

NATIONAL COMMISSION ON  
TERRORIST ATTACKS UPON THE UNITED STATES

Public Hearing

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## P R O C E E D I N G S

MR. KEAN: As we start I want to do two things. One is to make part of the permanent record -- we have a statement here from Senator Lieberman, who sent in a statement to make part of our record, and a statement from Chris Chez from Connecticut. We will make both those statements part of the permanent record.

I also want to recognize people who should have been recognized yesterday, I think, because they are absolutely vital to our work. Phil Zelikow, our Executive Director who is behind me with Chris Kojm, Deputy Director and Dan Marcus, who is General Counsel. They are absolutely essential, and will be, to our work.

I want to recognize, as well, Stephanie Kaplan and Tracey Shycoff, who did all the work really to put these hearings together these two days.

Our first panel this morning is on borders, money and transportation security.

Let me see, we are missing one person I thought was going to be here. Alright, so going in order -- no, I'm alright, I am looking at the wrong one.

We start out with Glenn Fine, unless you have some sort of order you all would like to go in?

(Pause.)

MR. KEAN: Okay, from the U.S. Department of Justice.

MR. FINE: Mr. Chairman, Mr. Vice Chairman, and Members of the National Commission, I appreciate the opportunity to testify before the Commission about the work of the Department of Justice Office of the Inspector General on border security issues. Both before and after the September 11 terrorist attacks, we have focused much of our

resources on these and other national security issues in the Department of Justice.

Today, I will describe findings from several of these reviews that examined programs in the Immigration and Naturalization Service. That agency had responsibility for immigration and border security issues until March 1, 2003, when it was transferred into the new Department of Homeland Security.

At the outset of my remarks, I want to stress that while we have noted serious deficiencies over the years in various INS operations, this should in no way diminish the important work of thousands of INS employees, now DHS employees. Most of them perform diligently, under very difficult circumstances, and their mission is critical to the security of our country. Yet, our reviews have revealed significant problems that left gaps in the INS's attempts to secure the nation's borders.

In one important review, we examined the INS's contacts with two September 11 terrorists - Mohamed Atta and Marwan Alshehhi. We investigated how these two were admitted in the United States. We also examined how, six months after the terrorist attacks, a Florida flight school received notification that Atta and Alshehhi's applications to change their immigration status from "visitors" to "students" had been approved. The mailing of these forms raised serious concerns about the INS's tracking of foreign students in the United States.

With regard to Atta and Alshehhi's entries into the U.S., the evidence did not show that the inspectors who admitted them violated INS policies and practices.

However, our review found that the adjudication of their change of status applications was untimely and significantly

flawed. The INS took more than 10 months to adjudicate the applications, well after Atta and Alshehhi had finished their training course at the Florida flight school. In addition, the INS adjudicator who approved their applications did so without adequate information, including the fact that they had left the country twice after filing their applications, which meant they had abandoned their request for a change of status.

We also found that historically the INS has devoted little attention to monitoring foreign students, and its paper-based tracking system was inefficient, inaccurate, and unreliable. The new internet-based foreign student tracking system, called SEVIS, has the potential to dramatically improve the foreign student program.

Last month, the OIG completed a follow-up review to assess the INS's progress



in implementing the SEVIS system. We found that while the INS has made progress, the system is not fully implemented. Significant deficiencies remain, such as a lack of adequate oversight and training of contractors hired to conduct site visits of schools, and a lack of procedures to identify and refer potential fraud for enforcement action.

In my written statement, I describe in greater detail a series of other reviews that the OIG has conducted on border security issues. One review examined the INS's efforts to prevent illegal immigration along the northern border. Until recently, the INS devoted significant resources to deterring illegal immigration along the southwest border, but did not focus such attention on the northern border. For example, as late as 1999, only 311 of the national total of approximately 8,000 Border Patrol agents were assigned to the

northern border. We concluded that the level of illegal activity on the northern border clearly exceeded the Border Patrol's capacity to respond.

After September 11, we issued a follow-up review that found the INS had made some improvements to enhance the security of the northern border. However, we concluded that increased staffing and resources for the northern border continued to be a critical need.

We also have conducted other reviews related to border security. For example: We reviewed the INS's record in deporting aliens who have been issued final orders of removal. We found that the INS removed 92 percent of detained aliens with final removal orders, but only 13 percent of non-detained aliens.

In addition, we reviewed the Visa Waiver Program which allows visitors from 28

countries to enter the U.S. without first obtaining a visa. We found that INS inspectors did not check passports of all of these visitors against the INS's computerized lookout system, and that the use of stolen passports from some of these visa waiver countries presented a serious problem.

A theme we found repeated in many of our reviews was that the INS's information technology systems needed significant improvement. Many OIG reviews have questioned the reliability of the INS's information systems and the accuracy of the data produced by them.

In addition, INS information systems are not always integrated with other agencies' systems. For example, the INS and the FBI developed their agency's automated fingerprint identification systems separately, and full integration of the systems remains years away.

I also want to mention, briefly, one other review that, while not addressing border security issues, does relate squarely to the Commission's work.

At the request of FBI Director Mueller in June 2002, we initiated a review to examine aspects of the FBI's handling of intelligence information prior to the September 11 attacks. Our review focuses on how the FBI handled an electronic communication written by an agent in its Phoenix office regarding extremists attending flight schools in Arizona. Our review also is examining aspects of the FBI's handling of the Moussaoui investigation and its handling of other intelligence before September 11. I believe the final results of this review will be useful to the Commission, and we intend to cooperate fully with your review of these subjects.

Based on the significant body of work

by the OIG during the last several years, I believe there are several broad themes that the Commission may want to examine relating to border security.

First, information and intelligence sharing among all levels of government remains a critical component of the effort to prevent terrorist attacks in the United States. Without adequate intelligence, the ability of front-line employees to screen effectively those who seek to enter the country is limited.

Second, our reviews have found that the current systems for identifying when aliens enter and leave the country are clearly inadequate. Implementing an effective entry-exit tracking system is a daunting challenge that will require substantial efforts and a large investment of resources.

Third, we encourage the Commission to focus on the often-overlooked issue of human

capital. To fulfill its mission, the Department of Homeland Security must have sufficiently trained immigration staff and supervisors. Historically, this has been a challenge for the INS.

Fourth, I think it is also important to note that timely and consistent processing of the millions of benefit applications has been a longstanding problem for the INS, and now for the DHS. An enhanced focus on border security should not override this important service-related responsibility.

And finally, the transfer of the INS to the Department of Homeland Security presents enormous management challenges. The transfer will not, in itself, resolve the issues I have identified today. Solutions to border security issues will require innovation and aggressive management oversight.

In sum, I believe that these border

security issues present many potential areas for the Commission to examine in the months head. We will be pleased to provide any information or assistance to the Commission as it performs this critically important task.

That concludes my statement. I would be pleased to answer any questions.

MR. KEAN: I think we will do the panel and come back, probably with questions.

Lee Wolosky from Boies, Schiller & Flexner, come in.

MR. WOLOSKY: Thank you for inviting me to testify before you on the subject of terrorist financing. It is an honor and a privilege to be able to appear before you today.

Unlike other terrorist leaders, Osama bin Laden is neither a military hero, a religious authority, or an obvious representative of the downtrodden and

disillusioned. Rather he is a rich financier. He built al-Qaeda's financial network from the foundation of a system originally designed to channel resources to the mujahadeen fighting the Soviets in Afghanistan the 1980s.

Thanks to the leadership of the Bush administration that network has been disrupted, but it has certainly not been destroyed. And as long as al-Qaeda retains access to a viable financial network, it will remain a lethal threat to the United States.

Like al-Qaeda itself, its financial network is deliberately compartmentalized, and is characterized by layers and redundancies. Al-Qaeda raises money from a variety of sources and moves money in a variety of manners. It runs businesses operating under the cloak of legitimacy and criminal conspiracies ranging from the petty to the grand. The most important source of al-Qaeda's money, however,



is its continuous fund-raising efforts.

Al-Qaeda's global fund-raising network is built upon a foundation of charities, nongovernment organizations, mosques, Muslim community centers, web sites, intermediaries, facilitators and banks and other financial institutions. Some whose money goes to al-Qaeda know full well the illicit and violent purposes that it will further. Other donors believe their money will fund legitimate humanitarian efforts, but the money is nonetheless diverted to al-Qaeda. For years, individuals and charities based in Saudi Arabia have been the most important source of funds for al-Qaeda.

Al-Qaeda moves its funds through the global financial system, the Islamic banking system, and the underground hawala system, among other money transfer mechanisms. It uses its global network of businesses and charities

as a cover for moving funds. And it uses such time-honored methods as bulk cash smuggling and the global trade in gold and other commodities to both move and store value.

Following September 11, 2001, the Bush administration, building on the policies of the previous administration, undertook tactical actions to disrupt particular individual nodes in the terrorist financial network and strategic initiatives to change the environment within which terrorists raise and move funds.

Tactical initiatives include law enforcement and intelligence activities, along with public designations under the International Emergency Economic Powers Act (IEEPA) of persons, businesses, and financial institutions associated with the financial network of al-Qaeda and other terrorist organizations.

Since much of the subject matter is

highly classified, the effectiveness of tactical measures is difficult to determine. Clearly, there have been successes, such as the recent action targeting the al-Farooq mosque just across the East River from here. Successes have been made possible due to markedly improved law enforcement and tactical intelligence cooperation from foreign states since September 11.

By contrast, progress in the strategic arena, in my judgement, has simply not been made a high enough priority. Far too many key countries, including virtually all in the Middle East and South Asia, still have in place ineffective or rudimentary bank supervisory and anti-money laundering regimes. In no country, including the United States, are either Islamic charities or the underground hawala system effectively regulated.

Fundamentally, U.S. efforts to curtail

the financing of terrorism are impeded not only by a lack of institutional capacity abroad, but by a lack of political will among key foreign partners. Some have a history of ignoring the problem. Some perceive, correctly or incorrectly, that the U.S.'s attention on the subject has waned. Some simply disagree with the U.S. view of the nature and severity of the problem.

Confronted with this lack of political will, the current administration, in my view, has not made full use of all relevant and legal policy tools at its disposal. For example, punitive provisions of Title III of the USA PATRIOT ACT enable the Executive Branch to restrict or prohibit access to the U.S. financial system for foreign states or foreign financial institutions that lack adequate anti-money laundering regimes. This powerful tool remains unused in a terrorist financing

context.

Finally, I would like to say a few words about the war in Iraq, which I support, but which I fear may retard progress on these critical issues.

Even supporters of the war must concede that the United States has not effectively justified the war to many members of the international community.

This state of affairs may set back ongoing U.S. efforts to fight terrorism. Terrorist financing is a transnational problem requiring transnational solutions. In almost all cases, the money trail leads or originates overseas. Curtailing terrorist financing therefore requires comprehensive law enforcement and intelligence cooperation with foreign states.

Political commitment defines the nature and scope of that cooperation. An

internationally unpopular war may make the necessary commitment more difficult.

At the same time, the diplomatic imperatives of fighting a war in Iraq may have bumped terrorist financing down the bilateral agenda with critical front-line states. By all external indications, the Saudis and other front-line states have not taken sufficient steps to change the strategic environment that funds extremism. Appropriate regulation of charities, hawala and the formal banking system, along with the reining in of the madrassa educational system, among other things, requires a fundamental commitment to long-term structural reform. While laws, regulations and decrees are difficult to come by, there is no credible evidence that comprehensive structural reform is taking place.

And yet we do not appear to be holding

the Saudis' feet to the fire. Rather than speaking out loudly and forcefully about their and other states' failure to take steps necessary to assure U.S. security, the United States remains publicly silent on these issues, no doubt captive to the near-term diplomatic imperatives of waging war, and assuring the basing and overflight rights, along with the petroleum production commitments, that are necessary or desirable in connection with that undertaking.

Thank you very much.

MR. KEAN: Mr. Dillingham is from Civil Aviation and General Accounting Office.

MR. DILLINGHAM: Thank you, Mr. Chairman.

Mr. Chairman, Vice Chairman Hamilton, Members of the Commission, thank you for inviting GAO to participate in this very important national forum.

As many of you know, GAO is the

investigative arm of the United States Congress. Over the years our reports have been a key source of information about the security of the nations transportation system.

In June of 2000 we reported that the terrorist threat of attacks using aircraft was a persistent and growing concern for the United States. The report also said that the trend in terrorism against targets was towards large scale incidents designed for maximum destruction, terror and media impact. Fifteen months later 9/11 happened.

Mr. Chairman, I have submitted a formal statement, for the record. This morning I would like to summarize that statement around two questions. First, how has transportation security changed since 9/11? And second, where do we go from here?

Regarding the first question about changes since September 11. Overall I think



the nation has come a long way. Before 9/11 security was never treated as a national priority and it had never gotten the kind of attention or resources that it receives today. We now have a federal agency whose primary mission is ensuring security for all modes of transportation. That agency is the Transportation Security Administration. TSA is the largest agency within the new Department of Homeland Security.

During the first 18 months of its existence the primary focus of TSA has been in aviation security. Before 9/11 the airlines, the airports and the federal aviation administration were all in charge of some aspect of aviation security. Unfortunately, as is often the case, when everybody is in charge, no one is really in charge and things can and did fall through the cracks.

Prior to 9/11 the very critical task of passenger and baggage screening, what was referred to as the last line of defense, was being handled by persons who were not properly trained, who were not properly supervised, whose salaries were not even competitive with the salaries of nearby fast food restaurants, and who had probably got the job less than six months.

Now most of the security screeners have been federalized. The question is whether screening is better because the staff are now federal employees. I submit to you that screening probably is better, but not because workers are federal employees. Screening is better because the workers are more skilled, because they are receiving a decent wage and because they are getting better training and supervision.

However, I want to point out that the TSA reports that since it took over screening

they have confiscated literally millions of prohibited items. I know that you have seen in the media, earlier on, about knitting needles and scissors and things of that nature. We are not talking about those kind of things. We are talking about over a million knives and box cutters. We are talking about more than a thousand firearms.

Since 9/11 there is a long list of security initiatives that have been undertaken. Some of which are classified and some of which are widely publicized, such as all baggage being screened before it goes on the aircraft, the installation of reinforced cockpit doors, and the presence of thousands of Federal Air Marshals.

In spite of all that has been accomplished, there are still vulnerabilities and occasional lapses in the aviation security system. The system is far from perfect and a

hundred percent secure. I submit to you that occasional lapse will probably continue to occur. The goal should be perfection, but there should also be a recognition that perfection is not attainable. The question is, are we doing as much as practicable to move towards that goal?

I think for the most part the answer is yes. With most of the goals that Congress set for TSA regarding aviation security now behind them, TSA is in the very early stages of working with the other transportation modes to enhance security in those modes.

Unlike the direct and pervasive role it played with regard to aviation, TSA envisions serving more as a transportation system security manager for the other modes. TSA will establish security standards and facilitate coordination and collaboration across the six transportation modes. TSA has

also provided some relatively small amounts of money to the other modes for security projects.

For the most part, state and local authorities and the private sector, in collaboration with a variety of federal agencies, such as the Coast Guard, Customs and federal law enforcement agencies, have been responsible for as much of what has been done to improve security in the other modes. These improvements have largely been a few new security initiatives or increased frequency of existing activities.

The new initiatives are activities such as conducting vulnerability assessments, in establishing first response teams. The increased frequency type activities includes things like additional training for emergency preparedness and revising emergency plans and conducting emergency drills.

The bottom line is that actions are

being taken and some progress is being made towards securing the nation's transportation system. But what could be considered as constituting an effective overall multi-modal transportation security environment, may very well be years away.

Turning to our last question. Where do we go from here and how do we get there?

The nation faces a very difficult and resource-intensive task to secure the transportation system. I would like to offer some thoughts and observations of where we need to go to move closer to the goal.

First, we must recognize that it is not possible to anticipate and counter every risk. Priorities must be assigned with time and money devoted to those threats and hazards that are best established and most likely to cause the most harm. In short, we need to plan and act strategically.

Second, effective coordination must be established among the many public and private entities responsible for transportation security.

Third, terrorists are creative. We need to address a significant proportion of our energies to identifying possible new terrorist risks and threats rather than simply preparing for the last type of attack that occurred. And in the final analysis, transportation security, which is crucial to our nation, it must be considered in the larger context of other national priorities and weighed and supported accordingly.

Mr. Chairman and Members of the Commission, this is very much a work-in-progress and much needs to be done. The GAO stands ready to help.

Thank you very much.

MR. KEAN: Thank you, Mr. Dillingham.

Commissioner Gorelick.

MS. GORELICK: Thank you, Mr. Chairman. I would like address my first couple of questions to Inspector General Fine.

First of all, I would like to say we have a very able and talented public servant in Glenn Fine. We are very happy to have you here today, and very pleased that you are doing your job in the Justice Department.

First question, I understand that the CIA launched an internal review immediately after 9/11 of its conduct before 9/11. Did the Justice Department do the same thing?

MR. FINE: No. The Justice Department did not do a broad after action report similar to what you describe with the CIA. Initially the Justice Department deferred to the Joint Intelligence Committee which was doing a broad review that looked at the actions of various Federal Government agencies, including the



Justice Department and others. After that, it has deferred to this Commission to do that broad review.

However, also the Inspector General, Department of Justice, my office, has done a series of reviews on national security issues, some of which I describe in my report in my written testimony, others on the FBI.

In addition when we have been confronted with particular issues such as the Atta and Alshehhi visa issue or change of application issue, we have done reviews on that. In June, as I mentioned, of last year at the request of Director Mueller we launched a review on how the FBI handled the intelligence information related to the September 11 attacks. So we are doing that kind of review. But the broad after action review similar to the CIA has not been undertaken by the Justice Department itself.

MS. GORELICK: Thank you. My second question is this. As I read your report, I see very different reviews occurring for a foreigner who wants to come into this country as a student, depending on what route he takes.

So could you contrast, for example, a foreigner who wants to come into this country as a student, but who applies for a visa in a visa waiver country, comes in as a visitor and then tries to change his status to a student status, which would allow him to stay longer, versus, someone who applies to be a student from a non waiver country and goes through the consular process for a student waiver. Could you describe the two?

MR. FINE: Sure. It is a different review process.

For the student who applies abroad in his or her own country, they have to show ties to the country, their own country, and show an

indication that they will return to the country afterwards. They have to show financial means, they have to show that they have been accepted at an accredited school in the United States, and normally, although not always, they normally go through an interview process with consular officer. As a result they get a student visa. They come to the United States. They present the visa to the immigration inspector at the port of entry, and they enter into the United States and take up studies.

That is a different process than a foreign student who did not get visa abroad but who comes to the United States on a visitor visa or who may come to the United States without a visa because they are from one of the 28 visa waiver countries. So they enter the United States either with a visitor visa or without a visa from a visa waiver country, and in the United States they then apply to change

their status to student.

In the United States it is largely a paper process. They fill out the I-589 form. They show they have been accepted by a school. They show financial means, and then the INS adjudicates their status on paper without an interview. Also, prior to September 11, as we found in the Atta and Alshehhi case, without even checks of the database that would show what their status was when they applied to the United States. So it is a different process depending on which route they take.

MS. GORELICK: So if you are clever, you can figure out a way to come into this country and stay for a substantial period of time without anyone ever interviewing you as to the appropriateness of that occurring?

MR. FINE: It is possible to do that.

MS. GORELICK: Has that changed since September 11?

MR. FINE: It has not markedly changed since September 11, particularly from the visa waiver countries.

MS. GORELICK: Mr. Dillingham, did you want to add something?

MR. DILLINGHAM: Yes, I did. To the best of our knowledge, the State Department is denying student visas to people who want to come in to study flying in the United States. That, in fact, has changed.

MS. GORELICK: I'm glad to hear that.

One other general question for you, Mr. Fine. What is the state of connectivity between the intelligence community and INS today, INS either at the Justice Department or at the Department of Homeland Security? How much information flows between the Intelligence Community and those who are guarding our borders and vice versa?

MR. FINE: Connectivity is better than

it was in the past. Now immigration inspectors and INS officials do connect through their own databases, through the interagency or board information system to State Department databases, the class database, tip-off systems, and in those databases is intelligence information provided by intelligence agencies.

In addition, the INS has more direct contacts with the intelligence agencies through their Office of Intelligence. However, the information is often unclassified, often sometimes vague and not in a particular usable form, we have been told by some immigration inspectors. I think that is a critical issue, that this Commission and the government needs to look at. The connectivity of information. The integration of the systems and the ability to get usable information, usable intelligence information to the front-line employees who need to use that information to screen people

who come to the United States. Without that it is an enormously difficult job that they do.

MS. GORELICK: Thank you very much.

MR. KEAN: Mr. Gorton.

MR. GORTON: Mr. Fine, assuming that in 2001 the INS have been substantially better funded, maybe twice as much money, and equally more efficient in carrying on its duties. How many of the 19 hijackers could have been in the United States or would have perfectly valid first entry into the United States, in any event?

MR. FINE: That actually, I think, is speculative and I can't really answer that question.

What we do know is that many of them, most of them, entered into the United States with valid visas and the immigration inspectors did not have any information or intelligence that would change the outcome of their inspection of them.

