA:

1. With the present methods of airline screening, are all passengers suspect without more screening than mechanical, or hand searches to insure airline safety?
2. Are the threats to airline safety as severe as we are told?
3. Are there methods of securing planes that are as effective as what we have now that do not involve protocols whose outcomes humiliate many of the responsible and safe American travelers being scanned?

We have progressed from being able to physically see our friends coming off a plane, to security zones just for passengers. After the shoe bomber, everyone was required to remove their shoes. After the underwear bomber, they installed the strip-search scanners and the 'enhanced pat-down.' Other countries use different methodology with higher effectiveness without an invasive element. These countries rely on passenger non-racial and cultural profiling. The airport security divisions gather information about passengers by looking for factors that raise suspicions.

The TSA has a rule oriented system that does not receive the critical oversight to protect American citizens from poorly developed process. Present rules cannot be deviated from judging all passengers as threats. So we won't be prepared for the next twist until it's been tried - hopefully unsuccessfully.

We tolerate about 40,000 automobile related deaths a year, about 360,000 deaths since 9/11. We tolerate about 3,000 firearm related deaths a year, about 247,000 since 9/11. We tolerate about 5,000 work related deaths a year, about 47,000 since 9/11. Yet, we tolerate zero deaths from potential terrorists blowing up airplanes.

We accept risk in all other aspects of our lives, (people can buy guns with no questions asked at gun shows for example), but when it comes to airplanes we hire people to humiliate elderly women by touching their breasts and crotches to prevent terrorism. Do these 'procedures' make us safer?

The Constitutional standard of 'reasonable search' is not being followed.

Mr. CHAFFETZ. Thank you and thank you for that testimony. We will put the balance of your testimony into the record.

I would also like to ask unanimous consent that the resolution from the State of Alaska be entered into the record. Without objection, so ordered.

[The information referred to follows:]

**STATE OF ALASKA
THE LEGISLATURE****2011****Source**
HCR 8**Legislative
Resolve No.**
4

Urging the Transportation Security Administration to reconsider its use of pat-down search procedures adopted on October 28, 2010, and to conduct pat-down searches using less invasive but equally effective procedures; and urging the United States Congress to exercise greater oversight of the Transportation Security Administration.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS efficient air travel is a cornerstone of Alaska's economy and quality of life, and no one should have to sacrifice his or her dignity in order to travel; and

WHEREAS many Alaskans can access urban centers only by air travel; and

WHEREAS Alaska is not adjacent to any other state, and those who want to travel by land to another state must travel through another country, which requires a passport; and

WHEREAS, as a result of a change in nationwide policy, the Transportation Security Administration, on October 28, 2010, began implementing new pat-down procedures that involve a more intrusive, full-body search, during which Transportation Security Administration personnel make inappropriate physical contact with sensitive or private areas of the body; and

WHEREAS the Transportation Security Administration is an agency of the federal government charged with protecting the nation's transportation systems to ensure freedom of movement for people and commerce; and

WHEREAS the Transportation Security Administration is responsible for screening airline passengers and personnel for weapons, explosives, and other contraband that pose a threat to airport security and is responsible for the safety of the general public; and

WHEREAS current Transportation Security Administration screening policy involves airline passengers and personnel passing through advanced-image technology scanners or undergoing a pat-down search administered by Transportation Security Administration employees, or both; and

WHEREAS the advanced-image technology scanners used by the Transportation Security Administration capture images that depict the shape and outline of a person's full body as it appears underneath the person's clothing; and

WHEREAS, finding advanced-image technology scanners to be overly invasive, many airline passengers and personnel choose the option of undergoing a pat-down search; and

WHEREAS the new procedures are offensive and humiliating to many individuals on whom they are imposed and are egregious whether imposed in public or private; and

WHEREAS, for survivors of physical and sexual abuse, invasive physical searches may cause revictimization; and

WHEREAS, for individuals with medical conditions, including those with prosthetics, joint replacements, drainage tubes, pacemakers, or other physical evidence related to a medical condition, invasive physical searches may be particularly traumatic and demeaning, may cause physical harm, and may endanger the person's health; and

WHEREAS reports have indicated that, in some instances, overzealous Transportation Security Administration employees have carried out the new procedures in a manner sufficiently aggressive to rise to the level of an inappropriate invasion of personal privacy from which an individual would ordinarily be protected under the laws of Alaska; and

WHEREAS travelers who refuse the new screening procedures are not free to proceed beyond security checkpoints to continue their travel; and

WHEREAS encouraging travel by ensuring the right of individuals to move about

without fear of undue invasions of privacy is essential to preserving a free society, safeguarding the flow of commerce, and promoting and sustaining goodwill among nations; and

WHEREAS the advanced-image technology scanners and new pat-down search procedures may discourage air travel, causing significant economic and personal hardship to Alaskans;

BE IT RESOLVED that the Alaska State Legislature urges the Transportation Security Administration to reconsider the new pat-down search procedures that were adopted on October 28, 2010, and adopt less invasive but equally effective procedures; and be it

FURTHER RESOLVED that the Alaska State Legislature urges the United States Congress to exercise a greater degree of oversight of the Transportation Security Administration, including investigation of policies that may violate the privacy rights of law-abiding individuals and a scientific study of the harmful effects of full-body scanning.

COPIES of this resolution shall be sent to the Honorable Barack Obama, President of the United States; the Honorable Joseph R. Biden, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable Janet A. Napolitano, United States Secretary of Homeland Security; the Honorable Harry Reid, Majority Leader of the U.S. Senate; the Honorable Mitch McConnell, Minority Leader of the U.S. Senate; the Honorable John Boehner, Speaker of the U.S. House of Representatives; the Honorable Nancy Pelosi, Minority Leader of the U.S. House of Representatives; the Honorable John S. Pistole, Administrator of the Transportation Security Administration; and the Honorable Lisa Murkowski and the Honorable Mark Begich, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

Mr. CHAFFETZ. We now move to questioning. I would like to recognize myself for 5 minutes, and then each Member will be able to ask 5 minutes.

One of the hallmarks of the United States of America is our commitment to the Fourth Amendment, unreasonable search and seizure. From your personal viewpoint, you are also a State law maker, how do we find that balance, and what was your personal experience? There are many that argue, well, if you choose to go on an airplane, then you choose to give up those rights. Can you share with us your perspective?

Ms. CISSNA. Thank you very much, Mr. Chair. And, Mr. Chair, it is absolutely true for Alaskans that we don't choose. We don't have a choice. I did make my way back to Alaska after that event at the airport on the 20th of February, but it took 4 days. It took 4 days and I was really lucky because I was able to find, in Canada, someone to fly me to Prince Rupert. So then I was able to take the marine highway and get to Alaska that way.

But for people in remote parts of our State, what happens is that oftentimes their first time away from those remote places, because of operations, have to fly out of the State, and they are a patient at that time. I hope that they get consideration at that time when they go out. We don't have the level of screening because it is metallics in the metal detector that we get screened with so far. That is what would have them felt up.

But after they come back, after they have the operation, when they leave the operating scene and the hospital, what happens is they are picked up by maybe a taxi, they are taken to an airport, and they become not a patient anymore, they are just a standard citizen. That is part of what I have heard from many of the caregivers in remote Alaska are talking about, is that they then, not only is it the stretcher or the wheelchair or whatever they are brought to the hospital, that has to be searched; it is taken apart. Then they are very invasively examined. Mine was not anything compared to what it would be for these people. And this is Alaska. This is the experience that they go through under the current system, and that is what the legislature is hoping we do, is revert to the less invasive.

Mr. CHAFFETZ. Now, certainly, we have to secure airplanes. I mean, there is a terrorist threat.

Ms. CISSNA. Absolutely.

Mr. CHAFFETZ. But you would never pass somebody who has some sort of prosthetic device or some other implant or something like that, in theory, should not actually pass or get through those whole body imaging machines and others. So do you have a suggestion on what we do as an alternative?

Ms. CISSNA. The fact is that until February 20th, I really had not thought very much about this. Actually, it was actually in October that I really started thinking about this. Not October, pardon me, November. But I have had many, many letters from many, many different people who have traveled all over the world, been through all kinds of different screening devices. As I understand, there are two that I have had close friends go through in this last year, both in Holland and Israel. They have extraordinarily successful screening devices that are very noninvasive. Very.

Mr. CHAFFETZ. But from your personal experience, going back to the Fourth Amendment, unreasonable search and seizure, these pat-downs are invasive, to say the least, and somebody who doesn't have another option, there are many of us that believe that this would be deemed a sexual assault on a person.

Ms. CISSNA. Absolutely.

Mr. CHAFFETZ. Your personal perspective, and we have just 30 seconds here, based on what you have experienced in these pat-downs, how would you relate that to the Fourth Amendment and the definition of an assault?

Ms. CISSNA. I think it is absolutely an assault, and it is the worst kind of assault in that it is essentially very similar to PTSD and the kinds of reactions that people get with that. What I haven't seen are studies. What I am not seeing is the oversight that really gives us a chance to really look at this and find out what is happening to our Americans. I am worried about my State, but I am also worried about my fellow Americans.

Mr. CHAFFETZ. Thank you. Thank you. Appreciate it.

We will now recognize the gentleman from Massachusetts, Mr. Tierney, for 5 minutes.

Mr. TIERNEY. Thank you.

Representative, thank you for coming here and testifying today, particularly the difficulty it caused you. I know it wasn't a pleasant experience, and it can't be easy for you to testify, so we appreciate you coming all this way and talking with us today.

I think you hit it on the head: everybody would like a less invasive, but equally effective, process on that, and that is what I think the proper oversight is going to try to get us on that path. In my opening statement I made reference to the fact that there is apparently a technology out there now that is being tested that would not give a full image, full body image, but rather would put something like a Gumby, if you remember what the Gumby background was, or stick figure, something of that basis, and then identify only an anomaly that came up, say, on your leg, if you had something strapped to your leg or whatever, and then that would be the only area that was patted down or investigated.

Do you have a feeling about that aspect of it? Do you think that is still a problem?

Ms. CISSNA. The problem appears to have been not having done adequate study for there not to have been really the time taken to make sure that we are doing no harm. And that is the most critical role any lawmaker has, is to do no harm. And not taking the time is something I think we have to fix. That is doing our job.

Mr. TIERNEY. I understand your comment and I understand that Congress has to take some responsibility for that after the so-called underwear bomber or shoe bomber, whatever they were faced the confrontation doing nothing, which didn't seem, I guess in their collective wisdom, to be the way to go because the situation was there, so they did what they thought was best at the time and were being told that was effective.

But my real question on this particular one was if there was not an image of your individual being up there, but some sort of a Gumby or stick figure or whatever, and if there was an anomaly that was detected in some isolated location on your body and that

area was the only area inspected, what is your reaction to that sort of examination or process?

Ms. CISSNA. I think you have to look at the whole process because one triggers the other. And the thing that is the most troubling to me is, as I look at all of the people on the airplane as I am getting on, understand, they are all guilty before they are proven innocent, and we have to get away from that. We have to really start respecting our people.

Mr. TIERNEY. So I guess are you saying that basically let everyone on unless they have some telltale sign?

Ms. CISSNA. Absolutely not. Absolutely we have to do the kind of screening that gets us the best results. But it doesn't have to be the one—the technology that is there now is not—

Mr. TIERNEY. I know. I get that. I guess I was trying to get your opinion on an alternative one, but you apparently don't want to give your opinion on that.

Ms. CISSNA. Not without a lot of facts; not without proof that it is good. Not without proof that we have done our job.

Mr. TIERNEY. I think that goes without saying.

OK, I yield back.

Mr. CHAFFETZ. The gentleman yields back.

We now recognize the gentleman from Texas for 5 minutes.

Mr. FARENTHOLD. Thank you very much.

I can understand what you have been through. Both my daughter and I have had the misfortune of triggering these machines with anomaly, and the search we both endured was very invasive, and you have the greatest sympathy from me.

Let me ask you. One of the things that you have not addressed, or if you did, I was reading through your testimony and didn't hear it, but my question is, would you be willing to submit to some form of background checks, surrendering your fingerprints or retinal data in order to get into a trusted traveler program where you are able to undergo a less strenuous level of security? Would you consider that to be a reasonable alternative?

Ms. CISSNA. I would consider that to be reasonable. And that kind of alternative is one. There are others also that are using psychological procedures that actually help create a profile; not a racial and not a cultural profile, but one that actually will, a scan that identifies people who are obviously up to no good. And there are ways of coming up with that; that has been found in other places. But it is a matter of actually looking elsewhere and seeing if there aren't other options. There usually are.

Mr. FARENTHOLD. It is my understanding that the TSA profiles boxes, but they don't profile passengers. They will profile a box based on its shape, its country of origin, where it was shipped from. We take no effort at all to determine if you are flying in from middle America or a foreign country that is hostile to us; your level of screening is the same and, to me, that defies logic. That is not a question, that is a speech, so I will yield back the remainder of my time.

Mr. CHAFFETZ. The gentleman yields back.

We now recognize the gentlewoman from Texas for 5 minutes.

Ms. JACKSON LEE. I thank the chairman of the subcommittee and the ranking member of the subcommittee especially for their

courtesies, and I thank the chairman of the full committee and, as well, the ranking member of the full committee for their courtesies.

It is a pleasure to see you this morning. I am not on this committee, but I am the ranking member and former Chair of the Transportation Security Committee with oversight over TSA and on the Homeland Security Committee. I will tell you that many of my waking hours address the question of professionalism and more training for the Transportation Security Officers, and I think you would venture to say, as someone who needs flying as a mode of transportation, that in most or many instances our TSO officers work within the realm that they have and use the skills in an appropriate manner. But you are right, we have to look at those issues that, as our colleagues have indicated, may impact the Fourth Amendment, may impact the dignity of all travelers.

I do want to put on the record that I am going to join with the ranking member of our committee, Homeland Security, Mr. Thompson, and will be writing a letter to ask for alternative protocols for individuals in your situation and also individuals who are traveling with medical devices and traveling with other medical equipment, traveling with a caretaker; and we expect to hear from them very soon and will be working with this committee. So I look forward to utilizing your written testimony.

I listened to my friend and colleague from Texas about the trusted traveler, and there are a lot of options that we could look at. My question to you would be to establish the fact that there are threats to the United States. You still believe that is the case, is that true, Representative? You have to be oral on the record so they can record it.

Ms. CISSNA. Thank you very much. Thank you. Yes, I certainly do agree with you. And it is absolutely essential, living where we do on the northwest perimeter of our country, we are right there. We are at the place where we really need to be constantly alert, and that is exactly why I have the feelings I do, is that I need to keep my population safe and strong so that they can be watchful too. We are the ones who are going to see trouble coming from another direction.

Ms. JACKSON LEE. Well, you have the eyes and ears. So we lay that groundwork and we know that the Transportation Security Officers play a valuable role in that, and you too watched that fateful Christmas Day when we saw a unique effort of trying to blow up a plane and harm the United States, the Christmas Day bomber. That generated this enhanced review, if you will. So would you offer to me any other thoughts you have about, just briefly, on what enhanced security measures you think we should take?

Ms. CISSNA. Thank you very much, through the Chair. The list of things that you are asking for, some kind of either exemption or some kind of way that people can avoid the more intense kinds of screening, any kind of prosthesis at all is a problem. Any kind of not just medical, but when people have pacemakers. And the things that people are going through is just amazingly severe. And I agree with you that the TSA employees that I have seen are doing a really good job of improving their attitude. Their treatment of the public seems to be improving. So it is the procedure itself that is the problem.

Ms. JACKSON LEE. I have just a few more minutes, if I might just say have you gone through an AIT machine? Have you gone through those machines?

Ms. CISSNA. That is the full body?

Ms. JACKSON LEE. Yes.

Mr. CISSNA. And, through the chair, pardon me. Yes, I did twice, actually.

Ms. JACKSON LEE. And that is when they found something. So my point is, let me just conclude by saying on that point you willingly went through the AIT. We thank you for that. We need to look at protocols that then respond to how we address individuals with medical concerns, devices, prosthetics, and my commitment to you is that we look forward to addressing that question.

With that, Mr. Chairman, I yield back. Thank you for your courtesy.

Mr. CHAFFETZ. Thank you. Glad you could join us. The gentleman yields back.

We now recognize the ranking member from Maryland, Mr. Cummings, for 5 minutes.

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

First of all, Representative, I want to thank you for being here today. Sometimes when we are addressing issues that are very personal, it is very, very difficult because what it says is that we are opening up ourselves to the public. Folks will be watching you on C-SPAN tonight; some of them are watching you right now. So you not only become exposed to a few folks, but you basically become exposed to the whole country, and for that I thank you, because you said some things that really touched me and there are two elements that kind of hit me.

One, you talked about the training and whether this person was properly trained, and you talked about courtesy. Then you also talked about the invasiveness and the medical situation. And then you also talked about how there are some things that people just should not have to go through. And I guess I am just trying to make sure that we strike this balance.

Now, one thing is for sure. We certainly can try to make sure that the TSA administrator brings some type of sensitivity training, if they don't already, to their folks. They need to know what people go through. I have relatives that have experienced medical situations where they have certain devices that might send off any machine or whatever. So I can understand that. But they need to be sensitive to that too. And there is nothing that is worse than somebody not being courteous to another human being.

President Obama said something that I wish I had invented myself. He said sometimes we have in our country an empathy deficit, an empathy deficit. So what I am hoping is that your testimony will allow us to strike the balance that I know you want, because you fully understand safety, but you also understand privacy. You understand making sure that a plane doesn't come down out of the sky, but you also know that there are millions upon millions upon millions of people who travel who never even have an idea, even think about trying to bring any kind of harm. So it is a tough one.

So, again, I want to thank you because I believe that your testimony will help us try to get to that balance that we need. I have

often said this, so often when we go through something it provides us with a passport, because we have experienced it, to help other people and to help address their problems, because we become the greatest witnesses. Somebody just saying it, talking about it is one thing, but when you have been through it, that is a whole other thing.

So I don't really have any questions, I just wanted to thank you. I wanted to thank you, after going through all that you have been through and being exposed all the ways that you have been exposed, and now to even go through another exposure for the sake of balance, for the sake of safety, for the sake of the rights of all of our citizens, on behalf of our Congress and of our Nation, I take this moment to simply say thank you.

With that, I yield back.

Mr. CHAFFETZ. The gentleman yields back.

Representative, we are concluding this first panel. Do you have any concluding comment that you would like to make briefly?

Ms. CISSNA. Thank you, Mr. Chair.

Mr. Chair, actually, the comment that all of this has brought to me over the last several weeks that I have been really the focus of a huge number of people coming and telling me things they haven't told other people is that the sense I have gotten is there are many people who have been losing the trust of their government through this kind of thing, and that doing this right, that is one of the things that we really do, is we win back the hearts of our people.

And I believe in government; I think government is the answer in its own way, and it needs to keep that idea in a balance. We need both public and private, but government can answer a lot of problems that we have, but without trust, we are not going to keep the kind of democracy we have. So thank you.

Mr. CHAFFETZ. Thank you. Thank you. I appreciate your time, your bravery for being here and sharing a very personal story. You represent the story of a lot of Americans. We thank you for the time and effort that you have taken to be here. It is a long trek to be here, but I assure you that it is very worthwhile. We thank you. May God bless you.

For now, we are going to go into recess here for about 5 minutes or so while we prepare for the second panel. Thank you.

[Recess.]

Mr. CHAFFETZ. The committee will now come to order. We will start our second panel with a note that, by mutual agreement, we are told that the TSA will show up at 12:15. So we are going to try to have a third panel at 12:15. Nevertheless, we want to start with the second panel. We appreciate all of you gentlemen for being here this day. Let me do some brief introductions and then swear you in, and then we will go to the 5-minute opening statements.

Mr. Marc Rotenberg is the executive director of the Electronic Privacy Information Center [EPIC]; Dr. David Brenner is a Higgins professor of radiation biophysics and the director of radiological research at Columbia University; Mr. Fred Cate is a senior policy advisor with the Centre for Information Policy Leadership at Hunton & Williams; and Mr. Stewart Baker is a partner with the law firm of Steptoe & Johnson LLP.

We appreciate all of you gentlemen being here with us today. We appreciate your credentials and look forward to your testimony. Pursuant to committee rules, all witnesses will be sworn in before they testify. Please rise and raise your right hands.

[Witnesses sworn.]

Mr. CHAFFETZ. Let the record reflect that all witnesses answered in the affirmative.

We will now start with opening testimonies. We would appreciate it if you would limit your comments to 5 minutes, but your entire written statement will be made part of the record.

We will start with Mr. Rotenberg. You are recognized for 5 minutes.

STATEMENTS OF MARC ROTENBERG, EXECUTIVE DIRECTOR, ELECTRONIC PRIVACY INFORMATION CENTER; DR. DAVID J. BRENNER, CENTER FOR RADIOLOGICAL RESEARCH, COLUMBIA UNIVERSITY; FRED H. CATE, SENIOR POLICY ADVISOR, CENTRE FOR INFORMATION POLICY LEADERSHIP, HUNTON & WILLIAMS; AND STEWART A. BAKER, PARTNER, STEPTOE & JOHNSON LLP

STATEMENT OF MARC ROTENBERG

Mr. ROTENBERG. Thank you, Mr. Chairman and members of the committee.

I appreciate the opportunity to appear today before you. I also wanted to thank you personally for the leadership that you have shown on this particular issue, which is of great concern to the American public. I also want to begin by saying that EPIC fully appreciates the important mission that the TSA has and the importance of protecting aviation security. There is no dispute about that today.

What I would like to do is describe for the committee the work that we have pursued over the last 5 years concerning a particular airport screening technology that the TSA has adopted and now hopes to widely deploy in U.S. airports, and that is the body scanner technology.

We became aware of this technology almost 6 years ago. We followed at the very beginning the concerns that had been raised about the privacy impact, about the health impacts, and also whether the technology would be effective. We were very cautious at the outset; we wouldn't make any strong statements until we had obtained more facts to understand how the technology would be used.

So we began a series of Freedom of Information Act requests. We were trying to understand the technical specifications, the protocols, the contracts that had been arranged with the vendors. We also began to work with expert organizations, civil rights groups, groups across the political spectrum, groups that represent passengers, groups in the travel industry.

And as we became aware of the concerns that had been raised, we joined with these organizations and submitted a petition to Secretary Napolitano in the spring of 2009, shortly after we learned of the TSA's plan to make these body scanners the primary screening technique in U.S. airports. This seemed to us to be a sharp de-

parture from what the agency had previously said about the use of this technology.

So 30 organizations wrote to the organization in the spring of 2009 and respectfully asked her to conduct a public rulemaking so that there would be an opportunity for the public to express its views on the TSA's program and so that TSA's decisions on those comments would ultimately be subject to some type of judicial review. We also, in that petition, urged her to suspend further deployment of the technology for primary screening because we felt the case had not yet been made that they were sufficiently tested. And I will say, Mr. Chairman, it was around this time as well that your bill which you introduced in the House passed through the House with more than 300 votes, which was essentially trying to drive the agency back to the same position, to keep these devices for secondary screening, where they might be used for special cases.

Now, the story actually gets quite a bit more interesting because in January 2010 we obtained the first set of documents that we had requested under the Freedom of Information Act, and I have attached to my testimony just a couple of pages. We actually have thousands of pages that roughly fall into two categories. The first category is the description of the devices and the second category is the many traveler complaints that the agency has received.

Now, the description of the devices—and now we are talking about the procurement specifications, and the vendor contracts are very significant because what these documents reveal because the devices that the TSA described to the vendors, in other words, the specifications that the agency outlined, was for devices that had the ability to store and record and transmit images of the naked human body.

Now, I am quite sure there is going to be some back and forth this morning about what that means. The agency will say, for example, that they don't save the images, they store them on a temporary basis and then they are deleted. But I need to make very clear at this point that we have done a lot of related litigation on this issue and we have obtained, for example, from the U.S. Marshal Service more than 100 images of a body scanner device very similar to the one used by the TSA. This is used by the Marshal Service in Orlando, Florida, in a courthouse. The images are routinely stored and recorded.

The TSA itself, subsequent to the documents that we obtained, acknowledged that in fact they were storing and recording images in test mode. And then when, last year, I believe Chairman Thompson pushed them a bit further on that, they also acknowledged that they were storing and recording images in training mode. Now we know that the agency has over 2,000 images, and I am referring back to the TSA, detailed images, 2,000, they will not turn over to us because they, for whatever reason, I think they don't want the public to see this.

OK, I will conclude. There is a lot in my testimony, but just in conclusion, the privacy issues here are enormous. The Fourth Amendment implications are enormous. There is the harm that we can see about these devices and then there is the harm we can't, and that is what I am here to discuss.

[The prepared statement of Mr. Rotenberg follows:]



ELECTRONIC PRIVACY INFORMATION CENTER

Testimony and Statement for the Record of

Marc Rotenberg
President, EPIC
Adjunct Professor, Georgetown University Law Center

“TSA Oversight Part 1: Whole Body Imaging”

Before the

House Committee on Oversight and Government Reform
Subcommittee on National Security

March 16, 2011
2154 Rayburn House Office Building.

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on the TSA's body scanner program. My name is Marc Rotenberg and I am the Executive Director of the Electronic Privacy Information Center (EPIC) and Adjunct Professor at Georgetown University Law Center, where I teach information privacy law.

EPIC is a non-partisan research organization, focused on emerging privacy and civil liberties issues. EPIC has been involved in the airport body scanner issue for a long time. In 2005, EPIC published the first report that examined the privacy and health impacts of the TSA's proposed body scanner technology.¹ Since that time we have pursued a wide range of open government lawsuits, consulted with experts and advocates, organized public conferences, received complaints from the traveling public, and worked with other organizations that share our concerns about this program.²

We want to thank the committee for holding this hearing today. This is an important issue for the American public. We also want to thank you, Mr. Chairman, for your leadership on this issue and the sponsorship of bipartisan legislation that would prevent the TSA from deploying body scanners for primary screening. That bill passed the House in 2009 with more than 300 votes in favor.

In my statement this morning I will outline the privacy objections to the TSA's body scanner program, describe the documents we have obtained under the Freedom of Information Act (FOIA), and discuss the need for Congress to take decisive action. Based on the documents we have obtained, the views of experts, the concerns of Americans, and the extraordinary cost to the American taxpayer, it is our view that (1) the body scanner program should be suspended, and (2) the TSA should conduct a rulemaking so the public will have the opportunity to express its views on this program.

The EPIC FOIA Requests

Over the last several years, EPIC has pursued a series of FOIA requests to learn more about the body scanner devices. We believe it is essential when discussing this technology to understand the actual operation of the devices. When we are say that there are ongoing privacy risks to American travelers and that the TSA has not done enough to safeguard privacy, we are not speculating. We are pointing to facts about the devices that

¹ EPIC, "Spotlight on Surveillance: Transportation Agency's Plan to X-Ray Travelers Should Be Stripped of Funding" (June 2005), <http://epic.org/privacy/surveillance/spotlight/0605/>.

