

SEVENTH PUBLIC HEARING OF THE NATIONAL COMMISSION ON TERRORIST
ATTACKS UPON THE UNITED STATES

SUBJECT: BORDERS, TRANSPORTATION AND MANAGING RISKS

CHAired BY: THOMAS H. KEAN

WITNESSES: PANEL I:

MARY RYAN, FORMER ASSISTANT SECRETARY OF STATE FOR CONSULAR
AFFAIRS, DEPARTMENT OF STATE;

DORIS MEISSNER, FORMER COMMISSIONER, IMMIGRATION AND
NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE;

PANEL II:

JOSE E. MELENDEZ-PEREZ, INSPECTOR, CUSTOMS AND BORDER PROTECTION,
DEPARTMENT OF HOMELAND SECURITY;

PANEL III:

MAURA HARTY, ASSISTANT SECRETARY FOR CONSULAR AFFAIRS, DEPARTMENT
OF STATE;

RUSSELL E. TRAVERS, DEPUTY DIRECTOR, INFORMATION SHARING AND
KNOWLEDGE MANAGEMENT DEPARTMENT, TERRORIST THREAT INTEGRATION
CENTER;

DONNA A. BUCELLA, DIRECTOR, TERRORIST SCREENING CENTER, FEDERAL
BUREAU OF INVESTIGATION;

PANEL IV:

JAMES ZIGLAR, FORMER COMMISSIONER, IMMIGRATION AND NATURALIZATION
SERVICE, DEPARTMENT OF JUSTICE;

ROBERT C. BONNER, COMMISSIONER, CUSTOMS AND BORDER PROTECTION,
DEPARTMENT OF HOMELAND SECURITY;

PETER F. VERGA, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR HOMELAND
DEFENSE, DEPARTMENT OF DEFENSE

LOCATION: 216 HART SENATE OFFICE BUILDING, WASHINGTON, D.C.

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MR. THOMAS H. KEAN: I'd like to call the hearing to order. As chairman of the National Commission on Terrorist Attacks Upon the United States, I hereby convene the seventh public hearing. This hearing's going to run over the course of two days, from 9:00 o'clock to 4:30 around today and tomorrow. We have taken it as the topic of today's hearing "Borders, Transportation and Managing Risk." Today we're going to focus primarily on border security.

We intend to be covering a lot of ground today. So we can get right to business at hand, I'm going to keep these opening remarks very brief. I will, however, make just two points before we begin. First, we'd like the American people to know that the Commission is deep into its work. We and our staff continue to work our way through more than two million pages of documents. We have interviewed more than 900 people and will be interviewing several hundred more before we conclude our work.

We have access to some of the most sensitive information in the possession of the United States government. Outstanding requests for additional materials that were the subject of subpoenas the Commission issued have been resolved. We are carrying out our mandate to provide a full and complete account of the events of September 11th, 2001 and to recommend ways to make the people of our country safer and more secure. We intend to write a strong and a creditable report.

Now I want to say just a word about today's hearing. Today and tomorrow staff will present facts uncovered in our investigation thus far into the events that transpired on September 11th, 2001. We believe that what we present today will provide new information about the attacks of September 11th. What we have learned certainly will impact our investigation and impact the final report that we prepare. Today we will hear from four panels of witnesses. Two will be preceded by statements from the Commission staff, summarizing what we have learned to date about incidents, about which witnesses will testify.

To start, I would now like to recognize Dr. Philip Zelikow, the Commission's executive director, who will begin the first staff statement. He will be followed by Ms. Susan Ginsburg, who directs the part of the investigation that pertains to the subject of today's hearing.

MR. PHILIP D. ZELIKOW: Members of the Commission, working with you we have developed initial findings on how the individuals who carried out the 9/11 attacks entered the United States. We have also developed initial findings on terrorists who failed in their efforts to enter the United States. These findings lead us to some tentative judgments on the way the United States targets the travel of international terrorists. This staff statement represents the collective effort of several members of our staff. Susan Ginsburg, Thomas Eldridge and Janice Kephart-Roberts did most of the investigative work reflected in this statement.

The Commission was able to build upon a large and strong body of work carried out by many talented public servants at the Department of State, the Central Intelligence Agency, the former Immigration and Naturalization Service, the Department of Homeland Security and the Federal Bureau of Investigation. The American people should be proud of the many extraordinary professionals now serving them. To the extent we have criticisms, they are comments less on the talent available and more on how that talent was used.

As we know from the sizeable illegal traffic across our land borders, a terrorist could attempt to bypass legal procedures and enter the United States surreptitiously. None of the 9/11 attackers entered or tried to enter our country this way. So today we will focus on the hijackers exploitation of legal entry systems. We have handed out a list attached to the statement of the names of 9/11 attackers to help you follow our discussion.

To break down some of al Qaeda's travel problem, view it from their perspective. For most international travel, a terrorist has to have a passport. To visit some countries, terrorists of certain nationalities must obtain a document permitting them to visit, a visa. Finally, the terrorist must actually enter the country and keep from getting detained or deported by immigration or other law enforcement officials. Susan Ginsburg, senior counsel to the Commission will begin by examining how the hijackers navigated these stages.

MS. SUSAN GINSBURG: Beginning with passports. Four of the hijackers passports have survived in whole or in part. Two were recovered from the crash site of United Airlines flight 93 in Pennsylvania. These are the passports of Ziad Jarrah and Saeed al Ghamdi. One belonged to a hijacker on American Airlines flight 11. This is the passport of Satam al Suqami. A passerby

picked it up and gave it to a NYPD detective shortly before the World Trade Center towers collapsed. A fourth passport was recovered from luggage that did not make it from a Portland flight to Boston on to the connecting flight which was American Airlines flight 11. This is the passport of Abdul Aziz al Omari.

In addition to these four, some digital copies of the hijackers passports were recovered in post-9/11 operations. Two of the passports that have survived, those of Satam al Suqami and Abdul Aziz al Omari, were clearly doctored. To avoid getting into classified detail, we will just state that these were manipulated in a fraudulent manner in ways that have been associated with al Qaeda.

Since the passports of 15 of the hijackers did not survive, we cannot make firm factual statements about their documents. But from what we know about al Qaeda passport practices and other information, we believe it is possible that six more of the hijackers presented passports that had some of these same clues to their association with al Qaeda. Other kinds of passport markings can be highly suspicious. To avoid getting into the classified details, we will just call these suspicious indicators.

Two of the hijackers, Khalid al Mihdhar and Salem al Hazmi presented passports that had such suspicious indicators. We know now that each of these two hijackers possessed at least two passports. All of their known passports had these suspicious indicators. We have evidence that three other hijackers, Nawaf al Hazmi, Ahmed al Ghamdi and Ahmed al Haznawi may have presented passports containing these suspicious indicators. But their passports did not survive the attacks so we cannot be sure.