So for that it is hard to say what the

difference would have been had the INS been better funded or had more information, but I do think it is an important issue that needs to be addressed going forward.

MR. GORTON: I take it then that most, if not all of them, could at least have had a first entry into the United States as visitors even if the INS had been much more efficient?

MR. FINE: That's correct, and really the issue there is the State Department. The State Department's interviews of them, giving visas to them, and my understanding is --

MR. GORTON: But they wouldn't have required interviews at all if they were just coming here first as tourists, would they?

MR. FINE: Pardon me?

MR. GORTON: Would they not have required interviews at all if they were just coming here first as tourists?

MR. FINE: From some countries they



would have, yes. From the visa waiver countries they wouldn't have required interviews. But many of them came from non visa waiver countries such as Saudi Arabia and elsewhere, where they did require interviews.

The Inspector General of the Department of State has looked at that and from my understanding of it, has indicated that there were some gaps in the processing of those 19 terrorists for their visas, but that's an issue for the State Department's Inspector General.

MR. GORTON: The question is basically leading to this. I think you have pointed out very eloquently, particularly in your written statement, the INS or any similar agency doesn't exist simply to keep people out. It exists in order to let the right people in, whether they are tourists, full-time immigrants, doing business here, or anything

else. One of your statistics is 500 million particular contacts at one time or another.

So I guess my question is, how much can we realistically expect to increase safety and the exclusion of dangerous aliens simply by a more efficient bureaucracy or homeland security agency, and how much for providing for the safety of the people of the United States, is on the laps of Congress perhaps to make different policies and to make the system less complex and easier to administer than it is.

Does the Department of Justice have views on that subject?

MR. FINE: Well, I am not sure I can speak for the Department of Justice per se, but I do believe the issues need to be addressed at all levels. It can't simply be looking at the INS and the end product of the process, saying all the onus or burden goes upon them. There does have to be a look at how to allow the flow of

travellers and commerce across our borders, but in a way that attempts to screen out ones who shouldn't be here.

Perhaps through trusted traveller lanes, or ways to increase the ability of cargo to be inspected in advance. So that is an important issue. There are policy issues that the United States Congress has to look at as well.

What we have looked at is the INS's aspect of it and we have found deficiencies. I am not saying that is the sole problem in protecting our country.

MR. GORTON: One more question of that nature, you spoke of the 28 visa waiver countries in your written testimony, at least. You speak to the fact that there is a great deal of theft of passports from those countries. Of course they are, in a sense, valid passports. Is there any practical

solution to that problem? Obviously from very friendly countries a visa waiver is probably a good policy decision, but how do we prevent the misuse of visa waiver passports?

MR. FINE: I think there are several ways to do that. One is to ensure that those countries have better accountability of their passports, and if their passports are being stolen we might want to look to see whether those countries should remain in the visa waiver program.

Secondly, once those passports were stolen they have to be reported so that the numbers of those passports can be entered into lookout systems, and when someone travelling with that passport shows up at a port of entry, an INS inspector can check the database, see that it's a stolen passport, see that it is illegitimate and stop that person.

What we found in our reviews is that

foreign countries sometimes --

MR. GORTON: How are we going to determine whether the passport was stolen?

MR. FINE: By the foreign country having clear internal controls about passports. They know they are missing, they know they are stolen. They report it to the United States. It is entered into a look-out system, and then we can stop people trying to use those passports. That's what happens, but we found that is not happening on a consistent basis and in some cases the INS inspectors didn't even check the look-out systems to determine whether the passport had been reported as stolen. That is one thing that we can do.

MS. GORELICK: Let me follow up on that and then move to more questions of Mr. Wolosky and Mr. Dillingham.

The INS, as I understand from your report and my own experience, has utilized

biometric measures for the identification of individuals trying to come into this country which, obviously, are harder to forge than a passport, and certainly harder to steal.

Do you see a future in the utilization more broadly of biometric measures as a form of identity checks at our borders?

MR. FINE: Yes, I do. I think it is critical. Names can be changed. Names can be misspelled. Names are not a full enough identifier. There does need to be some use of biometrics to ensure that the person showing up at the border is the person that received the visa, and also that the person is who he or she says he is.

So, yes, biometrics are clearly needed to be incorporated into our identification systems.

MS. GORELICK: Finally, you have raised serious questions about the visa waiver

program. In your professional opinion, should that program be continued?

MR. FINE: I think the visa waiver program does have significant benefits. It is a policy question whether those benefits outweigh the costs, and I am not in a position to say that the program should be discontinued. But I do think the countries that are in it should be carefully screened and held accountable to ensure that the appropriate measures, that its passports are not being fraudulently used.

MR. GORTON: Have we ever picked up a suspected terrorist who came here on a stolen passport from a visa waiver country?

MR. FINE: Yes, we have.

MS. GORELICK: I would like to ask Mr. Dillingham a couple of questions, not just about aviation security, but as I understand it, you previously were director of physical

infrastructure issues, generally, at the GAO.

There have been published reports that the Transportation Security Administration has poured, in fact, more resources into aviation security than perhaps we are needing at the moment. Yet we hear that there is not the same degree of attention being paid to our ports, to container shipments, to bridges, to tunnels. And as you have said, if everyone is in charge, no one is in charge.

You have contrasted the way in which TSA is approaching its role in aviation security with what, I think you have described as, a more management role setting standards, creating a collaborative role with all of the many parties who have responsibilities for all of these other transportation modes.

Could you comment on whether the resources are adequate to maintain and increase our security in these other areas of



transportation, and whether the management structure that you have described is adequate?

MR. DILLINGHAM: Yes. I think, without a doubt, there has been disproportionate resources applied to aviation. Aviation is different from the rest of the modes in that there was a Federal, a large Federal presence associated with aviation prior to 9/11. It was, of course, the FAA.

The other modes are also different in their characteristics. Mass transit, for example, is very hard to secure because of the nature of it. It's large, it has to be open. There are lots of ways to get into it.

Ports, a huge undertaking needs to be done, but there is also this sort of mix of stakeholders, local, state and federal players with regard to some of these other modes of transportation. Clearly, there is a gap between what has been done for aviation and

what needs to be done for the rest of the modes. Money is a big issue.

Just by example, we came up from Washington on the Amtrack. We came through a very heavily populated northeast corridor, and to my knowledge there was no metal detector check. There was no screening to speak of, and we pulled in under Penn Station.

That could have been a very bad situation. A situation that occurred in Baltimore a year or so ago with a chemical fire on a freight train. All of this points to the notion that there are definite gaps, whether there are going to be enough resources to address that is a real question.

What the TSA is doing now is, trying to establish what are vulnerabilities associated with these various modes, and to move from there.

The management structure you ask

about, I think there is no way that it can be the same as with aviation. Aviation was mandated by legislation, so I think the coordination and the collaboration and the structure that TSA is trying to put in place is, in fact, a good first step and it is probably a logical step to take in terms of managing.

It will still be a case where -- well it wouldn't be a case where no one is in charge. TSA will be in charge by statute. They are in charge of all transportation security. They will, therefore, have a statutory basis to coordinate and for cooperation and setting standards across the system.

MS. GORELICK: Well, Mr. Dillingham, if I might make an observation. Before September 11, 2001, the GAO and other agencies made numerous reports about the vulnerability

of our aviation security system. And the response was often, you need to understand how disperse power is. There are various entities with various responsibilities. There are local transportation authorities. There is the aviation industry, et cetera, and of course, this is very costly, and trying to figure out who bears the burden is very complicated.

That sounds actually quite similar to what we are hearing now about transportation outside the aviation security arena. I am prepared to concede that there is a lot of complexity, but I wonder whether we have the same urgency being brought to bear around our ports, in particular, around container shipments in particular, around the security of our bridges and tunnels, and whether you, having broad experience and lengthy experience in this area, feel that we have the right level of effort and the right structure being brought to

bear.

MR. DILLINGHAM: I think the process that is in place is the necessary process. That is, to determine what's important. This is all being done on a risk-assessment basis, meaning that the TSA is looking across all modes trying to see what the vulnerabilities and the threats are, and then to prioritize that across all threats and across all modes. Because, as I said in my statement, there is no way that we, as a country, can secure against all risk. So we have to prioritize and we have to prioritize according to what the threat is and the likely harm that would come if that threat is in fact realized.

I think ports are high on the agenda. Right now, only two percent of the thousands of containers that come into the country are physically inspected, but neither the technology nor the manpower is available to

inspect 100 percent of them. But we are moving in the direction of getting better technology and finding ways, both internationally and domestically to address the issue.

MR. GORTON: Mr. Dillingham, you were very optimistic about the degree of progress we have made since 9/11 with respect to air transportation. First, I just wanted to make sure, you talked about six modes, have I got the other five right, car, train, mass transit, bus and maritime? Would those be the other five?

MR. DILLINGHAM: Yes, sir.

MR. GORTON: Which of those five is the highest priority and the greatest threat, as far as you are concerned, from the point of view of moving in the direction of the degree of progress we have made with airlines.

MR. DILLINGHAM: I think ports. I think maritime because maritime cannot only be

a place of substantial infrastructural damage, but it can have cascading effects on the economy. We can see when our ports were closed for a very short time a few months ago, how that effected the economy and international commerce. So I think ports are probably the next highest priority, and probably highest in terms of vulnerability as well.

MR. GORTON: One other question, if I may, both for you and for Mr. Fine.

How would you characterize the cooperation of the commercial airlines themselves in connection with air transportation safety? That question is for you. And the question for you, Mr. Fine, with respect to tracking emigrants and immigrants from the United States?

MR. DILLINGHAM: When you say their cooperation with regard to safety could you say more. What do you mean?

MR. GORTON: The whole TSA attempt, which you characterized as being pretty successful so far, would you characterize all or most of the airlines as being highly cooperative with the safety measures or reluctant from time to time?

MR. DILLINGHAM: I think the airlines are -- it is probably both. The airlines, of course, are in some economic distress. So the airlines will often sort of push back with regard to at least paying for some of the security measures that are being put in place and they see them as unfunded mandates.

However, the airlines on the other hand recognize that if the flying public do not believe that security is much improved, the flying public will not come back and the airline industry will suffer even greater economic woes, which in turn has a cascading effect on the rest of the economy.



MR. GORTON: How about with tracking people?

MR. FINE: I think it is mixed. I don't think that they have been uncooperative. I do think that there are issues regarding the collection of departure cards, I-94, and whether they are universally collected and provided to the INS. They are clearly not.

There are also issues with regard to airport facilities, inspection facilities, ensuring that they are safe and secure.

In the end, though, it is a Government function to ensure that it is handled appropriately. I think the onus is on the federal government to ensure that whatever needs to be done is done. And I think that's where the answer lies.

MS. GORELICK: Mr. Wolosky, we had a witness here yesterday who basically said that there is so much money, as he put it I think,

"sloshing around" in the Islamic charitable community, and so relatively little of it is needed, if you will, to successfully fund terrorism, that the ability to squeeze out the part that has been siphoned off to support terrorism activities is extremely challenging, let's say. Could you give us your assessment of that? After all, you said we need to do that. We need to identify those sources of funds and eliminate them.

MR. WOLOSKY: Sure. First, I absolutely think it is true that there is a very large amount of money as you said, or as the witness said "sloshing around" through that system. In part because it is actually one of the five pillars of Islam, Zecat, to give at least 2.5 percent of your income to charitable endeavors. That is collected both through retail charities, at mosques and Muslim community centers, and through larger

donations, typically by Gulf Arabs.

But particularly when it is given at mosques and Muslim community centers, again, like the mosque across the river, it is frequently collected by a community leader. It is co-mingled. It is dispersed at the discretion of the community leader, most frequently without any record keeping or any accountability.

But I don't agree with the premise that just because a large amount of money moves through that system that the United States should not take steps to regulate that activity within its own borders. Nor do I agree with the premise the United States should forego instruments of foreign policy to compel other states in which this activity occurs to engage in similar regulatory efforts.

I think that there are really two reasons to take such action, notwithstanding

the fact that a relatively small amount of money can contribute to devastating terrorist attacks.

The first is that where particular nodes are identified, you actually can take steps to prevent attacks from occurring by choking off the financing.

Secondly, to the extent that you force systemic changes, you make it harder for terrorists to raise and move money. To the extent that you achieve that objective, you are forcing them to spend more time worrying about how they are going to raise and move money, than spending time and effort on planning and executing deadly attacks.

MS. GORELICK: Thank you for that response. I think it will help us as we consider the kind of factual inquiry we need to be making here.

You raised, I think, two fairly

dispiriting points. One is that the issue of attacking the sources of terrorism funding has moved lower on the bilateral foreign policy agenda. And also, that the necessity for some international rubric for attacking terrorist financing has been undermined by the lack of international consensus for this effort.

I was struck by the fact that in November of '02, when you did your report, you actually observed that while immediately in the aftermath of 9/11 there was a lot of international cooperation, you said, "that coalition may be fraying" and you noted a "widening gap between the U.S. and Europe" on the basic salience and perimeters of global terrorism.

My question to you is this, here we are six months later, how are our requests for international cooperation in the area of financing of terrorism being met? How are

other key participants in the international community currently responding to our request for help?

MR. WOLOSKY: I think with respect to both questions, unfortunately they are better posed to someone who is currently working on these issues on behalf of the United States Government, but I do think that, as a general matter, there is substantial evidence to suggest that our foreign partners -- you have to remember, the way this process has worked insofar as IIEPA designations is concerned, is that the United States, through executive order, has named individuals and organizations that are part of the terrorist financial network, the assets of which are frozen, assets subject to U.S. jurisdiction are frozen. U.S. persons are prohibited by law from transacting business with those persons or organizations.

That process has been multi-lateralized through U.N. Security Council Resolution 1390 whereby the same names of individuals or organizations has gone to the United Nations and gone out to the member states of United Nations for similar action, as the member states may wish to engage in.

There have been, in my experience, two problems with the multi-lateralization of that process. The first is that many states lack the technical capacity to actually freeze funds. That was illustrated for me personally when I visited, in recent months, a strategically significant African country and I asked them the question: What happened to this piece of paper with all these names that came from the United Nations? Where did it go? Answer: It went to the Foreign Ministry.

I go to the Foreign Ministry and say, what did you do with this piece of paper with

all the names on it? Well, we sent it to the Central Bank.

Go to the Central Bank, as I did and say, what happened to this list? Well, we sent it to our banks.

Go to the banks, as I did: What happened to this piece of paper with all the names? Well, we put it over there because we don't have any ability to go through our accounts and identify the beneficial holders of the accounts.

So that is a point on technical capacity which needs to be addressed in this context.

The second point has to do with differing standards of who and what constitutes a terrorist, and also the evidentiary standards with respect to the type of information that foreign states have asked for in connection with supporting the U.S. designations.



With respect to the first subpoint, as the report of the Council on Foreign Relations notes, the European Union still to this day permits Hamas and Hizbollah to legally raise funds on its territory.

Secondly, with respect to evidentiary standards, what we have found post 9/11 was that while there was initial willingness of other states to freeze funds over designated individuals and organizations originated by the U.S. Government, that willingness faded as the months went on and foreign states asked for increasingly sensitive intelligence information that supported the original U.S. designations, which when it wasn't provided caused them to fail to take steps to freeze the accounts of designated individuals and organizations.

MR. GORTON: Mr Wolosky, would you give us a brief description of how the Hawala system works. What kind of financial system is

it?

And secondly, what the United States has done with respect to its illegitimate use for the support of terrorism when the deposits originate here in the United States.

And third, whether there is really anything we can do with respect to such an informal system when the transactions take place entirely overseas.

MR. WOLOSKY: Sure. The way it works is essentially as follows.

Let's assume that I am a Pakistani immigrant living in Brooklyn and wish to transfer \$500 to my parents living in Islamabad. The way I can use the Hawala system to accomplish that money transfer is by going to a local individual, a hawaladar in Brooklyn, giving him my \$500. He uses his network, which is most frequently a clan or family-based network and contacts his counterpart in

Islamabad, and he says, when someone comes in with a particular identifying code, give him the \$500.

That system enables money to be moved without the physical movement of money --

MR. GORTON: Is not that individual in Brooklyn engaged in banking activities under the laws of New York?

MR. WOLOSKY: Well, until recently the problem has been that there has been no Federal regulation of that activity. Post 9/11, using preexisting legal authorities, the Department of the Treasury has begun to require that activity, individuals who engage in that activity to register.

MR. GORTON: I see.

MR. WOLOSKY: Because the activity fundamentally is intended to be anonymous, without record keeping, without paper trails. The likelihood that the individuals will

register is quite remote.

But notwithstanding that fact, it provides a basis for prosecution in Federal court if they fail to register. Prior to 9/11 frequently there was no basis for prosecution in Federal court. Now if they fail to register, they can be prosecuted.

MR. GORTON: Is that effectively our method of stopping some portion of that \$500 from going, not to the parent in Islamabad, but to terrorism?

MR. WOLOSKY: Yes. I think a basic point which you alluded to is that this system of moving money is used for mainly legitimate purposes. It is unique to several different cultures in south Asia and east Asia. It has been used for centuries. It is used by terrorists and other criminals, but it is also used by a lot of people who just want to move money and avoid formal banking. They have

access to formal financial systems, but they want to avoid it, for whatever reasons.

But you asked whether that was the primary method of regulating this activity in the United States. I believe that it is, through a registration system.

And you also asked whether it -- what steps or whether the United States should take action to prevent other countries from being part of abuses of this system.

I think the answer is yes. Again, if you look under Title 3 of the U.S.A. Patriot Act, it authorizes the Executive Branch to restrict or prohibit access to the U.S. financial system on the part of states or foreign financial institutions that lack adequate anti-money laundering regimes.

This is ultimately the most powerful tool in the arsenal of the U.S. Government. It has not -- and it provides leverage over

states that, for instance, refuse to regulate in any manner the Hawala system.

It hasn't really been used to this point in this context and the findings of the distinguished Bipartisan Commission and the Council on Foreign Relations was that it should.

MR. GORTON: One follow-up question. You may have left out the middle of this transaction. Your Pakistani has gone and given \$500 to the Hawala person in Brooklyn who has then called Islamabad or communicated with Islamabad, which gives \$500 to the parent there, but somehow or other the \$500 has still got to get from Brooklyn to Islamabad, does it not?

MR. WOLOSKY: No. It doesn't. That's how the system works.

In other words, it is credited through family relationship, let's say, or a clan-based

relationship. The money itself physically does not move.

If you, for instance, if your uncle called you and asked you to loan some \$500 to someone who he wanted you to loan the money to, you probably would do it, even if he didn't advance you the \$500. You would rely on the fact of your family relationship for settlement to occur in the manner of your choosing, at some future day. That is exactly how the Hawala system works.

MS. GORELICK: There would be an off-setting transaction at some point in the future?

MR. WOLOSKY: At some point in the future. Again, at a time of convenience, whatever the circumstances may require. It doesn't have to be in cash. It could be in gold or it could be through some co-mingled account in an Islamic bank. It can occur in a

variety of different ways.

MS. GORELICK: One of the challenges for this Commission is to look at organizational issues and to make sure, A, our Government is arrayed correctly and organized correctly and, B, that it is using all of its authorities.

The Council on Foreign Relations report and your testimony note, a lack of organizational accountability for the money laundering issue. You made a number of recommendations with regard to who should have the leadership and who should have the ultimate responsibility.

Since that report was issued, can you describe what, if anything, has been done to address the organizational problems that you identified, and could you describe briefly those organizational deficiencies?

MR. WOLOSKY: Sure. The report



suggested that notwithstanding the significance of this issue, the fundamental significance of this issue, there was no single U.S. official with the correct mandate and authority to coordinate U.S. policy on terrorist financing issues. Policy is currently coordinated through a policy coordination committee that is headed by the General Council of the Treasury Department.

The Bipartisan Commission of the Council on Foreign Relations concluded that that, for a variety of reasons, was not the most effective way to coordinate various diplomatic, intelligence and law enforcement and regulatory ingredients that contribute to effective and sustained U.S. policy response.

For one thing, the report of the Council on Foreign Relations concluded that the Treasury Department was not the appropriate agency to coordinate diplomatic or intelligence

activities.

There is also the question as to whether or not even the most capable General Counsel of the Treasury -- and I don't know the General Counsel of the Treasury, but I am told that he is extraordinarily competent -- given his other statutory and institution responsibilities, has other things to worry about than the suppression of terrorist financing.

MS. GORELICK: I take it from your report, though, that the Congress has vested this responsibility in the Treasury Department and other agencies of Government have resisted implementing that; is that correct?

MR. WOLOSKY: I think that the Executive Bank has vested this responsibility in the Treasury Department. There is no statutory authority whatsoever with respect to terrorist financing.

Our report concluded that because of

the very different and difficult ingredients that contribute to an effective response, ranging from diplomatic activities to intelligence activities to regulatory activities, that that was best coordinated out of the White House.

MS. GORELICK: An organizational question for you, Mr. Fine.

You have noted that a very substantial portion of the immigration and naturalization service responsibilities that are the subject of your reports, have now been transferred to the Department of Homeland Security.