² See, e.g., EPIC, "Whole Body Imaging Technology and Body Scanners ('Backscatter' X-Ray and Millimeter Wave Screening)," <http://epic.org/privacy/airtravel/backscatter/>; EPIC, "EPIC v. DHS (Suspension of Body Scanner Program)" http://epic.org/privacy/body_scanners/epic_v_dhs_suspension_of_body.html; EPIC, "EPIC v. Department of Homeland Security - Body Scanners" http://epic.org/privacy/airtravel/backscatter/epic_v_dhs.html; and EPIC, "The Stripping of Freedom: A Careful Scan of TSA Security Procedures" (Public Conference) (Jan. 6, 2011), <http://epic.org/events/tsa/>. EPIC also maintains a webpage where travelers can fill out a Body Scanner Incident Report (http://epic.org/bodyscanner/incident_report/).

are known to the TSA that the agency has been reluctant to discuss with Congress or the American public.

Design of TSA Body Scanner Devices

Following two FOIA lawsuits against the agency, EPIC received the TSA's procurement specifications for body scanners – that is to say, the operational requirements that the agency set out for the vendors – TSA contracts with L3 and Rapiscan, and hundreds of traveler complaints made to the TSA regarding the body scanners.

There are two key points about the design of the devices. First, the TSA required that body scanners have the capability to store, record, and transmit images of the naked human body. These machines have high capacity hard drives and the ability to transfer files via USB. The procurement specification documents also revealed security holes in the body scanner machines, notably that they run a form of Windows XP and are connected to the viewing booth via Ethernet. The TSA procurement specifications document also made it clear that the “privacy filters” can be turned off.

Second, the procurement specification documents revealed that the machines are not designed to detect powdered explosives.³ The design specifications refer to the detection of “weapons,” “explosives,” “liquids,” and “anomalies.” They aim to locate dense, non-metallic materials that metal detectors might not otherwise detect.

This is significant because the last two attacks on commercial aircraft – the “shoe bomber” and the “trouser bomber” – have involved the use of PETN, a powdered explosive. In fact, the trouser bomber went through one of the few airports in the world that was at the time equipped with a body scanner device.

As part of this FOIA litigation, EPIC also asked the TSA for test images and training manuals. DHS, however, argued that these materials were exempt under several FOIA exemptions, including “high (b)(2)”, an exemption which has since been invalidated by the Supreme Court.⁴

In related FOIA litigation concerning the use of body scanners in U.S. courthouses, we learned that the devices do routinely store images.⁵ In that case, the US Marshals Service acknowledged that one device had generated more than 35,000 images. The US Marshals Service responded to EPIC's FOIA request by providing more than one

³ Several report and articles reach a similar conclusion. *See, e.g.*, Leon Kaufman and Joseph Carlson, An Evaluation of Airport X-ray Backscatter Units Based on Image Characteristics, *Journal of Transportation Security*, <http://springerlink.com/content/g6620thk08679160/fulltext.pdf>; GAO, “Aviation Security: TSA Is Increasing Procurement and Deployment of the Advanced Imaging Technology, but Challenges to This Effort and Other Areas of Aviation Security Remain” (Mar. 17, 2010), <http://www.gao.gov/products/GAO-10-484T>.

⁴ *Milner v. Dep't of Navy*, 09-1163, 2011 WL 767699 (U.S. Mar. 7, 2011).

⁵ EPIC, “EPIC FOIA - Feds Save Thousands of Body Scan Images,” (Aug. 4, 2010), <http://epic.org/2010/08/epic-foia---feds-save-thousand.html>.

hundred images of individuals who entered the federal courthouse in Florida and went through a full body scanner. The popular tech newsletter *Gizmodo* obtained these images and published them widely on the Internet.

Documents obtained by EPIC under the Freedom of Information Act also revealed that the Department of Homeland Security has spent millions of dollars on mobile body scanner technology for possible use at railways, stadiums, and elsewhere.⁶ These body scanners were designed to scan moving pedestrians covertly. In these documents, the federal agency outlined plans to expand the use of these systems to monitor crowds, peering under clothes and inside bags away from airports. After the documents were made public, the TSA announced for the first time that it had no plans to expand the use airport body scanners, specifically. The agency did not however address whether or not it would expand the use of similar backscatter and body scanner technologies.

We are currently seeking further information from the TSA about passenger exposure to radiation emitted by the machines. EPIC filed a FOIA request last summer to determine whether the agency considered any of the medical evidence that suggested a variety of radiation risks to Americans. The agency has moved slowly in response to that request, though a recent article in *USA Today* strongly suggests a real risk that needs to be investigated.⁷

Traveler Complaints

As part of our FOIA requests, TSA also disclosed hundreds of complaints from travelers. The traveler complaints revealed that the agency was not informing travelers of their right to opt-out of the body scanners. Many travelers stated that they were never told that they could opt-out and were simply herded through the machines. Many more also reported that the pat-downs felt overly invasive and retaliatory. Some reported concerns about radiation exposure, especially to children, cancer survivors, and pregnant women.

It is difficult to describe the levels of frustration, anger, and exasperation these complaints reveal. Many people describe the sense of being humiliated by TSA officials. Others thought that the TSA's procedures were nonsensical and ineffective. Several men, who might not have objected to the scanners for themselves, were outraged when they viewed the treatment of their spouse or children.

Here are a few of the excerpts from the documents EPIC obtained:

"I specifically asked the TSA agent, before going through, if the scanner I was being asked to go through was the full body scanner that would show a naked image of me. He specifically told me it was no I now know that it was the

⁶ EPIC, "EPIC FOIA - Homeland Security Spending Millions on Mobile Strip Search Devices," (Mar. 2, 2011), <http://epic.org/2011/03/epic-foia---homeland-security.html>.

⁷ Alison Young and Blake Morrison, "TSA to retest airport body scanners for radiation," *USA Today*, at 3A (Mar. 14, 2011), http://www.usatoday.com/travel/flights/2011-03-11-tsa-scans_N.htm.

scanner. What happened to our constitution and our civil rights against unlawful search and seizure by the government? I'm a police officer and I find this a gross violation of a persons constitutional rights!" – Cynthia W.

"I have never protested anything in my life. But as a result of the body scanners and invasive pat down procedure I will not subject myself or my family to this practice. We canceled all holiday travel plans and reunions. I will also be avoiding all business travel as much as possible." – Derek

"I am six months pregnant. Absolutely nothing was explained to me about why I had to lift my arms and be scanned or if it would be dangerous to my baby . . . I didn't think that airlines procedures would get more belittling and violating than they already were. I see I was wrong. I will not be flying again until these ridiculous policies changes." – Alison K.

"Behind me was an older woman in a wheelchair. I watched as she was forced to stand on the footprints to be scanned in an unsteady condition. It was an absolutely insane situation." – Anonymous

The Public Petitions

In the spring of 2009, when we became aware that the TSA was planning to deploy the body scanner for primary screening in US airports, we worked with a broad range of organizations across the political spectrum and petitioned Secretary Napolitano to postpone the planned deployment until the public was given the opportunity to express its views on this dramatic change in agency procedure. We asked the DHS to conduct "a 90-day formal public rulemaking process to receive public input on the agency's use of 'Whole Body Imaging' technologies."⁸

The TSA Administrator responded that the TSA thought the program was fine. We did not receive a response to our request for a rulemaking.

In April 2010, not long after EPIC reviewed the documents obtained under the FOIA and fully understood the ability of the devices to store and record images of naked air travelers, we again petitioned the Secretary and asked her to suspend the program. The General Counsel of TSA replied. She denied our request for the public rulemaking from a year earlier but offered no rationale for that decision. She further indicated that the agency would go forward with the program.

EPIC v. DHS

Following the Secretary's failure to respond to our petition for a public rulemaking and our second petition calling for a suspension of the program, EPIC filed a lawsuit against DHS.

⁸ Letter from EPIC and thirty-three organizations to Secretary Janet Napolitano, U.S. Dep't. of Homeland Security (May 31, 2009), http://epic.org/privacy/airtravel/backscatter/Napolitano_ltr-wbi-6-09.pdf.

In the suit, EPIC argues that the program violates the Administrative Procedure Act, the Fourth Amendment, the Privacy Act, the Video Voyeurism Prevention Act, the Religious Freedom Restoration Act, and the agency's own obligation to assess the privacy impact of the technologies it deploys. In our brief, we argue that the Department of Homeland Security "has initiated the most sweeping, the most invasive, and the most unaccountable suspicionless search of American travelers in history."

EPIC also cites the agency's failure to respond to the first EPIC petition and the second EPIC petition, widely supported by a broad coalition of organizations, which challenged the deployment of the devices and called for a public rulemaking. I argued this case last week in the federal appeals court here in Washington.

We don't know what the outcome will be, but our position has not changed: based on the documents EPIC has obtained under the FOIA, the use of the devices for primary screening should be suspended and the public should have a meaningful opportunity to comment on the program.

TSA's History of Inconsistent Statements

The TSA has not been forthcoming with the American public about the operation of these devices. Since TSA began implementing body scanner technology, the agency has frequently made inconsistent or misleading statements to the American public regarding the capabilities of the machines and the risks created by the machines. The agency has substantially changed its policies regarding the machines over time, as well.

When the TSA first rolled out the devices, the TSA provided various assurances. The TSA stated that body scanner machines would not be mandatory for passengers, but rather "a voluntary alternative to a pat-down during secondary screening." The TSA also said that the images were "never stored."⁹

Passengers are not typically required to submit to secondary screening, but are selected for additional screening if they set off a metal detector¹⁰ or wear baggy clothing.¹¹ The DHS's Privacy Impact Assessment of body scanner machines is predicated on the non-mandatory use of the technology for primary screening.¹²

⁹ *TSA Tests Second Passenger Imaging Technology at Phoenix Sky Harbor Airport*, Transportation Security Administration, October 11, 2007, http://www.tsa.gov/press/releases/2007/press_release_10112007.shtm (last visited Mar. 14, 2011); *see also* *X-Ray Backscatter Technology and Your Personal Privacy*, <http://replay.waybackmachine.org/20090228125115/http://www.tsa.gov/research/privacy/backscatter.shtm> (last visited Mar. 14, 2011) (stating "Backscatter is a voluntary option for passengers undergoing secondary screening as an alternative to the physical pat down procedures").

¹⁰ *How to Get Through the Line Faster*, http://www.tsa.gov/travelers/airtravel/screening_experience.shtm (last visited Mar. 14, 2011).

¹¹ *TSA's Head-to-Toe Screening Policies*, Transportation Security Administration, October 15, 2007, http://www.tsa.gov/press/happenings/sop_facts.shtm (last visited Mar. 14, 2011).

¹² *Privacy Impact Assessment for TSA Body scanner machines*, DHS, October 17, 2008, http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_tsa_wbi.pdf (stating "Individuals will be able to choose to undergo [body scanner machine] screening in primary [screening].").

The TSA assured travelers that “a security algorithm will be applied to the image to mask the face of each passenger.” The TSA said that the picture generated by body scanner machines “will never be stored, transmitted or printed, and it will be deleted immediately once viewed.”

Moreover, the TSA states that, “to ensure privacy, the passenger imaging technology being tested by TSA has zero storage capability and images will not be printed stored or transmitted. Once the transportation security officer has viewed the image and resolved anomalies, the image is erased from the screen permanently. The officer is unable to print, export, store or transmit the image.”¹³ However, documents obtained by EPIC make clear that not only do the devices store and transmit images, the agency required this functionality as part of its own procurement specifications.

Of course, the TSA has already backtracked from its initial claim that the use of the devices would be voluntary and only for secondary screening. On February 18, 2009 the TSA announced that it would require passengers at six airports to submit to body scanner machines in place of the standard metal detector search.¹⁴ This contradicts previous assurances that body scanner machines are “voluntary.” The TSA’s February 18, 2009 statement also indicates that the DHS component may renege on other privacy assurances by “exploring and testing technologies ... in new configurations.”¹⁵ On April 6, 2009, the TSA announced that it plans to expand the mandatory use of body scanner machines to all airports.¹⁶ All passengers must “go through the whole-body imager instead of the walk-through metal detector,” the TSA said.

Systematic Problems with DHS FOIA Processing

Although EPIC has had considerable success obtaining documents relating to this program, we remain concerned that the DHS is not processing FOIA requests as it should. In light of this committee’s jurisdiction for government oversight,¹⁷ we would also like to draw attention to several systemic problems in the DHS’s FOIA practices. EPIC, along with a coalition of organizations and experts who share our interest in open

¹³ TSA: Whole Body Imaging, http://replay.waybackmachine.org/20090314233608/http://www.tsa.gov/approach/tech/body_imaging.shtm (last visited Mar. 14, 2011).

¹⁴ TSA Continues Millimeter Wave Passenger Imaging Technology Pilot, Transportation Security Administration, February 18, 2009, http://replay.waybackmachine.org/20090223120025/http://www.tsa.gov/press/happenings/mwave_continue.shtm (last visited Mar. 14, 2011)

¹⁵ *Id.*

¹⁶ Joe Sharkey, *Whole-Body Scans Pass First Airport Tests*, N.Y. Times, Apr. 6, 2009 available at <http://www.nytimes.com/2009/04/07/business/07road.html>.

¹⁷ Chaffetz to Chair Oversight Subcommittee on National Security, Homeland Defense and Foreign Operations, Office of Congressman Jason Chaffetz, <http://chaffetz.house.gov/press-releases/2010/12/chaffetz-to-chair-oversight-subcommittee-on-national-security-homeland-defense-and-foreign-operation.shtml>.

government, sent Chairman Issa and Ranking Member Cummings a letter highlighting serious problems in the ways that DHS carries out its FOIA mandate.¹⁸

Under a DHS policy in effect since 2006, political appointees have received detailed information about the identity of FOIA requesters and the topics of their requests in weekly reports before FOIA career staff could complete the processing of the requests.¹⁹ The policy requires DHS career staff to provide Secretary Napolitano's political staff with information, including where a requester lives, the requester's affiliation, and descriptions of the requesting organization's mission. EPIC's FOIA requests have been among those redirected to the White House.

This practice is not lawful. The Supreme Court has consistently held that FOIA does not permit agencies to investigate either FOIA requesters or their reasons for submitting requests.²⁰ We object to DHS efforts to circumvent the FOIA process. The effectiveness of FOIA depends on agencies adhering to the principles of open government and transparency.

Conclusion

We fully appreciate the very important responsibility that the TSA has in safeguarding our airports and protecting the travelling public. This is not a dispute about the agency's mission. This is a dispute about how the agency pursues its mission and the impact that it has on the American public. The TSA simply does not have the legal right or the practical need to subject American travelers to invasive and humiliating searches.

We ask that Congress take the following actions:

First, we ask that the Congress move forward with the very important legislation that you introduced and passed with the support of more than 300 House Members that would end the use of body scanners for primary screening. The TSA rushed forward with deployment without adequate testing, authorization, or public input. That legislation would restore accountability for the program.

Second, Congress should require the agency to undertake a public rulemaking so that the public and the experts are given a meaningful opportunity to express their views

¹⁸ Letter from EPIC and twenty-one organizations to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (Feb. 15, 2011), http://epic.org/open_gov/foia/Issa_FOIA_Oversight_Ltr_02_15_11.pdf.

¹⁹ See "FOIA Section of the DHS Cabinet Report to the White House Submission Guidelines Updated August 4, 2006,"

http://www.dhs.gov/xlibrary/assets/foia/priv_foia_cabinet_report_submission_guidelines_20060804.pdf and "Guidelines for Reporting on Significant FOIA Activity for Inclusion in the Cabinet Report to the White House July 7, 2009,"

http://www.dhs.gov/xlibrary/assets/foia/priv_cfoiao_memo_cabinet_report_foia_guidelines_20090707.pdf.

²⁰ *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 170 (2004) (stating that "[a]s a general rule, withholding information under FOIA cannot be predicated on the identity of the requester," and *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 771 (1989) (stating that the requester's identity has "no bearing on the merits of his . . . FOIA request").

and the agency is required to consider all of the evidence. The TSA gives the public the opportunity to comment formally on whether to raise the cost for replacing an ID document from \$36 to \$60, but it will not allow the public to comment on the most invasive search technology ever deployed by the US government. It is shameful that the Secretary has rejected a public petition making this request.

Third, oversight must begin on similar DHS programs that threaten the fundamental rights of the American public. Just a few weeks ago, an EPIC lawsuit revealed that the agency is considering mobile body scanners for city streets, office buildings, and stadiums. Is the agency now planning to scan us and our families before we enter ballparks or go to Disneyworld? The American public has the right to tell the government enough is enough.

We thank you again for the opportunity to testify today and look forward to working with the committee.

SENSITIVE SECURITY INFORMATION

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09/30/09

APPENDIX C USER ACCESS LEVELS AND CAPABILITIES

User access and associated capabilities, based on username, password, and user access level, shall (194) be as outlined in the Access Control Levels Table.

Access Control Levels Table

User Access Level	User	Capabilities
Z	Transportation Security Administration Headquarters Contractor Maintenance Technician (see Note 1) Super User	Logon and Logoff Startup and Shutdown Enable/Disable Image Filters Access Test Mode Export Raw Image Data in Test Mode Upload/Download User Database Create and Modify Accounts (All Users) Download Data (see Note 1) Set and Alter Passwords (All Users) (see Note 1) Modify Baseline or Fielded Software (see Note 1) Access Operating System Note 1: Contractor Maintenance Technicians shall not set or alter passwords and shall download data only without alteration. Contractor "superuser" passwords will be disabled by a Government representative after site acceptance. Only Government approved software changes shall be made to the baseline or fielded software.
1	Federal Security Director Screening Manager Screening Supervisor	All Access Level 2 Capabilities Logon and Logoff Startup and Shutdown Enable/Disable Auto-Detect Highlighting Create/Modify Accounts (Level 2)
2	Lead-In-Charge	All Access Level 3 Capabilities Perform Daily Preventative Maintenance Create and Modify Accounts (Level 3) Access and view AIT system FDRS Database and Reports Access and view AIT system User Database Download AIT system FDRS Data Calibrate system

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EPIC v. Neapolitano
AR 057.061

JA 0251

SENSITIVE SECURITY INFORMATION

OST-ENG-AIT-PROCSPEC-2.11
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3.0 REQUIREMENTS

3.1 Tier I Requirements

3.1.1 System

3.1.1.1 Detection/imaging

3.1.1.1.1 System Detection

The Concept of Operations for the AIT system encompasses a scenario in which an Image Operator (IO) reviews the AIT scanned image and determines if an anomaly is present. For this reason, detection performance for the "AIT system" refers to performance corresponding to the overall performance of AIT imaging and the operator in the loop. The AIT *shall* (1) image passengers without requiring the removal of clothing beyond outerwear. Detection performance requirements are as follows:

3.1.1.1.1.1 Explosives

The AIT system *shall* (2) produce images to enable an operator to determine the presence and location of explosives.

3.1.1.1.1.2 Weapons

The AIT system *shall* (3) produce images to enable an operator to determine the presence and location of weapons.

3.1.1.1.1.3 Liquids

The AIT system *shall* (4) produce images to enable an operator to determine the presence and location of liquids.

3.1.1.1.1.4 Other Anomalies

The AIT system *shall* (5) produce images to enable an operator to determine the presence and location of other anomalies (flat and conformal) (e.g. papers, wallets, small bottle of contact lens solution, etc.).

3.1.1.2 Privacy

TSA policy dictates that passenger privacy is maintained and protected during passenger screening. To ensure passenger privacy safeguards are in place, AIT systems will prohibit the storage and exporting of passenger images during normal screening operations. When not being used for normal screening operations, the capability to capture images of non-passengers for training and evaluation purposes is needed. To ensure that image capturing maintains passenger privacy, the AIT system will provide two distinct modes of operation: Screening Mode and Test Mode as defined in 3.1.1.3.1.

During Screening Mode, the AIT system *shall* (6) be prohibited from exporting passenger image data, including via STIP. During Test Mode, the AIT system *shall* (7) not be capable of conducting passenger screening.

WARNING: This record contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to person without a "need to know", as defined in 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520.

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EPIC v. Napolitano
AR 051.010

JA 0200

May 31, 2009

Secretary Janet Napolitano
Department of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Napolitano,

We the undersigned privacy, consumer rights, and civil rights organizations are writing to you regarding the Transportation Security Administration's announced plan to deploy Whole Body Imaging as the primary means of screening airline passengers in the United States. We strongly object to this change in policy and urge you to suspend the program until the privacy and security risks are fully evaluated.

Whole Body Imaging systems, such as backscatter x-ray and millimeter wave, capture a detailed image of the subject stripped naked. In this particular application, your agency will be capturing the naked photographs of millions of American air travelers suspected of no wrongdoing.

Moreover, the privacy problems with these devices have still not been adequately resolved. Even though a "chalk line" image is displayed to an operator in a remote location and even though the TSA undertook a Privacy Impact Assessment and said that the image-recording feature would be disabled, it is obvious that the devices are designed to capture, record, and store detailed images of individuals undressed.

If the public understood this, they would be outraged -- many on religious grounds -- by the use of these devices by the US government on US citizens. "The desire to shield one's unclothed figure from view of strangers, and particularly strangers of the opposite sex, is impelled by elementary self-respect and personal dignity," said the U.S. Ninth Circuit Court of Appeals in 1958. The law of privacy, according to a federal judge in California in 1976, "encompasses the individual's regard for his own dignity; his resistance to humiliation and embarrassment; his privilege against unwanted exposure of his nude body and bodily functions." Both courts were discussing dignity in prisons, even though other rights of privacy are not accorded inmates.

Further, the TSA repeatedly stated that these systems would only be used for secondary screening of passengers and only as a voluntary alternative to a pat-down search. The fact that the TSA reversed itself on the central question of whether these systems would be voluntary makes obvious the risk that the TSA will later reverse itself on the retention of images.

More must be known about the use of these devices. The American public is directly impacted by the planned use of these systems and should be given an opportunity to express its views.

We ask that the use of "Whole Body Imaging" technology undergo a 90-day formal public rulemaking process to receive public input on the agency's use of "Whole Body Imaging"

EPIC v. Napolitano
AR 039.003

JA 0039

technologies.

In the interim, the agency should suspend the use of Whole Body Imaging to screen all travelers. Individuals who are asked to undergo secondary screening must be fully informed of their right to alternative secondary screening options. Not native English speaking passengers must be informed via multi-lingual oral and written formats that include an image comparable to the size of the image that will be produced by the Whole Body Image technology. Passengers should also have alternatives to the Whole Body Imaging option for secondary screening such as a pat down, or physical search of carry-on bags.

The TSA should also investigate less invasive means of screening airline passengers. The expense of the technology to taxpayers should be considered in light of other less costly means of creating a secure air travel experience.

Finally, we seek a full investigation of the medical and health implications of repeated exposure to Whole Body Imaging technology. The frequency of air travel, medical conditions such as pregnancy, and chronic health conditions, and repeated exposure of TSA and airport personnel stationed in the vicinity of the technology should be assessed. Age, gender, pre-existing medical conditions, and other factors should be evaluated and medical recommendations developed regarding the use of any Whole Body Imaging system.

Sincerely,

American Association of Small Property Owners
 American Civil Liberties Union
 Americans for Democratic Action
 Catelegislation
 Center for Democracy and Technology
 Center for Digital Democracy
 Center for Financial Privacy and Human Rights
 Constitution Project
 Consumer Action
 Consumer Federation of America
 Consumer Travel Alliance
 Consumer Watchdog
 Cyber Privacy Project
 Discrimination and National Security Initiative
 Electronic Privacy Information Center
 Fairfax County Privacy Council
 Feminists for Free Expression
 Gun Owners of America
 Identity Project (PapersPlease.org)
 Liberty Coalition
 National Center for Transgender Equality
 National Workrights Institute
 Pain Relief Network

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JA 0040

Patient Privacy Rights
Privacy Activism
Privacy Journal
Privacy Rights Clearinghouse
Privacy Times
The Multiracial Activist
The Rutherford Institute
Transgender Law Center
U.S. Bill of Rights Foundation
Woodhull Freedom Foundation
World Privacy Forum

JA 0041

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AR 039.005

TSA Oversight: Whole Body Imaging
House Oversight Committee

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Testimony of Marc Rotenberg, EPIC
March 11, 2011

Mr. CHAFFETZ. Thank you.

We will now move to Dr. Brenner. Same thing, please pay attention to the light. If you keep your comments to 5 minutes, we would appreciate it. We now recognize you for 5 minutes.

STATEMENT OF DAVID J. BRENNER

Mr. BRENNER. Thank you, Mr. Chairman. My name is David Brenner and I am the Director of the Centre for Radiological Research at Columbia University and have about 30 years of experience in low dose radiation risk estimation. So I think one should preface any comments by saying that improved scanning of humans at airports is both desirable and clearly necessary.

As you know, there are actually two different AIT, advanced imaging technologies, that are currently being deployed, that is x-ray backscatter scanners and millimeter wave scanners. And in many ways they operate in exactly the same way; the analogy is radar, they bounce radiation off the individual and the reflected radiations are what are analyzed. The difference, as in the names, is of the x-ray back scanners use x-rays; millimeter waves do not. And, at least at higher radiation doses, it is certainly proven that x-rays are a carcinogen. There is no such evidence for millimeter waves. So I will focus my comments on x-ray backscatter scanners.

So let's talk about the individual risk, the risk of one average person going through the scanner once. The doses involved are extremely low, and that means that the risks, and the risks we are talking about are long-term radiation-induced cancer, are also extremely low. In fact, we can actually put some numbers on those risks. So the risk of an average person going through the scanner, the risk of a long-term induced cancer is like 1 in 10 million. Now, by any stretch of the imagination that is an extremely small risk. So I think I would agree with the TSA's characterization that in that context these devices are safe.

Of course, there are caveats there. Frequent fliers, for example, who can go through a scanner 200 times a year, the risk would be 200 times that. Air flight personnel can go through the scanners 300 or 400 times a year, so the risks are correspondingly higher. And there are also populations that are more sensitive than average, and children are the biggest example there; children are more sensitive to radiation-induced cancer than adults are.

So that is individual risk. So I would certainly go along with the general consensus that you can consider them safe in that context.

But there is another way that we always need to think about risk, and that is what we usually call either public health or population risk, and that is to do with both the individual risk and the number of people exposed to that risk. If you have a small risk, but only a few people are exposed to that risk, there is not much public health concern. But if you have a small risk and very large numbers of people exposed, then you get a public health concern.

And, of course, the issue here is that the TSA's plan now is the goal is to have everybody scanned with these new technologies, and number-wise that means 700 million scans a year at the moment, increasing in a few years to a billion scans a year. So we are talking about an extraordinarily large number of scanners.

And you can make a population estimate. Well, how many cancers would you think would be produced by a year's worth of scanning if you had a billion scans? And the answer is around 100, 100 cancers a year produced by a billion scans. It is important to stress there are a lot of uncertainties involved in that number, but it is the best we can do, and it is done with fairly standard approaches.

So even with 100 cancers a year you could certainly make the argument, well, we are talking about risks and benefits here. The benefits of not having our airplanes blown up would in fact counteract that relatively small risk. But because we have two technologies here, the millimeter wave scanners and the x-ray scanners, and both are apparently equally effective at doing what they are designed to do, but the millimeter wave scanners do not have that potential for long-term population risk, but the x-ray scanners do. To our mind, it makes a lot of sense that we should be thinking more about using the millimeter wave scanners and less about using the x-ray scanners.