Fifteen of the 19 hijackers were Saudi nationals. There were significant security weaknesses in the Saudi government's issuance of Saudi passports in the period when the visas to the hijackers were issued. Two of the Saudi 9/11 hijackers may have obtained their passports legitimately or illegitimately with the help of a family member who worked in the passport office.

We do not yet know the answer to the question whether the knowledge of these particular clues existed in the intelligence community before 9/11. From the mid 1970s when terrorists began to launch attacks in the Middle East and Europe, intelligence and border authorities knew that terrorists used forged or altered travel documents. By the 1980s the U.S. government had developed a Red Book used to guide and train consular, immigration and

customs officers throughout the world on spotting terrorists. It included photographs of altered or stolen passports and false travel stamps also known as cachets used by terrorists. The importance of training border officials on use of the Red Book is evident from a U.S. government film entitled "The Threat is Real." Here is a brief excerpt.

(Film shown.)

The U.S. government ceased publication of the Red Book by 1992, in part because it had fallen into the hands of terrorist groups. There continued to be a number of government efforts to provide information about generic forgery detection and document inspection techniques. Before 9/11 the FBI and CIA did know of some of the practices employed by al Qaeda. They knew this from training manuals recovered in the mid 1990s and from tracking and interrogations of al Qaeda operatives.

Some of this knowledge was revealed in individual criminal cases prosecuted in the United States in the 1990s. And yet between 1992 and September 11th, 2001 we have not found any signs that intelligence, law enforcement or border inspection services sought to acquire, develop or disseminate systematic information about al Qaeda's or other terrorist groups travel and passport practices. Thus, such information was not available to consular, immigration or customs officials who examined the hijackers passports before 9/11.

Now, turning to visas. The State Department is principally responsible for administering U.S. immigration laws outside of the United States. Consular officers, a branch of our diplomatic corps, issue several kinds of visas for visitors and for permanent immigrants. In 2000, these diplomats processed about 10 million applications for visitors' visas at over 200 posts overseas. U.S. law allows nationals of certain countries to enter without visas on a reciprocal basis under the Visa Waiver Program. None of the 9/11 hijackers however, were nationals of a visa waiver country.

Before 9/11 visa applicants provided their passport, a photograph and a written application. A State Department employee checked the passport and application for any apparent questionable features. A consular officer could call the applicant in for an interview. The applicant's essential information went into a State Department database. The information was then checked against a large consular lookout

database called CLASS which included a substantial watchlist of known and suspected terrorists, called TIPOFF.

Our immigration system before 9/11 focused primarily on keeping individuals intending to immigrate from improperly entering the United States. In the visa process, the most common form of fraud is to get a visa to visit the United States as a tourist and then stay to work and perhaps become a resident. Consular officers concentrated on interviewing visa applicants whom they suspected might leave and not return.

Saudi citizens rarely overstayed their visas or tried to work illegally in the United States. The same was true for citizens of the United Arab Emirates. So while consular officials in both countries always screened applicants in CLASS, including TIPOFF, they would not interview them unless there was something about the application that seemed problematic. Visa applicants from these countries frequently had their applications submitted by third party facilitators, like travel agencies.

In June 2001, the U.S. consular posts in Saudi Arabia instituted a third party processing program called Visa Express. It required applicants to apply through designated travel agencies instead of by mail or in person. The program was established in part to try to keep crowds of people from congregating outside the posts which was a security risk to the posts and to the crowds themselves. We have found no evidence that the Visa Express program had any effect on the interview or approval rate for Saudi applicants or that it reduced the scrutiny given to their applications. It actually lengthened the processing time.

With the exception of our consulates in Mexico, biometric information like a fingerprint was not routinely collected from visa applicants before 9/11. Terrorists therefore could easily exploit opportunities for fraud. Khalid Shaikh Mohammed, the chief tactical planner and coordinator of the 9/11 attacks, was indicted in 1996 by federal authorities in the southern district of New York for his role in earlier terrorist plots. Yet KSM, as he is known, obtained a visa to visit the United States on July 23rd, 2001, about six weeks before the 9/11 attacks.

Although he is not a Saudi citizen, and we do believe he was in Saudi Arabia at the time, he applied for a visa using a Saudi passport and an alias, Abdulrahman al Ghamdi. He had someone else submit his application, his Saudi passport and a photo through the Visa Express program. There is no evidence that he

ever used this visa to enter the United States. Beginning in 1997, the 19 hijackers submitted 24 applications and received 23 visas. The pilots acquired most of theirs in the year 2000, the other hijackers with two exceptions obtained theirs between the fall of 2000 and June 2001.

Two of the visas were issued in Berlin and two were issued in the United Arab Emirates, the rest were issued in Saudi Arabia. One of the pilots, Hani Hanjour had an application denied in September 2000 for lack of adequate documentation. He then produced more evidence in support of his student visa application and it was approved. Except for Hanjour, all the hijackers sought tourist visas. Of these 24 applications, four were destroyed routinely along with other documents before their significance was known.

To our knowledge, State consular officers followed their standard operating procedures in every case. They performed a name check using their lookout database including the TIPOFF watchlist. At the time these people applied for visas, none of them, or at least none of the identities given in their passports, were in the database. We will say more about this in another staff statement later today.

All 20 of these applications were incomplete in some way, with a data field left blank or not answered fully. Such omissions were common, the consular officials focused on getting the biographical data needed for name checks. They generally did not think the omitted items were material to a decision about whether to issue the visa. Three of the 19 hijackers submitted applications that contained false statements, that could have been proven to be false at the time they applied. The applications of Hani Hanjour, Saeed al Ghamdi and Khalid Al Mihdhar stated that they had not previously applied for a U.S. visa, when in fact they had.

In Hanjour's case, the false statement was made in an earlier application for a visit in 1997, not his final visa application in 2000. Hanjour and Mihdhar also made false statements about whether they had previously traveled to the United States. Information about these prior applications was retrievable at the Jeddah post where each applied. These false statements may have been intentional to cover up the applicant's travel on old passports to suspect locations, like Afghanistan, for terrorist training.

On the other hand these statements may have been inadvertent. During this period, Saudi citizens often had their applications filled out and submitted by third parties. Most importantly, evidence of the prior visas or travel to the United States actually would have reduced concern that the applicants were intending to immigrate, so consular officers had no good reason to deny the visas or travel.

Al Mihdhar's case was uniquely problematical. He had been - he had not been entered into the TIPOFF watchlist at the time of his second visa application in June 2001. In January 2000, the American consulate in Jeddah had been asked about Mihdhar's visa status in conjunction with an ongoing urgent terrorist intelligence investigation, and confirmed that this al Qaeda operative had a U.S. visa.

When Mihdhar applied again in June 2001, the check against the worldwide TIPOFF watchlist took place, but no system then in place included a notation of the prior visa status check. Neither the investigating agency, nor the post, had made the appropriate lookout entry. Thus, in effect, the post could not remember relevant suspicions a year and a half earlier about this same person who was traveling again with the same biographical information.

