

This web site was frozen on September 20, 2004 at 12:00 AM, EDT. It is now a Federal record managed by the National Archives and Records Administration. External links were active as of that date and time. For technical issues, contact webprogram@nara.gov. For questions about the web site, contact legislative.archives@nara.gov.



NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

[About the Commission](#) | [Report](#) | [Hearings](#) | [Staff Statements](#) | [Press](#) | [Archive](#) | [For Families](#)

Seventh public hearing of the National Commission on Terrorist Attacks Upon the United States

Statement of Jane F. Garvey to the National Commission on Terrorist Attacks Upon The United States January 27, 2004

Members of the Commission, as a result of my last appearance on May 22, 2003, my previous written testimony, and a subsequent meeting with Commission staff, I provide this supplemental submission addressing the aviation security system and how the responsibilities for that system were allocated among the airlines, airports and Federal Aviation Administration ("FAA") prior to September 11, 2001. In addition, this supplemental submission will also briefly address the area of threat assessment by the FAA prior to September 11.

I would note that both areas were addressed in my prior written testimony, as well as in response to Commission questions. Accordingly,

Current News

The Commission has released its final report. [\[more\]](#)

The Chair and Vice Chair have released a statement regarding the Commission's closing. [\[more\]](#)

The Commission closed August 21, 2004. [\[more\]](#)

Commission Members

Thomas H. Kean
Chair

Lee H. Hamilton
Vice Chair

in order to avoid unnecessary duplication of information, I respectfully refer the Commission to my prior submission and testimony.

The first area I wish to address in this supplemental submission is the development of the aviation security system and the allocation of responsibilities. With the passage of the Federal Aviation Act, 49 U.S.C. § 40101 et seq. ("the Act"), Congress sought to promote safe, secure and efficient use of airspace through the creation of a unified federal agency headed by an Administrator who had "plenary authority" to make and enforce safety and security regulations. H.R. REP. NO. 2360 (1958), reprinted in 1958 U.S.C.C.A.N. 3741, 3742. Thus, the Act established a congressional mandate for the FAA to promulgate regulations affecting aviation safety and security. See Federal Aviation Act of 1958, Pub. L. 85-726, § 601(a), 72 Stat. 775 (recodified at 49 U.S.C. § 44701(a)). The FAA later issued rules requiring air carriers to implement a screening system "acceptable" to the FAA. Aircraft Security; Screening System, 37 Fed. Reg. 2500,2501 (Feb. 2, 1972)(to be codified at 14 C.F.R. pt. 121), amended by Aviation Security, 37 Fed. Reg. 4904 (March 7, 1972)(to be codified at 14 C.F.R. pt. 121), modified Aviation Security, 37 Fed. Reg. 5254 (March 11, 1972)(to be codified at 14 C.F.R. pt. 121). The FAA also issued rules requiring airport operators to implement procedures to control access to air operation areas and to provide law enforcement support. Airport Security, 37 Fed. Reg. 5689, 5690 (March 16, 1972)(to be codified at 14 C.F.R. pt. 107); Law Enforcement Officers, 37 Fed. Reg. 25934 (Dec. 6, 1972)(to be codified at 14 C.F.R. pt. 107). Congress followed suit, statutorily ratifying these policies and procedures. Anti-Hijacking Act of 1974, Pub. L. No. 93-366, 88 Stat. 409 (codified as amended in scattered sections of 49 U.S.C.); see also H.R. REP. NO. 93-855 (March 7, 1974), reprinted in 1974 U.S. C.C.A.N. 3975-76.

Richard Ben-Veniste
 Fred F. Fielding
 Jamie S. Gorelick
 Slade Gorton
 Bob Kerrey
 John F. Lehman
 Timothy J. Roemer
 James R. Thompson

Commission Staff

Philip D. Zelikow
Executive Director

Chris Kojm
Deputy Executive Director

Daniel Marcus
General Counsel

On September 11, 2001, pursuant to the Congressional mandate expressed through the Federal Aviation Act and its various amendments, Parts 107 and 108 of the Federal Aviation Regulations set forth the respective responsibilities of airport operators and air carriers. 14 C.F.R. pt. 107 (Airport Security); 14 C.F.R. pt. 108 (Airplane Operator Security). The Act and its amendments specifically dictated that the screening function had to be carried out by air carriers. 49 U.S.C. § 44901(a); see also S. REP. NO. 106-388, at 1 (2000), reprinted in 2000 U.S.C.C.A.N. 2252. Pursuant to that directive, Part 108 charged air carriers with screening passengers and property and monitoring and securing sterile areas – areas such as the concourse where gates are located and access is controlled through inspection – under the air carriers' control. 14 C.F.R. § 108.7 (b) (2000) (airplane operator security program); see also 14 C.F.R. § 108.9 (2000) (screening of passengers and property). Air carriers were also responsible for ticketing and check-in procedures for their passengers. Passenger Manifest Info., 63 Fed. Reg. 8258, 8271 (1998) (adopting 14 C.F.R. pt. 243). The screening function on September 11, as prescribed by the detailed regulatory regime, encompassed:

- implementing, operating and maintaining a system for the screening of passengers and property, 14 C.F.R. §§ 108.9, 108.17, 108.20;
- selecting, hiring, training, and instructing screeners, 14 C.F.R. §§ 108.9(d), 108.31; and,
- supervising screeners and checkpoint operations. 14 C.F.R. §§ 108.9(d), 108.10, 108.29, 108.31(d).