And I will stop my testimony there. Thank you, Mr. Chairman.
[The prepared statement of Mr. Brenner follows.]

COLUMBIA UNIVERSITY MEDICAL CENTER
CENTER FOR RADIOLOGICAL RESEARCH
630 WEST 168TH STREET
NEW YORK, NY 10032

David J Brenner, PhD, DSc
Higgins Professor of Radiation Biophysics
Director, Columbia University Center for
Radiological Research
Phone: (212) 305-5660
FAX: (212) 305-3229
djb3@columbia.edu

Committee on Oversight and Government Reform
Subcommittee on National Security, Homeland Defense & Foreign Operations
“TSA Oversight Part 1: Whole Body Imaging”
March 16, 2011, 9:30 am
2154 Rayburn House Office Building

Thank you, Mr. Chairman, for the opportunity to testify before this subcommittee on the potential health significance of the x-ray exposures associated with AIT (Advanced Imaging Technology) whole-body scanners currently being deployed at US airports.

My name is Dr. David J. Brenner, and I am the Higgins Professor of Radiation Biophysics at Columbia University Medical Center in New York. I am the Director of the Columbia University Center for Radiological Research, which is considered the oldest and largest radiological research center worldwide, being founded in 1915 by a student of Marie Curie. The Columbia University Center for Radiological Research focuses on understanding the biological effects of ionizing radiation, both at high doses for cancer radiotherapy, and also at low radiation doses in the context of environmental exposures, occupational exposures, and x-ray imaging. I myself have been in the field of radiation risk estimation for about 30 years, and have published more than 250 peer-reviewed scientific papers on radiation risk estimation, as well as two books. In the present context I have just had published a peer-reviewed paper in the well known journal “Radiology” entitled “*Are X-Ray Backscatter Scanners Safe for Airport Passenger Screening? For Most Individuals, Probably Yes, but a Billion Scans per Year Raises Long-Term Public Health Concerns*”.

Without doubt, improved scanning for explosives of individuals boarding airline flights is both desirable and necessary. Currently there are several possible technology options in this regard, and I will focus here on the radiation safety of the most commonly deployed AIT (Advanced Imaging Technology), namely whole-body x-ray backscatter scanners. I will first summarize my three main conclusions, and then provide more in depth discussion:

Summary

1. Using the most credible dose and risk estimates that we have, one can say that the individual radiation-induced cancer risks associated with a few whole-body x-ray backscatter scans are likely to be extremely small. Our best estimate is that the chance of any given individual developing cancer as a result of the x-ray exposure from a few scans is around 1 in 10 million. Thus it is reasonable to say that, for an average individual, the scanners are “safe”.
 - *However, individual lifetime cancer risks will be somewhat higher for children, radiosensitive individuals and, particularly, for aircrew and for very frequent fliers.*
2. As well as individual risk, however, from a public-health / policy perspective it is important also to take into account the population risk. This relates to the number of cancers induced in the whole population as a result of scanner use. In that x-ray backscatter scans have become a primary screening measure, very large numbers of people will likely be exposed to very small radiation-associated cancer risks from the associated radiation exposure.
 - *Given the very large numbers of scans involved, potentially up to one billion each year in the US, there is a significant likelihood that, amongst the scanned population, there will be some cancers produced by the associated radiation exposure. A best estimate is around 100 cancers per year, though this number is quite uncertain.*
3. Given that it is unlikely that the alternative airport whole body-scanning technology (millimeter wave) will be associated with population cancer risks, from a public health perspective, they may be a preferable advanced whole-body imaging technology.

Background

Whole-body x-ray backscatter scanners have been deployed at US airports since 2007, though in fairly small numbers and to screen limited numbers of passengers. Indeed back in 2003 the National Council for Radiological Protection (NCRP) published a report on their use and safety, of which I was one of the five co-authors. In early 2010, however, in response to the Dec 25 2009 “underwear bomber” incident, the TSA (Transportation Security Administration) shifted the goalposts dramatically with regard to the use of whole-body AIT scanners. As reported by the Government Accountability Office “*In response to the Dec 25 2009 terrorist attack, the TSA has revised its procurement and deployment strategy for AIT, increasing the number of AITs it plans to procure and deploy. In contrast with its prior strategy, the agency now plans to use them as a primary screening measure where feasible, rather than solely as a secondary screening measure*”.

In other words, instead of using whole-body AIT scanners for a small number of selected passengers, the goal now is to use them for all US airline passengers. The number of commercial passenger emplanements per year is currently about 700 million and is predicted by the FDA to reach one billion by about 2023. While the number of times passengers pass through security will be slightly less than the number of passenger emplanements, it is clear that there is the potential for as many as one billion whole-body scans per year in US airports.

In fact there are two quite different AIT whole-body scanner technologies currently being deployed at airports. One uses x-ray backscatter technology, scanning the whole body with a narrow beam of x-rays both from the front and from the back. The second whole-body screening technology illuminates the subject with low power millimeter-waves.

In contrast to x rays, millimeter-waves are non ionizing¹. Our primary concern here will be in regard to the x-ray scanners, which represent the majority of deployed whole-body AIT scanners in US airports. In that the TSA has purchased and is deploying both x-ray and millimeter wave systems, it is reasonable to assume that both have comparable characteristics in terms of sensitivity, specificity and logistics.

What Do We Mean by “Safe”?

This testimony addresses the issue of whether whole-body x-ray backscatter systems are “safe”, so it is important to be clear about what “safe” can mean in this context.

The most direct interpretation of “safe” refers to the exposed individual. One may ask what is the best estimate of the lifetime cancer risk incurred by an individual receiving one or more of these scans? But risks can and should also be viewed from the perspective of the entire exposed population. The estimated population risk (sometimes called the societal risk) in this case relates to the number of cancers expected in the exposed population as a result of the proposed practice; this population outcome depends, of course, both on the individual risk *and on the number of people exposed to that risk*.

To illustrate this distinction between individual and population risk, consider a hypothetical activity producing an extremely small individual cancer risk of (say) 1 in ten million. An individual cancer risk of 1 in 10 million means that if 10 million people were exposed to this activity, on average one cancer would be induced. So if, for example, only 100 people were exposed to this activity, it would be extremely unlikely that any of the 100 exposed individuals would actually develop cancer due to the activity in question. Now consider one billion (one hundred million) people exposed to that same very small cancer risk of 1 in ten million: in this case it would be very likely that some of the exposed population would develop cancer due to the activity in question – a significant population risk.

The major national and international organizations that recommend radiation standards (International Commission on Radiological Protection [ICRP] and the US National Council for Radiological Protection [NCRP]) have both stated that, as well as individual risk, population risk is an appropriate measure for assessing the acceptability of a large-scale activity that might be associated with small individual radiation risks. Thus, population risk is described by the ICRP as “one input to a broad judgment of what is reasonable”, and by the NCRP as “one of the means for assessing the acceptability of a facility or practice”.

¹ *Ionizing radiations, such as x rays (but not millimeter waves), are those that have enough energy to knock electrons out of atoms, and can thus damage and break biological molecules such as DNA.*

Population risks are also routinely considered in other fields where policy choices involve large populations potentially exposed to small individual risks. For example the World Health Organization has developed approaches to estimate current and future population risks from diverse risk factors such as air pollution and climate change. Other areas where population risks have been used to inform policy decisions include civil aviation, flood control, second-hand smoke, and vaccination policy. For example, both the small individual risk of meningitis from pediatric measles vaccination and the population risks, are taken into account in formulating measles vaccination policies.

Estimating Individual Risks Associated with X-Ray Backscatter Scanners

The radiation doses required to produce images of the appropriate resolution and quality are extremely low, around 1 micro-Sievert (μSv). We do not know with any certainty the magnitude of the individual cancer risks associated with such low doses. Epidemiological studies of radiation risks at these doses are exceedingly difficult, essentially because there are so many cancers in any studied population that are from other (non radiation) causes.

However, we can make a best estimate of the individual radiation risk associated with an x-ray backscatter scan. Following the guidance of all the primary radiation regulatory and advisory agencies (ICRP, NCRP, UNSCEAR, BEIR), we use standard cancer mortality risk formulae that relate dose with cancer risk. This results in a best estimate for the lifetime cancer mortality risk of about 1 chance in 10 million for two x-ray backscatter screening scans.

This best-estimate risk estimate is quite uncertain, in large part because it is based on extrapolation of radiation risks estimated at much higher doses. Indeed, some have argued that the individual risk at very low doses is still lower; by contrast others have argued that recently studied phenomena such as tissue/organ microenvironment effects, bystander effects, and “sneaking through” immune surveillance suggest that low-dose radiation risks could be higher.

In terms of the significance of very small individual risks, the NCRP has defined a “Negligible Individual Risk Level” (NIRL) as “the level of annual excess risk of fatal health effects attributable to radiation, below which efforts to reduce radiation exposure to the individual are unwarranted”. Not quite the same as “safe”, but a reasonable practical proxy. The NCRP has suggested an NIRL value of 1 in ten million, which is similar to the estimated fatal cancer risk from two scans. It is not unreasonable, therefore, to describe x-ray backscatter scans as “safe”, in terms of the individual risk associated with a small number of such scans.

One could perhaps debate whether this “safe” descriptor should apply to the scan of a child, where the cancer risks are probably 5 to 10 higher than for exposure in middle age, or for radiosensitive individuals (including the embryo and fetus), or for air-flight personnel, or for very frequent fliers. For example US domestic aircrew passes through security in the range of 240 to 380 times per year. Likewise a very high-level frequent flier averages more than 200 flights per year from x-ray backscatter scans. In these cases the corresponding best estimate risk of a radiation-induced fatal cancer is around 1 chance in 100,000.

Estimating Population Risks Associated with X-Ray Backscatter Scanners

Given our estimates of individual risks, and the number of scans projected to take place each year in the US, how many cancers do we expect to be caused by the radiation from airport x-ray whole body scanners?

In the present context, if one billion (1,000 million) x-ray backscatter scans were performed each year in the US, and the average individual cancer risk per scan is 1 in 10 million (see above), one might eventually anticipate an expected 100 cancers each year resulting from this activity. Of course, as is now discussed, hidden behind this back of the envelope calculation are a number of issues and uncertainties, some practical and some conceptual.

The first uncertainty in the population risk estimate relates to the uncertainty associated with the individual risk, as discussed above. It is perfectly possible that the individual risk could actually be significantly lower (or indeed zero), but it is also quite possible that the individual risk could actually be significantly higher. One can make plausible mechanistically-based arguments either way here – and indeed people have, but it is certainly reasonable to base the best-estimate population risk on the best-estimate individual risk.

There have also been suggestions that it is not reasonable to estimate population outcome by multiplying small individual risks by the number of people exposed to those risks. It is hard to see the logic behind this suggestion, nor is there empirical evidence to support it, and indeed it has been widely disputed. To take a simple analogy: If millions of people buy lottery tickets, the chance that any particular person will win is extremely small. But it does not follow that there will be a population outcome where *nobody* wins. On the contrary, some people will win – it is just that we cannot predict beforehand who they will be. It is essentially the same situation when hundreds of millions of people are exposed to an extremely small radiation risk.

ALARA: As Low As Reasonably Achievable

The ALARA (As Low As Reasonably Achievable) principle, universally accepted in the field of radiation protection, requires making every reasonable effort to minimize ionizing radiation exposures as far below dose limits as is practical, consistent with practically achieving the desired goal. In the context of x-ray backscatter passenger screening there are two relevant consequences of ALARA:

1. Comparisons with other risks are not necessarily relevant. The fact that flying involves other radiation exposures, or other different risks, is not relevant to the ALARA requirement to minimize the ionization radiation exposure associated with practical passenger screening. In another context, for example, one would not ignore the radiation exposures associated with CT scans simply because domestic radon exposure involves larger effective doses.
2. If there is a non ionizing-radiation alternative that can reasonably achieve the same screening goal, then, consistent with the ALARA principle, it should be used in preference to an x-ray related technology. As far as is known, millimeter wave whole-body scanner technology fulfills this requirement. In terms of specificity, sensitivity, cost, and speed, the millimeter

wave technology is generally comparable to that of the x-ray backscatter technology. Of course one cannot rule out the possibility of adverse health effects associated with low-power millimeter wave radiation but, in contrast to the situation for x rays, there are no established mechanisms associated with millimeter-wave induced carcinogenesis, and extensive studies have not revealed evidence of potential deleterious effects.

Conclusions: Are X-Ray Backscatter Scanners Safe for Passenger Screening?

In conclusion, individual cancer risks associated with the radiation exposure from a few whole-body x-ray backscatter scans are undoubtedly very small. There are indeed uncertainties regarding the doses (the most recent estimates of the doses required to produce images of the relevant resolution and quality, though still extremely low, are an order of magnitude higher than earlier estimates, and there are even more uncertainties regarding the cancer risks, if any, associated with these very low radiation doses. Using the most credible dose and risk estimates that we have, one can say that the individual radiation-induced cancer risks associated with a few whole-body x-ray backscatter scans are likely to be of the same order as the NCRP Negligible Individual Risk Level (NIRL) of 1 in 10 million, and can therefore be reasonably described as safe. Best estimate lifetime cancer risks will be somewhat higher for children, radiosensitive individuals and, particularly, for aircrew and for very frequent fliers. Again it is important to emphasize the associated uncertainties in these individual risk estimates, which could result in the actual risks being either less than or greater than the best estimates discussed here.

As well as individual risk, however, from a public-health perspective it is important also to take into account the population risk, described by the NCRP as “one of the means for assessing the acceptability of a facility or practice” and by the ICRP as “one input to a broad judgment of what is reasonable”. In that x-ray backscatter scans have become a primary screening measure, very large numbers of people will likely be exposed to very small radiation-associated cancer risks from the associated radiation exposure. Given the very large numbers of scans involved, potentially up to one billion each year in the US, there is a significant likelihood that, amongst the scanned population, there will be some cancers induced by the associated radiation exposure. A best estimate is around 100 cancers per year, though this number is quite uncertain.

If there were no feasible alternatives to x-ray backscatter scanners, it could certainly be argued that such population risks would be more than balanced by the associated benefits of reducing the risk of a terrorist event. However, millimeter wave scanners are a feasible and practical whole-body scanning technology which does not involve ionizing radiation, and for which there is currently essentially no mechanistic or experimental evidence of biological risks. Whatever the actual radiation risks associated with x-ray backscatter machines, the ALARA principle clearly implies that a comparable technology which does not involve x rays is a preferable alternative.

Thank you for your attention.

Mr. CHAFFETZ. We applaud anybody who leaves a good solid 8 seconds on the clock. We appreciate that. Thank you. Thank you for your testimony.

Mr. Cate, you are now recognized for 5 minutes.

STATEMENT OF FRED H. CATE

Mr. CATE. Thank you very much, Mr. Chairman. Can I have his 8 seconds as well?

Mr. CHAFFETZ. They have come and gone. [Laughter.]

Mr. CATE. I would also like to thank you and Mr. Tierney and your colleagues on this committee. This is an extraordinarily important subject because the TSA is an agency that touches probably more Americans than any other agency which has the power that it has; and now, of course, it is touching them far more intimately and in an environment in which they either choose not to fly or to be subject to that scrutiny. And because so much of the work they do is governed by policies and procedures which are not made public, the review date on this equipment largely not made public, the oversight of this committee is exceptionally critical, perhaps more so than in any other area.

I have been asked to address AIT effectiveness, and this is a somewhat complicated issue because we can talk about the effectiveness of machines or we can, I think, more profitably talk about the effectiveness of the machines as they add to a system of security that the TSA is carrying out at airports; and it is in that latter context that I think we can say quite safely that AITs have introduced a distraction into the security system that may actually be weakening, rather than enhancing, our security at airports.

It is useful to remember what AITs do. They do not detect explosives. They do not detect firearms. They do not distinguish dangerous from ordinary materials. All they can do is identify what they consider to be anomalies on the body of a traveler. Now, that is a pretty limited function. It means if the traveler secretes something internally, or even in his or her mouth and closes the mouth, they can get through security without the AIT detecting it.

It also means that if we define anomaly as the TSA currently does, to mean anything that looks different than what they would expect, we are generating millions of false positives a year. This is, of course, why we have to take tissues out of our pocket and dollar bills and candy. All of these are considered anomalies by the AIT.

So despite the fact that these have been advertised in the American public on the basis they can see through clothing to really see if you present a risk, the opposite is in fact true. They cannot determine what a risk is. Therefore, we have turned the TSA largely into cloakroom attendants who are trying to get all of our anomalous goods off of us so that we can go through the machine, thereby leaving less for the TSA to have to screen.

This high rate of false positives is one reason for concern. Another is that we in fact have a very difficult time clearing the anomalies that do go through the system, because, in fact, even with a pat-down search, we often don't know what those anomalies are.

I mention in my written testimony, I was reminded of this last week, flying through Washington National Airport, I had dropped

an aspirin in my pocket, forgotten it was there; the machine identified this as an anomaly. You would think this billion dollar technology could tell the difference between a tiny little aspirin and something that might pose a threat, but it cannot, so, therefore, this required a pat-down. The agent pulled it out and said what is this? I said an aspirin. He said, thank you, go right on through.

Of course, he had no idea what it was. Once I had been subjected to the search, whether it was a dangerous chemical, whether it was an explosive, no earthly idea; he simply let me put it in my pocket and I walked through. The search had gained us nothing.

That is actually true, in following on our first witness this morning, with most medical devices. And I experience this as a diabetic who wears an insulin pump. So I walk through. If I have the insulin pump on, I am then either subject to a complete pat-down, as if for some reason having an insulin pump makes it more likely that I will be a terrorist, or, if I take the insulin pump off, I am still left with a plastic cannula in my stomach that carries the insulin.

This, of course, is an anomaly. I then become subject to another pat-down. The agent feels it and says what is that? I say, it is a cannula. OK, 8 out of 10 have no idea what that is anyway; they say thank you very much, they are invariably polite, and I walk on through. Like one out of five say, oh, you are on an insulin pump, they are invariably polite, and I walk on through.

Now, when I asked the TSA what it is about cannulas that they are so worried, they say, well, we are worried you might have bombs inside of you and this would be the mechanism for setting it off. I have no idea how great that threat is. I do know that agent has no idea at the site of the AIT and the search whether that is true or not. All they know is that they detected a plastic piece of tubing coming out of my stomach and I gave them an excuse for it.

Now, let me conclude by saying I too am enormously respectful of the difficult and important job the TSA has, and would also comment on the extent to which so many TSA agents that I encounter are invariably courteous and I think extremely well intentioned. I think they are as frustrated as we are by the irrational policies they are being asked to carry out.

Thank you.

[The prepared statement of Mr. Cate follows:]

United States House of Representatives
Committee on Oversight and Government Reform
Subcommittee on National Security, Homeland Defense, and Foreign Operations

Hearing on

TSA OVERSIGHT PART I: WHOLE BODY IMAGING

Washington, DC
March 16, 2011

Statement of Fred H. Cate
Distinguished Professor, C. Ben Dutton Professor of Law, and
Director, Center for Applied Cybersecurity Research, Indiana University;
Senior Policy Advisor, Centre for Information Policy Leadership at Hunton & Williams LLP

Chairman Chaffetz, Representative Tierney, and Members of the Subcommittee,

My name is Fred Cate, and I am a Distinguished Professor and C. Ben Dutton Professor of Law at the Indiana University Maurer School of Law, and the director of Indiana University's Center for Applied Cybersecurity Research, a National Center of Academic Excellence in Information Assurance Education and in Information Assurance Research.

For the past 21 years I have had the privilege of researching and teaching about a variety of privacy, security, and other information law and policy issues. I served as a member of the National Academy of Sciences Committee on Technical and Privacy Dimensions of Information for Terrorism Prevention and Other National Goals, reporter for the American Law Institute's project on Principles of the Law on Government Access to and Use of Personal Digital Information, and counsel to the Department of Defense Technology and Privacy Advisory Committee.

In addition to my academic appointment, I am also a senior policy advisor to the Centre for Information Policy Leadership at Hunton & Williams LLP, a member of Microsoft's Trustworthy Computing Academic Advisory Board, a member of Intel's Privacy and Security External Advisory Board, a member of the Department of Defense DARPA Privacy Oversight Board, a member of the Department of Homeland Security Data Privacy and Integrity Committee's Classified Cyber Review Subcommittee, editor of the Privacy Department of the IEEE's (Institute of Electrical and Electronic Engineers) *Security & Privacy*, and one of the founding editors of the Oxford University Press journal, *International Data Privacy Law*, among other activities.

I am testifying today on my own behalf; the views I express should not be attributed to any organization with which I am affiliated.

Chairman Chaffetz, I want to begin by thanking for your leadership in holding this important series of hearings on the TSA, and for inviting me to participate in today's hearing on the TSA's use of whole body imaging technologies. The TSA is charged with helping to secure one of our nation's most essential infrastructures—air transportation—and the agency's activities touch more Americans, as well as most visitors to this country, in ways far more direct and intrusive than any other federal agency. The

TSA is unusual in its ability to search the persons and possession of individuals who have done nothing to warrant suspicion. Moreover, although it carries out much of its responsibility in public view, most TSA policies and processes are secret. In the face of the courts' traditional deference where security claims are involved and the administration's failure to nominate a full slate of members of the Privacy and Civil Liberties Oversight Board, oversight by Congress is not merely important, it is in fact the only independent guaranty that taxpayers and the traveling public have that the TSA is conducting its activities effectively, legally, and appropriately.

I have been asked to address the effectiveness of whole body imaging through the use of advanced imaging technologies (AIT).

AIT Effectiveness

AITs use high-energy X-rays (or, in some cases, other types of energy) designed to penetrate a traveler's clothing, but not his or her body (or not too far into his or her body—unlike medical X-rays). The goal is to reveal what the traveler has on his or her person.

When installed, calibrated, used, and maintained properly, AITs may be effective at achieving this goal. We don't know, because the TSA will not make public its evaluative studies and the equipment manufacturers do not make machines available for independent testing. Moreover, proper installation, calibration, use, and maintenance are important qualifications that should not be taken lightly.

Even if AITs live up to their technological potential, it is important to be clear about how limited that potential is. For example, AITs do not detect explosives. They do not detect firearms. They do not distinguish dangerous from ordinary materials. All they are technologically capable of doing is calling attention to "anomalies" on the person of the traveler.

As a result, the real answer to the question of effectiveness turns on what the TSA does with the information provided by AITs—how AITs are integrated into a broader system of air transport security. We know more about this, and most of what we know suggests that AITs are generally not effective at contributing to greater security of airplanes and airports. In fact, it appears that the way in which the TSA has deployed these machines actually may be undermining the security of the U.S. air transportation infrastructure.

Too many false positives

There are many reasons why this is true, most of which relate to the fact that because the machines consider an "anomaly" as anything on a person, they generate numerous false positives. A piece of tissue, a dollar bill, a folded pocket, a boarding pass, a piece of candy—all are "anomalies" in the world of AITs, as deployed by the TSA, and so have to "cleared." Ironically, the old-fashioned metal detectors that the TSA is retiring are not fooled by such "anomalies."

The numerous false positives in turn divert TSA agent attention away from potential real threats towards "anomalies" that clearly pose no threat whatever. The goal in security is always to focus scarce resources on the greatest risks, but the TSA's deployment of AITs has precisely the opposite effect: it tends to focus TSA agent attention on innocuous "anomalies."

Moreover, in an effort to avoid so many “anomalies,” the TSA now has passengers removing more and more clothing and other possessions before going through the scanners. Even though AITs were sold to the American public with the promise that they can see through clothing, passengers must remove outer garments because different thicknesses of clothing generate even more “anomalies.” Belts are another offender that must now go, even if they do not have a large metal buckle. TSA agents are having to spend more time undressing passengers so that the new 21st-century detection technology won’t generate quite as many erroneous alerts. This requires more agents and more money, in addition to the cost of the machines, and it diverts agents and resources from more appropriate and effective security tasks.

An inability to clear “anomalies”

But even if there were only a few “anomalies” detected by AITs, it turns out that the TSA has little ability to actually “clear” many of them. I was reminded of this just last week at Reagan Washington National Airport when the AIT discovered a loose aspirin in my shirt pocket. This anomaly called for a pat down. The agent felt the pill and said “what is this?” I said “aspirin” and he politely waived me through. It could just as easily have been potassium cyanide: neither the AIT nor the TSA agent has any process or equipment for determining the difference.

We have spent more than \$2 billion installing a technology to identify “anomalies” that we cannot practically evaluate for the risk they pose. It was this inability to clear many of the false positives identified by AITs that led to the TSA’s disastrous policy begun last October of intimate, intrusive searches. The problem is that despite their intimacy, the searches did nothing to help the agent determine whether the “anomaly” was a real risk or just another false positive.

This is especially clear in the case of people with medical devices or prosthetics. As a diabetic on an insulin pump—a device the size of a pager strapped to my waist that provides life-sustaining insulin—under the TSA’s October policy, an agent would search me head to toe, including a careful pat-down of my genitals—as if somehow my genitals have become suspicious because I use an insulin pump. At the end of the search, however, the agent has no better idea than he did at the beginning whether the pump is loaded with insulin or high-tech explosives.

After two months of this policy, the TSA shifted ground and determined that insulin pumps would not require a full body search, but instead would be swabbed and the swab tested for explosive residue. A colleague of mine who works for the federal government and is also a diabetic described the indignity of recently having a TSA agent at Dulles International Airport reach inside her underwear with the swab. To what end? Are insulin pump users more likely than other travelers to secret explosives on their bodies? And what happened to the much-vaunted AIT machines that were supposed to detect the presence of such explosives? Why are we now swabbing inside travelers’ underwear as well as using AITs to peer inside, especially when there is no sign of any “anomaly” from either technique?

I have found it easier and far less intrusive to simply remove my insulin pump before being required to undergo AIT screening. (I don’t remove it before passing through a metal detector because it doesn’t trigger any alarm.) I am fortunate to have this option; most travelers with medical devices or prosthetics aren’t so lucky. But I am still left with the tiny plastic cannula in my abdomen to which the pump connects. The AIT sometimes—interestingly, not consistently—identifies this as an “anomaly.” When it does, a TSA agent pats me down, feels the sensor, and says “what is this?” I say “an insulin cannula” and the agent invariably politely waives me through. The agent has no idea, no verification,

and no certainty what is actually taped to my stomach. I am “cleared” not because the agent has determined that the plastic tube poses no danger, but because there is no way a TSA agent can make any further determination.

Many travelers suffer far greater indignities due to physical searches, triggered by AIT “anomaly” detection, that reveal nothing about whether the “anomaly” poses a threat. For example, after agents finish inspecting the breasts of a woman with an implant, they have no better idea whether the implant is filled with liquid explosives or silicone. The same is true with prosthetic limbs, urostomy bags, and most other medical appliances.

This type of response to having the AIT identify something as an “anomaly” is the very definition of “security theater”—it looks like the agency is doing something, but it accomplishes nothing. The same is true with many, perhaps most, of the searches that are triggered by AIT “anomalies.” A rational person might question whether it is worth the money we are spending to identify “anomalies” if the vast majority of them (indeed, perhaps all of them) are false positives, and we lack the practical ability to follow up on many of them in any event. This is the height of ineffectiveness.