At least two of the hijackers were actually interviewed in person in connection with their visa applications. Hanjour was interviewed twice, Satam al Suqami was apparently interviewed in Riyadh. Another hijacker, Ahmed al Nami was apparently interviewed briefly, but just to clarify an entry on his application. The three consular officers involved have some memory of these interviews. All stated that the reasons for their interviews had nothing to do with terrorism. They saw nothing suspicious.

At least four individuals implicated in the 9/11 plot tried to get visas and failed: Ramzi Binalshibh, Zakariya Essabar, Ali Abdul Aziz Ali and Saeed al Ghamdi. This Saeed al Ghamdi is a different person from the Saeed al Ghamdi who actually became a hijacker. Ramzi Binalshibh, a Yemeni, apparently intended to train as a pilot along with his Hamburg friends, Mohamed Atta, Marwan al Shehhi and Ziad Jarrah.

Binalshibh applied for a visa three times in Berlin and once in Yemen. He first applied in Berlin on the same day as Atta. He was interviewed twice and denied twice. Yemen is a much poorer country than Saudi Arabia, Both times consular officers

determined he did not have strong ties to Germany and he might be intending to immigrate unlawfully to the United States. Binalshibh tried again in Berlin, this time for a student visa, to attend aviation school in Florida. He was again denied for lack of adequate documentation and failure to show sufficient ties to Germany.

Essabar, a Moroccan who may also have intended to be a pilot, tried to get a visa in Berlin at least once, and failed because he failed to demonstrate sufficient ties to Germany, such as a job or family there. Third country visa applicants in Berlin were held to significantly higher standards in terms of documentation and showing ties with their country of residence, than were Saudi and Emirate citizens applying from their own countries.

Ali Abdul Aziz Ali is the nephew of Khalid Shaikh Mohammed and was heavily involved in financial and logistical aspects of the 9/11 plot. He tried to get a U.S. visa in Dubai about two weeks before the attacks. His visa application states that he intended to enter the United States on September 4th, 2001 for one week. As a Pakistani visa applicant in a third country, he would have received greater scrutiny from U.S. officials from the start. In any event, it was deemed possible that he intended to immigrate, and accordingly he was denied a visa.

Saeed al Ghamdi also known as Jihad al Ghamdi, apparently intended to participate in the 9/11 attacks. He is a Saudi, and applied for a tourist visa in Jeddah on November 12, 2000, the same date as 9/11 hijacker, Ahmed al Haznawi. Haznawi was approved, but al Ghamdi was denied after an interview with the consular officer because the consular officer believed he was intending to immigrate.

We now turn to exit and -- entry and exit from the United States. With a visa, an individual can travel to United States port of entry. Upon arrival, the individual must seek admission into the United States from an inspector of what used to be called the Immigration and Naturalization Service, or INS, an agency whose personnel now form part of the Department of Homeland Security. Property being brought into the United States is checked by inspectors of the U.S. Customs Service, whose personnel are now also part of DHS.

The 19 hijackers entered the United States a total of 33 times. They arrived through 10 different airports, although -- though more than half came in through Miami, JFK or Newark. A

visitor with a tourist visa was usually admitted for a stay of six months. All but two of the hijackers were admitted for such stays. Hanjour had a student visa and was admitted for a stay of two years, and Suqami sought and was admitted for a stay of only 20 days.

The four pilots passed through INS and customs inspection a total of 17 times before 9/11. Hanjour came to the United States to attend school in three stints during the 1990s. His final arrival was in December 2000 through the Cincinnati-Northern Kentucky Airport. The three other pilots, Atta, al Shehhi and Jarrah initially came in May and June 2000. They arrived for the last time between May and August 2001. All made a number of trips abroad during their extended stays in the United States.

Of the other 15, only Mihdhar entered the United States left and returned. Nawaf al Hazmi arrived in January 2000 with Mihdhar and stayed. Al Mihdhar left in June 2000 and returned to the United States on July 4th, 2001. Ten of the others came in pairs between April and June 2001. Three more arrived through Miami on May 28th. The INS inspector usually had about one to one and a half minutes to assess the traveler and make a decision on admissibility and length of stay. For all the entries, a primary U.S. INS inspector -- a primary INS inspector would work a lane of incoming travelers and check the people and their passports.

The inspector would try to assess each individual's demeanor. No one noted any anomalies in these passports, despite the fact that we now believe that at least two, and as many as eight showed evidence of fraudulent manipulation. The inspector would use the passport data, especially if it was machine readable, and Saudi passports were, to check various INS and customs databases. The databases would show the person's immigration history information as well as terrorist watchlist and criminal history information.

Of the five hijackers who entered the United States more than once, three of them violated immigration law. Ziad Jarrah entered in June 2000 on a tourist visa, and then promptly enrolled in flight school for six months. He never filed an application to change his immigration status from tourist to student. Had the INS known he was out of status, they could have denied him entry on any of the three subsequent occasions he departed and returned while he was a student.

Marwan al Shehhi came in through Newark in late May 2000, followed a week later by Mohamed Atta. Both were admitted as tourist and soon entered flight school in Florida. In September, they did file applications to change their status. Before 9/11, regulations allowed tourists to change their status at any time so they were in compliance, but both overstayed their periods of admission and completed flight school to obtain commercial pilot licenses. Atta and al Shehhi then left within a few days of one another and returned within a few days of one another in June 2001 -- January 2001, while their change in visa status from tourist to student was still pending.

Atta and al Shehhi did get some attention when both said they were coming back to finish flight school. Primary inspectors noticed with each that their story clashed with their attempt to reenter on tourist visas. The rules required them to get proper student visas while they had been overseas, since their earlier pending applications for a change of status were considered abandoned once they left the United States. Atta and Al-Shehhi were each referred by the primary inspectors to secondary inspections.

At secondary, more experienced inspectors could conduct longer interviews, check more databases, take fingerprints, examine personal property and call on other agencies for help. The inspectors involved have stated they do not remember these encounters. The reports indicate that both men repeated their story about still going to flight school and their pending applications for a change of status. The secondary inspectors admitted Atta and al Shehhi as tourists.

Flight 93 hijacker Saeed al Ghamdi was referred to secondary immigration inspection when he arrived in late June 2001. He had no address on his I-94 form. He spoke little English. He had a one-way ticket and about \$500. The inspector wondered whether he was possibly intending to immigrate. Al Ghamdi convinced the inspector that he was a tourist and had enough money. Customs officers took a second look at two of the hijackers but then admitted them. On Marwan al Shehhi's first entry into the United States, a Customs officer referred him to secondary inspection, completed the inspection and released him.