Air carriers typically contracted with private screening companies that performed the screening on behalf of and under the supervision of the carriers as their agents. See generally Certification of Screening Companies,

65 Fed. Reg. 560 (proposed Jan. 5, 2000).

On September 11, air carriers carried out their obligations subject to regulation by the Federal government. Day to day operational responsibility resided with the airlines and their agents, the security companies.

On September 11, Airport operators' primary area of responsibility under Part 107 was to control access to those areas of the airport where airplanes land, taxi and takeoff – the Air Operations Area (AOA) – and adjacent, “behind the scenes” locations that were not open to the general public. See 14 C.F.R. § 107.3(b)(4) (2000). This responsibility included installing physical barriers to these areas, such as fences and alarmed, locked doors; providing credentials to individuals whose jobs required access; and implementing procedures to ensure the protection of the areas, such as training individuals with access to challenge others who enter without apparent authorization. See e.g., Airport Security, 66 Fed. Reg. 37274 passim (2001).

Airport operators also provided local law enforcement support for the airport security program and the passenger screening system. See 49 U.S.C. § 44903(c)(1); 14 C.R.R. § 107.15(a). Law enforcement responsibilities in support of the screening system consisted of responding to checkpoints when a screener determined that a problem existed and summoned assistance. See e.g., Revision of Part 107, 43 Fed. Reg. 60786 (1978) (adopting 14 C. F.R. § 107.15); 42 Fed. Reg. 30766, 30767 (proposed June 16, 1977). Other law enforcement responsibilities included patrolling the airport terminal, AOA, and the perimeter in support of the airport's access control requirements and responding to apparent intrusions of it, as well as investigating reports of criminal activity occurring at the airport. See e.g., 62 Fed. Reg. 41760, 41776 (1997).

In short, on September 11, 2001, security was a shared responsibility. The FAA was responsible for establishing and enforcing regulations, policies and procedures. Air carriers bore the primary responsibility for applying security measures, including screening to passengers, service and flight crews, baggage and cargo. Airports, run by State or local government authorities, were responsible for maintaining a secure ground environment and for providing law enforcement support for implementation of airline and airport security measures.

The second topic I wish to address in this supplemental submission is the FAA's terrorist threat assessment prior to September 11. During my May 22 testimony before the Commission, I was questioned about the FAA's knowledge, prior to September 11, of intelligence reports regarding the use of commercial aircraft as weapons of mass destruction. The Commission cited several such reports. The staff of the former FAA Office of Civil Aviation Security Intelligence, which as been subsumed into the Transportation Security Administration, previously prepared a detailed, classified statement regarding those reports for the Joint Inquiry of the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence. Hopefully, that statement answers most of the Commission's questions regarding those reported episodes. I do not specifically address the incidents here. Instead, I wish to provide brief, general comments to the Commission regarding the FAA's intelligence capabilities on September 11.

Prior to September 11, the FAA played a role in the intelligence community as a user, a consumer, of intelligence information, not an intelligence gathering organization. The FAA relied on agencies in the intelligence community such as the FBI, CIA and DOS for intelligence collection and assessment of intelligence sources. The FAA then examined the information

received from the intelligence community for near-term and strategic threats to US aviation, using FAA's expertise in how the aviation system operates. Prior to September 11, the intelligence provided to the FAA did not support a conclusion that there was any specific, credible threat of terrorists using aircraft as suicide weapons for attacks against the United States.

This conclusion should not be construed as a failure to maintain a high level of vigilance. The FAA was aware of numerous, more traditional terrorist threats prior to September 11, and constantly warned airlines and airports about those threats, as well as adjusting countermeasures when warranted. The FAA and the intelligence community itself, believed that these more traditional terrorist threats – the bombing of aircraft, and hijacking and hostage taking – posed the more likely threats to aviation.

Thank you for the opportunity to contribute to this Commission's important task. I stand ready to provide any additional information the Commission may need.

As head of the Federal Aviation Administration (FAA), Jane Garvey ran an organization with 50,000 employees, a \$13 billion annual budget, and critical impact on the nation's economy. The FAA regulates and oversees aviation safety and operates the largest and most complex air traffic management system in the world. On any given day, some 50 percent of the world's commercial aviation traffic flies in U.S. airspace and thus under the guidance of FAA air traffic controllers.