The technological limits of AITs

One of the fundamental questions that security experts ask about detection technologies is how easily they can be evaded. The answer with AITs appears to be “pretty easily.” Because their radiation is supposed to stop at the skin, AITs are useless for locating explosives hidden in body cavities. Researchers in Europe have shown that this includes the mouth, and were able to pass solids and liquids through security undetected merely by holding them in their closed mouths. As security authority Bruce Schneier, originator of the phrase “security theater,” has written in the *Atlantic*: “A terrorist can go through the scanners a dozen times with bits in his mouth each time, and assemble a bigger bomb on the other side. Or he can roll it thin enough to be part of a garment, and sneak it through that way. These tricks aren’t new.”¹

Similarly, liquid explosives are not addressed by AITs. The TSA currently has no way of determining what is in the liquids passengers put through X-ray machines or buy once they have passed through security, and are left to hoping that terrorists will not think to combine the contents of their one-quart bags once they are onboard an aircraft or of infiltrating the large drink bottles that are sold beyond security in airports.

So while AITs have been deployed in the United States to deal with the 2009 attempted underwear bomber—and there is wide-ranging disagreement about whether the technologies or the subsequent searches would in fact have detected the thin plastic explosive sheets that case involved—the TSA is counting on terrorists not developing any new strategies. We are literally spending billions fighting yesterday’s threats on the assumption that terrorists are neither smart nor innovative.

¹ Bruce Schneier, “Why the TSA Can’t Back Down,” *Atlantic*, Dec. 2, 2010, available at <http://www.theatlantic.com/national/archive/2010/12/why-the-tsa-cant-back-down/67337/>

And we don't seem to be succeeding at even that backwards-looking task. According to information leaked by the TSA in February 2011, an undercover TSA agent was able to carry a firearm secreted in her underwear through AIT screening at the Dallas-Fort Worth Airport every time she tried.²

Poor policies undermine good security

The TSA leadership has insisted that its AITs generate real body images that look akin to X-rays and include the identifiable features of the passenger. Despite privacy concerns, the agency argued that only by having the complete picture could the agent make a determination as to whether "anomalies" were presented. This turns out not merely to be wrong, but to be counterproductive. The display of whole body and facial images has required blurring certain parts of the AIT image, thus limiting their effectiveness in revealing potentially suspicious "anomalies." Anecdotal reports suggest that actual facial and body characteristics may also distract TSA agents. European aviation security officials have managed to avoid these problems by deploying AITs that generate gingerbread person-like outlines without recognizable features, and then highlight with arrows or pulsing red indicators "anomalies" of the body of the traveler. These depictions may turn out to be more effective in alerting agents to potentially suspicious areas, and the TSA, despite its prior insistence on real whole body images, is now testing the new approach.

The TSA's determination to deploy AITs, whether or not they are effective, is not a new phenomenon. The AIT approach is only the most recent example of a series of intrusions that the TSA claimed were "necessary" to protect security, only to quietly recant them when it was shown that they did not work. Recall passenger profiling, bans on nail clippers and eyelash curlers, and expensive air puffers to detect explosive residue—all of which have now been abandoned.

Looking Ahead

While I am deeply critical of the TSA leadership and their use of AITs, I have great regard for many of the TSA agents I encounter. They are as disheartened as the public is about the poor policies being pursued by the TSA leadership. As one TSA agent in Indianapolis put it to me last November: "you wouldn't believe what we have to put up with from Washington. If those bureaucrats would spend even 15 minutes in the field, they would quickly realize how silly many of their policies are."

I also don't want my criticism of the TSA's poor choices to in any way obscure how important and difficult the agency's mission is. And to that end, I would like to offer two specific recommendations for the committee's consideration as you exercise your vital oversight responsibilities.

A clear mission

First, the TSA and ultimately the administration and Congress need to be clearer about what precisely that mission is. If it is to prevent the weaponization of passenger aircraft that occurred so tragically on September 11, 2001, many security experts believe that goal has been reached. Cockpit doors have been secured and passengers have been alerted to the danger and to their role in acting to

² Grant Stinchfield, "TSA Source: Armed Agent Slips Past DFW Body Scanner," NBC-DFW, Feb. 21, 2011, available at <http://www.nbcdfw.com/news/local/TSA-Agent-Slips-Through-DFW-Body-Scanner-With-a-Gun-116497568.html>.

protect their own security. That mission has been accomplished, and the TSA should not be selling AITs or any other technology on the basis that it is necessary to prevent the horrors of 9/11 from recurring.

If the TSA is now targeting the hijacking or destruction of an airplane, we should remember that the United States and many other nations have waged that battle for more than 30 years with great success without any help from AITs and without the intrusive physical searches that TSA implementation of AITs has led to. Moreover, it must be remembered that when so-called “shoe-bombers” and “underwear” bombers attempted to bring down planes, they failed. After-the-fact deployment of expensive technologies and burdensome procedures designed to thwart them is striking given that the attacks were unsuccessful in the first place, and would likely not have been prevented by these initiatives in any event since neither scanning shoes with X-ray machines nor people with AITs have been shown to detect either threat.

Perhaps more importantly, planes are already so full of potential weapons that it is irrational for the TSA to think they will ever make planes weapon-free, no matter how intimately the agency searches passengers. A sharpened pencil, the steel axle that runs through roll-aboard luggage wheels and laptop hinges, matches in the vicinity of aerosol sprays or oxygen tanks, a bomb in checked baggage—all pose a real threat. And real dangers, such as shoulder-fired missiles, exist outside of the plane as well. There is little the TSA is doing or could do against these dangers, but even the ones it can—like screening all checked baggage and freight on passenger planes, and conducting serious background checks of airport employees—seem to interest the agency less than more visible passenger searchers.

The TSA needs a clear, rational mission, and direct, serious oversight to ensure that it is focused on achieving that mission in a sensible, effective way. Massive expenditures targeting ineffective tools at yesterday’s terrorist threats do little to advance security, they ignore far more real dangers that air travel involves and that could benefit from the scarce resources currently being focused on screening passengers, and they undermine public confidence and public trust.

Clear processes for determining effectiveness

One good way to achieve this goal, and my second recommendation to this committee, would be for Congress to require the TSA to follow basic requirements for evaluating the effectiveness of not only AITs but all of its initiatives. The National Academy of Sciences addressed the issue of security programs that relied on personal data or searches in a report published in 2008 and its first recommendation was that “U.S. government agencies should be required to follow a systematic process . . . to evaluate the effectiveness, lawfulness, and consistency with U.S. values of every information-based program, whether classified or unclassified, for detecting and countering terrorists before it can be deployed, and periodically thereafter.”³

As a member of that committee, I could not agree more strongly with that recommendation. In fact, the NAS committee went so far as to propose a framework for evaluating effectiveness and privacy impact of new systems and technologies. Ironically, given that the Department of Homeland Security was the primary funder of the study, the recommendations and the proposed framework have been ignored by DHS and by Congress. I urge you to revisit that proposed framework—crafted by a bipartisan

³ Committee on Technical and Privacy Dimensions of Information for Terrorism Prevention and Other National Goals, National Academy of Sciences, *Protecting Individual Privacy in the Struggle Against Terrorists: A Framework for Assessment* (2008).

panel of experts in terrorism, security, data analysis, intelligence, privacy, law, and law enforcement from public and private sectors—and consider whether it might serve as a basis for improving the quality of both the TSA’s operations and this committee’s oversight.

Here is the outline of the effectiveness portion of the framework from the NAS report, which would apply to all “informed-based programs,” including AITs:

1. Is there a clearly stated purpose for the information-based program?
 - Is that objective meaningful?
 - Is it appropriate?
 - Is there demand or need for it?
 - Is it already being accomplished or could it be accomplished through less intrusive or costly means?
2. Is there a sound rational basis for the information-based program and each of its components?
 - Is there a scientific foundation for the system?
3. Is there a sound experimental basis for the information-based program and each of its components?
 - Does the system work to achieve its stated purpose?
 - Has a new system been shown to work simulations or laboratory settings or has it been field-tested?
 - Did the test conditions take into account real-world conditions?
 - Has it been applied to historical data to determine if it accurately accomplished its objective?
 - Have experimental successes been replicated to demonstrate that they were not coincidence?
 - Has the system been subjected to critical analysis, challenge, and likely countermeasures (for example, through “red-teaming”)?
4. Is the information-based program scalable?
 - Has it been tested on a data set of adequate size to predict its scalability?
 - Has it been tested against likely countermeasures or changes in technologies, threats, and society?
5. Is there a clearly stated set of operational or business processes that comprehensively specify how the information-based program should operate within the organization?
6. Is the information-based program capable of being integrated in practice with related systems and tools?
 - Does the system interact effectively with the sources of information on which it relies?
 - If it requires combining data, can it do so in practice to yield meaningful results and at the speed necessary?
 - Can the end product of the system be acted upon meaningfully by people or other systems?
7. Is the information-based program robust?
 - Can it easily be compromised by user errors?

- Can it easily be circumvented by countermeasures?
8. Are there appropriate guarantees that the data on which the information-based program depends are appropriate and reliable?
 - Are there adequate guarantees of the information's validity, provenance, availability, and integrity?
 - Are the data easily compromised or manipulated so that the system can be defeated?
 9. Does the information-based program provide for appropriate data stewardship?
 - Are the data protected from unlawful or unauthorized disclosure, manipulation, or destruction?
 - Are there technologies and/or procedures built into the system to ensure that privacy, security, and other data stewardship policies are followed?
 10. Are there adequate guarantees of objectivity in the testing and assessment of the information-based program?
 - Has there been peer review or its equivalent?
 - Has the program been evaluated by entities with no stake in its success?
 - Have test results been evaluated by independent experts?
 - Was testing blind—to both researchers and research subjects—whenever possible?
 11. Is there ongoing assessment of the information-based program?
 - Are there mechanisms for detecting and reporting errors?
 - Are there monitoring tools and regular audits to assess system and operator performance?
 12. Have the effectiveness of the information-based program and its compliance with these key requirements been documented?
 - Has the documentation been examined by an entity capable of evaluating the scientific evidence of effectiveness outside of the agency promoting the new system.

The TSA appears to have avoided most of these straightforward steps. Moreover, the agency's claims that it has done testing in related areas—such as the health impact of AITs—have been undermined by denials or contradictory reports from the third parties that the TSA claimed to have engaged.⁴ In short, the simple evaluative steps recommended by the NAS, which are widely followed today in both public- and private-sectors, could have avoided many of the missteps identified above, and might have highlighted for the agency, and for Congress, the shortcomings of the massive investment we have all been asked to make in AITs.

Conclusion

The experience with AITs to date is not comforting, not because the technologies are incapable of detecting “anomalies,” but because they detect so many “anomalies”—almost everything about the traveling public is anomalous—and the TSA leadership has not yet figured out how to respond rationally to the deluge of false positives. It appears to have deployed AITs either before they were ready for use

⁴ Andrew Schneider, “AOL Investigation: No Proof TSA Scanners Are Safe,” *AOL News*, Dec. 20, 2010, available at <http://www.aolnews.com/2010/12/20/aol-investigation-no-proof-tsa-scanners-are-safe/>.

in the field or before the agency knew how to use them effectively. As a result, AITs are not merely failing in practice to protect the air transport infrastructure against threats, but are actually interfering with TSA agents' ability to do so by sending them on so many wild goose chases and diverting their attention from more likely threats. In short, too many agents are working to satisfy the demands of AITs, rather than AITs being used to facilitate the important work of TSA agents.

The problem is bigger than just the TSA's deployment of AITs. Because the agency appears to lack a clear, coherent, rational mission, or a laser-like focus on achieving that mission, AITs are only the most recent example of big-ticket distractions that the agency has introduced to the travelling and tax-paying public. A more focused mission and greater congressional oversight of the TSA are critical to ensure that air transportation is appropriately secured against likely attacks and public resources spent wisely.

To be sure, the TSA has a vital and difficult task, but it has extraordinary resources and powers to carry out that task. The framework published in 2008 by the NAS is one tool that both the TSA and Congress should consider for helping to ensure that the agency uses its significant resources wisely and effectively, especially where the health and privacy, as well as security, of the public are involved.

Thank you again for the opportunity to participate today.

Mr. CHAFFETZ. And even more impressive; only 1 second on the clock. The Chair cannot thank you enough for wrapping up your testimony.

I challenge Mr. Baker to beat that goal here as we recognize him now for 5 minutes.

STATEMENT OF STEWART A. BAKER

Mr. BAKER. I appreciate being here.

I would like to just make three or four points. First, we obviously can't start this analysis by what we would like TSA to do; we have to start with what Al Qaeda wants to do, and Al Qaeda clearly wants to blow up planes over the United States if it possibly can. It is very conscious of what our security protocols are and it shapes its weapons to meet them. If we stop looking for shoe bombs, they are going to use shoe bombs. If we stop looking for underwear bombs, they are going to use underwear bombs.

Given that, my second point is, with that constraint, knowing it has to look for those weapons, and with one big caveat, TSA's measures are relatively effective and appropriately shaped to the nature of the threat. They have only changed their protocols, by and large, in response to demonstrated threats that were actual plots that could have brought down planes, and, by and large, each of the changes they have made is aimed at finding those particular weapons.

I won't go into the privacy protections that have been built into the AIT systems; you will be hearing from the TSA about those. But they are, by and large, effective. I have been through pat-downs. I would take issue with people who describe it as akin to a sexual assault; I thought it was very professional. And while I would much prefer to go through a scanner, the pat-downs are not a shocking experience, at least they were not for me.

But let me return to the caveat, because I think there is a way in which TSA is not doing what it should and could. It is still looking for weapons. All of the measures that it has adopted since 9/11 are focused on looking for weapons. And as Representative Cissna said, the result is we are all treated as though we are potential terrorists. We are all suspects, we are all treated the same way and screened in the same fashion.

We do not look for terrorists, and the reason TSA does not look for terrorists is it doesn't know enough about the people that it is dealing with to actually identify even a risky traveler. It doesn't know as much as a State trooper who stops someone on the highway knows about the person they have just stopped. It certainly doesn't know as much as other DHS elements like the Customs and Border Protection Agency know about people coming across the border, where in fact they know more and are able to move the travelers much faster. It doesn't even know as much as United Airlines. If you said who is going to do a better job of using data to find terrorists, United Airlines would have more data to use than TSA. This does not make sense.

And that brings me to my last point, which is we probably have taken the search for weapons as far as we can. I know there are people who think we have taken it too far. There certainly are possibilities for weapons. I don't think we have yet developed threat

case aspirin bombs, but there are certainly possible weapons and places to hide them that our search for weapons is not going to find them.

Therefore, we are going to have to spend more time looking for possible terrorists, risky travelers, and I would submit that most people who travel today would say if I could give information, if the fact that I was just discharged from the hospital after an operation was information that was available to TSA so they could verify my story and speed me through the line, that would be a much better step than having everyone screened in the fashion they are currently screened.

So my suggestion for this committee, for the Homeland Security Committee is that we allow TSA to set up some voluntary programs. Are already giving people a choice between a pat-down and a scan. Why not let people say, you can have my travel information, you can have some basic background information on me. If that will make the screening more effective and faster, I would rather do that than go through the scan every time or the pat-down every time.

So my suggestion for ways to improve the system that we have, and potentially reduce some of the intrusiveness of some of the screening, is to begin a process in which people can voluntarily agree that they will give up information in exchange for faster screening.

Thank you.

[The prepared statement of Mr. Baker follows:]

TSA Oversight Part I: Whole Body Imaging

Statement of Stewart A. Baker
Partner, Steptoe & Johnson LLP
Former Assistant Secretary for Policy, Department of Homeland Security

Before the Committee on Oversight and Government Reform
Subcommittee on National Security, Homeland Defense, and Foreign Operations
U.S. House of Representatives

March 16, 2011

Chairman Chaffetz and Ranking Member Tierney, I appreciate the opportunity to provide this statement today. The Transportation Security Administration's use of Advanced Technology Imaging, and TSA's broader efforts to secure passenger flights against terrorists, are important topics about which I have been outspoken. Much of what I will say today is consistent with things I have said before – as the head of the Department of Homeland Security's policy shop in the previous administration, in a book that I wrote soon after the Bush administration ended, and most recently in articles, blog posts, and interviews. I should note at the outset that while I maintain an active homeland security law practice, I am not representing companies selling Advanced Imaging Technology to TSA.

The Threat Is Real

Let me start with a point that should be obvious but sometimes gets lost: the threat is real. Terrorists – specifically al Qaeda and its affiliates – are trying to blow up planes flying in and to the United States. They tried to do it with Richard Reid, the shoe bomber, back in December 2001. We were fortunate that the explosive in his shoe did not detonate. They tried to do it with the liquid explosives plot to bring down 10 airliners in the summer of 2006. We were fortunate that British and U.S. law enforcement officials detected and prevented that attempt. They tried to do it with Umar Faroukh Abdulmutallab, the underwear bomber, who went up in flames on Northwest Flight 253 on Christmas Day of 2009. Again, we were fortunate that his bomb did not detonate.

And these are just the plots that are publicly well-known. Many other efforts have been foiled at an early stage and have not become publicly known. The point is that al Qaeda and its affiliates are trying, and they will keep trying. Remember that al Qaeda tried to bring down the Twin Towers with a truck bomb in 1993 before they succeeded with airplanes on September 11. And all the criticism of TSA now – for being intrusive in trying to make sure that bombs don't get on airplanes – will be nothing like the criticism if the terrorists succeed in bringing down a plane.

The Response Is Proportionate

So what should be done in the face of this persistent threat? As each particular threat technique has emerged, we as a nation could have said “let’s just keep doing what we’re doing.” But that would have been an invitation to disaster – we cannot stick our collective head in the sand. With clear evidence that terrorists will try to hide explosives in their shoes, it just makes sense to screen passengers’ shoes. Removing shoes is annoying, but not overly burdensome in view of the threat. And we’ve been living reasonably well with this response for almost 10 years.

With each new threat technique, it is appropriate to consider a range of possible responses and to ensure that the chosen response is sensible in view of the magnitude of the threat, the technology available to counter it, and the burden and cost to the traveling public.

The response to the liquid explosives plot is another example of a reasonably calibrated response. When British and U.S. intelligence and law enforcement agencies determined that there was a plot to bomb airplanes using liquid explosives, the first order of business was to stop that plot. And they did that. But as good as these intelligence and law enforcement organizations are – and they are quite good – we cannot be certain that we will detect all plots in advance. So the next order of business was to determine what measures would be needed to thwart similar liquids plots in the future.

There were some who wanted to ban virtually all liquids on planes. That would have been one way of dealing with the threat. But it would have been quite onerous for the traveling public. And rigorous analysis of the threat led to the conclusion that reasonable security against liquid explosives could be ensured by prohibiting passengers from carrying on board liquid containers of more than three ounces.

Living with this rule is a pain, to be sure. It would be better if there were a reliable technology that could quickly detect liquid explosives and allow passengers to carry safe liquids on board. I know that TSA does not like collecting tubes of toothpaste. But no liquid explosives detection technology is yet ready for deployment. So air passengers likely will have to deal with the liquids rules for some time to come. That’s unfortunate, but it would be far more costly to stick our collective head in the sand and hope that no one blows up a plane.

That leads me to TSA’s use of Advanced Imaging Technology. We have known for some time that magnetometers – metal detectors – are important security devices but are not sufficient to detect some types of explosives that can be hidden in a passenger’s clothing. Research and testing to develop better, safer, more effective passenger screening tools has been underway in earnest since 9/11, and TSA began deploying Advanced Imaging Technology in 2007. But it took the near-disaster of the Christmas Day underwear bomber to accelerate deployment. The explosives he used cannot be detected by a standard metal detector. Here again, the change in passenger screening –

through broad deployment and flexible use of advanced imaging technology – was calibrated to the threat.

Of course, TSA could have chosen other responses, but those other responses do not seem appealing. TSA could have, for example, done nothing at all to change passenger screening. The underwear bombing incident did not end in disaster, thanks to faulty ignition by the would-be bomber and fast action on the part of heroic passengers. TSA could have chosen to wager on al Qaeda's continued incompetence. But it would be wagering with passengers' lives, and that is not a bet the public wants TSA to make.

At the other end of the range of possible responses, TSA could have insisted that every person be subject to scanning with the new technology before boarding a plane, or TSA could have insisted that every passenger be subject to a very intrusive physical search. But these types of mandates would have caused an even greater uproar from the traveling public.

Instead, TSA chose a reasonable course – broad deployment of the new technology with randomized and flexible use. Not every passenger is selected for scanning – generally TSA uses randomization procedures to create a sufficient likelihood of detection such that the deterrent effect is high. And for those passengers that are selected, there is flexibility: the passenger can choose a thorough pat-down instead of the scan.

I have been through both the scanners and the TSA enhanced pat-down process. The patdown was highly professional and, to my mind, not especially intrusive. I prefer to be scanned, though, and I'd recommend that process to anyone concerned about the patdown. TSA deserves credit for offering passengers that choice.

TSA also deserves credit for the scope of privacy protections it has implemented. The TSA officers who see the passengers do not see the scans of the passengers; rather, the results of each scan are relayed to the screener by a TSA officer who is located remotely. And the scanning technology blurs or removes facial features of the passengers, so that even the remotely located officers cannot identify the passengers by face. Further, TSA policies prevent storing or transmitting the images of passengers. Finally, future generations of the scanning technology will simply identify anomalies without the outlines of the passenger's body – those outlines likely will be replaced with cartoon figures or stick figures.

The "Privacy" Concern Is Counterproductive

In short, critics are making a privacy mountain out of a molehill – a molehill that is likely to shrink even smaller once the next generation of Advanced Imaging Technology comes online.

The more pointed criticism comes from those who say that better scanning technology is not a complete solution. It is possible to find weapons and hiding places that even the

scans and the patdowns won't discover. We should not spend all our time looking for weapons. We need to spend more time looking for terrorists.

This is not a new idea. In 2003, for example, the Bush administration announced a second generation of the Computer Assisted Passenger Prescreening System, or CAPPs II. CAPPs II would have analyzed passengers' travel histories and travel plans to identify possible terror suspects and screen them with particular care. By focusing on suspected terrorists, CAPPs II could have mitigated the burdens imposed on ordinary travelers.

But the CAPPs II program was stopped dead in its tracks by privacy groups – those on the far left and far right – who claimed that TSA could not be trusted with data about who was checking in, where they had traveled, and where they planned to go. Today, as a result of this concerted campaign, TSA does not have access to sufficient passenger information to identify risky travelers. And so it has been forced to treat all of us as though we are all potential terrorists.

I want to stop for a moment to point out the irony. Some of the same groups and people who campaigned against letting TSA use travel data to distinguish among passengers are here today criticizing TSA for treating everyone with an equal degree of suspicion.

It is worth asking again why the use of ordinary data, such as travel histories and plans, is so controversial. As many have observed, treating all travelers as equal threats to aviation security is neither effective nor efficient. TSA's sister agency – the US Customs and Border Protection (CBP) – has been using passenger data for years to decide how much scrutiny to give passengers who are traveling to the United States from a foreign country. CBP has used that information to help thwart many recent terrorist attempts. What is so different about TSA that it can't be trusted with similar information – especially if using the information would reduce the need for other, more immediate intrusions?

I'm sure there are a few people who think it's worse for TSA to have their travel data than for TSA to pat them down or scan their bodies. I certainly don't, and I think the vast majority who feel the same way should have the option of providing that information if it will speed them through the airport. For that reason, as a further step in risk-based screening, TSA should consider implementation of a program that would enable travelers to voluntarily give TSA access to information about themselves in exchange for the possibility of quicker, less intrusive physical inspections.

I say the possibility of less intrusive inspections because we can never have a program that guarantees reduced levels of inspection. That would make the program too attractive for would-be terrorists. We will always need some random checks to discourage al Qaeda from trying to game the system. But travelers who have provided additional information are likely to be less risky, and so they could be subjected to streamlined screening most of the time. This is really not different from the use of scanners on a

random rather than universal basis. For trusted travelers who have provided access to their data, the chances of a detailed screen would be greatly reduced.

I don't want to try to design such a system in detail, but let me sketch one possibility for the committee. Imagine you are among the majority who don't see what the fuss over travel data is about. You authorize TSA to access data about you – travel data, say, and perhaps criminal or other records. When you show up for your flight, your boarding pass has already been coded to show that you're entitled to use the trusted traveler lane.

Good thing, too, because that line is much shorter. The TSA official checks your ID and boarding pass as usual, but he waves you into a fast lane, where the most aggravating and time-consuming security procedures have been eliminated – the liquids and laptop inspections, perhaps the shoe inspection too. No wonder the trusted traveler line is shorter; it is moving twice as fast. Every once in a while, though, scanning the boarding pass sets off a beep, and the officer waves you into a standard line for the usual drill. This is a random event, programmed into the system in advance based on all the data that TSA has. The line is still a lot faster, because only a few of the trusted travelers end up in the standard inspection, but that random event makes it difficult for terrorists to game the trusted traveler program.

The upshot would be faster inspections, less hassle, and more security. More privacy too, for those who think that giving up a little information is a fair trade for fewer scans and patdowns.

I support TSA's use of Advanced Imaging Technology and, more broadly, its well-calibrated responses to each new threat technique. But in the end, more intelligent TSA screening, using traveler data, gives us the best chance to thwart the next attack.

Mr. CHAFFETZ. Thank you. I continue to be impressed by the prompt nature of our panel. I will duly note that for future panels going forward. Nevertheless, we would love to move to the questioning phase. I am going to start by recognizing myself for 5 minutes.

Mr. Baker, I think you make an important point, that there are many of us that are concerned that what happens at the TSA is more TSA screening theater than it is about truly targeting and highlighting those that pose the greatest risk. I, for one, believe that the challenge before this country is how do we become more effective and less invasive; that we should not have to give up all of our personal privacy in order to secure an airplane. Nobody needs to look at my kid or my grandmother, whatever, naked in order to secure an airplane. And we as Americans should demand that we raise the bar on both and protect people's personal privacy, and we shouldn't accept anything less.

I would ask unanimous consent to enter into the record three articles that deal with the same topic. This first one, \$19 billion later, the Pentagon's best bomb detector is a dog. The Pentagon, having spent \$19 billion trying to ferret out improved explosive devices and the components thereof, have come to the conclusion that the very best way to actually find these bomb making materials, whether they be in a car or on somebody's person, is the good old fashioned dog. There is nothing like a good German Shepherd. They can be a whole lot less invasive, much less costly.

My fear is that what these dogs don't have lobbyists. And I really do worry that we have propelled ourselves into this false sense of security that these machines work, that they are safe, and that we are not storing any images. And I have challenges on all three of those fronts because through my research and the information I have seen, I don't know that is true. So again I would ask unanimous consent to enter these three into the record.

Mr. TIERNEY. No objection, but just a question, Mr. Chairman. Are those the actual studies or are those just articles about the study?

Mr. CHAFFETZ. Those are the articles referencing the study.

Mr. TIERNEY. Thank you.

Mr. CHAFFETZ. Without objection, they will be entered into the record.

Let's talk, particularly with this panel, and I want to start with you, Dr. Brenner, talk about the safety and efficacy. I worry about a couple of the more vulnerable people, the 65,000 people at the TSA that are around in close proximity to these machines on a daily basis. We also have people, pregnant women. We probably have pregnant TSOs that are there working at the airports. We have people with pacemakers, for instance. There is an article that was released that was in USA Today with a statement that came from TSA on a Friday saying that the machines that they had tested were emitting 10 times the allowable dose of radiation, or the normal dose of radiation.