In May 2001, Waleed al Shehri and Satam al Sugami departed Florida for the Bahamas, but were refused admission. On their way back to the United States, a Customs officer conducting a pre-clearance in the Bahamas, referred al Shehri to a secondary inspection. Customs then released al Shehri to return to the

United States with Sugami. We do know of one success by immigration secondary inspection the affected the 9/11 plot. An al Qaeda operative, Mohamed al Kahtani arrived at Orlando Airport on August 4, 2001. Evidence strongly suggests that Mohamed Atta was waiting there to meet him. Kahtani encountered an experienced and dedicated inspector, Jose Melendez-Perez, we will hear his story later this morning.

During their stays in the United States, at least six of the 9/11 hijackers violated immigration laws. We have noted Jarrah's failure to adjust his status while he was in flight school and the violations by Atta and al Shehhi. Hani Hanjour came in on a student visa in December 2000, but then did not attend the English language school for which his visa was issue. Nawaf al Hazmi overstayed his term of admission by nine months. Sugami overstayed his term of admission by four months. None of these violations were detected or acted upon by INS inspectors or agents.

Two programs might have helped detect such violations. One dealt with violations of student status, the other dealt with overstays. National security concerns about foreign students are not new. By the late 1980s, the INS had established a student school system to track students, but the system did not work. After the 1993 World Trade Center bombing when it was discovered that a participant in the plot had been a student who had overstayed his visa, the Department of Justice asked INS to devise a better way to track students.

INS officials recommended a new student tracking system and a student ID card that used biometric identifiers. In 1996, Congress mandated a new system to be installed by 1998 without appropriating program funds. The INS scraped together \$10 million and piloted a successful student tracking program in the Atlanta area in June 1997 which included a flight school. However, advocates of education interests argued that the program would be burdensome and costly.

Upon the order of senior INS management, the project manager was replaced. In 1998, INS indefinitely deferred testing of the biometric student ID card. The program stalled. Senators declared an interest in repealing the 1996 law and sought to obstruct further INS funding for it. Thus when Atta and al Shehhi lied when questioned about their student status on their re-entries in January 2001, and when Hanjour failed to show up for the school for which he was issued a visa in December 2000, a

student tracking system was far from available to immigration inspectors or agents.

Congress required the attorney general to develop an entry-exit system in 1996. The system's purpose was to improve INS's ability to address illegal migration and overstays of all types of foreign visitors. By 1998 Congress had appropriated about \$40 million to develop the system. Advocates for border communities, however, were concerned that an entry-exit system would slow down trade. INS officials decided to forgo the system at land borders and only to automate the entry process. The automation process was not successful. The result was that when hijackers Sugami and Nawaf al Hazmi overstayed their visas, the system Congress envisaged did not exist.

Moreover, when federal law enforcement authorities realized in late 2001 that Mihdhar had entered with Hazmi in January 2000 at Los Angeles, they could not reliably determine whether or not Hazmi was still in the United States along with Mihdhar.

MR. ZELIKOW: In conclusion, the director of the FBI testified that, quote, "Each of the hijackers came easily and lawfully from abroad." The director of Central Intelligence described 17 of the 19 hijackers as, quote, "Clean," close quote. We believe the information we have provided today gives the Commission the opportunity to reevaluate those statements. Based on our evaluation of the hijackers travel documents, the visa process, the entries into the United States and the compliance with immigration law while the attackers were here, we have a few observations.

Considered collectively, the 9/11 hijackers included among them known al Qaeda operatives who could have been watchlisted, presented passports manipulated in a fraudulent manner, presented passports with suspicious indicators of extremism, made detectable false statements on their visa applications, were pulled out of the travel stream and given greater scrutiny by border officials, made false statements to border officials to gain entry into the United States and violated immigration laws while inside the United States. These circumstances offered opportunities to intelligence and law enforcement officials but our government did not fully exploit al Qaeda's travel vulnerabilities. Why weren't they exploited?

We do not have all the answers. Certainly, neither the State Department's consular officers nor the INS's inspectors and agents were ever considered full partners in a national

counterterrorism effort. This is exemplified by the Bureau of Consular Affairs statement that before 9/11 they were not informed by anyone in the State Department or elsewhere that Saudi citizens could pose security risks. Nor were the Consular Affairs Bureau or INS given the resources to perform an expanded mission.

Between 1998 and 2001 visa applications rose by nearly a third, an increase of 2.5 million per year. Trained staff did not keep pace with the volume increase. In Jeddah and Riyadh, for example, each consular officer had responsibility for processing on average about 30,000 applications per year and routinely interviewed about 200 people per day.

The INS before 9/11 had about 2,000 agents for interior enforcement. As long as the top enforcement priorities were removal of criminal aliens and prosecution of employers who hired illegal aliens, a major counterterrorism effort would not have been possible. This is not to pass judgment on immigration policy generally. What we can do is highlight those policy choices affected counterterrorism efforts before 9/11 and potentially affect them today. For our frontline border inspection services to have taken a substantially more proactive role in counterterrorism, their missions would have had to have been considered integral to our national security strategy and given commensurate resources.

Today the level of systematic effort by the intelligence community focused on terrorist travel is much greater. But terrorist travel intelligence is still seen as a niche effort, interesting for specialists but not central to counterterrorism. Nor have policy makers fully absorbed the information developed by terrorists' mobility specialists. Much remains to be done within the United States and internationally on travel and identity document security, penalties and enforcement policy with respect to document fraud and travel documents screening efforts at the borders.

If we have one conclusion from our work so far, it is that disrupting terrorists' mobility globally is at least as important as disrupting terrorist finance as an integral part of counterterrorism.

Thank you.

MR. KEAN: We will now hear from our first panel whose topic will be: "The Border Security System Prior to September 11th."

Our first witness will be Ambassador Mary Ryan. Ambassador Ryan had a long and distinguished career in the United States Foreign Service beginning in 1966. Twice the recipient of the Presidential Distinguished Service Award, Ambassador Ryan served as assistant secretary of State for Consular Affairs from May 1993 until July 2002.

Our second witness will be Doris Meissner. Ms. Meissner served the United States government in immigration matters since the 1970s in several capacities in the Department of Justice. In October 1993, President Clinton appointed Ms. Meissner as INS commissioner. She served in that capacity until November 2000. Ms. Meissner is currently the senior associate at the Migration Policy Institute which she helped found.

At the hearing today and at all future public hearings, the Commission plans to put all witnesses under oath as authorized by section 605 of our statute of public laws number 107 through 3006. So, if I could ask the witnesses please to raise your right hand. Do you swear or affirm to tell the truth, the whole truth and nothing but the truth? Thank you.

Ambassador Ryan.

MS. MARY A. RYAN: Mr. Chairman, members of the Commission, thank you for the opportunity to appear before you today to describe the role of the Bureau of Consular Affairs of the Department of the State in our nation's border security program. My remarks will cover the period from May 1993 until July 2002, the years I served as assistant secretary for Consular Affairs. I retired from the Department of State in late 2002 after 36 and-a-half years as a career foreign service officer, during which I served eight presidents: Presidents Johnson, Nixon, Ford, Carter, Reagan, Bush 41, Clinton and Bush 43.