Your office has evidently built up a tremendous amount of expertise in the review and oversight of those functions. Has all of that capacity in your office been transferred to the Department of Homeland Security so that that oversight can continue uninterrupted in that new department?

MR. FINE: All of our capacity has not been transferred, but we have transferred a portion of our capacity.

There is a Department of Homeland Security, Office of the Inspector General that has been created. It has been created with resources from various entities. We have provided resources to it. The Department of Treasury Inspector General's Office has provided resources to it. The Department of Transportation Inspector General's Office has provided resources, FEMA and others. So there is a newly developed Department of Homeland Security, OIG. We have provided investigators and some managers to that entity.

A lot of our capacity is involved with the INS, but it is also involved with the FBI, the DEA, the Marshal Service. So there is not a distinct unit that we could transfer over there.

I do think it is a critical issue that you raised, though, because I do think that it is critically important that there be adequate, aggressive and strong oversight over this new entity, ranging from the INS to the Customs Service, to the Secret Service to the TSA. It is going to be a daunting challenge for that new agency, the Department of Homeland Security OIG, to get up and running, and to ensure that there is continuity of oversight.

We believe strongly in it and we think that that new OIG ought to be adequately funded to perform its mission in an aggressive way.

MR. HAMILTON: Mr. Wolosky, -- well, first of all let me say, this has been a marvelous panel. Each of the three of you have been very helpful to the Commission and we appreciate it.

Mr. Wolosky, I was focused on your final paragraph. "We don't hold the Saudis

feet to the fire."

I gather from your testimony that we, the United States, and the countries that are most responsible here, if we had the political will to crack down on financing, we could do it. But, because of policy considerations that are very important, we don't do it.

We have to have the oil. We have to have the overflight rights. We have to have the basing rights. And because we have to have those things, we do not hold their feet to the fire. Is that your view?

MR. WOLOSKY: That is my view.

Unfortunately, I wasn't called before you to testify on policy with regard to Saudi Arabia in the current context of --

MR. HAMILTON: I know, I appreciate that. I am not being critical of you in any way. It is just a very good illustration of how policy gets in the way of, in this case,

enforcement.

MR. WOLOSKY: Yes. That's the point of my testimony. In other words, I am not here to make judgments of whether or not particular issues should be prioritized over other issues, but what I can tell you is that the United States, at the highest levels, has not spoken out loudly and forcefully on the terrorist financing issue as it relates to Saudi Arabia.

That is not to say that things aren't being done. I have every reason to believe that a lot is being done, but it is being done in the shadows. The conclusion of the Council of Foreign Relations' report was that it was time to bring it out of the shadows. For the President of the United States or for other senior officials to state clearly, unequivocally and unambiguously what was required of the Saudi Government on the terrorist financing issue.

That is not being done, and in the judgment of this task force it needed to be done in order to set benchmarks for the Saudis and to enable the Saudi Government to communicate to its own citizens what kind of conduct was and was not acceptable.

MR. THOMPSON: Mr. Dillingham, I don't want to sound like a cranky business traveller, but I would like to get into an area of focus on the part of TSA in terms of air travel security, because funding follows focus, as we know, and your testimony and that of Mr. Fine this morning, have pointed out some rather large funding gaps, particularly with regard to port security which you testified to, and the issue of water security that Mr. Fine testified to.

I acknowledge that TSA employees, the new ones especially, are finding and retrieving large amounts of weapons. But if news stories



are to be credited, some weapons still get through. I understand it is a system which depends not just on technology, but on human instinct and humans paying attention as well. But it seems to me that a fault of government is it fights yesterday's battles.

As I go through airline security screening processes, I see this sort of almost obsessive focus on belts, and shoes. And at the same time you are telling me that containers are coming into the United States inspected only at the level of 2 percent, if that. And Mr. Fine is telling me that the northern border is, in many respects, an unprotected area, particularly with regard to 24/7 coverage. While everybody is down in the Southwest trying to prevent undocumented workers from crossing the border to work in the United States and take jobs that Americans won't do.

Is our focus on airline security wrong? Who makes these policies? Who reviews these policies? How are they kept up to date? Are we anticipating ways in which terrorists can use airline vulnerability, or are we saying that because Richard Reid got on an airplane and tried to light his shoes, that we are going to focus on shoes of millions and millions of American business travellers. And for the life of me, maybe you can explain it, but I don't see the relevance of showing your belt buckle open as opposed to your belt buckle closed, and yet we have these jam-ups at the security system screening depots with people milling around. We have all seen this process.

Is this the right balance? Is there somebody sitting in Washington to say, well, let's look at what we are doing about airline security and try and anticipate future attacks?

MR. DILLINGHAM: Yes, Governor, if I

could.

I think it is part of, if you have only got a hammer, all of the answers you use that hammer for. That's sort of how aviation security has evolved. That was the first thing that came out of the box and we have applied all of our resources to it.

It may seem -- if I can give you just sort of a story behind the belt buckle. What has been determined is that before 9/11 people would -- the belt buckle would send off an alarm and the screener would pass by and say, okay, belt buckle, no problem.

But the process of testing the system, if you have a belt buckle and you can hide a weapon inside or behind that belt buckle, and it is only passed as, it is only a buckle, it is not a weapon. That's the kind of situation that they were focusing on.

It is the same thing with people at

airports. They see grandmothers and children being examined and it seems embarrassing, in fact it can be, but they also have intelligence to say that the terrorists have used these kind of ways to get things through.

We are now seeing a ratcheting back of the things that don't make sense. We are seeing a rationalization of security. You are no longer asked did you pack your bag, has it been with you the whole time. There is no longer the prohibition of driving up to the airport.

We are seeing ratcheting back. We are seeing a rationalization of it. So there is someone who is looking at this. After 9/11 it was, let's do everything that we can to change the situation for aviation security, and now there are changes.

You are right, that has been the reputation of security in this country,

fighting the last battle and not looking for what's coming. I can tell you that our office is looking at that issue and trying to understand, you know, to what extent are we looking for the next generation of technology. To what extent are we moving beyond where we were being prepared for the threats that we haven't seen yet, but we know were out there.

MR. THOMPSON: Mr. Fine, going back to the students for the moment. Do we have a rough idea how many students are in the United States at any one particular time?

MR. FINE: About half a million.

MR. THOMPSON: Have a million?

MR. FINE: Yes.

MR. THOMPSON: I noticed all the way through your written testimony, and a little bit in your oral testimony as well, that almost every system that we have developed or identified to deal with some of the issues

about student entry or student remainder or student registration, don't yet seem to be working or up to snuff. I mean, is the sheer number of foreign students in the United States at any one time going to overwhelm any system?

MR. FINE: It clearly overwhelmed the paper-based system which was antiquated and inefficient. A computer-based system I am not sure will overwhelm the ability of the system to track who is in the country, who is not in the country, who has shown up at school, who had has gotten a student visa, came to the United States and then never showed up in the school, as actually one of the September 11 hijackers did. He got a visa to show up at a language school, never showed up. The school didn't do anything about it and none of the authorities knew this.

So we need a system that tracks that and can provide that information. What is

going to be very difficult is what to do with that information and how to decide what is the important ones to follow through with and how to prioritize what happens with an enormous amount of information. For that, I think, there needs to be intelligence and adequate intelligence to determine where the threats are.

But in the first step there does have to be a system, a computerized system that does track the status of the students. I believe that the SEVIS system that is being implemented is a good system and has the potential to do it, it is just simply not fully implemented and needs more steps to go.

MR. THOMPSON: Assuming the systems work, can we ever hire enough people to follow up on the information in the system and go track the people down who disappear from the system? To me that is a really devilish problem.

MR. FINE: I don't think you can hire enough people to track all of them, but I think you can do some efforts with some issues where there is intelligence that indicates you need to.

It is also important to be able to provide information from that system to other law enforcement agencies, so that when other law enforcement agencies come in contact with somebody, they will know that this is a person out of status, this is a student who never showed up at school. So they have that information and can act upon it. Prior to this computerized system, there was no possibility of that.

MR. THOMPSON: Could you or Mr. Dillingham comment on the status of the technology or efforts, pilot programs, or anything else that is out there to prescreen business travellers on airlines, or prescreen workers who come into the United States during



the course of day and go back to their host country in the evening.

It seems to me we haven't made much progress there and the result is, I presume, that we are still using a lot of human resources to screen the same people day-in-day-out that present what you presume to be a low security risk. Are there enough people to guard our northern border?

MR. FINE: Those are important projects. There are some projects that provide trusted travellers access across the border. They are not universally available. I believe that is an issue that needs to be addressed and needs to be more widely used.

Part of the issue is the money. Sometimes the fees are higher than people want to pay. But it is a program that I think provides some relief from the crushing workload that inspectors have along the border, an

ability to speed some people up and allow greater scrutiny of others.

MR. THOMPSON: The technology is there, I presume?

MR. FINE: Yes.

MR. DILLINGHAM: Yes. Following what Mr. Fine said, the TSA is in fact looking at programs such as trusted travellers, starting with identifying, using identification with biometrics for all transportation workers. So that is in process.

And at an international level, I think it is one of the unresolved issues. There is some cooperation between other countries and the United States in terms of supplying passenger lists for international travellers ahead of time. That is one of the issues that needs to be further explored. Bilateral, multilateral agreements with regard to security and security operations between the United

States and other countries. It is clearly an open area.

MR. KEAN: I have one question and then Commissioner Ben-Veniste and Commissioner Lehman.

I think I read about a year ago for the first time that the greatest danger out there was probably containers, and containers in container ports. You said practically the same thing again today and I read it a number of times in between. You said, well the technology has got to be developed.

Can you give us any kind of approximate timetable when that kind of danger is going to be lessened or are we just going to live with it?

MR. DILLINGHAM: We are certainly going to live with it for a while. There are some technologies out there that can be used. What's missing right now is better technology

and also the balance between screening and moving cargo. There are ways in which you can x-ray these containers, you can physically inspect these containers, but what you are talking about is slowing the commercial process. That is where the balance has to be struck.

Technologies are, in fact, being developed. In some cases the technology is so expensive at this point that it is also not being readily accepted by the maritime community.

MR. KEAN: Is there any kind of a timetable, six months a year, two years?

MR. DILLINGHAM: I would go with multiple years. Not six months, not a year, but a few years.

MR. THOMPSON: What do other countries do?

MR. DILLINGHAM: They are petty much

in the same way. Those are the containers that are coming here. What we have now is we are trying to work with other countries to do some screening, some random screening of containers at their point of origin so there is less to be concerned about as they arrive on U.S. shores, but it is an international issue. It is an international issue, so they aren't doing any more than we are doing.

You will find, for example, in an aviation context, El Al does a lot more with containers that are going on board and cargo that is going on board than the U.S. does. But the thing about that is, it is such a small operation compared to what we do in the States that it is not even comparable almost.

MR. KEAN: Commissioner Ben-Veniste.

MR. BEN-VENISTE: Thank you. Mr.

Fine, I want to express our appreciation for your offer of complete cooperation with this

Commission. We will definitely take you up on it.

In the limited time we have available, it is imperative that we take advantage of the pre-existing work that has been done in order to identify what needs to be done further and to make recommendations to the Congress and the President.

I want to mention, yesterday Mr. Wolosky, we had a panel that included Professor Ranstorp and Brian Jenkins who spoke about the galvanizing effect of 9/11 on the cooperation of international intelligence agencies with our own in connection with the anti-terrorism efforts.

You have made a very provocative statement with respect to the potential for degrading that cooperative effort as the result of political differences relating to the war in Iraq. Do you have any concrete evidence or

information to suggest that the multilateral intelligence services have in any way slacked off from their cooperation with our intelligence community in that respect?

MR. WOLOSKY: No, I don't. But I can tell you that having worked these issues day-in-day-out, they are very difficult under the best of circumstances. What I fear is that we may be entering into the worst of circumstances with respect to our efforts to cooperate with states that disagree with U.S. policies in Iraq, which I happen to support.

But my point is that it may be increasingly difficult for moderate Arab regimes, and even our traditional allies, to continue to engage in the type of cooperation that, I agree, was unprecedented following September 11.

MR. BEN-VENISTE: So your observation is one based on informed speculation rather

than actual evidence?

MR. WOLOSKY: Correct.

MR. BEN-VENISTE: Let me ask just one other question of Mr. Fine and Mr. Dillingham. We have heard about the potential for the trusted traveller card, perhaps utilizing biometric information.

Is this the precursor, is this the camel's nose under the tent for a national identity card utilizing such information?

MR. FINE: I don't believe it is the camel under the tent. It is an option for people to undertake if they want to go quickly across the border. It is a voluntary thing that people can participate in or not participate in if they want to.

I think there are clear benefits to it, to them and to the system to allow certain people who have been prescreened to go across the border quickly.



MR. DILLINGHAM: I would agree. I wouldn't say that it is the nose under the tent, but I would want to point out that as far as transportation is concerned, this does not mean that passengers or persons would not be subject to screening. They would still go through a screening process. It means that they would not necessarily have that second screening at the gate. Again, I agree that it is a voluntary process.

Right now transportation is developing what's called a Computer Assisted Passenger Profiling System, CAPS, which is based on information about the passenger that allows them to be sort of placed in the various categories of screening. Almost like our national terrorist alert sort of thing, red, green, yellow in terms of degree of screening. At the end of that flight, that information is purged and not kept. There is clearly civil

liberties and privacy issues and organizations looking at that.

We think that it is a way to make our system more efficient and focus our resources on those places where they need to be focused, finite resources for security.

MR. KEAN: Okay we have to move on with Commissioner Lehman, Commissioner Fielding and Commissioner Roemer who have suggested that they would like to ask brief questions, I hope.

MR. LEHMAN: I have two brief questions for Mr. Dillingham.

First, while little old ladies are being frisked at La Guardia, it is possible for an Arab businessman to pick up the phone and make a call and go up to Whiteplains and charter a Gulfstream or 737 Boeing executive jet which have no reinforced doors, no armed pilots and no screening for him and his party to go through.

Are there any plans to do anything about this rather huge lacuna in our civil aviation security?

MR. DILLINGHAM: Yes, Mr. Secretary. We have pointed out that charter flights, general aviation, cargo, these are still significant gaps in security and they, in fact, have to be addressed. It is a matter of priorities and funding.

Almost any aircraft can be a weapon. I mean, we saw in the Florida case where just a general aviation aircraft was stolen and flown into a building. That could have very well been an aircraft that had some chemical biological agents on it as well.

The point is, the threats and the vulnerabilities are everywhere.

MR. LEHMAN: Yes, but this one is so obvious, what is taking so long? Here we are a long time after 9/11 and nothing has been done,

I can assure you, because I use these planes fairly frequently and I have never seen a touch of security.

MR. DILLINGHAM: It is recognized. We keep pointing it out, but we can't make them do it. Hopefully the Commission will point this out, as well, as one of the gaps and that is a gap that needs to be addressed.

MR. LEHMAN: I would say it is a fairly urgent and glaring one considering the urgency that has been applied to some other sectors. Anyway, enough said.

The other question I have, as a veteran of the Reagan Administration, I participated in a major crisis effort to increase airline security after several hijackings in the early days of the Reagan Administration. I recall that a U.S. marshal program was put into effect at that time with great urgency. I also recall that there was an

edict put out, to put reinforced doors and to see that the pilots -- that the door were kept closed throughout the flight and that only the pilot had the key.

What ever happened to those programs?

MR. DILLINGHAM: Unfortunately, the history has been when the particular event leaves the headlines, the follow through has not always been what we would want it to be, and that's the case with many of the recommendations that took place after Pan Am 103, after the TWA 800. We have 9/11 and we have a situation where the Federal Air Marshal Service went from less than thirty or less than a hundred, to several thousand within a short period of time. We have a situation where the recommendation that you made early on about cockpit doors being locked and so forth, that now some 10, 15 years later we now have, as a result of 9/11, we have 80 percent of the fleet with doors installed and the deadline

being at the end of the week for all of the fleet.

It's the nature of where we have been, as long as there is oversight and constant reinforcement that these things must be done, the more likely that they will, in fact, be done.

MR. KEAN: Commissioner Fielding.

MR. FIELDING: Thank you. I have two quick questions to you, Mr. Dillingham.

First of all, I guess as a cranky flyer I ought to tell you that I think the TSA people are a vast improvement and are obviously trained in attitude as well, and I applaud you for that.

You gave us the list of priorities, of vulnerability priorities, and I understand air and then maritime, but for our planning purposes could you go a little further down the list?

MR. DILLINGHAM: I think the next one on the list would be mass transit, freight rail would follow that. The reason I say mass transit is because so many persons use mass transit and an incident on mass transit would have not only disastrous human effect, but the psychology of that would also be tremendous.

Rail, it's hard to prioritize too much because a chemical-biological accident associated with rail has both the human dimension as well as the psychological dimension. So it is in that order I would go, aviation, maritime mass transit, rail.

Now, having said that, more people ride the bus than many of these modes combined, but it is the incident. I mean, the likelihood of you going to do damage to enough buses at one point in time as opposed to what would happen in mass transit, as we saw in the Japan incident, it is different. So it's the

greatest harm to the greatest number of people is part of the decision about where things rank.

MR. FIELDING: Thank you, the other thing is just to follow up on what Secretary Lehman asked you.

Your answer to light aircraft issue, which has boggled everybody's mind who has ever been around those, is "you can't make them do it." Who is "them"?

MR. DILLINGHAM: Well, you can make recommendations and usually our recommendations will go to the U.S. Congress. We make recommendations to the agencies who in turn are responsive to the U.S. Congress. So it has to be a congressional priority that is followed through, and often times -- I think someone mentioned today, that action goes where the money goes.

It is not for us to sort of make



policies. It is for us to present the information to the policy makers, and from there, they can make them do it.

MR. FIELDING: How about the Executive Branch?

MR. DILLINGHAM: Those are the people that we generally are saying need to do something. We are a congressional agency and our mission is oversight, generally, of the executive agencies.

I don't want to sound like they don't do anything, but generally the implementation is not the way we want it to be. Some of the recommendations that have been made about aviation have been around for years. They were either not implemented or partially implemented.

After 9/11 there was a new urgency to it. We have been talking about screeners not doing what they are supposed to do for 15

years.

MR. FIELDING: Thank you. Thank you, Mr. Chairman.

MR. KEAN: Last question for Commissioner Roemer.

MR. ROEMER: Thank you, Mr. Chairman. I too want to join in applauding the help that this particular panel has been to the Commission.

I want to ask Mr. Fine, having been on the Education Committee for 12 years in Congress and having sat through many oversight hearings of SEVIS and heard time and time and time again that we couldn't implement the program, it would be another year, it would be another year. We are experiencing this program problem and that problem.

When is this finally going to be ready to be fully implemented and working in our country?

MR. FINE: Well, it has been implemented. There is the SEVIS system available. It applies to new students now. There are clearly bugs in it, there are clearly problems with it, but I believe the INS has made significant progress in implementing the system.

We have pointed out where deficiencies are. They need to address those deficiencies. Come August, they say that it will apply to every student, not solely the new students but also the continuing students. So according to their schedule, by August of this year the SEVIS system will be up, running, available and we hope will be adequately followed through with all the things that need to be done to ensure that is fully implemented as well.

MR. ROEMER: You have confidence that that deadline is going to be reached?

MR. FINE: I wouldn't say with

confidence that it is going to be reached, because I have seen similar things that you have seen. What I will say is, they have made progress and they need to make more progress.

MR. ROEMER: Mr. Wolosky, one quick question for you.

With respect to Saudi Arabia and the efforts they are making internally and bilaterally with the United States to do more about cracking down on the financing of contributions to terrorist operations, how would you measure the lack of progress since 9/11 internally? What have they done internally to crack down? And secondly, externally and bilaterally with the United States? In addition to elevating this to the highest levels of concern for us, what other steps need to be taken to make this communication more of a priority in terms of benchmarks and

implementing programs?

MR. WOLOSKY: Sure. Well, in assessing what has been done I think it is helpful to distinguish, again, between tactical measures and strategic measures.

The tactical measures are, again, ones that target particular nodes of the terrorist financing infrastructure, particular individuals, particular charities, et cetera.

Much of that activity is conducted by law enforcement intelligence agencies. Much of it is not transparent and should remain not transparent.

There has been a substantial amount of activity, as I understand it, between the United States Government and the Saudi Government at the tactical law enforcement and intelligence level.

At the same time, there have been indications that there are problems, chiefly,

with respect to the two public designations that were made of organizations or individuals that support terror. Jointly, I mean joint designations under the IEEPA statute with the Saudi Government, there were two last year. One targeted the Al Aman charity and the other was targeting an individual who was identified by the Treasury Department as a significant contributor—one of the cofounders of al-Qaeda is what I believe the Treasury press release said.

Now, with respect to Al Aman the problems are published reports that it is still in business with respect to the individual who is identified in September and designated by U.S. Government. The problem is that in the days after his designation by the U.S. Government, the designation was questioned by senior Saudi officials.

So that indicates to me, at least,

that notwithstanding substantial efforts, there are still problems at the tactical level in identifying particular nodes within terrorist financial system with Saudi Arabia.