Do you have any insight into the release of that data and that information?

Mr. BRENNER. Well, coming to your final comment about the factor of 10, my understanding is that it was an arithmetical error in analyzing the data and probably—

Mr. CHAFFETZ. Are you aware of who actually conducted the test on the machine?

Mr. BRENNER. No, I am not.

Mr. CHAFFETZ. My understanding is that the people that actually conducted the test on the machines was the manufacturer of the machines. Do you have any insight into whether or not, how that strikes you?

Mr. BRENNER. Well, it doesn't give you a great deal of confidence, of course.

Mr. CHAFFETZ. I guess, as a Member here, this concerns me. The people conducting the test on the machines are the manufacturers, and even they have come to the conclusion one-third of their machines are emitting 10 times. Now, they will say that is a mathematical error, it was a training error, we didn't calculate it properly, but we can't make mistakes with pregnant women. You can't make mistakes with people with pacemakers. What would be the effect of somebody who is repeatedly, in high doses, exposed to that type of radiation?

Mr. BRENNER. Well, let me come at your first comment. It is very true that the general scientific community does not have access to a measurement from these machines, so we are reliant on studies that are commissioned either by the TSA or by the manufacturers.

Mr. CHAFFETZ. Mr. Rotenberg, what has been your experience in trying to access that type of data and information along the way from the TSA?

Mr. ROTENBERG. Actually, Mr. Chairman, we recently submitted a FOIA request to the agency to make those materials available. We don't have expertise in that field, but it is our view that information should be available to Dr. Brenner and others so that those with the expertise are able to provide some independent judgment.

Mr. CHAFFETZ. Mr. Rotenberg, if I could, and Mr. Cate, very swiftly, the 9th Circuit Court of Appeals has allowed TSA pat-downs to be deemed as legal as long as it is "limited in its intrusive as is consistent with the satisfaction of the administrative needs that justify it." Would you care to comment on that very briefly? My time has expired.

Mr. ROTENBERG. Yes. Just very briefly, both the 9th Circuit and the 3rd Circuit, this was an opinion by then Judge Alito, have said that these techniques have to be minimally invasive and effective, and our case against the TSA is that in fact they meet neither test.

Mr. CHAFFETZ. Mr. Cate.

Mr. CATE. Thank you, Mr. Chairman. I would just echo that and add when the National Academy of Sciences panel met for 2 years to look at the question of programs such as this, it recommended an option of a framework that Congress would require agencies wanting to deploy equipment like this for to determine both intrusiveness into privacy and effectiveness. It would do this on the record to the extent consistent with national security goals and it would do it in a way so that Congress could provide effective oversight. Despite the fact that DHS actually paid for that study, it has not implemented the framework.

Mr. CHAFFETZ. Thank you. My time has expired.

I now recognize the gentleman from Massachusetts, Mr. Tierney.

Mr. TIERNEY. I just want to comment, Mr. Chairman, the panel did a much better job of keeping the time than you did. [Laughter.]

And not being a stickler for time, I don't say that for anything other than its humor.

Mr. CHAFFETZ. Duly noted. Guilty as charged. I agree.

Mr. TIERNEY. I think we need to take the time on this serious issue. But you all did much better, so thank you.

Let me just follow through, Mr. Cate. First of all, I thought your testimony was very interesting and very good, and I thank you for it, but I thought one of the interesting parts, are you an expert on the technical security aspect or on privacy aspect?

Mr. CATE. I am certainly an expert on the privacy aspects. I am also an expert on security systems, but not the technical side of this. That is why I didn't direct my testimony to that point.

Mr. TIERNEY. I thought a number of the comments you made, I was expecting the privacy angle, and then you hit it from the other angle, and I thought your comments were very interesting. But none more interesting, I think, than the last comment that you made about there having been a recommendation by the National Academy of Sciences for a proposed framework for evaluating the effectiveness and privacy impact of any new systems and technologies. And your testimony is that the TSA is not doing that on every plan that they put forward?

Mr. CATE. That is my testimony, sir. I would say, of course, if they are doing it in a classified environment, I would not know that.

Mr. TIERNEY. Right. I think we will have to ask them that.

Mr. Baker, do you know whether or not that is accurate?

Mr. BAKER. I don't know whether the particular framework recommended by the National Academy of Sciences was followed, but certainly these machines were put through substantial testing even at the end of the Bush administration. So they have been in testing for quite some time.

Mr. TIERNEY. But we are just not sure whether it was the NAS protocols or not.

Mr. BAKER. Yes. And I have to say, you know, everybody has an idea for how you could do this testing better, slower, have public comment, have a judicial review, but we had an underwear bomber in Christmas of 2009. These machines were deployed in Thanksgiving of 2010. That was remarkably slowly. If we had waited for Mr. Cate's process, we would still be standing around with our hands in our pockets.

Mr. TIERNEY. All right.

Dr. Brenner, can I just clear one thing up with you, because I think it is important on that. To my knowledge, nobody refutes the fact that there was a mathematical error made by the manufacturer when he tested that. Am I right in saying that?

Mr. BRENNER. Yes, I believe so.

Mr. TIERNEY. OK. I mean, I just think it is important that we understand what the situation is. If there was a mathematical error and whether or not that makes them really, really, really,

really bad on math is one question, but I think we should just get the facts.

Now, your testimony raises really potentially serious public health concerns, so I want to make sure I understand it correctly on this. The American College of Radiology released a statement and it said "it was not aware of any evidence that either of the standing technologies that the TSA is considering would present significant biological risks for passengers screened." Before that the Food and Drug Administration, the National Institute for Standards and Technology, and the Johns Hopkins University Applied Physics Laboratory all determined that the radiation doses for individuals being scanned by x-ray backscatter machines was minuscule and far, far below the accepted industry guidelines.

So, according to those studies, one x-ray backscatter scan is equivalent to roughly 2 minutes of traveling in an airplane at altitude, 1 hour spent outside, generally outdoors, or eating one banana. Do you disagree with any of those three studies that say the total radiation exposure provided by one x-ray backscatter scan is roughly equivalent to those basic every day activities?

Mr. BRENNER. Well, I don't think it is equivalent to eating a banana, but I do agree in general with the comment that the individual risk from a single traversal of the machine is extremely small. In fact, I gave you a risk estimate of one chance in 10 million, which is, by any stretch of the imagination, extremely small. So I don't have any disagreement with any of those comments, really, except the banana.

Mr. TIERNEY. Now you say that your best estimate is that one billion x-ray backscatter whole body imaging scans will potentially cause 100 cancers per year.

Mr. BRENNER. Yes. You multiply a billion by 1 in 10 million, and that is what you get.

Mr. TIERNEY. So does that mean that 100 people a year will be getting cancer from stepping outside or from taking 2 minutes in an airplane?

Mr. BRENNER. There is no doubt that a lot of cancers that we get in our everyday existence, 40 percent of us get cancer, are radiation-induced. We know this to be true. But those are unavoidable. The question is, well, this is potentially avoidable.

Mr. TIERNEY. OK. No, I get it. I am just trying to understand it better. So, yes, you might have 100 cases for being outdoors; yes, you might have 100 cases for spending 2 minutes in an airplane at altitude; and, yes, maybe there would be some impact for going through these scanners on that, but it is all about the same.

Mr. BRENNER. I would agree with that. I think the general issue is because you have one risk in your life, that doesn't mean you have to accept other risks in your life when you don't have to.

Mr. TIERNEY. And you say it is perfectly possible that the individual risk could actually be significantly lower or, indeed, zero, but that it is also quite possible the individual risk could actually be significantly higher.

Mr. BRENNER. Yes, I think that is true. Trying to estimate with these very low doses is very hard to do. All we can do is make a best effort.

Mr. TIERNEY. So did you do your own test on the emissions caused by these x-ray backscatter machines or did you base your estimates just on estimates of the emissions?

Mr. BRENNER. As I commented to the chairman just now, it would be great if the scientific community actually had access to these machines. We do not.

Mr. TIERNEY. Thank you.

Yield back, having used less time than you, Mr. Chairman.

Mr. CHAFFETZ. Without noting the time, we will go ahead and move to recognizing the gentleman from Arizona for 5 minutes.

Mr. GOSAR. Dr. Brenner, I, in my former life, was a dentist for 25 years, so we do understand that there is all cumulative aspects of all radiation, am I not right?

Mr. BRENNER. Yes, that is correct.

Mr. GOSAR. And so cumulatively how would you compare this to a full series of x-rays, using the same type of radiation? Put it in layman terms.

Mr. BRENNER. The doses are much lower than a series of even a dental x-ray, even when they are ideally done.

Mr. GOSAR. The key is ideally done right.

Mr. BRENNER. The key is ideally done.

Mr. GOSAR. Because a lot of the scientific method is based upon peer reviewed applications, is it not?

Mr. BRENNER. Correct.

Mr. GOSAR. And not having that availability, we are subjected to the industry's oversight, are we not?

Mr. BRENNER. We are in terms of estimating, trying to get a best handle on the actual radiation exposures. Trying to then go from radiation exposure to risk is another story that we are not particularly dependent upon industry. But the basic thing you start with is, well, what was the radiation dose, and there is certainly uncertainty there.

Mr. GOSAR. Well, it seems to me the point that we keep bringing up in this committee is self-reporting numbers based upon government agencies. So we are reliant on what the government gives us. And it doesn't seem that we are parlaying those or comparing apples to apples; a lot of times we are comparing apples to tangerines. So we are having some problems with our data, and that seems to be the biggest problem here.

Now, Mr. Baker, you alluded to something very interesting to me. I am from Arizona as well, and you talk about a multi-tier task effect, that TSA is not really gifted in regards to analyzing certain factors of passengers, and actually noted something about border security. Isn't there a place here for interagencies to be developing cross-referencing of looking at passengers, and what would hold that up?

Mr. BAKER. Absolutely there is. CBP has access to a lot of information and uses it well. They essentially scrutinize closely about one out of 200 of the people who cross the border, and the rest just walk through at 30 seconds or less showing their passport. And providing more of that information to TSA so that TSA can make decisions about the kind of screening it will do for passengers is something that should happen.

It has begun to happen, I understand, in the context of flights from Europe to the United States; that is to say, it is not so much that the information is shared, but that there are shared decision-making processes. I think TSA will be a little nervous about getting that information because, in the past, Congress, Fred Cate, EPIC, have made a big fuss about them having any information about travelers, claiming that TSA has a travel dossier on us. So it would be very helpful if they got a certain amount of authorization or encouragement to actually use the data in a constructive fashion rather than just try to do it on their own with CBP.

Mr. GOSAR. Mr. Brenner again, based upon the quality of the image, you know, I am sitting here with a dental x-ray, and if I don't have qualifications or the parameters set on my machine, they are worthless to me. And we have now come about seeing the experts talking about we don't really know what is in the general parameters of this scan; we are looking for abnormalities. In your opinion, does it justify the spending of almost a half a billion dollars on these machines and going further with this?

Mr. BRENNER. Well, you are asking me about the efficacy of the machines, and I don't think I am perhaps the right person to address that, I am no expert. There have certainly been studies where they have analyzed the quality of the images, worked backward to figure out, well, how much radiation dose must have been given to produce those images, actually from Arizona State, and the conclusion was the doses had to be higher than the doses that the manufacturers are suggesting.

Mr. GOSAR. Mr. Cate, do you have an opinion on that?

Mr. CATE. On the broader issue of whether these are ineffective, are they worth the risk, I would say they are not worth the risk and would in fact would, much to his annoyance, support Mr. Baker's earlier point, which is in fact knowing more about travelers or certainly those that wish to have more known about them would be a far more effective way. One of the things we always say in security is you want to focus your resources on the greatest risk. We have built the entire TSA system around doing the exact opposite.

Mr. GOSAR. Thank you very much.

I yield back my time.

Mr. CHAFFETZ. The gentleman yields back within an impressive timeframe. Thank you.

Now recognize the gentleman from Maryland for 5 minutes.

Mr. CUMMINGS. Mr. Baker, I want to just followup on some of the questions that our ranking member, Mr. Tierney, asked. If you recall, he was asking about a number of issues, and there seems to be some—they look at these measurements in different ways, so we are in a situation where Congress has to make critical decisions about our Nation's homeland security and the public health based on scientific evidence, and there seems to be all kinds of ways they do these measurements, and questions have come up with regard to those measurements.

But considering the conflicting scientific estimates on this issue and the significance of the security risk, what do you think, Mr. Baker, should be the next steps that Congress should take? Should

we request further scientific analysis on the actual results of these machines, instead of just using extrapolated estimates?

Mr. BAKER. I am not a medical expert, so I am cautious about expressing a view on that. I can tell you there are some costs to delay. Not only are the risks to the traveling public, but for those who are worried about waste and abuse in government. Right now there are two competing machine suppliers to do body imaging. If you say we are not going to buy from a people who use backscatter x-ray, then you are giving the other machine supplier a monopoly and you are going to get a price that reflects that monopoly. So it will have a significant cost, and I think you need to bear that in mind as you make a decision.

Mr. CUMMINGS. Professor Cate, a privacy law professor at Indiana University stated in his written testimony, "Advanced imaging technology is generally not effective at contributing to greater security airplanes and airports. In fact, it appears that the way in which the TSA has deployed these machines actually may be undermining the security of the U.S. air transportation infrastructure."

Mr. Baker, do you agree with Professor Cate's estimate?

Mr. BAKER. No. I think that these clearly add to our security. Perhaps if you compared this technology to some imaginary technology that was perfect, you would say, well, these machines are not as good as that imaginary technology. But if you compare them to the magnetometers that are the alternative for us, they are clearly much more effective at finding things that now could be used as weapons that couldn't be used 20 years ago, and, therefore, they are very likely the best alternative we have today.

Obviously, it would be great to find something better. I am a big believer in dogs, but they only really work for about half an hour, then they have to go play, and they cost \$30,000 or \$40,000 a year on that basis. So it is a great solution, although I guess I have to say I have a golden retriever whose searches of me are substantially more intrusive than the TSA ever has been. Therefore, I say we should continue to look for new technologies. But this may be the best we have for deployment in the next 5 years.

Mr. CUMMINGS. TSA has evaluated and tested advanced imaging technology in the field since 2007 and deployed the machines widely in 2010. Mr. Baker, in your experience, have the AIT systems been adequately tested for field use and are you aware of any other technology that is readily deployable on a mass scale and has a reasonable chance of preventing a terrorist attack from explosives brought on to an airplane?

Mr. BAKER. I am not. You know, we did do quite a bit of testing in 2007, 2008. We had high hopes for the puffer machines which would use explosive detection, basically an electronic nose, and they just didn't work reliably enough. The AITs are much more reliable. They are not perfect, and I would be happier if we could use chemical sampling than the technique that AIT uses, but we haven't found a way to make that work effectively yet.

Mr. CUMMINGS. Finally, in his testimony, Mr. Rotenberg advocates that TSA or Congress should suspend the use of AIT for primary screening. In 2009, legislation passed the House that would restrict the use of AIT to secondary screening only. In other words,

only if the change in your pocket set off the metal detector would you be directed to a whole body scanner. Mr. Baker, based on your experience, does it make sense to use the AIT only for secondary screening?

Mr. BAKER. No. I think that is nuts. The whole point of the underwear bomb is that it didn't set off the magnetometer because it was designed not to set off the magnetometer. So only using a technology that would find an underwear bomb when somebody has set off the magnetometer is to basically use it in context where it doesn't matter.

Mr. CUMMINGS. I see my time has expired. Thank you, Mr. Chairman.

Mr. CHAFFETZ. The gentleman yields back.

Now we recognize the gentleman from Texas for 5 minutes.

Mr. FARENTHOLD. Thank you. I would appreciate it if the witnesses would indulge me as I kind of bounce around with several different questions.

Mr. Baker, you have indicated that you have undergone the pat-down and did not find them intrusive. Was this just the pat-down you took when you opted down, or have you triggered an anomaly in one of the machines and received the secondary, more intrusive pat-down?

Mr. BAKER. I have gotten the opt-out search and I have set off the anomalies with change in my pocket, but the search consisted of having to show what had set off the anomalies. So I am confident there are certain kinds of anomalies that would produce a more detailed search, but I haven't been through it.

Mr. FARENTHOLD. I have. You don't want to be through it.

This one is to Dr. Brenner. Have you done any studies in regard to exposure of the TSA agents who are there? I know in typical radiological applications x-ray technicians are required to wear detection devices to determine their cumulative exposure to radiation. Are we doing anything to protect our TSA agents from radiation that may spill out of these machines?

Mr. BRENNER. Well, of course, a film badge, film monitor won't protect the TSA agents, but it will certainly give an estimate for future use as to whether they are being exposed, and it makes no sense to me at all that they are not wearing film badges. In any academic setting, in any medical setting, anybody who has any association with ionizing radiation wears a film badge.

Mr. FARENTHOLD. I don't know if you are married or not, but I am going to assume you are. Would you let your pregnant wife go through one of these machines?

Mr. BRENNER. I probably would not.

Mr. FARENTHOLD. OK. And you indicate that the backscatter x-ray is more dangerous than the millimeter wave technology. Are there any risks associated with the millimeter wave technology we are aware of at this point in time?

Mr. BRENNER. Well, as scientists, we are trained never to say something is perfectly safe, but there is no evidence of risks associated with a millimeter wave and there are no biological mechanisms that are established that would lead us to conclude that there are risks associated with them, which is in contrast to the x-ray situation, where we know exactly how x-rays cause cancer.

Mr. FARENTHOLD. Great.

Mr. Rotenberg, your EPIC organization is a privacy advocacy group that I have been familiar with for some time, and I understand your stance of the intrusiveness of these, especially the ones that show the images, not the Gumbies. What would your organization's stance be or, if you can't speak for your organization, your personal stance be on actual voluntary trusted traveler program where the government is able to data base certain information about you to allow you to bypass this type of invasive scanning?

Mr. FARENTHOLD. We have studied those programs as well, and I think what we have concluded is that there is simply no silver bullet. For example, the clear traveler program, which was a registered traveler program, that company, which collected a lot of biometrics on frequent fliers, over 100,000 deep background checks so that they could get that certification, go through the lines more quickly, actually found themselves in financial trouble.

Mr. FARENTHOLD. They went out of business right after I gave them my credit card.

Mr. ROTENBERG. Yes.

Mr. FARENTHOLD. I can sympathize with that.

Mr. ROTENBERG. But, you see, the story gets worse, because having collected this extraordinary amount of personal information used to conduct the authentication at the airport, that was their chief business asset, and they turned around and wanted to sell the data base that they had acquired on American travelers, and it took a class of the customers of the company to actually go into court in New York and say you can't do that, you can't sell our personal information that way.

So my warning here, and while I don't actually disagree that I think a lot could be done to improve the assessment of passengers, it is one of the recommendations of the IATA, this particular approach has been tried and there are some risks.

Mr. FARENTHOLD. Do you think the airlines might be a better organization to do it? I know Continental Airlines keeps pretty good track of me, and every time I get 35,000 miles they give me a free trip.

Mr. ROTENBERG. I think it is 25,000 on United, by the way.

Mr. FARENTHOLD. Well, hopefully we will get the better end in the merger there.

Mr. ROTENBERG. That may be. Well, yes, this is one of the things that has always seemed a little odd to me. In other words, if the concern is trying to make sure that the people you know, which is another way of saying the people you can trust, go through more quickly, the airlines do have that information; those are the frequent fliers. And the people you know less well are the ones you probably want to look over a little bit more closely. That is actually the basis of the approach that is now recommended by the International Aviation Transportation Association.

Mr. FARENTHOLD. Thank you.

I yield back my negative 2 seconds.

Mr. CHAFFETZ. I thank the gentleman. The gentleman yields back.

We now recognize the gentlewoman from Texas for 5 minutes.

Ms. JACKSON LEE. Mr. Chairman, thank you very much.

Gentlemen, thank you for your testimony. I am going to ask some rapid-fire questions, if I might.

Dr. Brenner, is there anything that we can do to fix the AIT machines, in your opinion?

Mr. BRENNER. Well, recall there are two different types of machines, the millimeter waves, that as far as we don't have long-term cancer risks associated with them.

Ms. JACKSON LEE. Right, and the present ones?

Mr. BRENNER. The x-ray machines potentially do. And certainly one of the things that we should do is have these machines available to the general scientific community to study them, rather than just have to use secondhand information.

Ms. JACKSON LEE. And you concede the point that some of the filings and reporting were incorrect in term of the amount of radiation? You concede that point?

Mr. BRENNER. Well, I think there is a more general suggestion that the doses are rather higher than the manufacturers are stating, apart from this recent issue.

Ms. JACKSON LEE. Well, you have heard the testimony that some of the reporting was incorrect, right?

Mr. BRENNER. Yes, I have.

Ms. JACKSON LEE. And they have corrected it and, therefore, it would be under what might be damaging or troubling.

Mr. BRENNER. Well, certainly in the x-ray world we believe there is actually no threshold below which the risk becomes zero.

Ms. JACKSON LEE. And your comment is, as you talked about the two distinctive aspects of radiation, your concern with the present current technology, AIT, is what?

Mr. BRENNER. The concern is that although the risk is very, very small, as I think everybody agrees, for any individual going through the scanner, if you have a billion scans a year, which is where we are heading, a very large number of scans, each with a small individual risk, will ultimately lead to a population—

Ms. JACKSON LEE. Well, would you concede—and I take issue with the billion, though I know that our previous witness indicated that travel for her is airplane, would you concede that it would be important to mend it and not end it, to try to mend the situation that we are addressing? Is security an equal concern as well?

Mr. BRENNER. Of course we are trying to make a risk-benefit balance and that is, hence, my comment about millimeter waves relative to x-rays.

Ms. JACKSON LEE. And I thank you. Amend it, not end it.

Dr. Baker, excuse me, Mr. Baker, are you familiar with the lone wolf concept? I know that we have seen each other before. How are you?

Mr. BAKER. Very good, thank you.

Ms. JACKSON LEE. Are you familiar with the individual acts of terrorism don't need to be in a crowd? Have we ever seen before the shoe bomber that kind of incident? Was that a first for the United States?

Mr. BAKER. That was a first.

Ms. JACKSON LEE. Was it a first for the United States on Mr. Abdullah on that fateful Christmas Day, when we discovered someone had enhanced their body?

Mr. BAKER. That was a first as well.

Ms. JACKSON LEE. Then can you suggest, if I could very quickly, refer you to Administrator Pistole's comment about the idea of a multilayered concept of imaging, advanced imaging technology fits into the multilayered approach of security? Is that important?

Mr. BAKER. I think it is. We have to give Al Qaeda a strong sense that their old tactics won't work, and the advanced imaging technology is the only approach, other than some very intrusive pat-downs, that make us reasonably comfortable that Al Qaeda can't slip bombs into their underwear and get onto planes. So, yes, I think it is our best current use in the context of a broad layered approach.

Ms. JACKSON LEE. And you concede that we live in a new world, a different world?

Mr. BAKER. Absolutely.

Ms. JACKSON LEE. Mr. Rotenberg, I have been a strong champion of the Fourth Amendment and the opposition to unreasonable search and seizure. You testified that AIT may be capable of storing and transmitting images of passengers. TSA has testified that both types of machines employed by TSA are currently incapable of storing or transmitting images. Do you dispute TSA's testimony that the machines are currently incapable of storing or transmitting images?

Mr. ROTENBERG. Absolutely.

Ms. JACKSON LEE. On what basis?

Mr. ROTENBERG. Page 9 of my testimony. That is the technical specifications for the devices.

Ms. JACKSON LEE. Are you suggesting that you want to completely eliminate a major force in security or would you suggest that we amend it and not end it?

Mr. ROTENBERG. Well, to be clear, I think our techniques have to be effective and I think they have to comply with the Fourth Amendment.

Ms. JACKSON LEE. Let me just indicate to you that I am introducing legislation that will require TSA to retain, but also indicate that they cannot in any way hold these images or they have no capacity to do so. Would that be of comfort to you?

Mr. ROTENBERG. I would like to see the technical specifications. I am saying if you look at page 9, it will tell you exactly what they can do. They can enable/disable the image filters; they can access the test mode; they can export raw image data in test mode. That is what the TSA required that the vendors provide to them.

Ms. JACKSON LEE. Well, the TSA disputes that.

Mr. Chairman, I would just end on saying that I think Mr. Rotenberg's representation is his, and we will look forward to making sure that we fix, but not end, this problem, and yield back.

Mr. CHAFFETZ. Thank you. The gentlewoman yields back.

We now recognize the gentleman from Florida, the chairman of the Transportation Committee, Mr. Mica, for 5 minutes.

Mr. MICA. Thank you.

When I had the responsibility for putting together a transportation security system for the United States after the 9/11 attacks, of course, I looked for different models. The British probably were the best in advising us because they are the only country that had

a countrywide system for screening and also they had been plagued by terrorists, attacked domestically for years.

Additionally, I contacted various Federal agencies and I talked to those who run the Federal maximum security prisons and other State organizations who also dealt with probably the most invasive types of screening of both prisoners and people who visited them, and I was told by them that even with body cavity searches, which I don't even want to describe here, with screening with electronic equipment, that both drugs, contraband, weapons all penetrated the system. I have been a strong advocate of using whatever means we can put in place that would provide us security, and I do believe in a layered system, but we have launched several efforts, very expensive.

When the Chechen women bombers destroyed aircraft, we were seeking a quick solution. We knew we didn't have deployed at the airports the equipment, and I was told the puffer would be the answer. I went to New Jersey and they tested the puffer. Went through the puffer at least three times with some material that should have set it off; none of the three times did it set it off.

But I was assured it was just a technical problem and that they would be used. They started, as you know, an expensive deployment; was not advised when they were deploying the backscatter and the millimeter wave, although I did encourage them to look at millimeter wave, I must say, and have been supportive of using advanced technology. But I think the important thing is testing.

Now, I was told the puffers would work and they didn't work. God only knows where they are sitting. I ask the committee staff to look at that fiasco. Now we are buying half a billion dollars worth of equipment. I have had that equipment tested. The results are classified and I ask the Members to review that.

I can tell you the equipment is badly flawed; it can be subverted. Our staff went out and our staff subverted the equipment, they inform me, in a very simple manner. Mr. Pistole said, well, it may require more training or something, and GAO was clever. What the hell does he think the terrorists are? Terrorists have gone from a very sophisticated shoe device, and I visited, orally interviewed people, saw what took place.

I was awakened in Texas the morning of the liquid bombers and we put in measures to try to deal with that. The diaper. I had, in January, tested the system for the pat-down, which is supposed to catch what this equipment doesn't catch, or be another device. I can tell you I can thwart the system not only visually, and not that cleverly, but most folks know that they are not going to touch your junk, and more than enough dangerous material can get through because that system is flawed too.

I am very concerned again about the testing of this equipment before it was deployed. It looks like we have a bigger puffer fiasco on our hands in buying this. If it wasn't just the half a billion, it is going to be another half a billion because TSA couldn't possibly use existing personnel or transfer some of the positions, the 3,770 bureaucratic positions in Washington to get their butts out working online. Of course, they are making \$105,000, on average, a year, and Mr. Pistole told me yesterday, in testimony, when I went be-

fore the Appropriations Committee, that they start the average screener at \$28,000 a year. Something seems out of kilter.