In the limited time I have for this oral statement, I have three objectives: to give you an overview of the automated consular system, to correct a couple of misconceptions about how our processes work and I also would like to outline for you the budgetary constraints on the Department of State in the 1990s and how these constraints impacted the Bureau of Consular Affairs. I will describe the improvements made to the lookout systems that developed from microfiche in 1993 to the current global system that we have today.

All these systems are designed to assist officers in visa adjudication process, in evaluating whether or not to issue a

visa to a foreign applicant. The systems are the Consular Look-out and Support System, or CLASS, TIPOFF, which is a system developed and managed in my time in CA by the Department of State's Bureau of Intelligence and Research. Visas Viper was created in 1993 designed to obtain intelligence from our embassies and consulates abroad as well as other agencies operating abroad and the consolidated consular database which gives consular officers replicated visa records of all visas issued and refused.

These systems contain the names of terrorists, criminal aliens and others who should not be admitted to the United States. They give consular officers real-time, online name checking capability. However, if there is a single point that I want to leave with the Commission today, it is that any lookout system is only as good as the intelligence it contains and the Bureau of Consular Affairs had no intelligence on any of the 19 terrorists.

In the 1990s, consular workload increased dramatically. Non-immigrant visa applications rose from seven million in 1993 to 10 million in 2001. We were also processing over 600,000 immigrant visa applications. U.S. passport demand grew from 3.5 million in 1993 to seven million in the same timeframe. State Department budgets were inadequate for this workload. Because of the lack of funding, the department's senior management determined not to hire to attrition and to reduce promotion significantly into the Senior Foreign Service. These decisions had an immediate and very negative effect on consular operations.

The department had generally maintained an intake of junior Foreign Service officers of about 200 a year. In the mid-1990s, because of the budget shortfalls, junior officer intake numbered one year 130, another year 110 and another year 90. Because most of the entry level jobs in the Foreign Service are consular, consular work was heavily impacted. A huge hole was created at the bottom of the Service. At the same time, senior officers were being forced out of the Service because they failed to be promoted.

Thus simultaneously, there weren't enough junior consular officers and there was also a shortage of top level consular management. Entry level positions were filled through a variety of staffing mechanisms. But many large sections faced a dearth of experienced supervisors to train more junior staff. It was an extremely difficult period and one that lasted well into the 1990s.

I would now like to describe for you the various lookout systems that provide intelligence to consular officers in the field. In Fiscal Year 1994, Congress authorized the Department of State to charge a fee for machine readable visa applications and to keep that money. That was the first time in the department's history that we were allowed to keep a fee that we collected. It was this funding that permitted the Bureau of Consular Affairs to undertake the enhancements to our system.

CLASS is the consular lookout system. In 2001, CLASS contained 5.7 million records on aliens, most of which originated with the visa application process at our consulates and embassies abroad. A variety of federal agencies contribute names to this system. INS contributed over a million records including the names of deported aliens. DEA contribute over 300,000 and Customs some 20,000 from its serious drug violator files. Consular Affairs, in turn, provided other agencies through the Inter-Agency Border Inspection System over 500,000 lookout records.

TIPOFF is a border security and counterterrorism tool developed in 1987 and managed when I was in CA by the Bureau of Intelligence and Research in the Department of State. It utilizes sensitive intelligence and law enforcement information from the CIA, from the FBI and from NSA and overseas posts concerning known or suspected terrorists and criminals. TIPOFF's objective was to detect these individuals either as they apply for visas or as they attempt to pass through U.S., Canadian or Australian border entry posts. Data sharing was implemented with Canada in 1997 and with Australia in 2000.

The Bureau of Consular Affairs provided over \$7 million to help TIPOFF between the years 1995 and 2001. The TIPOFF staff reviewed all intelligence reports, overseas post cables and other sources of information for the names and biographic data of known or suspected terrorists that were then entered into CLASS and INS and Customs' IBIS system, the Interagency Border and Inspection System.

In 2001, the CLASS database contained over 48,000 such records. Visas Viper is an integral part of TIPOFF. Intelligence and law enforcement agencies had been reluctant to share terrorist information at posts where it was developed. However, they professed themselves comfortable with providing this information through INR and through TIPOFF. Because the Bureau of Consular Affairs was advised that intelligence was

flowing to the Bureau of Intelligence and Research, we believed that we were getting all such intelligence that they had to protect our country. As I noted earlier, even a state of the art system like ours is only as good as the intelligence it has in it, and we had no intelligence on these 19 terrorists.

Finally, the Consolidated Consular Database is a globalized database of visa records. All visa data collected abroad was being replicated to the CCD, and by May of 2001, we were able to make the Consolidated Consular Database available to all visa issuing posts. The photo and details of all visa applicants, once only available locally to the post where the application originated are now available in real time to all visa offices worldwide. Visas can be checked at any point in the process against all issued and refused visas worldwide, and consular management in Washington now has access to up to the minute information about visas around the world. By October 2001, INS was able to accept this information and provided it to all the ports of entry. All of these systems were designed to protect the United States from those who mean us harm.

I'd like to address now some of the distortions that appeared in the media after the attacks on our country about visa operations in Saudi Arabia. In order to meet existing and new demands for visa services, and in the absence of adequate financial and personnel resources, the Bureau of Consular Affairs developed programs aimed at getting the work done as efficiently and effectively as possible. One of these programs was interview by exception, and was designed to concentrate scarce resources on visa applicants that were problematic. We also developed a travel agency referral program whereby carefully vetted travel agents could submit applications for their clients, who generally would not be interviewed. Variations of this program existed before my time in the Bureau.

Validation studies were conducted to ensure that the clients did return from visits to the United States, and agencies that violated any of the rules, or whose clients overstayed in the United States, were dropped from the program. The United States Embassy in Saudi Arabia developed such a program in 2001, one of more than 30 posts with similar programs. It was incorrectly alleged that travel agents were deputize to make visa decisions when they obviously had a financial interest in seeing that the visas were issued to their clients. Nothing could be further from the truth.

We use such programs in countries with low refusal rates or where the applicants had to travel long distances from their homes to our embassies and consulates. In every case, the applications were checked through CLASS, and CLASS is designed so that the visa cannot be printed unless the system is checked, for any indication of a program and the consular office was free to require the applicant to appear for an interview and the policy was never to guarantee issuance.

MR. KEAN: Ambassador, if you could start to wrap up.

MS. RYAN: I'm sorry. We treated Saudis exactly the same as we treat all nationalities who need visas from us. About 40 percent of our international visitors enter the United States through the Visa Waiver Program, and those people are not checked by State Department consular officials. Everyone else is checked and checked carefully through CLASS, through the databases.