Now, at the strategic level, there you get into questions of regulation of charities, steps that are taken or avoided with respect to putting in place, know your customer rules and suspicious activity reporting requirements within Saudi financial institutions. Regulations of charities, like hawala, things of that sort.

Again, that information should be publicly available. It should be available to this Commission. It should be available to the United States Government. It should be available to me as a concerned private citizen when I log onto the web. At least with respect to my efforts, I haven't been able to find it.

MR. ROEMER: Thank you.

MR. KEAN: Thank you very much. This has been a very, very helpful panel. I hope we can come back to some of you again. Thank you very much for your help.

(Recess.)

MR. KEAN: The next panel consists of Michael Wermuth of RAND Corporation, Steven Brill, author of a book many of us have read, "After: How America Confronted the September 12 Era." Zoe Baird of the Markle Foundation, and Randy Larsen of ANSER Institute for Homeland Security.

And I know, Mr. Brill, you have a hard and fast deadline, so maybe if with start off with you, sir.

MR. BRILL: Thank you very much, Governor. I appreciate your accommodating me.

I am delighted to be here this morning and honored to be asked to share some of my views with you. I think the primary benefit



that I might be able to offer the Committee, which is something less than the expertise of the witnesses you have just heard, is that for the last year-and-a-half I travelled this country, trying to get a grip on all of the questions you have been dealing with and, in particular, the questions you were dealing with this morning.

I spoke at great length not only to the people at the top of the issues, Attorney General Ashcroft, Secretary Ridge, Bob Bonnard, Jim Loy and people like that, and their staffs, but also to the people who are actually out in the field trying to implement and make sense of what was going on in Washington during some very difficult times.

My goal was to make a connection between policy, between discussions like the ones we are having today and what was actually happening in the airports, at the docks, at the

borders.

What I found, I think I can keep my remarks fairly brief and I hope quite simple, really falls much more under the category of what we can go do going forward as opposed to mistakes we might have made in the past. But I did come across some of those mistakes that we made in the past.

First, one general observation that I suspect everyone in this room shares and I really got to see firsthand in, I think, a very special way, we are -- the people out there doing this job, are, I think, the worthy successors to the greatest generation that Tom Brooker wrote about. They are people in Customs, in INS, in the Coast Guards, of course, men and women overseas who have really risen to the challenges of, what I call, the September 12 Era.

The issue is what kind of support

those people are going to get. Their dedication is constant. Their attention spans are long. I sat in on meetings of people who have been dealing with the container, the cargo container security issue, who have been dealing with this issue for 10, 11, 12 years or 20 years. I have sat in on meetings where the Office of Homeland Security brought people together for the first time from the Department of Transportation, from Customs, the Coast Guard, from Treasury, the Department of State, to deal with the problem like container security, or deal with the problem like borders, and they were delighted to meet each other. They had all been working off in their corners in different places dedicated to those issues.

          Their attention span is long. I can't say the same, with all respect, to many of you on this panel from members of Congress, from

members of Executive Branch and certainly from members of the press. Their attention spans are quite something else.

First, let me just recount a couple of the obvious pre 9/11 mistakes that I encountered. One was that on the evening of September 11, airline executives started to get a fax from the FAA. The FAA's fax was, guess what, a watch list, a no fly list. Don't let these 300 people fly. This is the evening of September 11.

Airline executives had the same reaction that I suspect you had: 'it is too bad we didn't get this the morning of September 11.' There are 300 names on that list. That list had been sitting around. It had been provided both by the CIA and the FBI to the head of Civil Security at the FAA, and they hadn't yet developed over a period of months a protocol for how to add names or subtract names from the

list, and under whose letterhead it was going to be issued, so they hadn't issued it. The evening of September 11, they decided to issue it.

The second story that I think illustrates the lack of urgency. On the northern border, this is something that Inspector General Fine has reported on more times than you are ever going to have hearings. On the northern border they were two border patrol agents who in 1999 testified before Congress about something called the "catch and release program." Here is what the "catch and release program" is.

They would catch people sneaking over the border in Detroit, walking through the train tunnel or coming in on little boats on the shore. They would catch them and then what they would do is, they would give them a self-addressed postcard. And they would hand

them the card after they caught them and arrested them. They would hand them this card and say, 'listen, when you get an address in the United States, the country you are sneaking into, that you are not supposed to be in, when you establish an address, send us back this postcard. Then we will know your address, and then we can mail you a notice of your deportation hearing. Then you can come for a hearing, and then we can deport you.' A lot of these people didn't really show up for deportation hearing or send the postcards back.

They testified about it in 1999. What happens in October of 2001 -- I am sorry, not October, the week after September 11, 2001? They tell a reporter for the Detroit Free Press something less than what I have just told you. Much less in detail, that the northern border isn't secure. That we don't have the resources. We can't hold people in detention

when we catch them. Guess what happens to them. They get a notice that they are going to be fired.

Luckily, the Inspector General stepped in. The office of, I think it is the Special Counsel Office that protects whistle blowers, stepped in. They did not get fired, but that was the INS border patrol reaction.

That policy after there was yet another hearing in November of 2001, that policy has now been changed somewhat. But this took September 11. It took an Inspector General. It took some reports in the Detroit Free Press before that policy -- talk about obvious gaps such as the general aviation gap, this is a fairly obvious gap.

One more example, just before the millennium there was a very well publicized arrest of someone who was attempting to sneak in over the northern border in Washington

State, who had plans to blow up Los Angeles Airport.

Ray Kelly, who was then the Customs Director, thought that as a result of that, this was a good time to reinforce the northern border with as many customs agents as he could possibly send there. His attitude, as I recount in the book was, I will send them there and surely Congress will pay for it now that we have made the arrest. Surely the issue of the budget to protect the northern border going to be solved by this obvious manifestation of the crisis, and those extra agents lasted for a few months. Congress lost interest, it went back to being just the way it was.

The air marshals -- just one more point. On the September 11, the air marshals, there was 31 U.S. air marshals in the United States of America, none of them were on a single airplane on the morning of September 11.



There are now, their target is something upwards of 3,000, I think, now, and we are doing it urgently, and, I guess that's good.

But today as we speak the attention span is still mixed. It still takes the INS, they say, five to seven months to render an environmental impact statement before they can put a pole up that will hold a camera at a strategic point on the northern border, or to put motion detectors. They have to do environmental impact statements, five to seven months in an administration that is not otherwise really quite that well known for its sensitivity to the environment.

The dilemma of all this is -- I could sit here for two or three hours as could the other members of this panel and talk about the gaps. The really serious issue is that we can never really be doing enough. We can all trade anecdotes and we can all decide that we are not

doing enough, and we really cannot do enough in a country that has 7500 miles of border, that has thousands of miles of natural gas pipelines, tens of thousands of facilities storing or shipping dangerous chemical, infinite entrances to subways, to trains and to office buildings, and just as many vulnerabilities relating to food or water supply, and even to office building ventilation systems.

So the critics that say we are not doing enough are always going to be right. The issue is, how can we make the debate and the way we go forward a little more constructive than that. There is never going to be enough money to solve everything. I think the opportunity that this Commission has, that some independent nonpartisan body can have, whether it is the GAO or a commission like this that goes forward, that goes on, is that it can set

specific tangible standards for improvement in homeland security. It can set up, to give you an example, it can declare that if we have our undercover people who work for a commission like this, trying to sneak something into the port, it should be detected by Customs, by Homeland Security 99.6 percent of the time and let's give the American people a report every quarter or every half year of how we are doing. Let's set goals. We can target these things and we can set goals. We can't do everything.

The debate we have today is really one where it is easy to be partisan. It is really easy because you can always say, if there is a terror attack, and there is going to be another terror attack, and when there is whether it is in the subways, or general aviation or ports, there will always be a way to point and say that somebody screwed up.

For example, Customs has initiated a

very intelligent program in risk management called The Customs Partnership. What they do is, they prescreen the truck drivers who drive the most over the Ambassador Bridge in Detroit. They are screened in advance and because they are screened they get something which gets them on a fast line. That is really intelligent. We can all sit here and say that is intelligent.

The test for this country, the test for the dialogue we are all going to have is that if, God forbid, one of the people who has gone through that screening does something terrible, are we going to have all kinds of recriminations and say, "we should stop every truck. That was a stupid plan, how could we have done it." Or are we going say, "well, we started a system, the system still makes sense. It didn't work in this case, that doesn't mean we scrap the system and go back to what we were

doing at the airports on September 12, which was checking everybody, no matter who they were or what they were."

The point I am really trying to make is that we have to think about intelligent risk management. The most important place we have to think about it is in the private sector, or certainly not the Federal sector. There are 1750 check points at all the airports in the United States of America combined, 1750. There are approximately 1760 entrances to the New York City subway system. We all agree that TSA is doing a great job.

So for only \$6 billion and 45,000 new employees, we could protect the New York City subway system the way we are protecting the airports.

For those of us who ride the subway, that sounds like a pretty good idea, but we can't do that. And by the way, when we decide

to do that we have to deal with the 17,000 entrances to office buildings in Manhattan. When we get through there, we probably want to start thinking about Chicago, San Francisco, Los Angeles and everywhere else.

We can't simply throw that kind of money at the problem. We have to get the private sector involved. I think we have to have something on the order of a voluntary identity card that companies in the private sector can issue to people that screens them, voluntarily, so that when we have lines, as we are going to have in office systems, subway stations and train terminals, we are going to have those lines after the next attack. And when we do that we are managing the risk a little more rationally.

The one thought I really want to leave you with is, I think the best thing a commission like this can do is either suggest

or else go and do it itself, setting specific goals in all the areas you are talking about. And then instead of the Democrats criticizing the Republicans for not spending enough money here, and the Republicans saying yes, but we have reorganized the Government and we now have this department so obviously we are doing enough. We hold a press conference to say we are spending this much money here, that is not a constructive debate.

You can quantify this. You can manage this the way people in the private sector manage lots of problems by settling specific goals, specific timetables, and having a nonpartisan body report on how we are doing.

I thank you.

MR. KEAN: If it is acceptable to the other members of the panel, knowing Mr. Brill has to leave, is it all right if he takes five minutes of questioning now?

MR. BRILL: Thank you for your  
courtesy.

MR. KEAN: I understand that. In that  
case Commissioner Ben-Veniste and Commissioner  
Fielding will ask five minutes worth of  
questions.

MR. BEN-VENISTE: Mr. Brill, I am  
quite interested in the fact that you have, in  
the course of the past year or so, spoken to  
people who are on the front line of protecting  
the United States in the post 9/11 environment,  
and have not limited yourself to those who are  
in supervisory positions, who are at the very  
top of the agencies.

You state that it is necessary to  
demonstrate our support for these individuals  
whose views in the long term, rather than in  
less optimal kinds of supervision, that  
Congress and others are able to maintain.

How would you coordinate that kind of,



or conform that kind of appreciation for to those who are dedicated to protecting this country, with the kind of accountability and review that is also necessary for us to conduct so that we may inform our recommendations, at the end of the day, with a body of information that not only provides an historical record, but provides a baseline for our recommendations?

MR. BRILL: I think that's the challenge. I don't want to minimize that challenge. Indeed, if I just sat here and said, well, you know you need to have as many whistle blowers as possible come and sit at this table and tell you what's wrong with each and every Federal agency, that would be much too simple. A lot of whistle blowers just have gripes that relate to labor problems, or their own personal problems, they haven't been promoted or they are just unhappy. All

organizations have that.

So it is not simply, "let the whistle blowers speak." It is much more trying to set -- just to give you an example, if Washington says that the ports are safer and, by the way, the ports are safer. The 2 percent number is a fiction. They are inspecting a much higher ratio of the truly dangerous cargo and they deserve a lot of credit for that, but the people who deserve the credit for that are not only Bob Bonner and his team in Washington, but the customs inspectors on the port that I sat with here in New Jersey, and in other places, who devised their own factoring system so that they could take a container and have notice of a container and decide which ones were the high risk containers.

What happened was, Washington, they consulted with those people and said, you tell us, tell us what should be in this list of a

hundred or two hundred factors that we should look at. You guys have the experience. There are some agencies that do that, there are other agencies don't. If you want a sweeping generalization I will give you one; Customs - good, INS - bad.

There is no deadline the INS has ever had in anyone's memory in this room that they have ever met. There is nothing they have ever said they are going to do that they ever did. I keep kidding my friend, Tom Ridge, that is now your problem and I can't wait to see how you solve it. Because a lot of people, including some of the people at this table, such as the former Deputy Attorney General, have been in charge of solving that problem and haven't solved it.

But the way to do it is, again, to try to take the politics out of it. It is easy for a senator to say you are not spending enough

money on this because you can never spend enough, and it is easy for people in power to hold a press conference saying we are do doing this, we are doing this, we are doing this. They are right, they are, and they are well motivated sincere people.

The issue is, we don't care what you say, what we want to know is, is the port x-percent safer today than it was last month? Is general aviation any safer?

The way Washington has solved general aviation issue is, you can't fly into National Airport. That is the one thing they have done, that the gentleman here didn't talk about. That is the only safety measure, so far, for general aviation. There have got to be other standards you can set for that. There ought to be productivity standards. This management goal, this management goal, did you meet it, did you not meet it? And that takes a

nonpartisan group, like the group assembled here, who can issue reports to the country the way we get economic reports every quarter. We are this much safer here, we are not safer there.

MR. BEN-VENISTE: Just to follow-up --

MR. KEAN: I just want to get Commissioner Fielding in. We only have two minutes of questions.

MR. FIELDING: I just want you to thank you for sugarcoating your comments about the INS.

MR. BRILL: Actually, they were sugarcoated.

MR. FIELDING: I am sure they were.

MR. BRILL: No profanities or anything.

MR. FIELDING: Just to follow-up, since we are short on time. One of our tasks is to try to figure out what's the best way to

proceed every day as we go forward, because we get a little bit of information and then we get a little bit more and we try to put it all together in some sort of a mosaic.

We have hearings like this, where people come in and are limited by their time, by their statements and that sort of thing. So we are very free and easy to ask of people, such as yourself, if you would stay with us and cooperate with us as we move forward?

MR. BRILL: I would love to. This is a particularly bad day for me, today --

MR. FIELDING: I understand that.

MR. BRILL: I will spend all day any day to help you with this.

MR. FIELDING: You obviously have a list of people or categories of people that we could learn from as we move forward. We don't intend to only speak with people in charge.

MR. BRILL: I certainly didn't mean to

imply that either.

MR. FIELDING: I understand that. So if you could do that.

The other thing which I think we could call upon you, is obviously goals and standards could be the same management issues as anything else. We have to figure out and prioritize goals and standards so that we may have goals for bus traffic, but we might not have goals for taxis.

MR. BRILL: Exactly.

MR. FIELDING: There, again, I would hope that we could call on you as we work our way through this. Thank you.

MR. BRILL: Thank you.

MR. KEAN: Thank you very much, Mr. Brill.

MR. BRILL: You're welcome.

MR. KEAN: I call on Mr. Wermuth.

MR. WERMUTH: Thank you Mr. Chairman,

Mr. Vice-Chairman, distinguished members of the panel. Thank you for the opportunity to be here today.

As many of you know from other positions that you have held, RAND has been doing terrorism research and analysis for more than 35 years. We have some of the leading experts in the country who have been involved in that process for a long time. In fact, at least one and perhaps more will appear before this panel in the coming days.

I am going to talk primarily about the work that we have been honored to do for the last four years now, in providing the research and analytical support to the advisory panel to assess domestic response capabilities for terrorism involving weapons of mass destruction, also euphemistically known as the Gilmore Commission.

From the written testimony that I



submitted, you will see the Congressional authority for the creation of that panel, and its specific Congressional mandate, a lot of information on the composition of that panel and why many people think that panel is unique primarily because it is made of men and women who represent the first response or community, people in law enforcement, fire services, emergency medical services, public health as well as people who have Washington experience and intelligence, and military affairs and other matters.

This panel lost one of its most distinguished members in the attacks of September 11, Ray Downey, Deputy Department Chief of Special Operations of the Fire Department of the City of New York. Of course, the incident commander on the day of those attacks died in the collapse of the North Tower that morning.

You will see from the written testimony, in considerable detail, that this panel has been very consistent from its inception, and long before September 11, 2001, it submitted its first report to the President and the Congress in December of 1999. It has now submitted four and will submit a fifth in December of this year, before it goes out of business.

But throughout its deliberations and policy pronouncements to President and Congress, it has consistently adhered to the view that intelligence is key to this entire effort. And that the proper organizational structure, the proper coordination of intelligence collection, analysis and dissemination, not only within a few select federal agencies, but even with state and local response entities, and now what is becoming increasingly obvious is that perhaps key elements of the private sector have

to be included in that process. That getting the intelligence piece right is paramount to everything that we do.

Prior panelists, I am sure others on this panel will continue to note that we are infinitely vulnerable. We cannot defend against everything. We cannot secure and protect against everything. The importance of intelligence and getting that intelligence into the hands of people who need it is critical to all of our efforts. The nexus between intelligence and law enforcement is also critical.

Having people both in the intelligence world and all law enforcement world, understand and appreciate what the other parts of all of that effort really means.

This panel started in 1999 and throughout its reports have made significant substantive recommendations about both

structure and process for improving our intelligence collection analysis and dissemination efforts.

In December of 2000, in its second report, it recommended the creation of an entity in the Executive Office of the President. Similar, though not exactly, to what eventually became the Office of Homeland Security under Tom Ridge. As part of that recommendation this panel said we need a better structure. We need a coordinated intelligence effort that brings together all of the agencies, as well as state and local response entities. To have a more complete, a more comprehensive, a more effective way of gathering and disseminating intelligence information.

In subsequent reports the panel has continued with those themes in ways to improve some of the specific pieces of intelligence

operations in its most recent report, and that is also detailed for you in the written testimony. We have also provided copies of that report to the Commission staff for each of you to have.

The panel recommended the creation of something that it called the "National Counterterrorism Center" an all-source intelligence

fusion analysis and dissemination center that would be comprised of pieces of the various agencies directly involved. The Central Intelligence Agency, the Department of Justice, other components of the intelligence community, to bring together all of the raw intelligence data, if you will, and to try to make some sense out of that in a comprehensive fashion. To include in that process, representatives of states and localities that would also help to inform through their resources, all the way down to the local beat cop on the street, and

to develop the best possible intelligence products for dissemination to people who have need to know that information.

The President announced in his State to the Union address, something called the Terrorism Threat Integration Center. Something similar to what this panel had recommended two months before, not exactly the same and I would be happy to address the differences between what this panel recommended and what the President has called for. But needless to say, this panel was focused on this and a number of other issues that you can see in our reports, long before September 11. It has been open and unabashed about its policy recommendations.

One of the things that it has said consistently with all due deference to the former United States senators and the two former members of Congress on this panel, but Congress still doesn't have its act together.

It is getting better, but for a long time was not willing to organize itself in a way that would address these issues more effectively. At least the House of Representatives have now started doing do that.

With that, I will complete my oral remarks by thanking you again for the opportunity to be here and to offer this Commission any assistance that this advisory panel can provide to you and, of course, anything that the RAND Corporation and any of its components can do, to help you with your very challenging tasks in the months ahead.

MR. KEAN: Thank you, Mr. Wermuth. I have a feeling we will be taking you up on that offer.

Zoe Baird.

MS. BAIRD: Thank you very much. I appreciate the opportunity to be here. We all, in our small way, hope that we can honor the

memories of victims of 9/11 and we thank you for giving us this opportunity to contribute to your effort to do that.

I have a few comments I would like to make, but I must say that my contribution to this Commission is already so large that anything else I say will be purely redundant and additive because you have the privilege of having the Executive Director of the Markle Task Force now as your executive director, and that will be the most important decision you have made. So I commend you. And if I can help in other ways too, I am happy to.

Our task force was focused on the use of information in order to prevent terrorism and protect the national security. September 11 exposed for world view what was already well known in Washington, that we needed to reform our intelligence and information systems in order to deal with new threats.



I had the privilege of serving in 1995 on a congressionally created commission on the future roles and missions of the intelligence community, and at that point in time there was no mandate from Congress to look at terrorism or weapons of mass destruction. We added it to our agenda, but it wasn't in the public debate as an important future role for the intelligence community.

That is of great significance because we had several years which would have been terribly important to develop the capabilities we need to protect the country in which we didn't do that. Where we had few people who spoke the languages we needed to understand. Where we didn't begin to think about the revamping of the very essence of how we do business and intelligence and information sharing. But instead we tried to patch a system that was designed against a singular

state enemy instead of trying to understand the new enemies and emerging threats.

I think that you can't fail to look at that as you do your work, because you need to know what we have to do differently now.

There is a great deal of discussion in Washington about the need for every agency to invest in filling these stove pipes with more information, or in connecting the dots and connecting information between agencies. But that is the same debate that we had about revamping the intelligence community in 1995 and 1996. It is using the same model of how we have always done business, to say that we should be able to do more of it.

The current need is radically different. You have heard from a number of people about the need for information down at the ends of the system, if you will, with state and local responders, with police, with

firefighters. You know the numbers, you know there are 11,000 plus FBI agents and there are 50 times that in terms of state and local law enforcers. What do we want these people to be doing? What is their role in the system?