We have also seen them move from diapers now to cargo, so I think they are slightly bypassing these machines, would you say, if they are planning to blow up planes over the sky with electronic remote devices? Would you say that would be effective deterrent with these machines? I see all negative. Let the record reflect all negative head shakes there.

Finally, with surgical implants, I leave this question with you. We know that now the folks that gave us some of these devices and attempts are moving to body cavity inserts, which we saw in Saudi Arabia, and surgical implants. Does this equipment, can you tell me, will that detect that kind of a threat?

I see Mr. Cate and Mr. Brenner, you need to verbalize this for the record.

Mr. CATE. No, it cannot.

Mr. MICA. Mr. Brenner.

Mr. BRENNER. I would confirm that, no, it cannot, it can't penetrate.

Mr. MICA. Mr. Rotenberg.

Mr. ROTENBERG. No, it would not.

Mr. MICA. Mr. Baker, you care to answer?

Mr. BAKER. I agree.

Mr. MICA. Thank you. I yield back.

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

We now recognize the gentleman from Massachusetts for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman. I want to thank the witnesses for their help with the committee.

There are real privacy concerns raised by the use of the advanced imaging technology and we are all looking for ways to maximize security while minimizing intrusions on that privacy. I understand that TSA is currently testing software commonly used in Europe on AIT machines that shows only a screen with a human stick figure on it, something like this. Actually, it looks more like Gumby than a stick figure.

But this is a way of identifying an anomaly on a passenger without revealing particular details of that person's body, and I think it is a better way, from a privacy standpoint, to allow an officer to physically inspect the area of the body where the anomaly occurred. But at no point in this system would any human being ever see an actual picture of the passenger being screened, and, once approved, TSA would be capable of deploying this software across many of its machines in a matter of weeks or months.

Mr. Rotenberg, would the employment of this software resolve the principal AIT privacy concerns raised by EPIC in your litigation against TSA?

Mr. Rotenberg. Mr. Lynch, it wouldn't. And let me just make a few brief points. First of all, regarding the European experience, it is important to note that very few European countries are adopting AIT. Manchester Airport has it; Schiphol has it, which is where the automatic target recognition software is being deployed. Italy tried it and then dropped it.

We are really alone right now, at this point, in treating air travelers as we do in this country. But people do point to Schiphol because they have deployed ATR. Now, it is a different configuration. The other thing that you need to know about this is that the TSO will not be in a remote viewing location; the TSO will actually be standing now in front of the passenger, looking at the so-called Gumby image, and then identifying on the person now in front of them, by the way, those areas of the body that alert for an anomaly, and that will then lead to the subsequent pat-down to try to resolve what the anomaly is.

Now, you could say that is less intrusive because the image is not as detailed, but, of course, what the TSA told us previously was that the reason they had the TSO in a remote viewing facility was to avoid the problem of the TSO viewing the passenger. Now you are back into that realm with the ATR. The other problem is that the devices will still record the image in its unfiltered form.

All of these techniques, the ATR is simply a photo processing technique. It is a bit like when you have a digital camera. You take a color photo; you can make it black and white, you can invert it, you can add sepia tone, if you want to. But what you started with is the actual image, and that is still what TSA will have, and that remains our concern. We think more needs to be done to try to resolve the problem of the unfiltered image that the devices will capture.

Mr. LYNCH. I see. Well, if there is no need, if they are not using the detailed image to make their assessment, I am assuming that it would be less problematic to get rid of that part of it, then.

Mr. ROTENBERG. Well, you see, it is a bit of a tradeoff. The image that is displayed on the screen will be less detailed, no dispute. On the other hand, the image that is captured will be the same, and the TSO, instead of being in a remote room, will now be in front of the passenger. So that is roughly where you will end up.

Mr. LYNCH. Well, the current system, the TSO is in front of the passenger.

Mr. ROTENBERG. They have two, actually. There is the TSO in front of the passenger, and he is communicating by headset with another TSO who is in the remote viewing room, and the TSO in the remote viewing room says we have a problem under the right arm, you need to look there.

Mr. LYNCH. But what I am saying is that neither TSO under this scenario would be looking at the detailed image of the passenger.

Mr. ROTENBERG. That is correct; it will be a generic figure.

Mr. LYNCH. I don't see how the privacy dimension is encountered here if both TSOs are looking at this.

Mr. ROTENBERG. Right.

Mr. LYNCH. What does it matter whether the person is in front of the passenger or not if they are not looking at a detailed image of the passenger?

Mr. ROTENBERG. Well, because the device will capture—

Mr. LYNCH. I understand that part of it. The technology. And they are not using the detailed imaging for any purpose in this process, so I imagine that could be deleted.

Mr. ROTENBERG. It could be. I want to point out also, in terms of the rollout of the ATR, when Administrator Pistole was asked

about the use of this technique last November, I think this was in front of the Senate Commerce Committee, he expressed a lot of concern. He said it was, at least in testing, creating a lot of false positives. Now, it may be that TSA has solved this.

Mr. LYNCH. My time has expired. Thank you.

Mr. CHAFFETZ. The gentleman yields back.

We now recognize the gentleman from California, the chairman of this committee, Mr. Issa, for 5 minutes.

Mr. ISSA. Thank you, Mr. Chairman.

It has really been helpful to hear the questions and answers coming before this, particularly, Mr. Lynch, I appreciate yours, and I certainly appreciate the Transportation chairman, because I think a lot of people have worked hard in understanding how thoroughly useless this technology currently is. Now, that is an assumption I am making, but let's walk through it so that I make sure that I have an agreement.

At the current time, with 57,000 TSA professionals, we only check a small fraction of the passengers, isn't that true? If you look at all the places, including San Diego, where, to be honest, we have all of them, all the stations are there, except in order to not back up well passed downtown San Diego, they do random, they do anecdotal, if you will. So, first of all, from a security standpoint, we are not secure if the vast majority of passengers do not go through these if they are necessary. Do you all agree with that?

Mr. CATE. Yes.

Mr. ISSA. OK.

Mr. BAKER. No. I am sorry, I do not agree with that.

Mr. ISSA. You don't agree? You think if we just pick up half of the people we are going to stop a bomb?

Mr. BAKER. Random screening has a real value for deterring terrorists; they don't want to take the risk that they will get picked up by the random—

Mr. ISSA. These people are willing to blow themselves up and you think they are scared of getting caught?

Mr. BAKER. Absolutely. They do not want to get arrested and fail. So, you know, random screening does have a place. I would prefer that—

Mr. ISSA. OK, let's continue along because this is the old problem we have. You take away all of our civil rights and you say, but it has some value, but certainly not enough. Crazy people who put shoes in their bombs, you are saying that they wouldn't have done it if they thought they might be caught, is that right, Mr. Baker? They wouldn't have done it if they thought they might be caught?

Mr. BAKER. Much less likely to try that, yes.

Mr. ISSA. OK. So we will assume that these products cut in half the likelihood of a bomb blowing up an airplane. We will give you that. Is it worth 57,000 TSA individuals and the countless billions of dollars to cut in half, but not even come close to eliminating? That would be my rhetorical question.

Mr. Rotenberg, I want to go through a couple of items with you. If it is possible to have technology do completely automated check, using something similar to these products, so that there is no human element except an X in the case of a high likelihood of something which is a legitimate anomaly, would you say that when

that technology is ready to be used you would consider it, if it met all of those requirements? I just want to quantify that you are not being unreasonable; you simply want a technology that currently doesn't exist, is that right?

Mr. ROTENBERG. Mr. Chairman, I don't think the technology has to be perfect. I don't think it would be realistic to expect a technology to be perfect. I think what I have suggested, as Mr. Chaffetz has, is that the technology should be effective, I think that is reasonable, and I think it should be minimally invasive, because that is what the courts have told us at the Fourth Amendment.

Mr. ISSA. And at the current time the false positives are huge. I have watched them. It doesn't take much to go through these lines and see every third or fourth person who actually goes through the machine in a secondary. And, by the way, that is after they pause and wait for quite a while before they are allowed to go forward.

Dr. Brenner, I am particularly interested because of your knowledge and experience. Do you remember the fluoroscope of yesteryear and what they did to people who had their shoes fitted using that technology?

Mr. BRENNER. Oh, yes. And those devices continued to be used well after it was pretty well established that there was a risk associated with them.

Mr. ISSA. And my understanding is not only did they increase the likelihood of cancer for those who were having their shoes fitted or those who were using it more often, but they created almost certainty that a shoe salesperson, over time, would have doses likely to give them cancer and some other problems, isn't that true?

Mr. BRENNER. You are right. The biggest doses were to the salespersons rather than the individuals getting the foot examination.

Mr. ISSA. So clearly these products, although they may be less than the fluoroscope of old, they are showing about the same thing; they are designed to show about the same thing. They, in fact, represent a high likelihood that our 57,000 TSA individuals, who are not badged to see if they are getting excess dosage, are getting dosage far higher than the rest of us would, even as frequent travelers.

Mr. BRENNER. Well, I am not sure I know the answer to your question as to whether it is really a high likelihood—

Mr. ISSA. But they are getting higher dosage.

Mr. BRENNER. Almost certainly so. But I think we need to measure those doses.

Mr. ISSA. Well, and that is one of the points I think this committee has an obligation to do, is to see that the measurement begins immediately, even if these things are not going to be stopped.

Let me go through one more item. Like Mr. Farenthold, I was a clear passenger; I gave them my retina scan, I gave them all my fingerprints, and I was dismayed when I found out that they thought they were going to sell their asset that, in fact, I had paid to give them, which is what made me a little worried about things more than I had been in this cyber era.

But let me just ask the simple question. Including you, Mr. Baker, since you think that everything helps a little, false ID is easy to get. People get it every day and they come to this country

in vast amounts over the Mexican border, a few miles from my district. The IDs that will let you come through the country illegally are the same IDs that TSA looks at with some level of does the picture match.

Anyone can print out a boarding pass; anyone can take a boarding pass and effectively make a new boarding pass once you have a few of them. From the standpoint of actually is the person who they say they are and are they actually on the flight that they say they are in, isn't one of the gaping flaws right now that when you go through security anywhere in America, they don't actually know for sure that you are who you say you are, because the ID is questionable, and they don't even know that the ticket you have is valid for the flight you are on? Haven't we left gaping holes that should be filled first, at a fraction of the cost of what we are looking at today? Just quick answers from anyone that wants to partake, particularly you, Mr. Baker.

Mr. BAKER. Yes, for sure. Bad ID is a problem. TSA has done a much better job than the airlines did of checking those IDs. That is why they have the loops; that is why they have the fluorescent lights. They are checking ID and they are finding fake ID much more than was the cases prior to TSA taking over that responsibility.

Mr. ISSA. Yes, I remember they claimed that my government ID as a Congressman was fake, and they wanted to see backup, California driver's license, which anybody can get, even if they are not a citizen.

Mr. Chairman, thank you for your indulgence. I yield back.

Mr. CHAFFETZ. Thanks. The gentleman yields back.

With the gentleman's privilege here, I am going to recognize myself and then Mr. Tierney here, as we wrap up this panel. And again, do appreciate all of your participation.

Mr. Baker, would you agree or disagree that layered security is really the only way to move forward? There is no foolproof solution.

Mr. BAKER. Absolutely.

Mr. CHAFFETZ. My concern is that these whole body imaging machines, as they have been deployed, do give us a false sense of security and, in fact, are, in part, security theater, as I call it, that don't necessarily give the degree of confidence that I would like in securing that airplane. Your concern is just by going through the metal detector there are things that go undetected. But, conversely, aren't there things that go through a whole body imaging machine that go undetected?

Mr. BAKER. Absolutely. None of this technology is perfect, it is just that these body imagers are much more effective at finding the kinds of weapons we are worried about than magnetometers.

Mr. CHAFFETZ. Are you familiar with the Government Accountability Office, who issued an unclassified report in March 2010 that said, "it remains unclear whether the AIT would have detected the weapon used in the December 2009 incident?"

Mr. BAKER. I am aware of that and I understand the argument that they are making. It remains unclear to Al Qaeda as well, I would point out. The important thing to say here is since there is no perfect solution, we have to find a solution that is better than

what we have, and we don't have something better than these machines today.

Mr. CHAFFETZ. And while you mock the idea of using a dog, because you have an overly aggressive Schnauzer or some sort of dog?

Mr. BAKER. No, no, I think it is a great idea. I don't mean to mock it. It is a great idea; it is just that it doesn't—

Mr. CHAFFETZ. Would you agree or disagree with the Pentagon, who says that this is a more effective way than the current AIT? In fact, do we have up the slide here? I just returned from Afghanistan 2, 3 weeks ago. If we could pull up that slide. How many whole body imaging machines do you think we have deployed to Afghanistan?

Mr. BAKER. I have no idea.

Mr. CHAFFETZ. How many have we deployed to Iraq or Pakistan, where we have literally over 100,000 of our men and women in harm's way, where we have to deal with the threat on a daily basis? What I am looking at is people who are really truly concerned about what is going on in the green zones, they are dealing with these improvised explosive devices which come at them in every way, shape, or form, we are not deploying whole body imaging machines, we are deploying dogs. And to suggest that they only work for 20 minutes I believe is wholly inaccurate.

I think the TSA is failing us because they are so insistent on technology. Technology for technology sake doesn't work. Technology is great, but if it doesn't work it is not so good. And what I worry about, as the gentleman from Massachusetts pointed out, it going to a Gumby like type of thing, what if the technology is not working?

So, again, I wish there was a fool-proof solution. I wish we didn't have to deal with the reality of the threat that there is truly terrorists that want to kill our people and blow things up. I worry, though, that the TSA is maybe a little too anxious to deploy technology, even though we know from a parallel experience in Afghanistan and Pakistan and whatnot, they are so quick to deploy technology at an enormous cost, at invasion of privacy, when there are things out there that will make us more secure.

I show you this picture because, again, 3 years ago they weren't importing whole body imaging machines; they had dogs. When we had the State of the Union here, one of the most highly secure events out there, they bring in the dogs. That is the point I guess I would like to make. And I worry that we spent \$30 million bringing in puffers with the suggestion that they would work, only to find out that they really didn't work.

My last point, and, Mr. Baker, I appreciate all of you being here. There was one part of your testimony that did trouble me, it was this part that you found that "critics are making a privacy mountain out of a mole hill." You also said that privacy concerns are "counterproductive." In this day and age, when we are trying to balance the Fourth Amendment, the right of Americans to be secure, how do you justify saying that the privacy concerns are counterproductive? We heard testimony from Representative Cissna here. To say that critics are making a privacy mountain out of a mole hill?

Mr. BAKER. Absolutely, because if we had listened to the privacy advocates, we would have no machines deployed, we would have no protection against the kind of bombs that were used on December 25th, other than magnetometers that do not work. That is the result of privacy lobbying, and I think it is counterproductive.

Mr. CHAFFETZ. Well, I, for one, wholeheartedly disagree with you. I think that a lot of people have offered a reasonable use of certain machines in certain instances. I, for one, believe that as a secondary screening device, that the whole body imaging machine does have a certain place. Somebody has a hip replacement, a knee replacement, I think that is a productive use of this.

I guess the question or the encouragement I would have moving forward is to try to find the balances between the Fourth Amendment that we have, increasing the security of the airport, lessening the invasiveness. That is, I think, what we should all be striving for.

I now recognize the gentleman from Massachusetts, the ranking member, Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman. I thank our witnesses, again.

Interesting idea on this. I don't know if anybody on the panel has the technical expertise that warrants this as a fair question of them, but I think, Mr. Baker, you may either have it or be as close as anybody on this. Would the AIT detect or would it have detected a powder or a liquid explosive?

Mr. BAKER. My understanding is that it can detect unusual bulks and volumes and different textures don't match the body or that don't fit the body profile, but to some extent there is an amount of judgment in that, and one of the things I worry about with these Gumby figures is the judgment is going to be made by the machine, and we have to be sure that they can do that right.

Mr. TIERNEY. So, at any rate, it wouldn't identify it as a powder explosive or a liquid, something that isn't normally on the body, to explore further?

Mr. ROTENBERG. Could I speak to that, Mr. Tierney?

Mr. TIERNEY. Sure, if you have the expertise.

Mr. ROTENBERG. Well, we have had the time to review the procurement specifications, and the question that you ask is actually on page 10 of my testimony; it is the key excerpt. And I can tell you, looking through the documents, that the problem, the threat assessment when the TSA began the AIT was plastic knives, ceramic guns, plastique, C-4, dense nonmetallic images. That is what these devices are designed to detect.

And, you see, the problem with PETM, which is the powder that was used by the trouser bomber and the shoe bomber, the devices were not designed to detect. So when you look at the research that came out post-December 25th, the GAO report and the academic studies, I mean, they are largely inconclusive, but they are inconclusive as to the fact that the powder would not have been located, and that is in the procurement design.

Mr. TIERNEY. Thank you.

Mr. Baker, I heard you make a comment about the millimeter wave versus the x-ray backscatter on that. Assuming, because I haven't heard it contrary here, that both of them are equally as ef-

fective in detecting whatever it is they are detecting, the millimeter wave apparently doesn't raise any evidence that there be a public health safety problem here, but we buy both of them, if I understand your testimony, because going to one supplier would keep the cost lower, so we may use one that has a public safety question and one that doesn't as a cost-effectiveness measure as opposed to any other reason to have both of them?

Mr. BAKER. As I said, there will be a cost to going to a single sole supplier for something as significant as this purchase.

Mr. TIERNEY. So we have to decide whether or not that cost outweighs the risk of one of—

Mr. BAKER. Absolutely. And I think the TSA view has been that they think all the studies suggest the risk is—

Mr. TIERNEY. So we should explore that, I think, a little.

Finally, not to be contentious, Mr. Chairman, but just to, I think, raise the point that, again, we should go back to having some sort of framework for evaluating the effectiveness and privacy on everything, I know two things. One is that there are 300 AIT machines currently deployed in Iraq and Afghanistan, it is not like there are just dogs over there, that have been used for the past 6 years.

And I just quote from an article that appeared on March 1st of 2003 that examined the possibility of replacing bomb-sniffing dogs with handheld chemical systems. Among the drawbacks of using dogs, the article stated, is that they require rigorous training, testing, and validation exercises in various operational scenarios and with different types of explosives. The animals' performance, which requires constant retraining, frequently declines over time and after extensive field work, according to the articles, the dogs became tired of the 30 to 120 minutes, which means using more than one dog at each location.

Dogs also exhibit behavioral variations and changing moods which might affect performance. In addition, dogs often trigger false alarms because they are trained to detect chemicals which may appear in other forms than just explosives; and, finally, terrorists also may turn to certain stable explosives that emit very little chemical vapor and therefore harder for dogs to detect.

So while I wouldn't totally exclude dogs, from the equation of a layered system or whatever, I think they ought to be put through the same evaluation process for effectiveness and for privacy indications on that. As we move forward we will, I assume, try to do that.

Yield back.

Mr. CHAFFETZ. The gentleman yields back.

Are any other Members seeking to ask questions of this panel?
[No response.]

Mr. CHAFFETZ. With that, we will thank the panel members for their participation, your efforts, your time in preparation of this testimony. We would allow also for 5 legislative days for Members to submit other information. We would also ask, and hope that you would cooperate, if Members have additional questions, that they be able to submit those to you. If you can provide those answers back to us, we will make sure that the other members of the committee have that. We thank you for your expertise, for your insight into this, and thank you for your time and effort to be here today.

The second panel is adjourned.

We had talked about, as they dismiss here, we would need some time to set up the third panel, but I have also come to learn that this committee room has been scheduled and has been committed to the needs to set up and whatnot, from 1:15 on. Consequently, it is going to be this chairman's prerogative to delay what was supposed to be two gentlemen from the TSA that were going to be here as part of the second panel, insisting that they have to have their own separate hearing and they can't be sitting next to somebody that they disagreed with, that we are going to delay that third panel and we will reschedule it. We are hoping to do that the first week of April.

Mr. TIERNEY. Mr. Chairman, may I be heard on this?

Mr. CHAFFETZ. Sure.

Mr. TIERNEY. Mr. Chairman, I don't understand this at all. First of all, we had this whole discussion; we resolved the issue. We have asked the TSA to come over here today; they are here. So they came across to accommodate the chairman and the rest of this committee. Having them on this panel now or putting them on separately now is not going to be a time factor at all; it will take about a minute and a half to put up new name tags, and then we would have 45 minutes, minimally, to have this hearing, which would have only extended this current panel 45 minutes. I don't think there is any real rationale for that.

I am a little upset that we went through the whole process trying to be cooperative. TSA did come downtown. It would be effective to have them testify at this hearing. I just think it is totally appropriate and I don't think your reasoning is sound enough to give us a real true matter of why it is you won't let them proceed. I ask that the chairman reconsider, that he allow them to come out right now. They will have 45 minutes. If you want to bring them back again if you feel that it hasn't given you satisfactory opportunity to question them, I will agree to that and we will work that out for another return.

But to send them away after having gone through that whole process this morning, bringing the chairman and the ranking member of the full committee in, discussing it out, having an agreement and inviting them down here, and then sending them away I just think is totally inappropriate and disrespectful, frankly.

Mr. CHAFFETZ. Well, I appreciate the gentleman's comments. I appreciate the working nature that our staff and the Members have here together. Nevertheless, I do believe that this is of keen interest to most every member that is on this committee. I want to allow adequate time to hear their testimony and allow Members to question them. We are also, under committee rules, allowed to have multiple rounds of questioning. We certainly have, right now, just a handful of Members here, without any sort of notice that would give them adequate time. We have run over by a good 15 minutes longer from the time that we thought we would start the third panel.

In deference to those Members who do want to participate on this panel and ask questions, given the late nature of which this second panel was there, and given the fact that they had notice, we had planned on, they had committed to being here for this

panel No. 2, they certainly had adequate time to do that. I don't want to—

Mr. TIERNEY. Mr. Chairman, rather than relitigate that issue—

Mr. CHAFFETZ. The gentleman will suspend. The gentleman will suspend—

Mr. TIERNEY. We had that issue litigated.

Mr. CHAFFETZ. The gentleman will suspend.

Mr. TIERNEY. Well, I have a difficult time suspending.

Mr. CHAFFETZ. The gentleman will suspend.

Mr. TIERNEY. If you are not going to follow the rules and adhere to our agreement—

Mr. CHAFFETZ. The gentleman will suspend.

Mr. TIERNEY [continuing]. Then I am not sure why I should agree to this.

Mr. CHAFFETZ. We did not—no. The gentleman will suspend. The agreement was that they were going to come here and participate on the second panel. Now, they refused to do so and they came to that election by themselves.

Mr. TIERNEY. Was the chairman present this morning—

Mr. CHAFFETZ. The gentleman will suspend.

Mr. TIERNEY [continuing]. When the agreement was made that they would come to testify?

Mr. CHAFFETZ. I would be happy to yield. I would be happy to yield.

Mr. TIERNEY. Would the chairman yield?

Mr. CHAFFETZ. No, not until I finish—

Mr. TIERNEY. I guess you are not that happy.

Mr. CHAFFETZ. I am not very happy. Until we finish—until I make these comments.

We had anticipated that this panel would reconvene for panel No. 3 at 12:15. It is past 12:15. It is, in fact, well past 12:15. The other thing that has come to light is we have another committee that has done research and work and preparation, and Members have adjusted their schedules in order to accommodate that hearing, which is going to start, which would be less than an hour from now.

Consequently, I want to do this the right way. I want to do it the right way for the TSA. I want to do it the right way for every member on this panel. So we have adequate time to get to the issues that need to be got at.

So, with that, I am suggesting, in fact, I am ruling that we are going to move this third panel to another day.

Mr. TIERNEY. You said you would yield. Will you yield?

Mr. CHAFFETZ. I am sorry?

Mr. TIERNEY. You said you would yield. Will you yield?

Mr. CHAFFETZ. Yes, please.

Mr. TIERNEY. Rather than keep this going on so that you actually make it a reality that there is not enough time, let me just say one more time that there is 45 minutes. You don't know that the panel was going to go an hour with these people anyway. Forty-five minutes could be entirely adequate.

Let's get them started. Let's get them out here. If you want to bring them back at some other point in time, you can do that. You

have essentially all the Members that you had earlier here, and they were all made aware that we had come to some agreement this morning that TSA would come on the last panel. This is no surprise to anybody. Everybody had their testimony from last night.

I just find your whole reasoning behind this totally lame and inappropriate, and I am not pleased at all, with having come to an agreement this morning on that and have you come up with a rather lame excuse to put that agreement aside. I would ask you one last time to reconsider and let's do this the right way, keep your working relationship as we have had on this, as the only cooperative idea, one that we can rely on each other's word.

Mr. ISSA. Would the gentleman yield?

Mr. TIERNEY. Yes.

Mr. ISSA. Mr. Chairman, I know we may not complete this. I have been assured that the next subcommittee could move a little to give us a little additional time. I have also been assured we won't have votes before 1:15 to 1:30. My concern, which I share with the chairman, is that we will need to ask the TSA to be willing to come back if we do not conclude by the time of the vote. If that can be agreed to, I would join with the other gentleman to try to start, but we would need that agreement from TSA.

Mr. TIERNEY. Reclaiming my time. I would in no way impede that and would support that effort to have them back, if that is appropriate and we need more time to finish.

Mr. LYNCH. Point of order.

Mr. CHAFFETZ. Does any other Member wish to—the gentleman from Massachusetts.

Mr. LYNCH. Mr. Chairman, not to eat up more of our valuable time, but we have them here and I just want to point out that your hearing, our hearing was in conflict with a lot of other hearings when we originally scheduled it, that is why Members are back and forth. There is no guarantee that won't happen again when we reschedule it, it is just the way things work here.

I do like the comprehensive aspect of this, where you had a bunch of good panels in here, and I would like to hear from the TSA. I would just hate to waste time. We have 45 minutes we could go at these folks, and I have some questions I would like to ask of them, as I am sure you are; and if we have to bring them back, we will bring them back.

I yield back.

Mr. CHAFFETZ. Does any other Member wish to speak to this?

[No response.]

Mr. CHAFFETZ. This committee will stand in recess for 5 minutes while we redress and we will make a ruling at that time. Thank you.

[Recess.]

Mr. CHAFFETZ. We will start our unanticipated third panel. Appreciate the two of you being here to answer questions before this committee. It is my understanding, having worked with both sides, and my understanding from the two of you, who I have yet to speak with, that should this panel run short, that is, Members not be allowed to fully ask all the questions that we have here today,

that you both will personally agree to come back and participate in another hearing as a followup.

We will call this Part 1 of Part 1 of this hearing. And I would hope and expect that the two of you would also be able to attend that second hearing. We will come to it by mutual agreement in terms of the date; it will be your own panel so you are not offended by anybody. Is that your understanding of how we are going to proceed? Mr. Kane.

Mr. KANE. Mr. Chairman, yes, it is.

Mr. CHAFFETZ. Mr. Kair.

Mr. KAIR. Yes, Mr. Chairman.