Nominated by the President and confirmed by the Senate in August 1997 as the first FAA administrator to serve a five-year term, Garvey led the nation's aviation system into the 21st century. Garvey's legacy as administrator includes leading the FAA through one of the toughest chapters in all of our history, restoring

America's confidence in air travel, and strengthening airline safety.

During Administrator Garvey's term, the FAA successfully navigated the Year 2000 transition, it established a risk management approach across the entire aviation community to improve aviation safety, and it achieved aggressive strides to expand the capacity and capabilities of the air traffic control system. Under the leadership of Jane F. Garvey, U.S. air travel is safer, more efficient, and the FAA is poised for continued success. Herb Kelleher, former President and CEO of Southwest Airlines, called Garvey "one of the finest administrators in the history of the FAA. She sees where you should be going, and she understands the steps you need to get there."

Administrator Garvey became administrator at a challenging juncture in FAA's history. In 1997, confidence in aviation safety and the FAA had been shaken by two major accidents the previous year. At the same time, there were doubts about the FAA's ability to update its "antiquated" air traffic control system.

Garvey's first big challenge was to successfully lead the FAA into the 21st century. The FAA had more than 650 systems — millions of lines of code — that needed to be ready for the year 2000 changeover. In addition, as the world's top aviation authority, the FAA had a critical leadership role to play to ensure that aviation systems around the world would make a smooth transition. Garvey championed the Y2K effort for U.S. aviation and led the charge for the international aviation community. The result: aviation's seamless transition to the new century.

When Garvey arrived at the FAA, there was no industry-wide consensus on how to improve aviation safety. The FAA faced more than 1,000 safety proposals and no clear plan on how to proceed. Under Garvey's leadership the aviation

community developed a new data-driven safety model. Under this model — Safer Skies — government and the aviation community target their resources on making the changes that data shows will make the biggest difference in lowering the accident rate. Today, the fatal accident rate continues to decline in what is one of the safest forms of mass transportation.

To expand the capabilities of the air traffic control system, Garvey discarded what she refers to as the “big bang” approach and successfully initiated a consensus-based and incremental building-block approach. Over the past five years the FAA has replaced, replenished, and renewed ATC hardware and software across the nation. The benefits include shorter flying times, lower fuel consumption, and better service for air travelers. Under Garvey’s direction, the aviation community came together in 2001 and agreed to a plan to expand the capacity of the nation’s aviation system by 30 percent by 2010.

Underscoring Garvey’s ability to foster collaboration, achieve consensus, and get things done, Senator John McCain said, “She’s reached out to a lot of segments of the industry and she’s done a good job listening to them.”

Prior to becoming FAA Administrator, Garvey was Acting Administrator and previously Deputy Administrator of the Federal Highway Administration (FHWA) from 1993 to 1997. FHWA has an annual budget of \$30 billion and works in partnership with states to maintain the safety and efficiency of the nation’s roads and bridges.

Among her accomplishments at FHWA, Garvey conceived and developed a new comprehensive initiative, called the Innovative Financing Initiative, to enable the states to use federal highway funds more effectively. Most of the funds-management methods tested by more

than 30 states under this initiative were later enacted into law. One particularly successful innovation enables a state to pledge future federal highway revenues to repay a special debt instrument, designated a GARVEE (Grant Anticipation Revenue Vehicle) by the U.S. public finance market.

Before joining FHWA, Garvey was director of Boston's Logan International Airport. From 1988 to 1991, she was Commissioner of the Massachusetts Department of Public Works. She holds a Bachelor's degree from Mount Saint Mary College and a Master's degree from Mount Holyoke College. After graduation, Garvey began her career as a teacher, at both the secondary school and collegiate level. She participated in the Fellowship Program for Public Leaders at Harvard. She holds several honorary degrees from institutions including Mt. Holyoke College and Cranfield University in England.

Ms. Garvey has received numerous awards and public recognition including the National Air Transportation Association's Distinguished Service Award, the National Council of Public-Private Partnerships Leadership Award, the National Award of Excellence from the National Association from State Aviation Officials, the Leadership Award from the American Association of Airport Executives, and the Woman of the Year award from both Women in Transportation Seminar and Women in Politics. In 2002, the Association of Road and Transportation Builders Association presented Ms. Garvey with their highest annual award where Ms. Garvey joined the distinguished list of The Hundred Leaders in Transportation for the 21st Century. In 2003, Ms. Garvey was honored by the First Flight Centennial Commission as one of the 100 Heroes in Aviation History. She also has been named to numerous boards and commissions.

National Commission on Terrorist Attacks Upon the United States
The Commission closed on August 21, 2004. This site is archived.