We don't, in this country, want a system which will make all of those people and the UPS truck drivers intelligence agents. Our country isn't worth protecting if it becomes a police state where everyone is collecting information and putting it into massive databases that we can then run programs against in order to find out who is doing what.

But we do need to develop a system which moves the information to the people in local communities who need it when they need, and what they need, not everything, but what they need. We need to have a system that pulls that information into central places in Federal Government when it is needed for the

purposes that it is needed.

That system -- our task force which was composed of one of the imminent members of your panel, Senator Gorton, as well as the whole range of people with experience both in Washington and in intelligence and on the Hill, as well as people from the state and local governments, and quite a number of people from the information technology community.

We looked at this problem and we said the system can be built in a way that both enhances security and protects the privacy and liberty interests. As long as those two interests are the key design elements for the system, and it is built together, that the system can be built with existing technology. This is not a matter of creating substantial new technologies over a long period of time that are more sophisticated and do more. In fact, a great deal of what we want to be able

to do, is already done in the private sector.

So the question then becomes, how do you construct the system in a way that is comprehensive in the reach of who can participate in it, but not undermining of the civil liberties of people about whom you collect information.

Our conclusion is that the essence of doing that, is that the President has to develop guidelines for creating the balance between privacy and security, and that there needs to be a public debate about what the criteria should be for those guidelines.

We made a number of recommendations in our report, but your forum may be a very good one in which to inspire the public debate. Because as Steve Brill was saying and others, unfortunately we still swing wildly and polemically from the "protect security," to the "protect privacy" sides of the spectrum, and it doesn't do us any good

to have a unanimous resolution passed to shut down a program on privacy grounds, and then to have actions taken by the Attorney General without consultation on security grounds.

We are swinging back and forth in a way which won't enhance security and we are doing it in a political environment, which is just going to leave people sitting here a year from now when you report, feeling no more secure than they do today.

We couldn't possibly harden all the targets. I mean, this is a refrain you will hear from everyone. Even if you pursue the kind of management tool that Steve was talking about, which seems very, very sensible, you will still not be able to harden all the targets.

So what do you need to do? You need to have an information system that enables you to know who it is that is in the country who is

hostile and might be inclined to undertake these actions. And when does that hostility merge with the capability to actually carry out an action, so that you have a real threat to the country. That is an information challenge. People who are hostile do us no harm unless they also have the capability to act.

You need information on both sides of that, and you need to understand when those come together to actually create a threat.

We know that if we had used the information we already had on 9/11, that there is a great deal we would have learned, that two of these terrorists were on the INS terrorist watch list, that they had common addresses and common frequent flyer numbers with other terrorists.

Now, out of the vast amount of information, even if we had the kind of systems that we talk about, could we have prevented

that attack? I can't tell you that we could have. But we could have felt much, much better about the role our government plays in protecting our citizens, which is one of its highest callings.

Therefore, it seems to me that as we are looking at what we need to do in the immediate term, we need to have the public debate that talks about the balance between privacy and security. The President needs to develop guidelines which will govern the Federal Government and inform the states and localities, and we need to, in addition, invest in state and local governments being part of this system, because the funding isn't there for them to participate.

There are some very good people doing good work in their local areas, but they don't have the guidelines that empower them and constrain them, and they don't have the funds to



undertake what they need to pursue.

So with that I will close my comments and be happy to answer questions. Thank you.

MR. KEAN: Thank you very much. Mr. Larsen.

MR. LARSEN: Thank you, Mr. Chairman, distinguished members. At the Institute for Homeland Security we have been working on this specific topic for about three years. We are just about ready to finish and submit a report which we will provide copies to this Committee. It will not be released to the general public, due to the sensitive nature.

We have focussed on intelligence and law enforcement from a somewhat nontraditional perspective. We got together 15 senior people from each of four communities; law enforcement, intelligence, public health and agriculture, to look at how they could better share information. Food supply is a great concern in

this country about how it could be attacked.

We have discovered there are great cultural barriers to that. It took us about six hours to figure out what "business casual" meant with that community in our first outset. When the word "prevention" came up we found out that people in the intelligence community have a completely different definition than people from public health or agriculture.

In the Department of Defense where I spent 32 years, we have a DOD dictionary of military and associated terms. So we all know what the term "general war" means. We may not agree with it, but that's what the Secretary of Defence signed. That does not happen in interagency community, but we will be happy to provide a copy of that, and I think you will find it interesting.

I submitted my comments last week so I will not repeat them, but I will highlight

three issues from there. I see from the letter that I was sent from this Commission it says you are chartered to prepare full and complete account of the circumstances surrounding the events of September 11, 2001. As a tax payer, I would prefer that you focus on the future, not the past. If this Commission were beginning one month after 9/11, that might be available. I have seen so many changes, I am not sure of the value looking at the old system.

When I say you should focus on the future, I am not talking about next year, because you are not going to fix it for the next year, about what we need in the 21st century. I think your focus should be out around the five year point, about which this country is going to need.

I think there are two alternative futures for the day you release your report. I

believe May of next year. One of them will be, there will be in new attacks on the American Homeland and the American people, and Congress will expect a certain sort of recommendation from a Commission that is operating in that environment.

The other alternative is, I think is, we could have had several attacks, perhaps major attacks, perhaps even an attack with a weapon of mass destruction. And I think the American people and Congress would expect a completely different recommendation from this committee.

I think we all understand that 9/11 was not what changed everything. It is the technological revolution that has changed the threat to our homeland. Because of the technological revolution small nations and small well-financed terrorist organizations can threaten our survival in this country. That is the scenario you must work with because that is

going to happen whether it is next month, next year or five years, we know there has been a fundamental change in the international security equation. That is what you must deal with.

We did an exercise last November, John Hamre from CSIS and myself led Silent Vector. It was the follow on to the Dark Winter exercise that we did 18 months ago. I have given you a handout from Silent Vector, and once again I apologize, because we cannot release this to the public. It is not classified or anything, but we think it is sensitive and we don't like to provide terrorists information that would end up in the newspapers or something.

But what we discovered when we were working on this exercise was, it was an unusual. Senior leaders, Sam Nunn played the President; Jim Woolsey played Bill Sessions

former FBI Governor, Governor Gilmore played Governor of Virginia. The attack never occurred in the exercise. It was about specific incredible intelligence information coming in, and John Hamre and I wanted to see where we could force them to make decisions that would have an enormous economic impact, perhaps even more than the attack itself, what they would do.

What we discovered in the six months that we were preparing for the exercise was, there is no system in the Federal Government today, no organization that looks at intelligence information that flows in, law enforcement information and a vulnerability assessment and puts them into a fusion center, or as some people like to say, an integration center to look at all this. And then combine that with the sort of data-binding capabilities other panel members were talking about, that

could then provide real time information to senior elected and appointed officials about how to use their limited resources. If you are the president, governor, mayor or county executive. How do you do that?

I spent a lot of time talking to mayors and chiefs of police. Two weeks ago I was talking to the Sheriffs' Association of Illinois and I said, how would you know what's protecting your county, if I told you there is a specific threat? Where is your big vulnerability?

With a chart like this, and this is rather simple, that just eight people put together over a few months. There is no organization doing this.

Now the NAPSI that I know, Commission, you worked on for a while, was somewhat focused on the cyber aspects of it, and it was a good model because they did look at all sources of

intelligence information, law enforcement, but I don't think the vulnerability assessment covered enough of the physical.

But when you look at this, we came up with some very specific information, if you only have limited resources to use your national guard or state troopers or whatever, it gives you an idea where you have got to go. This integration center we are talking about, is not only valuable for prevention, it is also valuable for how we are going to spend the money for mitigation and response.

This sort of center could provide that information on as a vulnerability assessment, what the threats are, what the capabilities are, what the intentions are, so we know where to spend our money.

Because my bottom line and the whole thing about homeland security, and I began studying this in 1994, biological warfare is



what brought me into the homeland security business. My greatest threat, even though I am very worried about the future of genetically engineered biological weapons, which I think is a very serious threat, Nuclear weapons, cyber weapons, you name it. The one that I fear the most is uncontrolled spending. If we do not establish the right priorities, we will spend ourselves into bankruptcy like the Soviet Union did in the Cold War.

7500 miles of border, are we going to spend billions on building imaginal lines along our border, when Ramsey Josef in 1993 attacked the World Trade Center with a bomb built across the river. Timothy McVeigh built his bomb in Kansas. When Aum Shinrikyo made their sarin, they made it in Tokyo a few miles from where they attacked.

The only weapon you need to bring across our border is a nuclear weapon. You

don't even need to bring a radiological disposal device across our border. I saw a picture in a newspaper the other day, one of these scanners that looks at the shipping containers. The x-ray uses cesium-137. That is one of the best things to use for radiological disposal device. You just put the bomb in the container, you don't even need the radiological material, it is in the x-ray machine right there at the port.

My point is, we cannot build a Maginot line. I am concerned about setting priorities and I think that's the most valuable thing this Commission can provide American people. A sense of priorities on this information integration center that will help not only for prevention, but mitigation and response.

That information will be most important. It will be the best investment this country can make in security.

Thank you, sir.

MR. KEAN: Thank you, Mr. Larsen.

Commissioner Ben-Veniste and Commission  
Fielding.

MR. BEN-VENISTE: Can I first turn to  
Mr. Wermuth and Ms. Baird. First of all, we  
are very grateful for your contribution. You  
have submitted very important materials that go  
far beyond your oral presentations today, and  
we thank you for those and for your pledge of  
cooperation, which we will take you up on.

To comment very briefly on Mr.  
Larsen's observation as a tax payer; we are  
charged by our statute to investigate the  
circumstances of 9/11, but we are not starting  
from September 12. We are building upon the  
very good work done by the Joint Inquiry and  
other entities which have investigated that,  
and our mandate is to use that material as a  
jumping-off point to conclude the

investigation, hopefully, to provide a definitive review of what went wrong on September 11 that will withstand historical scrutiny. But we are not going to reinvent the wheel, and please be assured of that.

Both of you have talked about the balance between technological improvements for our security and the imperative of protecting our civil liberties. There is obviously a great deal of tension between those two.

I am interested that, Ms. Baird, you have suggested that this Commission may be an appropriate forum for the national debate with respect to those perhaps competing objectives. Protecting our security and yet protecting our civil rights, for it is quite clear that if we spend days hiding under the table or afraid because of increased scrutiny on us, that our civil liberties are gone. Then our opponents will have won a victory just as easily as Mr.

Larsen has said, we spend ourselves into bankruptcy as the Soviet Union did.

So I would like to ask you to elaborate on what you view as the principal points between enhanced security and protection of our civil liberties.

MR. WERMUTH: The advisory panel has, on more than one occasion, used a quotation, I think, to describe how it feels about that issue and the quote goes, "They that would give up essential liberty for a little temporary safety, deserve neither liberty nor safety." That's Benjamin Franklin in 1759.

This panel has been focused on civil liberties. It has said consistently the civil liberties of the citizens of the United States are really what make us unique in the all the world. Nobody else has the kind of system and protections for civil rights and privacy considerations that we do in the United States.

Having said that, the panel has articulated ways that we can use existing laws. We don't need significantly expanded laws, more intrusive capability. A lot of this is structure and process. It is simply taking things that we can already acquire under our laws, whether it is through the Foreign Intelligence Surveillance Act or other court supervised activities, or simply information that can be gathered legally in any number of other contexts.

The idea is to bring all that information together and to fuse it, to use that term of the vernacular, to analyze it, to create some products out of it that makes sense and then get it into the hands of people who need to have it.

This panel has been concerned, Randy mentioned, with subsequent terrorist attacks. This panel has been concerned that we have an

opportunity now to get this right, structurally and process wise. If we don't, the hue and cry from the American public, if it is still wrong when the next attack occurs, may cause that pendulum to swing too far, and we will feel compelled or there will be public pressure to compel the Government, perhaps, to be more intrusive, to chip away at civil liberties. The men and women, at least of this organization and certainly RAND's research has been articulating that over the years, we don't want to do that. We want to find things that are consistent with the Constitution, consistent with the statutes that are on the books and protections that we have, where we don't find ourselves under the kind of pressure of another attack or pending attacks where we do something. That is not consistent with those values that we have held for so long and make us then very much like a lot of other

countries who don't have the kinds of protection that we do.

MS. BAIRD: I would suggest that there are two ways that you might look at this question. First of all, the development of guidelines are really the essence of striking that balance. And what I mean by "guidelines" are directives that make very clear for people in the system, from Washington out into the local communities. What it is that they can do and what it is that they can't do. What they are empowered to do and what the limits are on their actions.

Right now we have a drive for unfocused collection of information everywhere, and then even less focused or less targeted oversight of the collection of that information. We have privacy czars, we have Congressional oversight bodies, and everyone is trying to grab at what they think is the area where they need to limit



what's going on.

The dynamic then that gets set up is those who have these weighty responsibilities, who don't want to be sitting here in front of you having failed when another terrorist attack occurs, are doing everything they can to use information to provide security. But they don't have guidance and accountability being assumed by policy makers for what it is they should be doing, and what the limits are of what they should be doing.

So you have a system that really does not provide either security or privacy. So these guidelines, we believe, are really the essence of making the clear determinations about what kind of information we need, who needs to have it, who should be providing it, and how that information moves in and out of those who need it, both in the public sector and the private sector.

The other part of this guideline point that I would make is, that a great deal of the information that we need to enhance security is in the private sector. It is our belief that it ought to stay in the private sector and be drawn on the when the Government needs it. This is not necessarily popular in the private sector because it creates an obligation and a relationship with the government which doesn't exist in every part of the private sector, but where it does exist in the financial services community, for example, it has been very successful and not unduly burdensome for the private sector. Again, with very clear guidelines about what kind of information people in the private sector are required to retain, for how long, how it is accessed and what their liability is for that.

Just again to be brief, the second point that I would make, that I would encourage

you to look at, is the responsibility of the FBI in relationship to other agencies of the Government.

It is our belief that the FBI should do collection, if you will, the kind of law enforcement collection of information that the FBI undertakes now; but that the FBI should not be the agency that is our equivalent of a domestic intelligence agency. We won't probably ever say we have a domestic intelligence agency, but in fact, the collection of information to inform policy makers, which is what intelligence is, as opposed to information that is collected for law enforcement. It is our belief should be driven out of the Department of Homeland Security.

That is for important civil liberty reasons as well as capabilities of different agencies, because if the people who collect the information are those who can take away your

liberty by arresting you, then there is a greater threat to civil liberties from the collection of information by the government, and it is unnecessary given that we have to build this capability for the first time somewhere. So we concluded that building it at the FBI was not the right place, again, as part of that balance.

MR. BEN-VENISTE: We are going to drill down a little further on who gets the authority for the collection and dissemination, because I think each of you have a different views about that. But just to follow up on this point, what I hear from both of you is that the means that we have available, presently existing, are sufficient. That there is no great need for some other silver bullet kind of intrusive collection mechanism, but rather the dissemination, the coordination was the failure.

As we go forward and recognizing the imperative of individuals who are charged with guarding our homeland security, and their natural response to the obligations they have, where do you see the point of where the rubber meets the road on the civil liberties issue? Where do you see it coming down?

MS. BAIRD: One way to look at that is the question of whether you need to collect information on individuals, or at what point do you need to collect information on individuals, and what kind of information. For example, if a police officer stops Mohamed Atta and needs to go to a database to find out about this person, he doesn't need to know everything about Mohamed Atta. He just needs to know not to let him go. He needs to know to bring him in so that whoever has information about him is informed, this person where the red lights go off, has been stopped.

I think a very key part of the design of the system is to decide who needs to know what about individuals, and who needs to know what about events or activities that they need to report to others. There are a lot of ways to -- you probably get news alerts on your e-mail all the time. There are a lot of ways to move information around, to alert people to things that are developing, or to have people understand that they have come across something that others need to know about, without having to actually inform everyone in the system about everything.

I think that is a very important part of the design of the role of all the actors in the system.

MR. WOLOSKY: I don't know that there is a hard and fast rule that you can apply to say something is or is not an encroachment on civil liberties that will apply in every

context.

Fortunately, the American people are not reticent about speaking up on things that they think are problems with their own privacy and liberty, as well as security interest.

We all know, those of us, and half of this panels that are lawyers by profession, and some of the rest of us who are here testifying, with every civil liberty, with every civil right there is a corresponding obligation.

We are willing in a reasonable context to do things like going through searches of our person and our baggage when we go on airplanes because we know security risk. So there are things that have to be applied in different situations, but I suggest it is a commonsense rule. We simply need to be cognizant of not going too far in any context so that we encroach on civil liberties, but we are always going to be in that balancing act between

security and civil liberties, and we just need to make sure that we try to address as many of those as we can in the calm between the storms, if you will, so that we are not forced into a situation of going overboard, as I said before, when the next attack occurs.

MR. KEAN: Mr. Larsen, you want speak.

MR. LARSEN: Yes, sir. In December I met with some folks here in New York City Police Department, their intelligence organization, and they talked to me about a program we need to look at called Advance Tip-offs. It is technology that already exists, they were asking if they could only have the funding to make it work.

If they would have existed on July 5, 2001, when the Florida State Trooper pulled over Mohamed Atta for speeding, and punched it into the National Crime Information Center, it would have tied it to 17 different watch lists,



everybody from Customs, INS, DEA, CIA and others. As Zoe said, It would not say we want him for this or whatever, it would just say, don't let him go.

I think the American people would have no problem with that. The technology can protect some of the privacy. But I think privacy is going to be one of the most important issues you are going to address. It should be addressed when you have a year to sit down and do this. Not the two weeks that it took to pass the Patriot Act, 362 pages that changed 17 laws. I haven't had time to read that. I wonder how many members of Congress read it, and how difficult it is when it says change subparagraph c from "and" to "or." That would take a tremendous amount of work. I doubt if any member of Congress read the entire Patriot Act. That's what this Commission can do.

I think you also need to look at, what

are the real standards of privacy in this country today. We hosted a seminar at George Washington University, cohosted with the Institute in the Elliot School a couple of weeks ago, where we looked at law enforcement intelligence and one thing, what's the new standard?

One of the professors at George Washington recently made a trip to a conference in California and as he got to the airport he realized he forgot his running shoes, he is a big runner. He said, no problem, I will buy some new ones, he had got a lot of miles on them. He checks into the hotel, he goes to the store and finds the running shoes that he likes, he buys those. He sees a great pair of mens dress shoes on sale, a pretty good price, so he buys them.

Did you ever have it when your credit card comes back saying, you're little it bit

out of the profile, what's your mother's maiden name or whatever that is.

This guy is a computer information specialist at George Washington University, so he asked the person on the phone, what made it pop out of your computer. He said, three things. First of all, you never bought shoes in California, you never bought two pair of shoes in one day, and you have never bought black dress shoes.

Now, I am not going to tell you which credit card this was, but one of those big credit cards knows that about you too.

Now, that sort of information would not be available to the FBI, but it would be to your bank card. What are the standards? We allow the banks to get away with that. I think you need to spend some time with folks in here, very seriously talking about new standards of privacy.

We all lived in a small farming community where I grew up. We knew what everybody was going because it was a small community and we knew everyone. It is a different society we live in now and I think you really need to spend some time looking at what those standards are.

MR. FIELDING: Obviously, that is an issue that we could go on all afternoon, but unfortunately we are short of time.

I would also like to thank you all for your cooperation and for coming here today, and the tremendous paperwork that you have provided for us, which is going to be first read by those people and then by us. We do appreciate it.

I am afraid we have to get onto really some organizational issues which are apparent from this topic, but it has been suggested to us in various ways that there is no real need

for additional organization structure, especially within the Federal Government. That the authorities that are needed for that exist, they are just not fulfilled. I would appreciate each of your comments on that, as an initial subject on the organizational side of this.

MR. WERMUTH: I think we would agree in terms of the authority to conduct certain activities, as you see will from the written testimony in connection with this national counter-terrorism center which, to a certain extent, has some of the characteristics that the President's initiative for the terrorist threat integration center terms of fusion.

The research that we did, the recommendation that Gilmore Commission made for the creation of that center was not to create something new in addition to existing structures, but to bring pieces of other

agencies together and put them in the same room, if you will, and require them to work together collectively, comprehensively, rather than working from some distance apart with all the culture problems and other barriers that exist between and among Federal entities.

The panel said, take people that are already doing this and put them together. Don't create something brand new and in addition to everything else. We have got statutory authority. We have got existing capability. We have got expertise in these in compartments, but they are simply not together. Bring them together. We happen to say a little differently than what the Markle Foundation recommendation was. Don't it put it in either Department of Homeland Security or the Central Intelligence Agency or any other department. Put it where it is truly independent and objective, an honest broker

because they are a lot of customers. The Department of Homeland Security is not the only customer. The Central Intelligence Agency is not the only customer. The Department of Justice is not the only customer.

Put it in a place where there really aren't the inherent pressures, if you will, and the competition for resources within an existing agency. Make it free-standing, objective, independent, but bring all the pieces together into that single location. That's what we said in a structure standpoint.

And by the way, we don't need additional statutory authority other than authority maybe to move the responsibilities for those from the agencies where they are into this other structure.