To summarize, with all of these systems we need intelligence information from the agencies designed to collect it. We had no such intelligence information on any of the 19 terrorists.

Thank you for your attention.

MR. KEAN: Ms. Meissner.

MS. DORIS MEISSNER: Good morning, Mr. Chairman, members of the Commission. Thank you for the opportunity to appear before you. I hope to be able to help in any way that I possibly can with the important work that you're doing. As you noted in your introduction, I had served in the Nixon, Carter, Ford and Reagan administrations, so brought some experience to the position of commissioner when I entered on duty. I came back in the Clinton administration, recognizing some of the challenges that INS faces and committed to wide-ranging agency reform.

INS, as you know, has widely divergent areas of responsibility that had suffered from a history of neglect by administrations and Congresses of both parties. During my time at INS that began to change, as serious attention was devoted to building the capabilities the agency needed to carry out its mission effectively. At the same time, even under the best immigration controls, most of the September 11 terrorists would still be admitted to the United States today. That is because they had no criminal records, no known terrorist connections, and had not been identified by intelligence methods for special scrutiny.

The innovation al Qaeda introduced is clean operatives who can go through immigration controls undetected. Immigration measures are an important tool in the war against terrorism, but they are not effective by themselves in identifying terrorists of this new type. The immigration system can only set up gateways and tracking systems that exclude terrorists about whom the United States has some information. And it can enable authorities to find clean operatives already in the country if new information is provided by intelligence agencies. The immigration and the intelligence systems must work together for either to be effective.

To that end, the lead domestic security responses to terrorism should be strengthened intelligence and analysis, compatible information systems and information sharing, and vigorous law enforcement and investigations. Improved immigration controls and enforcement are needed, and they can support good anti-terrorism enforcement, but they are not enough by themselves.

Let me first give a brief overview of my tenure. With more than 10 million immigrants, the 1990s rank as one of the two decades of highest immigration in American history. These numbers represent millions of transactions daily, and those transactions were made by an agency that suffered from chronic overwork, underfunding and outdated practices. Early in 1993, three high profile immigration crises occurred in close succession. They were the first bombing of the World Trade Center, the multiple drownings when a Chinese smuggling ship washed ashore off Long Island, and shootings outside the CIA headquarters that killed government workers. All three involved people applying for political asylum in the United States.

Beginning with fixing this broken asylum system, border control became the highest priority for the new administration from the outset. During my tenure, the INS budget grew from approximately \$1.6 billion to \$4 billion. Personnel grew from about 18,000 to 32,000. With growth at that scale came enormous management demands. In addition, Congress enacted a series of sweeping new laws, beginning in 1996, that placed ambitious new mandates on INS. The 1996 act alone required writing more than 70 regulation sand training more than 20,000 staff. All generated unplanned, sizeable new workloads.

Other major efforts that we faced included successive humanitarian emergencies, such as Haitian and Cuban boatlifts, a

tripling of detention capacity, dramatic increases in the removal of criminal aliens, and a citizenship backlog reduction program that foundered, requiring top to bottom reforms that demanded attention for several years. Overall, Congress supported the administration in providing increased resources for INS and promoting new strategies and technology. Still the public mood was one of growing anti-immigration sentiment. The administration had basic immigration policy disagreements with Congress, the relationship between INS and its congressional oversight committees was often contentious.

Against that backdrop, let me summarize a few items of most relevance to counterterrorism. First, border control. The broad goal that I set forth for INS was to prevent illegal immigration and facilitate legal immigration. Preventing illegal immigration incorporated all abuses of the immigration system. We began with asylum reform, but we then continued with border control as the agency's highest priority during my entire tenure. Our definition of the nation's borders was comprehensive: land borders with Mexico and Canada, our ports of entry and our consulates abroad. The transformations that were the most visible occurred along the southwest border. But INS's agenda always encompassed a comprehensive view of our borders. That meant that ports of entry, POEs, had to be a key element of border protection.

Among the most meaningful changes that we implemented in our port of entry operations are inspector staffing increases, improvements to the lookout system, data share efforts that Ambassador Ryan has described with Consular Affairs, facilitation programs that created more secure travel such as INSPASS, which was the first use of biometrics, SENTRY, which is electronic dedicated commuter lanes at the border, an advanced passenger information which is the sharing of manifests from airlines. We were able to get 80 percent of airline passengers having been checked before they arrived at our ports of entry in the United States. All of these things are elaborated in more detail in my testimony.

These improvements have been significant. They have strengthened border control and facilitation. But they all address issues of admitting people to the country. There has never been systematic departure controls from the United States. Without them, INS's knowledge of who and how many people have left as required and who did not has been incomplete. To meet this need, Congress called for an entry-exit system in its 1996 legislation. INS designed, tested and implemented the front end

of such a system at certain airports but the major stumbling block for entry-exit has been the land borders, a problem that remains unresolved today.

Next to border control, technology was my highest priority. In 1993, less than 20 percent of INS employees had access to any automation. When I left, more than 95 percent had a terminal at their work station and relied on automated information to carry out their tasks. The technology projects beyond those that I have described that have a bearing on counterterrorism include the following.

IDENT, this is the system that was created in 1994 for the southwest border. It is the automated biometrics system that contains a photo and two index finger fingerprints. The technology now meets many immigration needs where identity must be verified for both enforcement and benefit granting purposes.

New green cards and laser visas. In 1998, INS began replacing with a new green card a technology that incorporated state-of-the-art security features, including biometrics. The technology was also used to produce laser visas which Consular Affairs issued to Mexican nationals. The replacement program consolidated a large number of documents that INS had historically issued and its purpose included reducing misuse and counterfeiting of documents.

Foreign student tracking. In response to FBI concerns, INS proposed a new student system in 1995. Congress mandated it in 1996. INS tested a pilot in 1997 and '98 and was on track for implementation in 2003 as the legislation required assuming that funding issues which were unresolved could get resolved. These programs and other technology infusions represented major improvements that INS badly needed to be effective. But by the late 1990s, appropriations did not keep pace. Numerous candidates for new systems development that could yield significant continuing improvement had to be kept on hold.

Nevertheless, it's not databases that catch terrorists. Had student tracking, for instance, been in place before 9/11, it's still highly unlikely that the terrorist with a student visa who did not appear for classes would have been arrested by INS. That's because it would take far greater numbers of officers than INS has ever had to actually locate and take custody of those who have overstayed or who have violated the terms of their visas.

Instead, what good information systems can do is cultivate a culture of compliance with our immigration requirements and they can provide very useful information that law enforcement needs when following investigative leads, including leads in counterterrorism investigations.

I see the yellow light is on, so let me say that there are other actions that are, of course, outlined in my testimony. Among them are serious refocusing of our interior enforcement which included focusing on criminal matters that would have included terrorism and restructuring of the INS which would have been a major effort which we presented to Congress in 1998 and which included upgrading and including and incorporating as law enforcement our activities at the ports of entry. That too is an issue that still remains undone.