Mr. CHAFFETZ. As long as we have the ranking member here and we have an understanding of how that is going to proceed, we will proceed.

Mr. Lee Kair is the Assistant Administrator for Security Operations at the TSA and Mr. Robin Kane is the Assistant Administrator for Security Technology at the TSA.

Pursuant to committee rules, all witnesses will be sworn in before they testify. If you would please rise and raise your right hands.

[Witnesses sworn.]

Mr. CHAFFETZ. Let the record reflect that all witnesses answered in the affirmative.

In order to allow time for discussion, we would ask is allow you to each take 5 minutes for your opening statements. Please adhere to the red light that will appear before you. We will give you some leeway with that. Keep your comments to 5 minutes, and then we will allow you to submit any additional testimony that you are not able to give verbally into the record for the full committee.

So at this time we will recognize first Mr. Kane for 5 minutes.

STATEMENTS OF ROBIN E. KANE, ASSISTANT ADMINISTRATOR FOR SECURITY TECHNOLOGY, TRANSPORTATION SECURITY ADMINISTRATION; AND LEE R. KAIR, ASSISTANT ADMINISTRATOR FOR SECURITY OPERATIONS, TRANSPORTATION SECURITY ADMINISTRATION

STATEMENT OF ROBIN E. KANE

Mr. KANE. Good afternoon, Chairman Chaffetz, Ranking Member Tierney, Ranking Member Cummings, and distinguished members of the subcommittee. We appreciate the opportunity to appear before you today to discuss the Transportation Security Administration's risk-based intelligence-driven approach to aviation security, and specifically the use of advanced imaging technology. As the Chief Technology Officer, I will focus on the technical aspects, and our Director of Security Operations, Lee Kair, will discuss the human aspect.

Before going into more detail, let me state it clearly: the technology is vital to our Nation's ability to keep air travelers safe in this post-9/11 world. Mr. Chairman, the United States faces a determined, creative enemy bent on the destruction of our way of life. The threat is everywhere.

Last year the FBI arrested a man planning an attack on the D.C. subway system. A few weeks ago a young Saudi man was arrested

under suspicion of plotting terror attacks in Texas, a lone wolf jihadist. And whether it was a failed attack on Christmas Day 2009, the disrupted cargo plot last October, or the latest intelligence we see every day, we know Al Qaeda and other terrorist groups continue to target our aviation system.

Our security measures must focus on detecting and disrupting today's threat, not yesterday's. Today we have a nimble aviation security system that deploys multiple layers of risk-based, intelligence-driven security measures. The checkpoint is a central piece of the puzzle, and one aspect of the checkpoint is what we are here to discuss today.

Mr. Chairman, well concealed, nonmetallic improvised explosive devices are now among the gravest threat to security. And while there is no silver bullet, AIT, the advanced imaging technology, gives us the best opportunity to detect these threats. We first piloted the advanced imaging technology in early 2007 knowing of these threats. Following testing and analysis, we began deploying the technology nationwide. After the failed Christmas Day 2009 attack, we accelerated it. In our ongoing testing and development, we know that well concealed devices like those used on Christmas Day 2009 can be detected by AIT. It is then up to the image operator to recognize the anomaly.

Beyond effectiveness, there are two other issues I will address, privacy and safety. AIT units in airports cannot store, print, or transmit images. The system would require different software to make this a possibility. Anonymity is also paramount. The officer reviewing the image does not see the passenger and the officer assisting the passenger cannot see the image. AIT also does not produce photographic quality images that would permit personal identification.

We are now testing other detection software that further enhance privacy by eliminating passenger-specific images and, instead, highlighting anomalies on a generic outline. Testing is ongoing to ensure that this software provides the same detection capability as previous versions of the advanced imaging technology. Passengers appreciate it and we hope to roll it out nationwide in the near future.

On safety, this technology is safe for all passengers and employees. The radiation dose from backscatter advanced imaging technology machines has been independently confirmed by the Food and Drug Administration, the National Institute of Standards and Technology, Johns Hopkins University, and the U.S. Army, among others. All this testing confirmed that the radiation dose is well within established standards. As constructed, backscatter AIT is incapable of producing the energy required to generate radiation at a level that would exceed the established standards. Failsafe mechanisms are installed to automatically shut the machines down should they begin operating in unexpected ways.

Multiple tests occur on each individual unit before it is ever used to screen passengers. Ongoing testing occurs on every unit consistent with national standards to confirm continued safe operation. Additional testing is conducted if a machine is relocated or requires other maintenance. Contractors are required to notify both TSA and FDA if they find radiation levels above the standard. We re-

cently committed to publishing all future radiation tests online so the public will be able to see for themselves that their home airports have safe technology.

While reviewing old reports, we identified errors in some of the contractors' recordkeeping. These errors are unacceptable and we are taking steps to ensure they are not repeated, including we are retesting those where they had an error, we are retraining the work force that are doing those surveys, we are expanding our independent evaluation of the safety protocols, and we are having increased expertise in our own staffs in TSA to be able to have subject matter experts review the surveys as they come in. We believe these significant steps will enhance our ability to assure the public that all technology is safe.

With that, I will turn it over to Lee.

[The prepared statement of Mr. Kane follows:]

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Statement of
Robin Kane
Assistant Administrator for Operational Process & Technology
and
Lee Kair
Assistant Administrator for Security Operations
Transportation Security Administration
U.S. Department of Homeland Security
Before the
United States House of Representatives
Committee on Oversight and Government Reform
Subcommittee on National Security, Homeland Defense, and Foreign Operations
March 16, 2011

Good morning Chairman Chaffetz, Ranking Member Tierney, and distinguished Members of the Subcommittee. We appreciate the opportunity to appear before you today to discuss the Transportation Security Administration's (TSA) use of Advanced Imaging Technology (AIT) at airport security checkpoints, including the effectiveness and safety of this technology and our emphasis upon protecting passengers' privacy. The use of AIT enables TSA to carry out its core mission to maximize transportation security in the face of an evolving terrorist threat while maintaining efficient checkpoint screening operations.

Working in concert with our international, federal, state, local, tribal, territorial and private sector partners, TSA's mission is to prevent terrorist attacks and reduce the vulnerability of the nation's transportation system to terrorism. AIT is a powerful advancement in our continuing effort to improve aviation security, which also includes work with the law enforcement and intelligence communities, strengthening supply chain security, and increased international cooperation. While we have made significant advances in reducing the threat to aviation security, al-Qaeda and other terrorist organizations remain intent upon attacking the aviation system. We have witnessed the evolution of this threat from checked baggage, to carry-on baggage, and now to air cargo and non-metallic explosives hidden on the body.

One of the most salient examples is the bombing plot by al-Qaeda in the Arabian Peninsula resulting in the December 25, 2009, alleged attempt by Umar Farouk Abdulmutallab to blow up

a U.S.-flagged airplane en route to Detroit using a non-metallic explosive device that was not and could not have been discovered by a metal detector.

TSA works diligently to protect and secure the U.S. transportation domain against the evolving threat as terrorists adapt their tactics to attempt to circumvent our technology and procedures. We continue to modernize our technology deployments, including AIT. We have deployed nearly 500 AIT machines at domestic airports throughout the country to enhance security by safely screening passengers for metallic and non-metallic weapons and explosives – including objects concealed under layers of clothing, while protecting the privacy of the traveler. We have also deployed new portable explosive trace detection machines, Advanced Technology X-ray systems, and bottled liquid scanners to enhance our security technology in the aviation domain.

We also have deployed additional behavior detection officers, Federal Air Marshals and explosives-detection canine teams at airports throughout the country. Nearly a year ago, in April 2010, we implemented new, enhanced security measures for all air carriers with international flights to the U.S. that use real-time, threat-based intelligence to better mitigate the evolving terrorist threat. Last November, we achieved a major aviation security milestone: 100 percent of passengers on flights within or bound for the United States are now checked by TSA against government watchlists through the Secure Flight Program, as recommended in the *9/11 Commission Report*.

AIT is Effective at Detecting Metallic and Non-Metallic Threat Items

AIT represents the very latest in passenger screening technological advancement and addresses a broad range of threats, many of which cannot be addressed by older technologies like metal detectors. TSA's work with AIT began in 2007 and has included testing and evaluation in both the laboratory and in airports. Our extensive experience with AIT has made us the world leader in its implementation in the aviation environment. The agency tested and piloted the use of AIT at several airports around the country prior to the December 2009 attempted attack. As a result, TSA was able to accelerate AIT deployment following the incident to enable our Transportation Security Officers to quickly and effectively detect metallic and non-metallic threat items.

Based upon our analysis of the latest intelligence and after studying available technologies and other processes, TSA has concluded AIT is an effective method to detect threat items concealed on passengers while maintaining efficient checkpoint screening operations. Accordingly, in January 2010, TSA determined that AIT should be deployed as part of its primary screening program. TSA continually evaluates these technologies, their software and associated screening procedures to ensure that they are effective against established and anticipated threats, while continuing to protect passenger privacy, civil rights and civil liberties.

TSA's goal is to deploy nearly 1,275 AIT machines by the end of calendar year 2012, providing AIT coverage at more than half our operational screening lanes. The ability to deploy AIT to airports and the number of machines deployed are directly affected by the amount of funding and

available resources. Accordingly, the President's budget request for FY 2012 includes a approximately \$105.2 million in base and additional funding to continue deployment of AIT.

AIT is a Safe and Reliable Screening Method

The safety of the traveling public is TSA's number one priority. Our technology policies require compliance with consensus-based scientific safety standards including those administered by the Health Physics Society and accredited by the American National Standards Institute for screening equipment using ionizing radiation.

AIT machines are safe and efficient. The radiation dose from backscatter AIT machines has been independently evaluated by the Food and Drug Administration, the National Institute of Standards and Technology, and the Johns Hopkins University Applied Physics Laboratory, all of which have affirmed that the systems comply with established standards for safety. Public versions of our safety testing reports are available on TSA's website at www.tsa.gov.

A single screening using backscatter technology produces a radiation dose equivalent to approximately two minutes of flying on an airplane at a cruising altitude of 30,000 feet. Millimeter wave technology does not emit ionizing radiation and instead uses radio frequency energy. The energy projected by these units is a fraction of other commercially approved radio frequency devices, such as cell phones and two-way radios.

TSA is sensitive to the needs of all types of travelers. For example, Transportation Security Officers (TSOs) are trained to work with parents to ensure a respectful screening process for the entire family, while providing the best possible security for all travelers. TSA never separates a child from the adult accompanying him or her and the adult traveling with the child observes the entire screening process. AIT is safe for children and children of all ages may undergo screening using AIT as long as they are able to stand with their hands above their head for the five to seven seconds needed to conduct the scan.

AIT Procedures Protect Passenger Privacy and Civil Rights and Civil Liberties

Strict safeguards to protect passenger privacy and ensure anonymity have been put in place by TSA as it has deployed AIT. The machines deployed by TSA at airports cannot store or print passenger images, and images are maintained on the monitor only for as long as it takes to resolve any anomalies. Images from TSA screening operations cannot be, have not been and are not retained for any purpose.

Further, TSOs reviewing the image are unable to see the individual undergoing screening, and a TSO screening the passenger cannot see the image. AIT machines do not produce photographic quality images that would permit recognition of the person screened. A facial blur has also been applied to both the millimeter wave and backscatter technologies.

The Department of Homeland Security's (DHS) Chief Privacy Officer has conducted a Privacy Impact Assessment of the AIT machines and updated those assessments as the program has developed. The full results of that assessment are available to the public on the Privacy Office's website at www.dhs.gov/privacy. TSA's screening protocols ensure that such screening does not unreasonably intrude on a passenger's privacy in the airport environment and that the public's privacy concerns related to AIT screening are adequately addressed. According to our statistics, more than 98 percent of individuals selected for AIT screening have opted to be screened by this technology over other screening methods such as a pat down. In addition, there have been a number of public polls indicating public acceptance of the technology at nearly 80 percent. TSA provides notice to the public of the use of the AIT machines prior to the passenger's entering the machine. The notice also advises the individual that they may decline AIT screening, and be screened by a pat-down instead.

If an anomaly is discovered by the TSO operating the AIT machine, TSA procedures require TSOs to use additional inspection methods to determine whether the anomaly is a threat. These methods may include visual inspection, swabbing for explosives, or a pat-down to resolve the anomaly.

TSA has been working to ensure passengers' civil rights and civil liberties are also protected. We are pursuing technology enhancements, such as Automatic Target Recognition, which we will discuss in more detail shortly, to enhance passenger privacy. Additionally, TSA and other DHS outreach and privacy offices have conducted extensive outreach to communities representing persons with disabilities and special medical needs, as well as major medical centers, to discuss AIT and other challenges encountered by members of these communities during the screening process. We will continue to work with these communities to make refinements and adjustments to our screening protocols that are respectful of the needs of these individuals while ensuring the security of the traveling public. This collaboration has already resulted in refinements. For example, TSA has developed a notification card to allow passengers with disabilities to communicate discreetly to a TSO that they have a condition or disability that might affect their screening.

Field Testing of Automatic Target Recognition (ATR)

While we are rapidly deploying AIT machines to U.S. airports, we also are exploring enhancements to this technology to further address privacy issues and civil rights and civil liberties concerns. Specifically, TSA is field testing auto-detection software, referred to as Automatic Target Recognition (ATR), which enhances passenger privacy by eliminating passenger-specific images and instead highlighting the area with a detected anomaly on a generic outline of a person. Pat-downs used to resolve such anomalies will be limited to the areas of the body displaying an alarm unless the number of anomalies detected requires a full-body pat down. If no anomalies are detected, the screen displays the word "OK" with no icon. With ATR, the

screen will be located on the outside of the machine and can be viewed by the TSO and the passenger.

As with current AIT software, ATR-enabled units deployed at airports are not capable of storing or printing images. This software eliminates the need for a TSO to view passenger images in a separate room because no actual image of the passenger is produced, reducing associated staffing and construction costs. ATR software represents a substantial step forward in addressing passenger privacy concerns, while maintaining TSA's standards for detection. TSA plans to continually update and test enhanced versions of the software in order to ensure that technology with the highest detection standards is in use.

Advancing and Refining Our Screening Approach

Earlier this month, TSA Administrator John S. Pistole outlined his vision of airport security in the future. This is a direction in which we are already moving, based upon the evolution of our multi-layered approach to transportation security. TSA is looking to focus its resources and to streamline and enhance the passenger experience at security checkpoints applying new risk-based screening procedures and uses of technology. It is expected that AIT and ATR will continue to play an important role in that evolution, by enabling passengers to move through security expeditiously while being assured that the best available technology, as part of an effective layered technology system, has been used to check all passengers and baggage for items that can be used to cause injury or carry out a terrorist act.

Conclusion

We want to thank the Subcommittee for holding a hearing on the use of AIT by TSA at our nation's airports and for its diligent work in overseeing the agency's efforts to ensure transportation security. We are pleased to answer any questions you might have.

Mr. CHAFFETZ. Thank you, Mr. Kane.
We now recognize Mr. Kair for 5 minutes.

STATEMENT OF LEE R. KAIR

Mr. KAIR. Good afternoon, Chairman Chaffetz, Ranking Member Tierney, and distinguished members of the subcommittee. Thank you for the opportunity to appear before you today regarding the Transportation Security Administration's use of imaging technology at airport security checkpoints.

As my colleague stated, current intelligence reminds us that commercial aviation remains a top terrorist target. On Christmas Day 2009, Umar Farouk Abdulmutallab attempted to blow up a plane bound for the United States using a nonmetallic explosive device that was not and could not have been discovered by a metal detector.

Our success in staying ahead of dedicated adversaries is dependent upon our ability to utilize the latest technologies and procedures. As the head of TSA's Security Operations overseeing the work of TSA's frontline security employees, I can assure you that our nearly 50,000 officers and managers at over 450 airports nationwide are dedicated to our important security mission. Every day TSA screens nearly 2 million passengers to ensure they arrive safely at their destinations. We use a variety of security techniques to ensure our transportation systems remain secure, including advanced imaging technology [AIT].

I want to reemphasize that while there is no silver bullet when it comes to aviation security, advanced imaging technology, in combination with our checkpoint procedures and the work of our dedicated work force provides us with the best tools to detect dangerous threats. Advanced imaging technology remains optional to all passengers who may request alternate screening, to include a pat-down. As we have deployed advanced imaging technology, TSA has continued to evolve its pat-down procedures, as well as to mitigate threats.

There are a few things I want to clarify regarding TSA's pat-down procedures. First, only a small percentage of passengers require a pat-down during the secondary screening process. Pat-downs are conducted by same gender officers, and all passengers have the right to request private screening at any time during the screening process. In addition, any passenger may choose to be accompanied by an individual of their choosing, such as a parent, guardian, or traveling companion throughout the screening process.

While it is necessary to ensure that all passengers are properly screened, TSA is sensitive to passenger needs. For example, our officers are trained to work with parents and passengers with special needs to ensure a respectful screening process for the entire family. Additionally, TSA's Office of Civil Rights and Civil Liberties maintains a coalition of more than 70 disability-related groups who partner with TSA to inform our checkpoint screening procedures, including the use of advanced imaging technology. We continue to work closely with these groups to ensure we are constantly improving the training we provide to our officers, which ultimately enhances the passenger experience.

While we continue to work with stakeholders and partners, we are dedicated to also continuing to engage and inform the traveling public regarding the use of technologies such as AIT, as well as our procedures. We want to ensure the traveling public understands the screening process, while protecting the information terrorists could use in an attempt to circumvent screening protocols.

As part of that effort, we have worked with our airport partners to post signage at airports regarding AIT, on our Web site, through the media, and via hundreds of press conferences, as well as social networking platforms. Through these mechanisms, TSA has reached millions of individuals nationwide to inform them about airport security policies and procedures. Additionally, TSA is committed to answering questions and receiving feedback from the public regarding their screening experience. To achieve this, TSA utilizes a number of communication tools, including the TSA Contact Center, the Talk to TSA Web feedback tool, local customer service managers, and input on the TSA blog, among other avenues.

TSA is committed to building upon best practices to mitigate risk and make our transportation systems as safe as possible. Earlier this month Administrator Pistole outlined his vision for the future of airport security screening as we develop additional risk-based initiatives that shift away from a one-size-fits-all approach at airport checkpoints. TSA anticipates that this type of innovative approach will enable TSA to better focus its resources, while enhancing the passenger experience.

We want to thank the subcommittee for holding this hearing on TSA's use of advanced imaging technology and for its diligent work in overseeing the agency's efforts to ensure the transportation security. We are pleased to answer any questions you might have.

Mr. CHAFFETZ. Thank you. I will now recognize myself for 5 minutes.

We have a great need in this country to secure aircraft and transportation in general. The threat is real. Let there be no mistake from anybody anywhere; the threat is very real. I appreciate the good hard work that the tens of thousands of TSA agents do. I think most are trying to do a good job; they are working hard; they are placed in a difficult situation.

In fact, I think a lot of them who probably signed up to do this didn't envision that they were suddenly going to have to be involved in some very invasive pat-downs and doing some things that, when they probably first signed up, they weren't anticipating to do. And I appreciate both of you in your degree of participation with public service. Mr. Kane, for instance, your 20 years in the Coast Guard and what-not. We appreciate that.

Nevertheless, I am very frustrated by the lack of candor coming from the Transportation Security Administration. The TSA has earned a notorious reputation of doing things a bit different than the way they say they are doing it. That is not a personal attack on you two as individuals, and I want to note at the beginning it is not a direct criticism on any one of you personally.

But given that you are sitting here, and I am glad you are sitting here, and we are going to have this discussion, I just want to note that it is our role and responsibility to make sure that we improve

security and still protect people with their Fourth Amendment rights; that we minimize the invasive nature in which this technology is being deployed; not just the technology, but the pat-downs as well.

With that said, I want to start to dive in here a little deeper on these machines and start, I guess, for instance, with you, Mr. Kane. These machines, as I understand it, were built to the specifications, correct?

Mr. KANE. Yes, Mr. Chairman.

Mr. CHAFFETZ. Yet I have heard repeatedly that “the imaging technology that we use cannot store, export, print, or transmit images.” That came from Secretary Napolitano. Is that true?

Mr. KANE. The machines in the airports cannot store, transmit images. The software packages on those machines does not allow that in the airport. We do have machines in our testing environment where we do have that capability—

Mr. CHAFFETZ. Same machines, though, right?

Mr. KANE. Same machines hardware-wise.

Mr. CHAFFETZ. Same machines. OK.

Mr. KANE. Hardware-wise.

Mr. CHAFFETZ. My understanding—I am looking at this Freedom of Information Act that was put out there and the specifications were put out. Let me read a few things. Enabling and disabling of imaging filter shall be modified by users as defined by the User Access Levels and Capabilities Index. Let me go on. When in test mode, the whole body imaging machine, the WBI, shall allow exporting of image data in real time; shall provide secure means of high speed transfer of image data; shall allow exporting of image data, raw and reconstructed. Did I misread anything here? Is that accurate?

Mr. KANE. I believe you are referring to probably a prior specification, some of which we have cleaned up in subsequent engineering change proposals to make sure that those test modes are separate. So you reference, Mr. Chairman, a test mode. That mode does not exist in the airport environment; the machines in those airports have a different software package. That does not exist—

Mr. CHAFFETZ. You said the same machines have those capabilities. My understanding is the network, that each of them are built with a “network interface with an ethernet interface connection. Network interface shall be configured with an IP address,” which would suggest that it is actually transferring images, is it not?

Mr. KANE. None of the machines today are networked in the airports. That capability is in the hardware of those machines; they are not networked in the airport.

Mr. CHAFFETZ. So they do have the capabilities of doing it, and you actually do capture and transmit images, right? Just think about this. From the very standpoint of the fact that somebody goes through the machine, you capture the image, it is then transferred electronically to another room, correct? That image then appears on their screen.

Mr. KANE. That is correct.

Mr. CHAFFETZ. How is that not capturing, transmitting, or storing the image?

Mr. KANE. I think our point is we don't save those images; we don't retain them; we don't transmit them. I would argue that is the same part of the machine and that image review station is part and parcel of that advanced imaging technology machine and, of course, we have a display monitor on that machine to be able to look at the images, for the image operators to be able to identify anomalies to be resolved.

Mr. CHAFFETZ. Under oath, I want to ask you both, do you transmit images that you have captured in airports ever? Have you done that?

Mr. KANE. Captured in airports? I am completely unaware of us ever having done that, so I would say no, under oath, we do not transmit images from the airport.

Mr. CHAFFETZ. Have you ever done that?

Mr. KANE. I am unaware of us having ever done that.

Mr. CHAFFETZ. Mr. Kair.

Mr. KAIR. I am unaware of us ever doing that, sir.

Mr. CHAFFETZ. You have in your specifications that you have to have these capabilities. Why was that in there in the first place?

Mr. KANE. Clearly, when we developed this type of technology, like any other piece of technology we have, we have to do extensive testing, we have to do extensive training to be able to deploy those machines. Therefore, we have the capability on those machines to operate in the test mode, to capture images, to be able to transmit those images to other machines in our networks that we use in testing facilities, we have that capability.

We don't have that capability in the airports; we separated that capability completely out from anything that is in the airport. And the other piece, we do have images that we use that were taken from volunteers, and typically those are paid volunteers that we use in our testing processes to capture those images.

Mr. CHAFFETZ. What about this so-called Level Z access? Capabilities under "Level Z access" enable and disable image filters; export raw image data in test mode; modify access level capabilities; download data.

First of all, Mr. Kair, how many people have user access Level Z capability?

Mr. KAIR. Sir, that is actually a question for Mr. Kane.

Mr. CHAFFETZ. Sorry. Mr. Kane.

Mr. KANE. Mr. Chairman, I am not sure of the exact number, but I would like to just say the specification to make sure we gave greater confidence to people that we were not doing the things that people are talking about, we removed some of those capabilities from the Z user access. Typically, those are maintenance technicians and some of my folks in my labs have that type of user access.

Mr. CHAFFETZ. Can you provide this committee the email or the paperwork that would verify that you have actually changed that and when it was changed?

Mr. KANE. Mr. Chairman, I certainly will do that for the record.

Mr. CHAFFETZ. So when I see under the TSA Web site "The image cannot be stored, transmitted, or printed, and deleted immediately once viewed," that is fundamentally false, is it not? It does

have that capability; it is a matter of flipping the switch, turning it off and on.

Mr. KANE. It is not a matter of flipping a switch and turning it off and on. The software that is on the airport machines does not allow that capability in the airport. The software in our testing machines is a completely separate software and has that capability in our labs.

Mr. CHAFFETZ. Has it ever had that capability? When you first deployed it did it have that capability?

Mr. KANE. In those initial, the first, I believe, 47 that we rolled out, that capability was on the machines to flip that switch at that Z user level access that you are referring to. We recognize that we wanted to change that and we made a change on the machines that are in the airports and retrofitted it to all those machines that are in the airports.

Mr. CHAFFETZ. The committee would appreciate it if you would provide that paperwork.

My apologies to the ranking member; I did not realize how far over time I was. I will now recognize the gentleman from Massachusetts for 5 minutes and some more if he would like it.

Mr. TIERNEY. Thank you, Mr. Chairman. Mr. Chairman, I think it is important that you get the questions that you have answered, so I have no objection to using the time on that.

I don't mean to just pound this thing to death, but I want to make sure that we are clear on it, because there seems to be a trust issue here, clearly, on that. I am reading the requirements on sensitive security information and it says, "TSA policy dictates that passenger privacy is maintained and protected during passenger screening. To ensure passenger privacy safeguards in place, AIT systems will prohibit the storage and exporting of passenger images during normal screening operations. While not being used for normal screening operations, the capability to capture images of non-passengers for training and evaluation purposes is needed. To ensure that image capturing maintains passenger privacy, the AIT systems will provide two distinct modes of operation, screening mode and test mode. During screening mode, the AIT system shall be prohibited from exporting passenger image data, including via STIP. During test mode, the AIT systems shall not be capable of conducting passenger screening."

Does that sound accurate to you?

Mr. KANE. Yes, Congressman.

Mr. TIERNEY. So what we need to do is somehow give assurances to people that are doubtful on that, and how do you suggest we do that?

Mr. KANE. It is very difficult at times to do that. We have talked about it. We have offered up the specifications. We have made some of those changes that you referred to. We have actually changed in the specification to make it more clear of how we intend to operate the machines. We put out a private impact assessment that talks about how we intend to operate the machines and we try to be very straightforward with the public, with the signage and the other messaging mechanisms we have to make it clear to the public how we intend to operate the machines and the fact that we don't store, transmit, retain any of the images, and they are de-

leted when they leave the machines, once we have resolved any anomalies.

Mr. TIERNEY. Is the ability to do all of those things you just said basically contained in the software, as opposed to the hardware?

Mr. KANE. At this point, yes, Congressman.

Mr. TIERNEY. Do you have plans to do it otherwise?

Mr. KANE. No. At one point they were kind of together, where you could flip a switch as a Z user level. We have separated that capability and the airport machines don't have that capability.

Mr. TIERNEY. So if Mr. Chaffetz wanted to go to the airport, he would see that the software at any given airport is disabling all of the problems or concerns that he has.

Mr. KANE. It is probably difficult to see that at the airport from a nonexpert, but we could certainly endeavor to show people that.