MR. FIELDING: Ms. Baird.

MS. BAIRD: Yes, I would just say that I think that there is so much to be done to

build on the existing capabilities and to create the activities that need to be undertaken, that I would put your focus there rather than putting your focus on thinking about new laws or new authorities, because there is a great deal of capability, legal authority, and talent and agency commitment that needs to be developed. That should really be the priority.

I do think that the Department of Homeland Security has an important domestic role to play, that you can encourage, be played out by that department. It has quite a number of agencies in it that have a great deal of information that needs to be part of this system and that needs to be drawn on by the rest of the Government and the locales.

It also had the potential of being a single point of contact for much of the private sector information, which is not going to



comfortably be shared with CIA or foreign intelligence community. So as the Department of Homelands Security is ramping up and much of the activity that was hoped for by those who passed the legislation on Capitol Hill, is being pulled into other agencies other than Department of Homeland Security or umbrella agencies.

You might look hard at what you would encourage the Department of Homeland Security to be able to do, and particularly on the domestic front, what is important to have happened in an agency that is not under the direction of the Director of Central Intelligence. What will the American people be more comfortable having undertaken and be guided by a domestic agency as opposed to a foreign intelligence agency. And I think you have seen some of the debates on Capitol Hill, much more skittishness about the potential for

privacy intrusions from the Defense Department or the foreign intelligence community, than people feel about domestic agencies, and I would look hard at that.

MR. FIELDING: But, of course, the DCI exists as a concept. Is it your feeling that that's just not a popular vehicle for doing this?

MS. BAIRD: I don't think you will ever persuade the American people that the Director of Central Intelligence is a benign entity, because we have operated outside this country with rules we will not be comfortable applying inside the country, and he has been responsible for those operations.

Perhaps five or ten years from now, after the system sorts itself out and people understand comfortably how we can use information domestically to protect security, people will come to that. But I think that

will not be a comfortable place to have the leadership for domestic intelligence or information collection, particularly from the private sector.

MR. LARSEN: I don't think this new organization, that I would like to see, fits under the Department of Justice or DCI. At one time I thought it might fit under the new Department of Homeland Security, but I am no longer sure now.

Unfortunately, I think what John Gannon was trying to do over there got derailed. I think there was some potential there. Clearly the terrorism threat intelligence center does not give us what we need, and clearly, we cannot have it under law enforcement, that is the part I think the American people will insist, that we must protect the rights of the accused. So I think there are other models we can look at in other

countries that could perhaps give you some vision here. My final recommendation here was, I think you need to start with a blank piece of paper.

The first time I went to visit the NAPSI, and I say NAPSI was a wonderful model that came out of PDD 39, the previous administration, where they fused those things together. But when you first walked in the door, the first day I visited there, they reached in, they pulled out their badges, they were cops. And they admitted that only 14 percent of computer crime was reported, because businesses didn't want to go to Justice, because if you said there has been a computer crime and they came out and investigate, anything they found out could be used against you in a court of law.

So we are going to have to remove it from Justice and, I think, the intelligence

community.

MR. FIELDING: That raises a question, I guess, I really would like all three of your comments too.

We have obviously had an historic role for the FBI, an historic role for the CIA. One was overseas and one was domestic. And the FBI is an adjunct to the Department of Justice. It provides information for the Department of Justice, their indictments come down. Suddenly all the information goes into the black hole. It can't be shared, it is grand jury information, it is law enforcement information, but it is being used in the adjudication of criminal cases and, therefore, doesn't get disseminated.

How are we going to solve that problem in any of these schemes?

MR. LARSEN: I think there is a model. The national infrastructure protection center

is being moved to the new department. They looked at all source intelligence information, law enforcement sensitive information which even included grand jury testimony, and with as the vulnerability. But like I say, once again, primarily focussed on cyber aspects of it.

That model is there. It works. There are certain things that take place in the counter terrorism task force that also works. I agree, I don't think we need new legislation, I think we new need new organization. I think General Eisenhower got it right when he said "the right organization will not guarantee success, but the wrong organization will guarantee failure."

Now we have the wrong organization. We need a new one.

MR. FIELDING: Zoe.

MS. BAIRD: Well, you have probably the leading expert on your own Commission in

Jamie, on that question. So I won't even try to venture into how information gets shared, because she will make sure you are straight there.

But I would say something that is perhaps not responsive, but I think important, which is that if much of this information is not collected by law enforcement, if intelligence information which is intended for policy makers is collected through other means, or under the direction of the Department of Homeland Security, then you don't put the FBI in the challenging position of deciding not to pursue its own rules. You then have a policy maker who says, okay, this is what we know about this group of people. What policy action should be taken? Do we want to prosecute them to get them off the street? Do we want to deport them? Do we want to continue to follow them to see who they are working with outside the country, or at other levels or in other

cells? Do we want to engage in diplomacy with the country from which they came to try and learn more about what's going on in that country that could lead to a more substantial terrorist threat by virtue of the fact that we have this information on their citizens, perhaps information about relationships between their citizens and others.

So, if you have in the first instance the information going to policy makers, then the policy makers can decide that this is something that should go into that law enforcement box. And how black the box is today is a little grayer than it used to be. But be as I say, Jamie is the best person to inform you about that.

MR. KEAN: Mr. Wermuth.

MR. WERMUTH: Intelligence collection for law enforcement purposes investigation, arrest and prosecution is, in our view, very



different than intelligence collection analysis and dissemination for deterrents, prevention and detection.

We have said that in our reports, that the FBI is the best law enforcement agency in the world. They don't understand intelligence collection analysis at the strategic level. They do it for law enforcement and it is different. They protect it, as you have suggested, in the grand jury testimony and investigations. That is one of the reasons this panel said take the FISA collection responsibilities out of the FBI and put it into this reconstructed, this new design of capability in a stand-alone center.

Let me offer an anecdote that I think is an analogous. In a prior -- I had something to do with counter drug policy making and operations.

In 1990, about this time of year in

1990, if memory serves, the counter-narcotic center at the Center Intelligence Agency came to the FBI and DEA and said, could we see all of your files on Columbian drug operations. Of course, the answer that you might expect was, we can't turn over all our files to you, there are open investigations, there is grand jury testimony in there, we might taint evidence that would be presented in a court.

So the CNC went away and scratched their heads for a few months and came back and said, okay, can we see all of your closed files.

After some agonizing with people in the Office of Legal Policies and the Department of Justice, and elsewhere within the structures, the Bureau and the DEA turned over their closed files to the Counter Narcotics Center. Ninety days later the CNC had mapped the

Cally Cartel to about 95 percent level of assurance.

That is the kind of things we are talking about when we talk about strategic intelligence versus intelligence for law enforcements. It is different situation, and this panel has said that they are not sure that the FBI would ever be able to change their culture to understand the difference in the two. And even if they could, it would take new generation of FBI agents and leadership, despite all the great things that Director Muller and some of the senior people in the FBI are trying to do.

It is an inherent culture in that organization that they do things for law enforcement purposes. They don't do it for strategic purposes, for deterrents, prevention and protection.

MR. KEAN: We will take five more

minutes.

MR. BEN-VENISTE: With respect to comment that Ms. Baird made in her written materials relating to agencies rushing out to collect information and technology on their own, resulting in stove-piping of systems. We have seen the unfortunately named Total Information Assessment Office recently defunded. Undoubtedly, throughout the Government, since there is this great infusion of funds thrown at counter terrorism, what have you observed in terms of duplication of efforts, duplication of funding, which perhaps we, in being on the scene and in realtime, observers of situation can perhaps influence in some way. And if we could, what would you have us do?

MS. BAIRD: A great deal of funding is being put into the information collection capability for the government, but it is being

put into filling up the stove pipes, by and large. It is not being put into developing a system of sharing information and at the federal, state and local level. So very little money is going into the intersection between agencies or between the federal and local, and having the state and local governments fail to be able to be part of the system.

I would encourage you to look at, and to ask people to provide you with information about the dollars that are going to developing the systems of sharing and integration of a national system as opposed to filling the stove pipes of particular federal agencies.

MR. WERMUTH: I am trying to find the exact cite that the National Strategy for Homeland Security talked about the creation of something that it call it a Collaborative Classified Enterprise, and that was supposed to be exactly the kind of stuff that Zoe was

talking about, to link all of this together for both intelligence and information sharing so that you could get information to the people who needed to have it, at the right time, at the right place. You could bring information that was gathered in appropriate ways, into this collaborative classified enterprise, was what the national strategy called it.

We suggested that be in this new national counter-terrorism center that the panel called for. It wouldn't have to be there, but it certainly needs to be, as Zoe said, a comprehensive focused prioritized mechanism for doing exactly what she was suggesting.

MR. BEN-VENISTE: I approach this with no preconception, but one of the things that we have heard a lot about and will continue to study, is the question of whether this domestic intelligence collection enterprise is moved out

of the FBI, where it basically now resides, and put somewhere else.

Two things: One, you have this great aircraft carrier of the FBI turning. We are in the process of turning. They have devoted assets, they have re-trained. They are trying to do what we are asking them to do.

At the same time there are discussion that we should go to something like a British MI5 or the Canadian bifurcation or the French, God forbid, or something else.

Is there a suggestion from your collective experience as to one country which would be a model, in a democratic country, which operates in an efficient way that should be a model, at least in part, for us.

MR. LARSEN: We looked at MI5 very closely, for example. But we deliberately stayed away from trying to draw a comparison

with what this panel was recommending with the national counter-terrorism center, including the domestic collection piece and MI5.

The simple fact is, the laws are different. The concerns about civil liberties are different. The concerns about privacy are different. You might compare some structure just in terms of where it is located, who it reports to it, and who can task it and what some of the limitations are.

We finally came to the conclusion that there wouldn't be anything advantageous from making those comparatives because so many things are different. This panel said this is a U.S. problem, we need a U.S. solution, and that's why it recommended what it did, without any artificial or arbitrary comparisons to the structures in other countries.

MR. KEAN: We have a couple of minutes. We have three commissioners who have



been waiting to ask questions; Senator Gorton, Commissioner Gorelick and Senator Cleland.

Fast questions and answers, if we can.

MR. GORTON: Mine would take far too long, so I will defer -- I couldn't even ask the question in the time.

MS. GORELICK: We all want to hear that question at some point.

MR. GORTON: You will.

MS. GORELICK: First let me say to Zoe Baird and to the Markle Foundation, thank you for directing our attention to, A, the low hanging fruit of engaging state and local government agencies and corporate America, and for teeing up the very important question of the balance between privacy and the efficacy of law enforcement and counter terrorism.

My questions are primarily directed to Mr. Wermuth and Mr. Larsen. They go to the question of efficacy of commissions.

Mr. Wermuth, I would have thought that if you read your commission recommendations, together with the conclusions of the joint inquiry which just, after all, looked at intelligence failures, but nevertheless, that it would have been sickening to you because you recommended, well before September 11, 2001, that we have a fusion of intelligence, law enforcement, immigration information, and that we engage fully state and local law enforcement. And when you put that together with what the joint inquiry said would have occurred in terms of the apprehension of leadership of those who perpetrated 9/11, that if you had gotten that information together you could have apprehended those people, or possibly you could have.

It is a very disturbing picture. And here we are, ten commissioners, a very able staff, very able people willing to help us, and

my question to you as we are in this first public hearing, looking to the end of our process is, do you have any second thoughts about what you did with your recommendation? Are there things that we can learn about how to be more effective and have greater impact, so that the scenario I just described wouldn't be repeated in the future?

MR. WOLOSKY: It certainly is frustrating when you look at this from an historical context now, to realize how many, what now appeared to be pressing recommendations this panel made before September of 2001. But you have served in a major department of government and the highest levels. Others of you have, others have served in Congress and as chief executives of states. You know the tensions that exist. You know the parochial nature of certain issues that exist. You know the politics, both with a little P and

a big P that often enter into deliberations of legislative bodies and Executive Branch agencies.

That is not to say that any of that was not well intentioned at the time. Our agencies do compete with each other. Our political parties compete with each other. Heavens, the two Houses of Congress compete with each other.

I think there is significant value in commissions just like the one on which you now sit because you bring a wealth of information to the discussion without the constraints, maybe, that you once had when you served within a specific branch of government or represented a party in a particular house of Congress.

You will be able, from what we have learned, you will be able to be more open and honest and comprehensive, and nonpartisan in a capacity like this, than perhaps you were in

positions in which you served in the past.

To us that's beneficial. That is not to say that you need to establish a national commission for every single problem and expect it to solve the problems, but you can have some impact. Of the 79 recommendations that our advisory panel made in its first three reports, 66 of them have been adopted in whole or in major part. So you can have an impact. That doesn't mean that you will get all of the things right, but if you are a panel that is composed of the kind of people that are clearly on this panel, with your expertise and national recognition. Suffice it to say that, your recommendations and I dare say they will be reasonable and logical and sound and supported by the evidence and everything else, you will have an impact. You shouldn't be concerned about that.

The only concern would be, can you do

it fast enough to get them into play before the next events happen.

MS. GORELICK: Thank you. I would like to hear any comments from Mr. Larsen and Ms. Baird.

MR. LARSEN: I don't often disagree with Michael. I disagree a little bit. We had a close mutual friend, Philip Coleman, when he sat down to be the director on the Presidential Commission on Critical Infrastructure and Protection. He went back and looked at a whole bunch of commissions and what effect did they really have. It is pretty discouraging when you really look at the data out there.

MS. GORELICK: Well, he also, his commission, the Presidential Commission on Critical Infrastructure catalogued all of the vulnerabilities of each of the sectors in this report, and one questions what has happened to all that information, and is it being used.

MR. LARSEN: A very good question. I know NAPSII was very focussed in cyber owning and the physical dropped off the scope.

But I tell you in January -- a recommendation I have for you how to get better action out of your report. You don't want it to become shelfware, like so many do, okay, another report, let's stick it over there.

In January of 2001, Dr. Tara O'Toole from Johns Hopkins and I, were terribly concerned about this country being vulnerable to an attack of smallpox. Something we know that Iraq has, that could threaten the survival of the nation.

Now, we could have gotten a small study funded by the Markle Foundation or someone, and gone out and written a report and put it up there and what would it have done? What we did together was put together that exercise, Dark Winter, and then not so much the

exercise, but how we took that 35-minute presentation in a dramatic format, and sat down with Senator Warner in his office with Senator Roberts, with Vice President Cheney. We briefed Vice President Cheney nine days after 9/11 and said this is what it means to this country only having 15 million doses of smallpox vaccine. I accept that is very focused, one small issue. We got a \$500-million program out of that and the country is far more secure.

There is another commission going on right now looking at another threat and has come to us and said, could you do a Dark Winter style thing for us to help us when we finish our study and our scientific work, to put it together so we can take it around town and sit down either in Congressional hearings or one-on-one with senior leaders and say, let us show you what it would be like if we have another serious threat coming to our country



with the system we have now. Let us show you what it would be like if we had this new system we recommend.

A dramatic 30 minute presentation like that, is something that might help you market your recommendations.

MS. GORELICK: Zoe, do you want to have the last word on that question?

MS. BAIRD: No. I think enough has been said. Thank you.

MR. KEAN: Last question from Senator Cleland.

MR. CLELAND: Thank you very much, Mr. Chairman. Just one quick one. We may be getting lost in the weeds here, for the second day in a row here, I have heard distinguished panelists say there is going to be another attack. Mr. Larsen, you said that, the gentleman here and Ms. Baird. We heard that yesterday from an expert on terrorism, who has

been studying that since 1974, I think.

That's very scary. Given the fact that what little we know about Osama bin Laden, and we haven't found him yet apparently, is that he generates his energy from the allegation that particularly America is overstepping its bounds and has a footprint on Islamic lands in Egypt, in Saudi Arabia and now we have a war in Iraq. I mean, are these aid to Egypt, aid to and a base in Saudi Arabia, the war in Iraq. Are these actions by the United States more likely to produce the counterattack or this next attack, Mr. Larsen?

What elements are there that make you think we are going to get hit again, and what would lessen those elements?

MR. LARSEN: The fact that we are at war in Iraq today, in my mind, there is no question that it increases the threat of attacks on our homeland in the short term.

However, if we are we were not at war in Iraq today and Saddam refused to disarm, I think the long term, the threat would be even be more significant. We're not at war today in Iraq to make it safer this week or this month. I think it is trying to make a safer internationally security environment for my children and your children and grandchildren. That is what it is.

The international security equation has changed, as I said in the beginning, with technology, small actors can seriously threaten us. It is not just Osama bin Ladin, it is others, but you mentioned Osama bin Ladin. He doesn't hate us for what we do in our foreign policy, I think, as much as and what we are and what we believe in in this country. That's not going to change. So I think we have to understand it. I hate saying that. I hate saying that to my kids and grandkids down in

Texas that there are going to be more attacks,  
but it is a fact that we have to adjust to.  
It is going to happen.

MR. CLELAND: Anyone else, Mr.  
Wermuth.

MR. WERMUTH: I happen to think that  
whether we were in Iraq or not -- we said this  
clearly, even before the current conflict  
started that the likelihood, for the for all  
the reasons that Randy has mentioned, there are  
people out there and not just Osama bin Laden,  
there are just people out there who don't like  
us. And are likely now because the mold has  
been broken, and we have had significant  
terrorist attacks inside the United States,  
that others will be emboldened to do it.

But I mean, let's face it, we had  
what could have been a disastrous attack right  
down the street in 1993 and a lot of people  
said you better be paying attention to that.

You need to understand what implications that has for the future, and some people listened but not enough people listened.

The operations in Iraq may do as someone said yesterday, create another hundred Osama bin Ladens, but I would suggest that any number of policies of this country, just because we do what we do, we are who we are, might just as well push some of those people over the edge into attacking us at some point in time.

So I don't think that this country can stop taking decisive action when it is in the U.S. national interest to do that, as long as we have good grounds to do it. Whatever it is, whether it is economic policy or military engagement or types of diplomacy or sanctions or whatever else it happens to be, just because we are scared of the next terrorist attack.

And I know Senator, that is not what

you were suggesting. I think we, obviously, have to take into consideration what reactions our actions may cause in other parts of the world and within other cultures, but we still need to continue to try to do the right thing wherever we interest in the world.

MR. CLELAND: Thank you, Mr. Chairman.

MR. KEAN: Thank you very, very much.

It has been a wonderful panel. Thank you so much for your help and for your past work, and hopefully we can call on you as we go along in the future.

Thank you all very much. We will try to get back, if we can, a 35 minute recess, if we can do that.

(Recess.)

MR. KEAN: The Commissioner of Police and the Commissioner of Fire. They were here yesterday and have promised future cooperation with the Commission.

We have also got a statement to be read into the record by Senator Corzine. Senator Corzine has been very interested in the Commission and very helpful to the Commission at this point, and he had a statement which we will read into the record.

Today's panel starts now and will end at 3:00. We have Shawn Kelley, who is in the Arlington County Fire Department. I appreciate your being here. William Baker, of the American Society of Civil Engineers, and Ken Holden from New York Department of Design and Construction. I thank you all for being here.

Mr. Kelley, would you like to start.

MR. KELLEY: Good afternoon. My name is Shawn Kelly and I am Assistant Chief with Arlington County Fire Department and was one of the incident commanders throughout the rescue and recovery efforts at the Pentagon.

On behalf of the Arlington County

Government and the men and women of the fire services in Northern Virginia and the Washington D.C. area, thank you for allowing me to address you today.

Like most fire departments in the region, the Arlington County Fire Department participated in regional disaster drills consisting of hospital or college dorm fires, mass transportation accidents and even structural collapses. But never did we think of training for an incident that combined an airliner crash into a large building, structural collapse, along with large building fire that was fuelled by jet fuel.

Following the March 1995 sarin nerve agent attack in a Tokyo subway that killed twelve commuters and injured hundreds more, the Arlington County Fire Department recognized that America's first responders were not trained or equipped to handle such emergency.



Our training changed its focus towards large scale incident management.

From the moment American Airlines flight 77 crashed into the west side of the Pentagon at 0938 a.m. and for the subsequent ten days, this was a major fire and rescue incident, the responsibility of the Arlington County Fire Department.

The destruction caused by the attack was immediate and catastrophic. The 270,000 pounds of metal and jet fuel hurling into the solid mass of Pentagon is the equivalent in weight to a diesel train locomotive, except it is travelling at more than 400 miles per hour. More than 600,000 airframe bolts and rivets, and 60 miles of wire were instantly transformed into white-hot shrapnel.

The resulting impact, penetration and burning fuel had catastrophic effects on five floors and three rings on the Pentagon

corridors numbers 4 and 5.

This act of evil cost the lives of 198 persons in the Pentagon attack; 194 were innocent victims and 5 terrorist perpetrators of this criminal act.

Though the Arlington County Fire Department did not feel its response to terrorist attack on the Pentagon was extraordinary, it did not happen by chance. The Arlington County Fire Department's preparedness was a result of years of hard work, reorganization, intensive contemporary training and updating command staff education.

The successful response to the terrorist attack on the Pentagon can be attributed to effects of ordinary men and women performing in extraordinary fashion. These efforts are described through an after-action report that was prepared for the Arlington County by Titan Systems Corporation.