Let me conclude by saying that by 2000 INS had become a larger, better, more professional agency especially in the areas of its most critical responsibilities. Many of the changes were transformational. All constituted critical building blocks for properly managing the immigration system in the years ahead. But it is my strong conviction that on the issues of counterterrorism, the agency's focus and record were where they should have been. We understood that our role was to have the systems and structures in place to prevent wrongdoers from getting into the country.

We did that by pressing hard for strong comprehensive border controls, modern information systems and interagency and international coordination. The measures we took and the systems we put into place would have identified the 9/11 terrorists, had INS known who to be looking for. Moreover, the major technology and systemic improvements in immigration control that have been made since 9/11 have been to fund and give higher priority to the initiatives and the technology that we developed.

Thank you very much.

MR. KEAN: Thank you, Ms. Meissner.

Our questioning today will be led by Commissioner Lehman.

MR. JOHN F. LEHMAN: Thank you. I'd like to begin with a question to Ambassador Ryan. Ambassador, as you know, historically, the consulates and the consular corps of the Department of State from the earliest days of the republic have been the outer defenses, the global listening posts and the first

line of defense if you will. And the history certainly of the first up to the Second World War was an elite professional consulate professional corps. Yet, ironically, as our global involvement started to expand rapidly after the war, the consular corps and consulates began a long and steady decline, shrinking in numbers steadily, shrinking in prestige, gradually becoming a kind of an orphan within the Department of State.

And while I know during your tenure with things like the MRV program, you did some very significant things to attempt to do more with less or, as you said in one of your interviews, to do more with nothing. But I remember one of the first State Department issues when I began in the government back in the Nixon administration was the closing of a whole range of consulates and consolidating. And then when I was secretary of the Navy, I was deeply involved in a lot of skirmishing throughout my tenure because the Navy is particularly dependent on consulates in ports around the world and they were being closed at an even greater pace during the Reagan years.

So my question to you is, while, I know and your testimony and your statement outlines some important significant tactical efforts that you made to fight what was essentially a rearguard battle against personnel cuts and closings and so forth, could you give us an idea about what you might have done or what should have been done to take a larger view to look at the overall steady decline of which your particular tactical problems were a part. And what was done to try to reverse this and to reinvigorate the consular corps as a line of defense against terrorism and, importantly, to get the resources because next to the Coast Guard and INS, there probably is no other orphans who are underfunded historically as the one that you headed in State?

Were your obstacles a lack of recognition of the importance? Were they budget cutting within the Department of State? Was it OMB or was it principally the congressional appropriation that kept this inexorable decline going even as the threat increased?

MS. RYAN: Mr. Secretary, we in the Bureau of Consular Affairs take our responsibility -- when I was there, took the responsibility as the outer ring of border security very, very seriously. We were faced with many of the things that you describe. In the mid-90s the budgets were completely inadequate, and this was before the MRV money, machine readable visa money, began to really come in. We just got the authorization in FY

'94. We were charging at that time \$20 per machine readable visa application, but we did not have that technology worldwide.

So we didn't have a lot of money and so we were devastated by the budget cuts. We were devastated by the lack of junior officer intake. I would say that the people that we used in lieu of junior officers, who were civil servants on excursion tours, they were specialists in other areas of the department, and we also hired Foreign Service spouses to do this work. They did a fantastic job. But the message that was sent by this to the rest of the Department of State was that consular work was really not that important, and it was the only cone -- if we call the specializations cones -- the only cone where this occurred. All other cones were staffed completely by Foreign Service officers.

So we had that problem. I would tell you, sir, that the high point of my career was in the Bureau of Consular Affairs, serving with people in my bureau, which is a primarily civil service bureau, and serving with consular officers worldwide, because I really believe they're the finest public servants in the government. They take their responsibilities very, very seriously. As you heard from the staff, in Jeddah, for example, they were interviewing 200 people a day. I interviewed 200 people a day 30 years ago when I was on Monterrey, Mexico. I can tell you how hard that work is and how difficult it is, and how worn down you are by the end of the day and how you always have people left over that you were not able to reach to interview, even though you were working as hard as you can. It's demoralizing work for consular officers.

But I would tell you, which I believe with all my heart, that they did it to the best of their ability, that they love this country, that they're patriots, that they chose government service not for the money and not for the prestige, because neither exists in the government any more, but they chose it because they love this country and they want to serve our country and the American people. And I -- despite the fact that these 19 people exploited our weaknesses, I believe that the consular officers around the world and the consular officers who issued to these people did their jobs to the best of their ability with the knowledge and the tools that they had at the time.

MR. LEHMAN: But my question really is where was the problem? Why were you the orphan? Was it prejudice within the department or an ignorance within the department. Was it over at OMB that all the cutting went on? Or was it in Congress? And did you -- I mean, the disparity between the needs and the

mandates you had and the resources you were given is so gross that I would have expected you to be raising hell at each of these three levels. Did you?

MS. RYAN: I did, sir. We have a program in the Department of State called the Bureau Program Plan, which is a way that we try to match resources and money. We did very good Bureau Program Plans that didn't unfortunately get us the money that we needed. I believe that it was the Congress in the mid-1990s that cut us. If you remember, in the mid-1990s we had the furlough, because I believe that there were people in the Congress who did not know that the U.S. government did anything that the American people needed or wanted or couldn't get when we were closed.

MR. LEHMAN: And was this in foreign relations or in the appropriating process?

MS. RYAN: It's in the appropriations process.

MR. LEHMAN: And did the Intelligence Committees have a say?

MS. RYAN: I don't know, sir, because we didn't ever testify before the Intelligence Committee. I certainly didn't. We testified before the Appropriations Committee. I testified before the Immigrations Subcommittees of the House and Senate. We tried higher up than I in the chain of command in the State Department, tried to get us the money that we needed, tried to get the department the money that we needed. It simply wasn't there. Congress had higher priorities or priorities that they felt were more significant than funding the State Department.

MR. LEHMAN: Ms. Meissner, I'd like to ask you a similar question. You said you got the budget up to \$4 billion plus by the time you left, but your successor has made a very good case, with various specifics, just matching minimal funds to the mandates that Congress has provided, and comes up with a figure 10 times that size. As a similar orphan in a larger department, how did you raise hell and at which levels were your biggest obstacle? Again, was it Congress, was it OMB and the White House, or was it within your own cabinet department?

MS. MEISSNER: Well, Mr. Secretary, I think our circumstances during the time that I was there were slightly different from a budget standpoint because we were growing very, very rapidly. The difficulty with INS, of course, was how fast could you grow? I mean, there were years that we were growing 15, 20 percent a year and we didn't have the infrastructure to

handle the recruiting and the training and the deployment and the space. So the difficulty that we had with funding was not so much in the early years, support from either the Justice Department or the administration or the Congress.