Mr. TIERNEY. Take an expert with him on that.

Now, can you tell me whether or not the millimeter wave scanners are as effective or more effective than the x-ray backscatter scanners?

Mr. KANE. I can't talk about the specific requirements and capabilities in an open hearing; I am happy to share—

Mr. TIERNEY. Sure you can. I mean, you can't tell me whether or not they are as effective as the others?

Mr. KANE. So what I would say is both have met our specifications. So we have specifications that we put out and both met those specifications in very near similar levels, and they flipped a big depending on where you were using them.

Mr. TIERNEY. I don't accept your answer that you can't tell us in open session, but I am going to for the moment on that, because my basic point here is that you are saying they are interchangeable and the TSA would be satisfied with whatever machine happened to be at a given airport that it was doing the job you wanted done.

Mr. KANE. That is a fair statement, Congressman.

Mr. TIERNEY. OK. Now, the only reason you don't go just to the wave scanners, where there is no issue at all with respect to radiation is that it is TSA's contention that the levels are so low in the x-ray backscatter that it is not a problem?

Mr. KANE. That is one of the reasons. It is a very safe technology and it is very, very low radiation, as we have tested it independently many times. But the other is it is useful for us to have multiple technologies. As we talked about, we do need to address the threat. Having a number of people working on the problems of addressing the threat is useful to us. Having competition in our marketplace, where we are the primary buyer in the world of technologies is useful to us as well.

Mr. TIERNEY. Well, I understand. I am all about competition on that, as the F-136 debate will indicate. But the fact of the matter is here, if you thought it was a risk, a danger, you would just take the chance of going with a monopoly, as opposed to having one area out there that was a competitor, but dangerous.

Mr. KANE. We think the technology is very safe, yes, Congressman.

Mr. TIERNEY. So will you make available to the public your evaluation studies and make the equipment available for independent testing?

Mr. KANE. We have never really made the equipment available for independent testing; that would expose it to a lot of public information that we wouldn't share publicly in terms of its capabilities.

Mr. TIERNEY. You don't think there is a way to do that and not expose it? I mean, it is done all the time.

Mr. KANE. Radiation-wise, we certainly have done that with independent validators; we have had Johns Hopkins, we had National Institute of Standards and Technology. Just making it available to the public to look at those machines, no, we wouldn't be able to do that.

Mr. TIERNEY. But other than making it generally available to the public, you would make it available to other independent sources that were qualified to make an evaluation? You have done it and you would do it again if it was set up appropriately?

Mr. KANE. Yes, sir.

Mr. TIERNEY. OK. Do you know whether or not the materials that were used by the shoe bomber and the underwear bomber, whatever you want to call them, could have been detected or would have been detected by the AIT machines?

Mr. KANE. Those types of materials, what advanced imaging technology does is detect anomalies on the body. Those types of materials are anomalous to the body and so, yes, it does detect those types of materials. We tested against similar types of materials in the labs and certainly in their operation on the day-to-day use. Lee could speak to a number of things that you find that are similar to those types of materials as well.

Mr. TIERNEY. One of our previous witnesses testified that the Department of Homeland Security and TSA had basically funded a National Academy of Sciences report where it made a recommendation at the end for evaluating the effectiveness of all initiatives in a systematic way, and then had a whole process out there. Do you follow that process when you are evaluating the different techniques?

Mr. KANE. I think if you are talking about the process we use for developing our technologies, yes, we use a systematic process in doing that.

Mr. TIERNEY. Did you use the one that was recommended by the National Academy of Sciences, for which you paid?

Mr. KANE. We use our process as mandated by the Department of Homeland Security in their acquisition guidelines. We use that process.

Mr. TIERNEY. Do you know how that measures up to the—

Mr. KANE. I apologize, I don't know that.

Mr. TIERNEY. Would you get that for the record for us—

Mr. KANE. Certainly.

Mr. TIERNEY [continuing]. And give us an indication of how your policy, your standards and your evaluation process line up with the recommendations made by the National Academy of Sciences in the 2008 report that was paid for by the Homeland Security and TSA?

Mr. KANE. Yes, sir.

Mr. TIERNEY. Thank you very much.

Yield back, Mr. Chairman.

Mr. CHAFFETZ. The chair now recognizes the gentleman from Texas for 5 minutes.

Mr. FARENTHOLD. Thank you very much.

In response to privacy concerns, you implemented the pat-down search, as well as a secondary pat-down search for the anomalies, and the 9th Court of Appeals has allowed you all to do administrative searches at airports and held that the pat-downs are illegal. I think their words were limited in its intrusiveness as it is consistent with satisfactory of the administrative need that justifies it. So limited in the intrusiveness I think is kind of key there.

But take a look at some of these slides we have up here. I am concerned. These are not even the secondary pat-downs, these are the primary pat-downs. This is a child. Another child. There are people who would go to jail for touching a child like that. Do you really think these are the least intrusive means you can come up with to ensure security?

Mr. KAIR. Sir, Mr. Kane and I actually sit every morning in an intelligence briefing where we learn what is coming at us from our attackers, and what is evident to us is that those that wish to do us harm are very willing to use techniques which go against our social norms and try to use things that will use our process against us, and that was proven out actually in Flight 253 with the placement of a bomb that used all nonmetallic components. So we have done extensive testing in what techniques we can use in order to be able to detect items like that using both process and technology so that we can mitigate that threat, while also being as conscious as possible about the passengers' experiences coming through, as well as allowing passengers to expeditiously get to—

Mr. FARENTHOLD. And you also indicate in your testimony that only a small percentage of passengers have undergone a secondary screening. I have had the misfortune of being one of those passengers, and I was taken into a private room, not offered the opportunity to stay in public or have anyone accompany me, and was thoroughly searched. I was not offered the opportunity to rescan in the event I moved.

The TSA agent indicated, you probably moved; that's why there were the anomalies. A rescan would have avoided that. Wouldn't that have been a less intrusive option, to offer me a rescan, when they had I think it was five anomalies detected on my body?

Mr. KAIR. Sir, without getting too much into the sensitive security part of when we do which type of screening, when we do have an anomaly in a sensitive area, we do want to make sure that we properly screen that area using a pat-down. Any passenger is authorized to have a companion in that private screening room with them and we use whatever technique we can—

Mr. FARENTHOLD. I mean, I would rather have had this happen, sunshine is the best disinfectant. Despite as embarrassing as it was, I would have preferred to stand out there and let the rest of the people at the airport see what I was subjected to.

Let me move on. I am concerned also about the safety of your hardworking TSA officers. Why should none of those officers that work around these x-ray machines, in particular, not wear the same safety badges that any body who works at a hospital is re-

quired to wear? This seems like a low cost way to ensure the safety of the people working for you.

Mr. KANE. Congressman, these are different and they are very, very low levels of radiation used by these machines, and they are well within public use limits, and there are national standards for when you would implement a dosimeter type of program that you are referring to, and we are well, well below any of those levels that would cause us to look at putting the radiation badges on the workers.

Mr. FARENTHOLD. I can understand why you also are not willing to open up the entire software and process to peer review, but would you be willing to allow independent agencies or the scientific community to test the amount of radiation that these machines emit?

Mr. KANE. Sir, we have done a number of independent tests and we have ongoing independent tests for all of these machines in the airports. Johns Hopkins did the study on the backscatter advanced imaging technology as an independent body; the Army's Public Health Command comes into airports, they look at our radiating machines in airports and they use test and survey methods, including dosimeters in some cases, and they have done extensive independent testing of the machines and clearly and consistently show very, very low levels of radiation.

Mr. FARENTHOLD. I see my time has expired. I will wait around for the next round of questions. I have a whole other page.

Mr. CHAFFETZ. Thank you. The gentleman yields back.

We now recognize the gentleman from Illinois for 5 minutes, Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman.

Thanks for being here. How many of these machines are in place now?

Mr. KANE. There are nearly 500 in 78 different airports.

Mr. QUIGLEY. And how many do you need if you are going to use them at every location, at every gate?

Mr. KANE. We are working through what that would be. Some of it depends on what the final capability of the machines is, especially with this automated target recognition software. You can get more people through those types of machines than you can with the image operator. We think that number is going to be something less than 1,800. Eighteen hundred is the number that we have used, but it will probably be something less than that. To give you some concept of scope, we have around 2,200 airport lanes in the country.

Mr. QUIGLEY. And is there a concern that you have, if those were all in place with the new technology and the time to get through, it would not change the time that it takes to get X number of people through an airport in a day at every one of those entrances?

Mr. KANE. Congressman, we are very sensitive to that. That is why I say the final number will depend on what the technology becomes capable of and how fast it can process a passenger. Right now you see it in an airport, you see it sitting next to a walk-through metal detector to alleviate just that concern. We are going to keep that configuration until we know we don't have that concern and we won't cause that to be the impact at the checkpoints.

Mr. QUIGLEY. Is there a projected timeframe now to have all these in place, a range?

Mr. KANE. I can tell you that we have nearly 500 in the airports today. We had 500 in the President's fiscal year 2011 budget request. How the CR plays out or how the fiscal year 2011 budget plays out we will see, but we think there is 500 within that level; and then the fiscal year 2012 request is for 275 additional machines. So that would bring the total to 1,275 at that point.

Mr. QUIGLEY. You mentioned the new capabilities and the new technology that would be less, would be more generic, I guess, in terms of what body images are shown.

Mr. KANE. Yes. You would see, at the machine itself, a very generic outline. It is the same outline for everyone, and you would just see that, and any anomalies would show up on that outline, and that allows for one to just do the resolution right at the machine and to a very limited pat-down or targeted pat-down. So if I keep my BlackBerry in my pocket, you know, it is going to show on my pocket and the officer will just have to resolve that alarm right there in my pocket.

Mr. QUIGLEY. And the reason I am asking is if it seems like it is a reasonable period of time before that technology will be available, you would want to start shifting over to those right away, before you purchase 2,200 of them.

Mr. KANE. We think it is a reasonable amount of time that technology will be available, and we have stated a number of times that we expect our next procurement to have that capability.

Mr. QUIGLEY. Very good. Thank you.

I yield back.

Mr. CHAFFETZ. Will the gentleman yield to me?

Mr. QUIGLEY. Yes.

Mr. CHAFFETZ. I just want to make sure, Mr. Kane, I heard exactly what you said. Have any of these machines transmitted, have you emailed, have you sent anything back to the headquarters? And I believe your answer to that was that you were unaware of any, right?

Mr. KANE. Correct.

Mr. CHAFFETZ. Why isn't the answer to that no, it doesn't even have the capability? See, that gives me a pause to think you had to think about that and you came to the conclusion, when I gave you a few more minutes to think about it, well, not that I am aware of isn't quite definitive as no, it is not even capable of doing it. It is like if I said did you fly to New York in your airplane? No, it can't even fly, are you crazy?

Mr. KANE. I can tell you no, authoritatively, since we started rolling them out in airports. I was not involved with the program from its inception and I don't know some of what occurred earlier in the program's inception. I am virtually certain, but I can't say for certain because I wasn't the one who would have been witness to what was in the airports and how they were used in the airports. But TSA has always been on the record as saying, no, we don't do this, we have never had this capability. So I couldn't say authoritatively, though, from before my time there.

Mr. CHAFFETZ. I appreciate that, but just because you are "on the record," that is the concern, that I find the inconsistency between

sometimes what the record is, and I have some personal experiences that I won't take the time of this committee, but that is the concern. Instead of hearing a definitive no, it is not even capable, what I read are specifications that say, well, we have an ethernet cable, we have an IP address, we have an ability, it basically has all the capabilities you say it doesn't have, and that is the fundamental challenge.

I have taken this gentleman's time. I will yield back my time and now recognize the gentleman from Maryland for 5 minutes.

Mr. CUMMINGS. Mr. Chairman, I just noted you had stopped the clock for about 2 or 3 minutes. Did you know that?

Let me just say, gentlemen, you all have a very tough job. You have a very, very tough job. You weren't here a little bit earlier when I said that you have to protect the public and at the same time you have to try to make sure you have a fair balance so that you are not intruding into people's lives unreasonably and their bodies, and that is a tough one.

And as I listen to all of what has been said so far, there has been, overhanging this hearing, and I think with the chairman's statement just now, there is a very, very significant shadow hanging over TSA, and that is clearly, and it goes to a five letter word, trust. When I listen to all the discussion, there is a lot of information you cannot divulge. And I am not an intelligence expert, but I would imagine that part of the problem is that you don't want to let people know what certain things are happening with these machines so that they can get around them, I guess. Is that right? Does that make sense?

Mr. KAIR. Yes, sir.

Mr. CUMMINGS. On the other hand, you have a Congress which wants to know and the public wants to know, and that is a tough situation. I guess what I want to get to is I want to have that trust. I want to believe that just like Members of Congress raise their hand and swear to protect the people we represent, that you all go in there every day trying to figure out how you can best protect every single person that use our airways.

So how would you all suggest, given all that I just said and what you know, that we get that trust back? And the more I think about it, it is so easy to lose the trust when you give up but so much information, when you have millions of opportunities for something to go wrong.

But how do we get back there? Because that is what it is all about. First of all, you have to have the trust. Then there is another piece, which is you have to do things in a way that is least intrusive, but there has to be a level of trust for people to believe that you are doing it in the least intrusive way. So help me with that.

Mr. KAIR. Mr. Congressman, all I can say is when you look back at previous attacks, even since 9/11, our adversary does look for processes or items which are not prohibited at the time, such as 9/11 they used an item that was not prohibited at the time, or I think they look at what our process is and try to use that process against us, such as the Richard Reid shoe bomb. They recognized at the time that using a nonmetallic improvised explosive device going through a metal detector was a viable way of going through.

So from a TSA perspective we have to look every day at what are we seeing from a threat perspective and trying to put processes or technology in place to be able to thwart that type of a risk or threat, and at the same time be able to communicate with the traveling public so they know what to expect when they come through the checkpoint. So it is a balancing act that we have to balance every day, and it boils down to having a very active dialog with the American public. We use a variety of ways of trying to do that, including pretty robust dialog on the Internet. We have an award-winning blog, for example, where we encourage the American people to have that discussion with them about why it is that we are doing what it is we do every day, and we want to make sure that the traveling public is able to navigate our screening process—

Mr. CUMMINGS. I am running out of time, but I want to ask you this. When I heard the representative earlier, she testified, one of the things that she talked about was training, and that there seemed to be—I think part of the trust, too, is that people feel that they are treated with respect, that they may be going through some difficulty, but somebody hears them, somebody understands them, somebody has empathy. I think that goes a long way toward trust also. Just comment, and my time is up.

Mr. KAIR. Yes, sir. I couldn't agree with you more on that. We emphasize to our officers—I think our officers are probably some of the most trained and tested of any profession out there, and one of the things that we do emphasize with our officers is proper communication to de-escalate the traveling process. Just traveling, much less screening, is a stressful proposition for particularly like a family going through. So our officers are trained and, for the most part, do a very good job of de-escalating stresses of going through that process.

We actually retrained our entire work force about 2½ years ago to emphasize customer service as well as security, because the two actually go hand in hand. We also have another training initiative this year to get at that same exact issue of good communication which de-escalates stress to assist them in getting through. It is a partnership with the American public, where we want them to help us in the screening process as they are going through our checkpoints.

Mr. CHAFFETZ. The gentleman yields back.

We now recognize the chairman of the overall committee, Mr. Issa from California, for 5 minutes.

Mr. ISSA. Thank you, Mr. Chairman.

And thank you for your patience in getting through a long day. This is an important panel. We have waited for you two because this committee has serious doubts about the effectiveness and efficiency and authority for some of the things you are doing. I think that is pretty clear.

The chairman is particularly interested in the full body scanners. I am interested in the overall process. So as someone who was here on 9/11, who remembers President George W. Bush telling us it wouldn't change America, I am concerned that it has. You represent 57,000 well meaning people. I debate well trained because your turnover is still pretty darn high and it is awful hard to have that many newbies and all we say they are well trained. Almost

every time I go through security I see training, which is a good thing. But the bad thing is I see the need for training every time I go through.

Mr. Kair, let me go through something that isn't full body scanners. I will give you a little relief. I fly more than 40 round-trips a year, plus many overseas trips. For more than 6 years I carried in my carry-on baggage on every single flight a pair of folding scissors. That pair of folding scissors was taken away 2 weeks ago. That pair of folding scissors, if you open them up and elongate them, has one inch of blade times two, and its overall length is two inches.

I have researched and cannot find a basis for taking that away. Do you have an explanation for that kind of subjectivity? Were they wrong 200—let me rephrase that—40 times 2 is 80; 320 times they were wrong or were they right one time and I can't find proof that is a prohibited item?

Mr. KAIR. Sir, we actually did an analysis on the prohibited items list I want to say November 2005, that timeframe, where we did a risk-based analysis of what was prohibited—

Mr. ISSA. I remember my toothpaste being taken away after we discovered that liquids could be a problem in the British situation. You didn't have an answer, you just took them all away. Then you made the answer three ounces. But specifically the scissors as I described, are they prohibited?

Mr. KAIR. During that analysis in November 2005, that timeframe, we actually changed the prohibited items list and scissors with a length of less than four inches from the fulcrum are not prohibited. So I don't have an explanation for why they would have been removed 2 weeks ago.

Mr. ISSA. Eight weeks earlier I had a 12 millimeter open-end box wrench taken away; it was five inches long. Can you explain that one?

Mr. KAIR. Sir, small tools was another piece of the analysis that was done, and there is some discretion on tools, where, if it could be used as a bludgeon in the discretion of the TSO, then it would be prohibited. If it is just a normal tool, I believe less than seven inches, it would be allowable. All of that information is actually up on TSA.gov.

Mr. ISSA. Oh, I went there, but when you say, you have to be kidding, you get threatened, you get people who make it very clear they are law enforcement. So I am concerned about something. I am concerned that some people think a less than five inch 12-millimeter open-end box wrench is a bludgeoning tool. I am concerned that a one inch worth of point and cutting, plus another two inches of the rest of a scissors are somehow dangerous. But they only do it very infrequently. And, please, as a guy with a motorcycle, don't ask me to explain how I had a 12-millimeter open-box that I had gotten on the wrong coast, but these things happen.

The fact is you don't have a consistent system to test. Today you are saying we are safer while in fact only a fraction of the people are going through these full body scanners, and the full body scanners are repeatedly false positivizing in huge numbers. Isn't that true? I understand all the good at work and the improvement and the trying, but isn't it true that my statement is fair, that only a

fraction of the people go through them and they have huge false positives today?

Mr. KANE. Today, only a fraction of the people go through them. They have false positives. Not a huge number of false positives.

Mr. ISSA. How about in San Diego it is about every fifth person that goes through gets a secondary?

Mr. KANE. That would be possible.

Mr. ISSA. OK. So 20 percent is not huge, but it is close enough to huge if you are one of the people getting a pat-down. You have heard testimony here today that in fact low level x-ray is long-standing to be a problem. What assurance do we have here today that you are not going to be the next fluoroscope, you are not going to be the next situation in which you say, well, it is not a problem, but Members on the dais who go back and forth across this country literally 40, 50 round-trips a year aren't getting overexposed, if in fact you eventually get to implementing full-time this procedure?

Mr. KANE. The machines have been tested repeatedly to show how safe they are, and independently to show how safe they are, and they are tested against national standards that are set by standards-making body who have a host of experts on them, and they set those standards that we work toward. We are well below those standards for this technology, backscatter in particular I believe you are referring to, Mr. Chairman.

Mr. ISSA. I am referring to people involuntarily getting x-rays or being forced into a secondary because now they have said, no, I don't want to. The elimination of the trusted traveler, granted, it went bankrupt. All of that contributes to the whole question that year after year after year, each time you find out what you didn't know, which right now includes you can't detect a bomb sewn into a human being. As a result, you are not going to pick up the bomber willing to have surgery to implant explosives under their skin. That has been said here today; it has been well documented.

I am just going to close with one thing. Would you please report back to the committee the following: earlier today, in Mr. Kair's opening statement, you talked about what people can have and not have, and the consistency. I go through those checkpoints all over the country regularly. What I don't see is I don't see anything that says here is a traveler's right. You have a right to a private thing, you have a right—and I know, Mr. Chairman, I have gone over, but I know a lot of us have.

I have seen repeatedly TSA individuals tell people who are traveling with another person that is being held for secondary, stand back, go over there. They are deliberately denying what you said was a right here today. And I hold you to post, the TSA to post that I have a right to have my spouse, you have a right to have your child or whatever with you during any secondary, and not be told they must go over there, stand over there, you could be arrested if you don't move away. The exact opposite has happened in the experience of thousands of travelers. Will you agree to post so travelers know that your TSA people are wrong if they try to say stand back, you can't be there?

Mr. KAIR. Sir, I believe the description about being able to have a traveling companion or family member with you, particularly in a private screening area, is up on our TSA Web site—

Mr. ISSA. Web site doesn't make it when your people are saying the opposite.

Mr. CHAFFETZ. All right, we will need to move on here.

Mr. ISSA. Will you commit to make sure that it is available to the public at the point at which they may be being told that they cannot have that person with them?

Mr. KAIR. Part of the challenge that we have is that signage, we run into having too many signs out there, so having a posting at the checkpoint is difficult for us because we have requirements for so many signs.

Mr. CHAFFETZ. The Chair will recognize that is a no. If you want to continue to add testimony, this is the problem with trying to fit this in.

Mr. ISSA. Thank you, Mr. Chairman.

Mr. CHAFFETZ. We are about to be called for votes. We have two other Members. It is the policy of this committee to first recognize those who actually sit on the subcommittee first, so I am going to recognize the chairman of the Transportation Committee, full member of this committee and subcommittee first, Mr. Mica, for 5 minutes.

Mr. MICA. Mr. Kair and Mr. Kane, have we bought 250 of the rapid scan backscatters, is that either purchased or being purchased, is that correct?

Mr. KANE. That is correct.

Mr. MICA. What is the estimated cost of that equipment, \$100 million?

Mr. KANE. I believe, all told for all the equipment we have purchased so far, and I don't know the split, is around \$122 million.

Mr. MICA. For rapid scan?

Mr. KANE. For both, the rapid scan and the L3, for the 500 machines.

Mr. MICA. OK. L3. Did former Secretary Chertoff talk, consult, or communicate with either of you two?

Mr. KANE. No, Congressman, he did not.

Mr. KAIR. No for me, sir.

Mr. MICA. Can you provide to the committee records of any of his communications between those involved in the acquisition of the equipment?

Mr. KANE. I am not sure how I would locate records. There was no one in TSA involved with him in the acquisition of the equipment, so I think the record would be zero from TSA's perspective.

Mr. MICA. Can you check the records of representatives of, what is it, L3, that you purchased that equipment from?

Mr. KANE. I am sorry, Congressman, I didn't—

Mr. MICA. The equipment was purchased. We talked about rapid scan and there is millimeter wave. I am interested in finding out the contacts of the former secretary with TSA, either prior to, during, or at some time of the acquisition. Can you check your records?

Mr. KANE. Congressman, we can do that. I can tell you he was not involved from the acquisition perspective of those machines any time after being secretary, at least, and clearly as his oversight of the department he would have had some involvement before that.

Mr. MICA. All right. Actually, the backscatter is nothing new. I remember at least 5 years ago we had stick devices that you could

deploy or software that would give you a stick image, rather than the full body scan. Is that correct? Are you aware that they had that?

Mr. KANE. No, I am not.

Mr. MICA. Mr. Kair.

Mr. KAIR. I am not familiar with that, sir.

Mr. MICA. Well, they have had it. I understand you are now testing that?

Mr. KANE. Yes, we are testing the automated target recognition software, which is the generic outline of a person.

Mr. MICA. And when do you expect those tests to be finished?

Mr. KANE. We have them on the millimeter wave, the L3 machines, we have them in the airports today. We will finish up with the specific testing we have to do on those probably by the end of this month. There is about a 45 to 60 day test.

Mr. MICA. Well, I can't believe it, because 5 years ago that software was available, so we didn't have to have—and objections were raised 5 years ago and we were told that technology was available. You have testing in your testimony, testing began 2007, included testing and evaluation in both laboratory and airports. When did you first notify Congress that you were going to deploy the equipment and it was fully tested?

Mr. KANE. I am not sure there was a specific timeframe that we did that, Congressman. I know in our budget request, clearly, when we requested the machines and the funding for the machines, we communicated to Congress—

Mr. MICA. Did you provide any evaluation of your testing at those airports?

Mr. KANE. We have provided very substantial briefings and—

Mr. MICA. That was after the deployment, at least to my staff.

Mr. KANE. And that is possible, Congressman. I don't know that we came up in advance of deploying to everyone on the Hill. I am not sure.

Mr. MICA. Are you aware of the latest testing of the equipment that GAO conducted in December?

Mr. KANE. We are aware of GAO's testing, as well as the other ongoing testing we have in airports every day—

Mr. MICA. Again, what this reminds me of is the puffers. The failure rate was totally unacceptable. Would you concur with that evaluation?

Mr. KANE. I think we look at different types of testing and we think the machines are very effective against the types of threats we are looking at. We do daily testing in airports across the country.

Mr. MICA. That is your self-testing. You have been briefed by GAO on their testing?

Mr. KANE. Yes, I have.

Mr. MICA. And you find that acceptable level of performance?

Mr. KANE. I would like to think that we could perform very well at 100 percent—

Mr. MICA. Do you find the level of failure acceptable that GAO has reported, now that you have the equipment in place?

Mr. KANE. So the specific number?

Mr. MICA. Well, first of all, we are not going to talk about numbers because it is classified, but the failure has been pronounced; Mr. Pistole talked to it. Mr. Pistole said that GAO was clever. Do you feel that, again, having reviewed this, is that failure rate acceptable? We are going to spend a quarter of a billion dollars on deploying this equipment and staffing it, and I have had it tested, and to me it is not acceptable.

Mr. KANE. I would like to see us do better against GAO testing. I don't think that is representative of the effectiveness of the technology.

Mr. MICA. If the American public, if we could reveal the failure rate, the American public would be outraged at that expenditure, but it seems that you have opted for sort of a popularity poll. You said that 80 percent of the people do not object to, accept the use of that technology, even though it doesn't work. So that is the basis on which we deploy expensive screening technology?

Mr. KANE. No, Congressman. I think that is a partial basis, but I think the other extensive testing that we did in the labs, that we did in the field, and that we do in the airports every day—

Mr. MICA. Well, the public may accept it, but I am telling you I will not. Thank you.

I yield back.

Mr. CHAFFETZ. The gentleman yields back.

We have a vote on the floor. We have a committee that has now run past its time it was going to start. We have other Members who have joined us here who want to ask questions, but with 12 minutes to go we are going to have to stand in recess, with the expectation that both of you will come back to further testify and answer Members' questions. Is that your understanding, Mr. Kane?

Mr. KANE. Mr. Chairman, yes, it is.

Mr. CHAFFETZ. Mr. Kair.

Mr. KAIR. Yes, Mr. Chairman.

Mr. CHAFFETZ. My apologies to the Members. This is not the way we were going to conduct this. This is not right and fair to the Members. I appreciate the public and those that have traveled here to do this. Nevertheless, we will continue this hearing at a date to be determined. We stand in recess. Thank you.

[Whereupon, at 1:38 p.m., the subcommittee was adjourned.]