It was accomplished through a grant from and support of the Department of Justice, Office of Justice Programs, Office of Domestic Preparedness.

The After Action Report describes the activities of Arlington County and the supporting jurisdictions, government agencies and other organizations in response to the September 11, 2001, terrorist attack on the Pentagon.

It is organized into four principal annexes and four supporting annexes. Annex A is fire department operations and emergency medical service activities, and it is the bulk of the report.

Annex B is about the response of the local area hospitals and clinics and their ability to handle communications and the number of patients that could have been brought to them.

Annex C covers local, federal and private law enforcement agencies.

And Annex D is the emergency management and emergency operation center that supported the first responders and citizens of Arlington County.

You will see on September 12, Arlington County public schools were open and trash was picked up and services continued in that jurisdiction.

Although the response to the September 11, 2001, terrorist attack is commendable, the After Action Report contains 235 recommendations and lessons learned. Each which must be understood within the context and setting of the Pentagon response.

The first segment describes capabilities others should emulate and speaks to incident command system and the unified command that was established at this event.

Mutual aid with surrounding and supporting jurisdictions and outside support, and the Arlington County emergency management plan that was put into place, the Employee Assistance Program, the training that we had undergone, exercises that we had performed and shared experiences.

The final segment describes challenges that must be met and speaks to self dispatching, fixed and mobile command and control facilities, communications, logistics and hospital coordination.

The Arlington County Fire Department is addressing these challenges by updating its communications system, the purchase of a dedicated command vehicle, establishment of a logistic segment within the department, and ongoing coordination with local and regional hospitals.

In summary, the response to 2001

terrorist attack on the Pentagon was successful by any measure. Although the tragic loss of life from this horrific event could not be avoided, it was minimized. Had it not been for the heroic actions from the response force and the military and civilian occupants of the Pentagon, clearly the number of casualties could have been much higher.

Damage, although severe, was contained in area and the fire was brought quickly under control. The fact that the response force did not suffer a single fatality or serious injury, is testimony to the training, professionalism and leadership of the Arlington County and the response community.

Terrorism, in any manifestation, is an insidious phenomenon. It strikes without warning, often targeting innocent people. It is not intended to defeat an enemy by overwhelming military force, but to undermine

and weaken its resolve. If the terrorist intended to weaken our resolve by attacking the Pentagon, they failed.

In the words of our County Manager, Ron Carlee, "The cowardly and evil effort to terrorize our community and our country served only to unite us more strongly than ever before."

Thank you.

MR. KEAN: Thank you very much.

Mr. Baker.

MR. BAKER: Yes, my name is Bill Baker and I am the partner in charge of structural engineering in Skidmore, Owings and Merrill. I am here today representing the American Society of Civil Engineers.

I wish to express my sincere appreciation for being asked to address the Commission on behalf of the ASCE/FEMA World Trade Center Building Performance Assessment

Team.

My comments relate to my role on the ASCE/FEMA team as well as my experiences as a structural engineer assisting the fire fighters and contractors in the early days after the attack on the World Trade Center.

In addition, I will offer my recommendations as to what may be valuable to New York and other urban areas in dealing with the aftermath of future terrorist attacks. These recommendations include: immediate coordination of on-site contractors and structural engineers; an archived depository for construction drawings of all city-wide buildings and infrastructure; and federal "good Samaritan" legislation for those assisting.

When I arrived at the World Trade Center site after the attack, I was awestruck at the extent of the devastation. While the



media focused on the destruction of the twin towers, the damage went far beyond anything that was conveyed to the general public. The damage included the total collapse of four major buildings, the partial collapse and burnout of three major buildings and extensive damage to seven additional buildings. Many other buildings suffered minor damage. The district's infrastructure, including utilities and the subway system in the area, was extensively damaged and parts of it were destroyed.

The New York City Department of Design and Construction performed a brilliant job in organizing the efforts of the engineering and construction industries to support the search and rescue and, later, clean up of the site. The DDC divided the district into four sectors. Each sector was assigned to a team of contractors. This was a very successful

approach.

Because the contractors were top-notch and adept at managing very large private and public sector projects, they knew how to organize the teams, deal with heavy equipment and marshal resources. However, the contractors needed the professional assistance of structural engineers.

The Structural Engineering Association of New York stepped forward to organize the services of structural engineers from across the city, state and country. SEAoNY, as it is called, assembled teams of structural engineers to assist each of the four contractor teams. I urge the Commission to use this approach developed by the DDC and SEAoNY as a model for dealing with possible large urban disasters. In many ways, New York City was a fortunate to have the DDC and major players from the engineering and construction industries

available to assist at the site.

In the first critical hours and days following the attack, what was not readily available or well organized were drawings of the buildings, plazas, subway tunnels, freight tunnels, et cetera. As engineers and contractors were investigating the extent and severity of damage, drawings of the original structure were sorely needed. When it was necessary to bring in large cranes across subway tunnels, vaults and plazas, drawings were an absolute necessity. I strongly urge all major cities to develop an archive depository for construction drawings and other critical information to be available to the authorities on short notice. A duplicate copy should be housed in a redundant location.

The structural engineers who assisted at the World Trade Center site were often in uncharted territory with respect to

professional liability. There should be appropriate national "Good Samaritan" legislation to promote the assistance of engineers in such situations. While such legislation exists in high seismic states such as California and some of the West Coast states, all states are vulnerable to terrorist attacks and there should be appropriate legislation.

At this point, I would like to focus my comments on the efforts of the ASCE/FEMA Building Assessment. The Structural Engineering Institute, a division of the American Society of Civil Engineers, was responsible for organizing this effort and bringing together the relevant professional societies with support of FEMA, for an assessment of the World Trade Center site. Under the leadership of ASCE, a team of structural engineers and fire engineering

experts from around the country were brought together. Because of my expertise in designing tall buildings, I was asked to join the effort and be on the five-member core group that directed the assessment.

This type of effort is important because the advancement of construction of buildings has often come from the analysis of failures. These tragic events of 9/11 provided an opportunity to see how building emergency systems and structural systems behave in extraordinary events. Although the media has focused on the twin towers, there is more to be learned from the ordinary buildings that were damaged by the events. We saw and documented the performance of structures that resisted extraordinary forces and maintained their overall integrity. But we also saw and documented collapses that, based on previous experiences, should not have happened. It is through the

study of these behaviors that the art of building design is advanced.

Unfortunately, the ASCE/FEMA team faced many obstacles while studying the World Trade Center. The team was not able to assemble on the site until October 6th. We could only request and cajole to get drawings and other information. In fact, we did not receive access to the twin tower drawings until January. Nonetheless, the team was able to perform an invaluable service in our initial, overall evaluation of the buildings in order to focus and prioritize future investigations and research.

In response to this, fortunately, the National Construction Safety Act that was signed into law on October 1, 2002 addresses many of the difficulties faced by the ASCE/FEMA team at the World Trade Center site. This act authorizes the National Institute of Standards

and Technology to investigate building failures. This is similar to the National Transportation Safety Board investigations of airlines and other transportation accidents.

This allows NIST teams access to building failure sites; provides the power to subpoena evidence; provides access to drawings, records and other documents; and allows for the removal and storage of evidence. None of this was available to the ASCE team.

This legislation is a significant step forward in creating a vehicle by which the design and construction industry can learn from failures. This will help to advance building technology and improve the safety and reliability of future construction.

As a structural engineer, the World Trade Center collapse represents the largest structural failure in the history of mankind. From this tragedy, I am confident that we can

learn now to approach catastrophic building failures in the future and through the National Construction Safety Act we will continue to learn how to improve building construction.

Thank you for your attention.

MR. KEAN: Thank you. Mr. Holden.

MR. HOLDEN: Good afternoon Chairman Kean, Vice-Chair Hamilton and members of the Commission. My name is Kenneth Holden and I am the Commissioner of the New York City Department of Design and Construction. Thank you for allowing me to appear in front of you today.

The City's Department of Design and Construction, DDC, was created by the Mayor in 1996 to consolidate most of the City's capital construction programs. Its mission is to streamline the design and construction of the City's infrastructure and facilities by ensuring that the City's projects are delivered



in a safe, timely, and cost-effective manner.

DDC's clients include OEM, the Police, Fire, Environmental Protection, Transportation, Aging, Juvenile Justice, Correction, Health and Cultural Affairs Departments; the Administration for Children's Services; the Human Resources Administration; the Public Library System and the Board of Education.

On the morning of September 11, 2001, I was preparing to leave my office in Long Island City for a meeting at City Hall when I first learned that a plane had hit the World Trade Center. I immediately went into downtown Manhattan, and was on the steps of City Hall when the first tower collapsed. I, along with many others that day, ran north. Eventually, around 11:00 that morning I ended up at One Police Plaza, which was being set up as a command center. It was there that DDC's role began.

We realized that the entire infrastructure of the Port Authority, which was headquartered in the North Tower and is the owner of the site, had been decimated, and therefore a response from them was likely impossible. FEMA and the Army Corps of Engineers had not arrived yet. I thus began trying to get contractors and structural engineers to the site to conduct a walk-through, in order to assess the stability of the site and the scope of the response that was required. DDC was uniquely qualified to jump into action in this emergency: We had many construction project managers and engineers on staff with significant and varied experience and we had established numerous contacts with experienced firms that could immediately mobilize the equipment and personnel necessary to help with the search and rescue operation. Our ability to draw on our own internal

expertise and these widespread outside contacts allowed for the quick and efficient decision-making this situation required.

At approximately 5:00 that evening, I conducted a walk-through with several engineers and construction managers. The immediate need was for lighting, since all electricity was out. I spent Tuesday night and Wednesday in a mad scramble to locate light towers to illuminate the site, and also to bring in heavy equipment to lift debris, so that fire fighters could fight fires, and the search and rescue operations could go on. We worked closely with the Police Department to set up police escorts to get the contractors over the bridges.

DDC staff was pulled from their regular duties to organize and manage demolition, excavation and debris removal operations. Many worked 18-hour days, seven days a week, to respond to the emergency.

In the first days, I recall being stunned by rescue efforts to lift and demolish the north pedestrian bridge with many fire trucks underneath, and wondering if there were any survivors. I watched a priest praying over the smoldering remains of Building 7, and ran into a contractor and cried on his shoulder. However, I could not allow myself much time to feel, because we assumed there were survivors in the piles of debris and we had to come up with a plan to get them out.

Using emergency procurement procedures, four construction companies were hired on a "time and material" basis. Those firms hired numerous subcontractors for scaffolding and netting, demolition, health and safety planning and monitoring, hazardous materials removal, shoring, structural engineering, hauling and barging.

In cooperation with the Port

Authority, the Fire Department, Police Department and numerous other agencies, DDC handled hundreds of details and questions every hour. The site was immediately and immensely hazardous for rescue and clean up workers. We divided the site into quadrants and placed netting on surrounding buildings, to secure the site for the rescue effort. We came up with a Site Safety Plan to address hazards throughout the site, from cranes dangling ironworkers in baskets facing precariously leaning pieces of the towers, to voids in the debris that could swallow a grappler.

Just walking on the site was hazardous because the debris could shift at any moment. Yet hundreds of fire fighters, police officers, rescue workers, laborers, crane operators, iron workers, construction management personnel and DDC staffers worked around the clock in close proximity to literally hundreds of potentially

dangerous objects and situations. Throughout this time, the war-like atmosphere was surreal, with Army, National Guard and NYPD providing armed security.

Quick, but safe decisions regarding where to put the cranes had to be made, inspection of the slurry wall and water in the basement were conducted, while numerous fires were still burning and smoldering. Underground, it was still so hot that molten metal dripped down the sides of the wall from Building 6. Cars both burned and pristine, were suspended in the air balanced on cracked parking garage slabs.

Along with the Building Department and Structural Engineers Association of New York, DDC assessed 400 buildings in the surrounding area for structural integrity. Over 200 engineers worked, above and below ground, to monitor the structural integrity of the

buildings that surrounded the World Trade Center complex, to ensure that the debris pile remained stable during debris removal and to monitor the stability of the slurry wall.

There was constant inter-agency coordination, and daily meetings were held, which included many Federal, State and City agencies.

Government agencies brushed aside their normal bureaucratic tendencies and effectively said to one another, "What can we do to help?" Although FEMA and the Army Corps of Engineers usually take over disaster sites, to their credit, they recognized that DDC had pulled together an effective team of the best and brightest, so instead they worked with us. They told the City to continue its work and they guided us to make sure we were doing the work in a manner that would allow FEMA to reimburse us. They allowed us to use "time and

materials" contracts, which they do not normally allow.

Police officers, fire fighters and Port Authority Police officers spent countless hours searching for survivors and remains. DOT re-routed traffic, the Mayor's Community Affairs unit set up a family assistance center and consoled families of victims, the Fire Department put out the fires, the National Guard and Police Department provided security. The Department of Sanitation cleaned the site and watered down the streets, and OEM mobilized command centers at the Police Academy and Pier 92 from which it supplied the coordination and organizational focus necessary to complete a job of this magnitude and complexity.

Throughout the operation, finding survivors, and then later human remains, was always a priority. But to do that we had to be able to remove the debris and steel.



Cooperation between Federal, State and City agencies was especially crucial in setting up bargaining operations at Piers 25 and 6, to handle the staggering amount of steel and other debris that had to be removed from the site. The Fresh Kills Landfill, which was closed, was re-opened and mobilized to accept the steel and debris from the site. Steel and debris from the site was sent to Fresh Kills where it was examined and sifted. As the Department of Sanitation could no longer handle the steel with their existing equipment, and our engineers thought the steel would destabilize the landfill, DDC received verbal permission to ship the steel to New Jersey. By the end of June 2002, an astounding total of over 1.6 million tons of steel and other debris were removed from the site.

As the site became more a reconstruction area, infrastructure

coordination was required to handle numerous concerns, including massive amounts of conduit in the streets; sewer, water main and street repair; reducing the perimeter to allow businesses and residents to return; establishing roads in the World Trade Center complex; fewer cranes, more grapplers; continued focus on site safety; and equipment maintenance, especially in view of the strain of keeping machines operating 24/7 in the extreme conditions of heat and dust; all the while trying to remain sensitive to the emotions of victims' families and uniformed rescuers, proceeding with dignity and solemnity, and trying to get the job done safely.

What's happening now and what are our plans for the future? DDC is working together with OEM to address future preparedness concerns and to make sure efforts are

coordinated, and in fact, is currently re-building OEM's new emergency command center. DDC and OEM have received a grant to create a protocol for emergency responses for contractors, and specifications for procuring contractors in the event of an emergency.

Please urge Congress to enact legislation providing for federal indemnity, making it clear that contractors can go in and do the work in the event of another disaster, and not incur liability. The four construction companies that DDC contacted put aside all other business and standard operating procedures and responded with a sense of patriotism, working without contracts. The indemnity issues remain unresolved, and these companies have been incredibly patient. However, the costs of defending themselves against lawsuits may be economically devastating, and such considerations could

prove prohibitive, in the event that they are called upon again.

The largest and most emotional rescue and recovery job in American history was also an exceptionally safe project, due to a combination of our safety plan and its enforcement, and luck. There were no deaths and minimal injuries; which is absolutely incredible, in light of the magnitude of this job and its hazards.

The work that the City and its employees accomplished reflects the extraordinary talent, dedication and heart that makes New York such a special place. From the first days at emergency headquarters at P.S. 89, a few blocks from Ground Zero, where we all struggled to make sense of what needed to be done and to find ways to do what was necessary, to the final emotional days of the cleanup, DDC staff and other City employees exhibited a

strength of character, determination, and a sense of duty that is inspiring.

New York City can do extraordinary things. Everyone involved, engineers and architects, surveyors, uniformed personnel, numerous diverse groups of City workers, Salvation Army and Red Cross volunteers, private contractors and construction project managers, operating engineers, ironworkers and laborers, can all be proud of what we all achieved together, possible only because we were united in a spirit of cooperation and resolve to get the job done.

Thank you.

MR. KEAN: Senator Max Cleland will lead the questions.

MR. CLELAND: I'd like to say that Mr. Kelley and Mr. Baker and Mr. Holden, I don't think any local responders have ever been called upon to do what you have been able to

do. From Arlington to New York City, all of us in America are proud of all of you. Mr. Baker, you said this was the greatest structural collapse in the history of the world and, Mr. Holden, that makes your clean up the biggest clean up that has ever been done based on this structural collapse.

Mr. Baker, I understand there were some conclusions to the Civil Engineers' report. Could you talk a little about that, about some of the weakness you found in the structure of the World Trade Center.

MR. BAKER: This initial report was really more of question of our report than it was trying to find findings. It was a very, very complicated site with a lot happening. We are trying to get this document released, the World Trade Center Performance Study, which is a FEMA document is available to you. What we were trying to do was, we are trying to pull

the information together that was available, and somewhat package it so that it would be available for future researchers and try to prioritize. That was mainly the emphasis.

We put together a few likely scenarios for some of the collapses, but we gained no conclusions as to what they were. A lot of our questions, certainly there were a lot of discussions about the nature of the collapses of the twin towers.

As a structural engineer, I have to say that most structural engineers were surprised at the collapse after it had survived the airplane impact, but in retrospect, maybe we should have known better.

One of the things that surprised us quite a bit was the collapse of Building 7. It didn't get a lot of press, but it was a 47-story building, 2 million square feet, a big building. And it was the first building that

had ever collapsed, ever, that had been a fireproof steel building that collapsed in an uncontrolled fire. So it was the first time. That building was not hit by an airplane, so the collapse of that building is a very important one, and that is one that the study is ongoing on.

There were two likely scenarios presented. One is, diesel fuel, and a lot of emergency generation in that building. Some people give that credibility. We don't know. The other was perhaps just a simple paper storage fire. Turns out one of the best sources of fuel there is, is paper, okay. It could have been something as simple as a file room that burned for seven hours.

Those are things -- it really wasn't a question of nailing the thing. I think it will probably take a couple of years before we really know why some of these buildings



actually collapsed.

MR. CLELAND: From the audience I heard a phrase there "what about fire proofing?" I guess it was based on code; right?

MR. BAKER: Yes. There are questions about fire proofing in the buildings. Building 7, I am not aware of any issues, and that's certainly part of the new study. There were some questions about the fireproofing in the towers. There had been efforts to increase the thickness of some of the fireproofing in the towers, and whether or not that was done. It was not complete at the time of the impact.

Tower 2, which is the second one hit, the first one collapsed, was hit in a zone where the fire proofing had not been upgraded. It is an unknown thing if that was significant or not. It is quite likely that that particular structure would not have survived regardless, because there is a theory that is

kind of post this report is that, even though the fires, that were burning there weren't in the sense of building fires that large, there was a lot of fireproofing that was knocked off.

MR. CLELAND: Lot of what?

MR. BAKER: A lot of fireproofing that was knocked off by the impact of the airplane. These airplanes were going extremely fast. They are going cruising speeds down that low. It was, I think, close around 560, 600 miles per hour, if I remember correctly. So they are going very, very quickly. There is a lot of debris, ripping off a lot of fireproofing, and then the ensuing fire.

MR. CLELAND: Mr. Kelley, what was your biggest challenges at the Pentagon?

MR. KELLEY: Our challenges were actually manifold. First was perimeter scene security. Here you have the nation's defense. You have a hole in the building. You have rescuers and responders responding to assist

and aid. Both civilian, fire, police and gaining control of those folks and making sure that we had accountability for those people.

Getting logistics to the scene and getting the materials that we needed to the scene. Though it wasn't a huge problem, it was at first because the Federal Government had let out because there was a terrorist attack, so now this log jammed all the highways and byways that we needed in order to get materials in, until we got control and got all those people gone, and then we could start getting in the resources that we needed. Those were probably the two biggest things in a large scope.

Insofar as the Fire Service is concerned, the attack inside the Pentagon -- it is a very big building. You have 982-foot corridors. We wear 45-minute, 30-minute air packs and we had to do some very creative air

management with our air packs where we would actually stay off air, crawl down hallways as long as we could, go on air, try and fight some fire, and remember how long it took us to get in so that we had air to get back out, so we wouldn't lose anybody.

Another challenge was each of the evacuations on the first day while we were actively engaged in firefighting. The first evacuation was the structural collapse on the heliport side of the building. Dropping the hose lines, losing ground that we had gained in fighting the fire to evacuate out. Those hose lines being burned up, equipment we had left behind, having to re-amass that equipment and go at it again. Those were all challenges to us on that first day in order to get the fire under control.

MR. CLELAND: That's amazing. Hearing your testimony, all of you, it reminds me of a

line from Admiral Nimitz after the battle of Iwo Jima that "uncommon valor was a common virtue" and it sounds like it to me.

Mr. Holden, I would like for you to shift a little gear here and talk to me about the psychological impact of you and your wonderful people and crew working for so long on such a massive project, dealing with such tragedy. Has the City put together any kind of program to help the psychological readjustment of those workers who worked so hard at Ground Zero. What do you see about that?

MR. HOLDEN: Actually, I believe FEMA has put together a program that is open to all New Yorkers, as well as the people who -- both the construction workers and engineers who were down at Ground Zero. I believe it is Project Cope and the Liberty Project which are these broad-based counseling services.

I have talked to all my people and

still meet with them quite regularly, and a lot of people have taken advantage of these FEMA-sponsored programs. They have told me that the people are really quite competent and quite helpful, and it has been a big help actually.

MR. CLELAND: It seems like to me that that's part of the terror of terrorism. It is not just the people who die in the incident, but the impact, the washover, the psychological impact on the entire country and on those people who were nearest the flames, so to speak. In many ways just like combat, they live with that experience forever.

Mr. Kelley, do you want to talk to us a little bit about some of your workers and the psychological impact on you?

MR. KELLEY: Yes. In our Department and in Arlington County Government they embrace a very strong Employee Assistance Program.

At Ground Zero, at the Pentagon, from

the very moment after the attack, we actually had EAP workers with the collapse rescue teams and the firefighters right there on the scene, 24 hours a day, for all ten days that we were there. Even if it was just to go get somebody an apple or to bring a cell phone to them to speak to their spouse or their family while they still working, to take some of the stress and pressure away. It was very important.

As far as wellness for the community and to make Arlington whole again and the region whole, once again we got a grant and they started a program called Community Resilience, where they went physically door to door -- they learned this from Oklahoma City, where they had clinicians that went door to door throughout the resident and the business community, first in the Pentagon region and Crystal City area, but then expanded out through Arlington and into the schools, to help

the community deal with stress and to deal with the things that they find after an attack like this.

There is a website that folks can go to, to get pointers and to get tips and it's [www.communityresilience.com](http://www.communityresilience.com), and it has very good information for any community.

MR. CLELAND: As a firefighter, and you and your firefighters, when you go in to talk to kids and children, they have been powerfully impacted. They don't have a lot of defenses that adults have, maybe sometimes that good. Can you tell us a little bit about the impact on some of the kids in the schools, and what you are telling the kids?

MR. KELLEY: Well, the impact is twofold. The impact is to our own children who are scared when their parents, the police officers and the firefighters, go to work now. Daddy or mommy, are you sure you are going to



come home? And so to reassure them and get them well.

In the schools, the best way that we deal with kids -- we got wonderful drawings and wonderful sentiments from the kids and you could really see their feelings, in what you were talking about, in their art work and in what they were saying, which we used as inspiration. We have these things in all our fire stations, hung all over the place. We brought them down to the scene and put them right up on the side of the Pentagon as folks would send these things to us, to keep the rescue workers going.

We say to the kids, yes, we are still here. Yes, some horrible things have happened and this is a tragic event, but we are still here. We are going to be safe. We were there and we are standing here now talking to you. We need to move on.

That's kind of how we are handling it,

but at a more elementary level.

MR. CLELAND: Mr. Holden, you have a whole city, a whole big community to deal with. For you and some of your workers, I am sure you get called upon by the schools to go out and talk about the experience. What are you telling the kids, can you share that with us?

MR. HOLDEN: Actually, I haven't given a lot of talks to kids. I have given talks to university students and engineering students primarily about the engineering projects. But insofar as disaster response, I have not given a whole lot of talks, if any, to elementary or junior high school kids.

MR. CLELAND: Mr. Baker, you have looked at this report. What is the one conclusion that you would draw and would give to this Commission or to your fellow structural engineers around America about what you have learned?

MR. BAKER: It sounds trivial, but you cannot allow large airplanes to fly into buildings.

MR. CLELAND: I am sorry?

MR. BAKER: You cannot allow large airplanes to fly into buildings. You cannot design against it. Smaller planes, like that tragedy down in Tampa where the kid flew the little airplane, that is not gong hurt a building.

But if you have a large commercial aircraft, passenger or cargo, I don't care why it is there, those large airplanes, you cannot design against it. If you look at the 767, it is a big airplane. There are bigger airplanes out there, quite a bit bigger. There are the 747s, there is A380 Airbus which is on the boards in Europe, much larger planes. Both cargo and passenger airplanes have to have foolproof safety systems.

MR. CLELAND: Mr. Chairman, some of

the other Commissioners might have some questions.

MR. KEAN: Yes, they do. Commissioner Roemer.

MR. ROEMER: Thank you, Mr. Chairman.

First of all, I remember 9/11 as if it was yesterday, as a member of Congress, and a member of the Intelligence Committee and as somebody who was right across the river from the Pentagon, Mr. Kelley.

After a full day of scrambling around trying access to intelligence and figure out what was happening to the country and how we should react in making sure the legislative branch was moving forward in getting the right briefings, I felt like many Americans and wanted to contribute somehow.

Everybody had seen what had happened in New York all day. So at about 11:00 or 12:00 at night, I drove across the river and

was able to get through the barricades and right to the front, about 500 yards from the Pentagon. I slogged through ankle-deep water to get over there to see if there was anything I could do, or at least to see it, so that I could see what these terrorists had done to our country. I was mesmerized, looking at this huge fortress, this structure that looked like a steel boot had come down on the top of it and just made a paper accordion out of it.

You were there. You had fire trucks' ladders going up both sides of the building that was still on fire at that time of night. Your folks were scrambling everywhere to see what they could do to help others. And I will never forget, and I tell my four kids about this, turning around from that site of horror and terror and seeing all of you as an army of America, lined up to heal America and take them forward. And you guys did it, and accomplished

so much, and I think it's the story of courage and bravery that so many of us are proud of, and inspire us to work hard and try to get to the bottom of what happened and try to make the country a better place in the future, as well.

I want to personally thank you and everybody in the Fire Department of Arlington and Alexandria, and rescue crews, and if you can take that back to them, this Commission very much appreciates what you help us with.

And New York, Mr. Holden, I can't say I was fortunate enough to come up to New York City. I can say that I will never forget it, coming up a couple of days afterwards as a member of Intelligence Committee, and going to Ground Zero. And I went on a boat up the Hudson River because it was too difficult to get through the town. A sergeant of the Police Department was taking us up, driving the boat.

I asked Tony what he was doing on the

day and how he felt New York was reacting to it. After telling me about all the people that were literally jumping off into the water to try to get away from the collapsing buildings, and he would ferry them over to New Jersey for triage.

I asked him again, how does New York feel they are doing now. This grizzled veteran of probably all kinds of things that he had seen and heard in New York, looked at me. He was 55 or 60, he had huge tears falling down his cheeks. He said, "we feel like we could never do enough to help each other."

Well you did, and you came forward and did extraordinary work in record time to clean things up and to move people forward to try to heal the process.

I wish Commissioners Scoppetta and Kelly were here so that we could thank them. I hope you will pass that on, on our or behalf

and I hope you will make sure that we get an opportunity to talk to them at a later date.

Along those lines, Mr. Baker, I want to ask you, based upon your expertise and your insight on this, it is quite a compliment to pick somebody of your skill for this kind of endeavour, to look at the twin towers, in particular, and see what happened. So I want to ask you, specifically, given this counsel that you bring, this insight that you bring to this report.

You said you were pleasantly surprised by the integrity and the structure of some of the other buildings. Were you concerned or disturbed at all by any of the features, the design and the structural engineering of the twin towers when you studied them?

MR. BAKER: It took a long time to come to grips with the collapse.

MR. ROEMER: When you did come to



grips with it, what did you conclude?

MR. BAKER: I am not sure that -- I think the building performed remarkably well, actually. You never want it to collapse, but one of the things you might say about it, it was a very strong building. It took a huge amount of damage. So many columns were knocked out. We counted the ones on the perimeter and a large number of columns were knocked out initially.

Later studies, ongoing studies have indicated that a large number of core columns were knocked out and the building still did not come down immediately. So the nature of the structure was enough that it could hold itself together long enough for people to get out.

A lot of people did get out and approximately, I believe, 99 percent of the people who were below the impact zones were able to get out, according to articles in New

York Times and U.S.A. Today.

MR. ROEMER: I just have a couple of questions and then I want to make sure the other Commissioners have an opportunity to ask questions as well.

Apart from the plane hitting these buildings and bringing them down, let me ask you specifically about the structure of the buildings, or the uniqueness of them apart from the plane hitting them.

Do you know of any other high-rise or super-high-rise buildings that have floors composed of open-web trusses spanning up to 60 feet?

MR. BAKER: No, I do not.

MR. ROEMER: Is that something that would concern you?

MR. BAKER: It is something to be looked at very closely. We were not able to look at that closely in this situation.

What you are referring to is these are commonly called bar joists. You see them in the roofs and ceilings of big-box retail like a Wal-Mart. It is a very lightweight truss. There are things the industry needs to do to study these things further.

MR. ROEMER: So that could be of concern and that disturbed you?

MR. BAKER: It is something that we don't have the answer on and I personally would not ever use them in this type of building.

MR. ROEMER: So you will recommend other high-rise buildings not use them.

MR. BAKER: Until we know more about it. In fact, there is draft out for the New York City Code which has recommended a temporary moratorium on the use of these types of trusses in high-rise buildings until it is better understood how they can be fireproofed and the integrity of the fireproofing.

The issue comes down that they are very small bars, about one inch diameter and whether or not you can adequately fireproof those.

MR. ROEMER: Specifically, I know Senator Cleland asked a general question about fireproofing. Let me ask you a more specific one.

Was half-an-inch thickness of fireproofing on the floor trusses sufficient to give a three-hour fire rating, in your view?

MR. BAKER: I doubt that a three-hour fire rating was required for the floor trusses, just an as a point of reference.

MR. ROEMER: I didn't ask that.

MR. BAKER: No. I would be very surprised if a half inch would give three hours. We did not study that specifically, but I would be very surprised.

MR. ROEMER: Finally, did you see or

hear of any evidence in the course of your inquiry, that the fireproofing of the twin towers was inadequate? Obviously, you just said you had a concern, but any others?

MR. BAKER: We do know there was an ongoing program to replace fireproofing in the towers, that the Port Authority, as the floors are re-tenantized and made available, that they were going back in there and putting additional fireproofing onto the floor trusses.

There had been some issues of some of the fireproofing falling off of some of the core columns in the elevator shafts, and there had been some earlier lawsuits. We were not able to get access to that information to know the details.

MR. ROEMER: You tried get access to it?

MR. BAKER: Yes, we had no authority. It was all locked up in legal -- there were

nondisclosure agreements on lawsuits and the like. We couldn't get the information.

MR. ROEMER: Thank you, Mr. Baker.

MR. LEHMAN: First, I would like to associate myself with the earlier comments of great admiration. I think that you and your colleagues made the whole country very proud, and impressed it the world with the way the response was immediate. It engaged every asset available in the cities and the districts available, and everyone on the sites showed courageous disregard for their own personal safety, not to mention the trial lawyers association, which the Mayor alluded to earlier on.

So please take the questions that I am going to ask, in the spirit that they are intended, which is to get onto the record as much of the lessons learned as possible so that we can make appropriate recommendations for the

future. This is not intended to try and point fingers at anyone or so forth.

There have been a lot of questions raised since then about why, after it was clear, this was perhaps a measure of weeks rather than days, that there could be no more survivors from the wreckage, why was the site not made a crime zone and given the proper protection so that evidence and forensic investigations could be taking place? Why wasn't that done?

MR. HOLDEN: I believe that security around the site, and the Police Department, in fact, did call it a crime zone, and it was very difficult to get access to the site as the Police Department and the National Guard and Army were called in to provide security to prevent people who need not be at the site, you know, were kept away from the site.

As you mentioned, we believed that

there were, in fact, survivors for many weeks early on. So our main goal was basically to remove, particularly the heavy steel beams to allow the Fire Department and Police Department to continue with their searching operations, with their rescue operations.

MR. LEHMAN: You mentioned the steel. There have been other questions raised about why the steel was removed to a site and then ordered destroyed without being made available to the overall investigation of the structural clues that would have helped in really evaluating where failures took place and whether these codes were met. Why and how was the decision made to destroy that steel?

MR. HOLDEN: Again, you have to go back 19 months and put yourself in the position of trying to find survivors.

Our priority at that time, in September and October, was still looking for



survivors. The steel was precluding that from happening because much of the debris early on was being sent to the Fresh Kills Landfill. It became clear after three or four days that the equipment that the Department of Sanitation had to handle the City's garbage was not equipped to be able to pick up those large pieces of steel. And those large pieces of steel were preventing the rescue workers from crawling into crevices and voids underground.

We really had no place to put it. There is no place to put 170,000 or 180,000 tons of structural steel. We were pressed by the urgency of trying to find survivors. We looked at a number of operations. We knew that some of the steel might have asbestos-containing materials on it. We knew that we couldn't just dispose of it, but it was not an option to continue sending it to the Fresh Kills Landfill where all the debris was being taken.

The only options, based on discussions both internally with our engineers, as well with New York State with the State of New Jersey and with the Environmental Protection Agency was to basically ship it off to New Jersey and recycle it. No one was volunteering to just store that huge volume of steel. They would only take it if they could melt it and recycle it.

We really couldn't figure out any other option at the time.

MR. LEHMAN: This was a sort of crisis management group decision, it wasn't any one person that dictated it?

MR. HOLDEN: This was my decision.

MR. LEHMAN: Okay. I have read that the twin towers, because they were owned by the Port Authority were actually exempt or outside of the enforcement codes for the City of New York. Is that true?

MR. HOLDEN: I'm not a Port Authority

employee, but the buildings are in fact Port Authority and I am almost certain that they are exempt from following New York City Building Code requirements.

MR. LEHMAN: Isn't that something that we ought to address or that should be remedied? Why should a building like that in the middle of the City of New York be exempt from State and City codes?

MR. HOLDEN: I think that warrants looking into.

MR. LEHMAN: Mr. Baker, I would like to ask you, did the buildings conform, at the time of their construction, to prevailing standards of survivability and structural integrity that were prevailing at the time of their construction?

MR. BAKER: In the short period of time that we produced this report, that was not studied in detail. My understanding is that

NIST, at this point, has actually, is trying to commission a study to do a detailed review of the prevailing codes, particularly the New York City Building Codes vis-a-vis the construction documents. So that was not done as part of the study.

MR. LEHMAN: We look forward to receiving that when that is done, or if we can be of any assistance to see that it is completed before the end of our report, that would be very helpful.

Mr. Baker, how was the decision made, or what were obstacles made to keep you from the site for so long while so much of the evidence was being removed? I don't mean evidence in terms of liability and so forth, but evidence in terms of learning the lessons.

MR. BAKER: I am not sure I know all the details, but basically we were told that the folks on site did not necessarily want

other extraneous people walking around. They had their hands full at the moment.

I personally was on the site much earlier than that because as part of the other activities, as part of assisting the search and rescue. But the rest of the team was not able to get access because of the nature of activities before October 6, when we actually did get access. I believe we were deemed to be superfluous at that point.

MR. LEHMAN: Perhaps, Mr. Holden, you might shed a little light on it. Was it because they were deemed to superfluous or was it, by this time had the fear of litigation, as the Mayor spoke to yesterday, begun to enter the calculations of City officials.

MR. HOLDEN: It took a lot of months to go by before I started thinking about litigation, quite frankly.

I am not sure exactly about when the

American Society of Civil Engineers came on site. I know we worked with SEAoNY, which Mr. Baker alluded to earlier, which was a State organization of structural engineers who worked with numerous city structural engineers, as well as structural engineers we had hired to both examine buildings and look at the site.

The problem, again, going back 18, 19 months ago, was that you had a very difficult site to control. As you alluded to earlier, it was a crime scene so access was limited. We also, especially that first week or two, had thousands of volunteers coming down to the site, which was a wonderful and much appreciated outpouring of spirit. However, it was an extremely unsafe site and we were very concerned that having hundreds and thousands of people walking around the site, could cause further fatalities. And if the Mayor gave us one clear marching order, it was that no one

else was to die at that site.

I am not exactly certain when the American Society of Civil Engineers were looking to gain access, but early on some of the constraints were, in fact, the fact that it was a crime scene and there were just safety concerns. We were trying to grapple with what was there, and how many people we could allow on site, how stable the various piles were, how unstable.

I am sure you remember the facades of towers 1 and 2, we were not certain about stable those facades were. We were very concerned about having so many people walk around the site.

However, I would never use word that Mr. Baker used, calling the engineers "superfluous," they were extremely helpful.

Those are just some of the general difficulties in allowing people on the site.

MR. LEHMAN: Thank you for your responses. They are very helpful.

MR. KEAN: Thank you, Commissioner Ben-Veniste.

MR. BEN-VENISTE: I have a question for Mr. Holden. Following up on my friend and colleague, Max Cleland, who was quite interested in the effects of terrorism and the lingering trauma of those who have experienced it firsthand, My alma mater, Stuyvesant High School is located four blocks north of World Trade Center. On September 11, 2001, they were evacuated from the school. The evacuation notice was "run for your lives."

Hundreds and hundreds of teenagers, from all parts of the City, made their way on their own out of the toxic plume, watching as people jumped to their deaths from these buildings, an extraordinary traumatic experience.



Can you comment on what the City has done with respect to trying to provide guidance counselling follow-up for the children who were directly exposed to this tragedy?

MR. HOLDEN: I wish I could, but I am really not qualified. Those questions are really much better addressed either to the Commission of Department of Mental Health, or what is now the Department of Education. But really the Department of Design and Construction was really limited in its focus to demolition of the existing structures and debris removal.

I am just not qualified to speak to your question.

MR. KEAN: Commissioner Gorelick.

MS. GORELICK: This is for Shawn Kelley. A number of us on this panel have served at various times at the Pentagon and we are aware that the cafe in the middle of the Pentagon is called Ground Zero.

MR. KELLEY: Not anymore.

MS. GORELICK: It was. So we knew that we were working in a place that was a possible target.

We heard testimony yesterday that the evacuation procedures at the Pentagon were not understood, at least, and not well practiced and could not be followed by the people in the building.

So my question for you is, did you conclude or did your After Action Report conclude that there were any failures in the evacuation process at the Pentagon after the plane slammed into it?

MR. KELLEY: We have emergency incidents at the Pentagon every day. We run an average of two responses a day at the Pentagon. I personally investigated a fire there two weeks prior. So it is 11 percent of our call volume is to federal facilities within

Arlington.

We have never experienced in the past a problem in evacuating the occupants from different sections or parts of that building, out and away from where the danger is, along with the assistance of the Defense Protective Services, the police officers, that work in and out everyday around the building.

In this particular event or in this particular incident, to have this plane and almost the entire plane made it into the first floor of this building, and to penetrate in three rings, and I am not going to go into the floorplan of the Pentagon, but to penetrate in three rings and then pop out into what they call A&E Drive.

I will say that most all the fire doors did work, in the outer corridors. That is good and bad. The fire doors closed like they should, and then it was dark and held smoke and

could have possibly caused further injury or death to some of the folks.

They had also just done construction and updated the Pentagon and installed some new windows which were not openable. That also had some impact on the building not being able to breathe or let out its products.

With regard to where the Pentagon is now, I can share with you that they have installed some enhancements to assist in easier evacuation. In fact, in my opinion, it is state of the art now. It is an example for the rest of nation to follow. Some of those things can't be shared. It is truly, truly an example now. The employees do practice evacuation drills.

The Pentagon has even approached my office, the Fire Marshal's office, to have two deputy marshals assigned down there, a third party to ensure that proper code enforcement is

conducted. Not that it isn't now, but just to have a third party assessment to assist in things like evacuation plans and drills, and things like that.

MS. GORELICK: Thank you very much.

MR. KELLEY: You're welcome. If I may, the After Action Report, if you don't mind, you did mention it. It is available for free for everyone, I am not trying to make an ad, but it is real important in the Fire Service that we study ourselves and learn from action and have other persons learn, good or bad. If there is criticisms, then folks need to fix them so that if things didn't go so well, that they are prepared or do better.

MS. GORELICK: That is an excellent great note on which to end the hearing.

MR. KEAN: I would like ask a question before we end. Mr. Holden, first, when you got to the site, who was in charge?

MR. HOLDEN: I would say the Fire Department and the Police Department.

MR. KEAN: Jointly in charge?

MR. HOLDEN: Yes, the Fire Department was clearly putting out fires and the Police Department was handling security.

MR. KEAN: Three or four hours later, who was in charge?

MR. HOLDEN: The same people.

MR. KEAN: Did that change later?

MR. HOLDEN: I don't think that really changed until, again, now I am just giving you my impressions. I don't think that really changed until several days later when the National Guard, Governor Pataki brought in the National Guard, and I believe some Army units were down helping with security. Although certainly, the Fire Department was playing a major focus on the interior.

MR. KEAN: Mr. Baker, when you got on

site, who was in charge then?

MR. BAKER: My impression when I was there was that the people in overall charge of it was the Fire Department of the sectors, but the operational control were the contractors. These contractors were very, very good. They are used to managing very large projects and have command structures within their groups, who know how to bring in heavy equipment. They know how to deal with subcontractors, and all that kind of stuff.

So a lot of the operational, who goes there, we want to see if that building is going collapse, let's go into this thing and look around. Really our interface was with the general contractors, they did an excellent job.

MR. KEAN: I want to thank you all very, very much. This has been a very good panel and a very instructive panel. Thank you

for your answers. Thank you for your presence,  
we appreciate it very much.

That ends our hearing.

(Whereupon, the proceedings were  
adjourned.)