There was a consensus that the INS needed to grow. The difficulty was that the Congress sometimes wanted the growth in different ways and in different programs than the Administration proposed. And in key areas such as technology, the funding really tapered at the time where we needed it to keep expanding, because our workforce had expanded so quickly that we were eating up the money just with operating the systems that we had, and we were not able to continue the new systems development that we needed in order to support the workforce.

Now, I've seen Commissioner Ziglar's testimony and I wish I had thought of doing an analysis like that. It is entirely possible that INS needs to be a \$40 billion agency. I can't say independently anything about that. I think that the most important thing for the growth of an agency like INS is that it be steady and balanced and across the board.

Our problem was that the money and the Congress's desire for the money was focused almost entirely on the southwest border, whereas the case that we made and that the Justice Department and the administration supported us on was for an across the board distribution of resources, the areas that were not getting the money: technology, interior enforcement, and the borders comprehensively, which is not simply the southwest border but also our ports of entry and the kinds of data and technology efforts that needed to take place as between us in Customs and us in Consular Affairs, because this has to be a seamlessness. The duties are divided among agencies but the people and the responsibility for running the immigration system is cross-cutting.

MR. LEHMAN: In addition to being orphans, you both have in common the fact that your agencies have a dual and some would say almost incompatible mission. One is enforcement in each case, which is always unpleasant. People don't smile when you enforce. And service, helping travelers, facilitating air travel and so forth, helping citizens in need abroad. And the criticism of both of the cultures of the agencies you headed, and indeed to a certain extent of each of your tenures, has been that enforcement was seriously neglected or de-emphasized, while service and assistance and facilitation was greatly emphasized and that they money flowed to the soft helping rather than the hard enforcing,

and specifically on really putting teeth into the denial of visas and looking at Visa Express, for instance, looking at things like Transit Without Visa that essentially the Consular Corps kind of thought this was not really their business or much of a threat. That has come through from a good deal of the interviewing we've done. Would you care to comment on that, Ambassador?

MS. RYAN: Mr. Secretary, I would agree -- I would disagree with that statement. I think that we did balance law enforcement and travel facilitation. We poured what money we had into improving our lookout systems with CLASS, with TIPOFF, with Visas Viper, all of which were designed to get us the information that we needed to identify people that we should keep out of the country. I don't think travel facilitation and law enforcement are opposites. I think they're all part of the whole scheme of things, as we were trying to do them.

Visa Express, which I agree -- I mean, I certainly wish that it had a different name. It's a very unfortunate name because it makes people think that we just issue visas --

MR. LEHMAN: Well, the problem is not that you issue visas, it's the fact that some terrorists actually used it from third countries to get visas that, had it not been in place, they would not have presumably been able to get.

MS. RYAN: No, I don't think that that's really correct, because prior to the time of Visa Express, most of the people in Saudi Arabia were not interviewed. What happened was that they would come -- this was pre-Visa Express. They would come in the mornings and they would make their application, they would drop off their passports with the application. They would come back in the afternoon to pick up their passports. Thus there was -- the waiting rooms in both Riyadh and Jeddah were insufficient for the numbers of people who were applying for visas. And so there was a great deal of milling around outside of the embassy, both in the morning and the afternoon, which was of great concern to the regional security officers at both posts because, you know, in 2001 we were having intelligence information that there were threats against our interests in Saudi Arabia, and in fact, in July of 2001 we put out a travel warning on the Arabian Peninsula because the threats that we were hearing were so great.

So I don't think that Visa Express changed anything except that a third party now received the passports and submitted them to us, and eliminated the crowds at the embassy and at the consulate. The systems -- the consular systems staff, which

developed CLASS when we had the money through MRV fees, developed it so that you could not print a visa without checking the system. There was no override to that at all. You had to check the system so that a consular officer, no matter how busy or overworked or tired or whatever they were, there was no way that they could issue a visa without checking the name -- the lookout system, CLASS.

So I think that knowing certainly what we did in Consular Affairs, prior to September 11th, 2001, we did -- we took every step that we could to enforce the law and to be polite.

MR. LEHMAN: I would respectfully disagree with you. I don't think the record shows that at all. In some of the interviewing of some of your officials that were doing the actual consular functions in Saudi Arabia at the time, they said in so many words, gosh, if we only knew. If someone had told us that Saudi Arabia was a threat. We thought that they were our friends and all we were looking for were people who were trying to immigrate and we weren't looking for terrorists. Well, hello. I mean, did anybody read the newspapers? I mean, there were books.

The literature was rife with, you know, books like "Among the Believers" that catalogued this tremendous proselytizing of hatred and of fundamentalism around the world, sourced in Saudi Arabia, with many Saudi Arabian institutions and clerics the source of it. Yet everybody that we talked to said, "Oh, well, Saudi Arabia," as they issued visas, "Saudi Arabia is our friend so we don't look for terrorists here. Maybe somewhere else like Pakistan," which is the point I was making with one of the terrorists, who applied for a visa through -- thanks to the changes that were made with Visa Express, from a third country that never would have -- he would have gotten much different scrutiny, had he not done it into Saudi Arabia. So that is -- I don't think the record supports your view.

MS. RYAN: Before September 11th, and I think even after September 11th, until now, I think that this government, our government, does regard Saudi Arabia as an ally. In the current issue of Foreign Affairs, the deputy secretary says that we have every confidence in the crown prince of Saudi Arabia to carry out the reforms that he's trying to carry out. I mean, that doesn't sound like we regard Saudi Arabia as a state sponsor of terrorism. It was never so identified before September 11th, it was never so identified after September 11th.

MR. LEHMAN: But did you only have robots that just take what the official State Department characterization is? Don't they read the papers? Don't they know that so much of the funding, so much of the ideological motivation is sourced there? I mean, you know, in fact, after the fact, as you clearly demonstrate and affirm, we were told by consular officers that there was no change. They felt after the attack, oh, gosh, we really screwed up. Fifteen of them were -- we gave visas to 15 of these guys, there are going to be some big reforms coming, and nothing was ever done. Did you ever require -- did you call all hands in for an offsite? Did you require after-action reports? Did you do a lessons learned on how we're going to do things differently?

There was a reason why 15 of them were on Saudi passports, and that's because the way you were doing business in Saudi -- I mean, you can blame it on the official ostrich view of this Department of State perhaps, but these were people that are supposed to have personal judgment, education and ability to ask the right questions on their own, regardless of what the secretary of State happens to be saying.

MS. RYAN: We were dependent on the intelligence of law enforcement agencies to give us information on people that they believed we should keep out of the country. I don't believe that in a visa interview you would ever uncover a terrorist. We are dependent on the people whose job it is to develop that kind of information. We set up all the consular automated systems that we could, designed to get that information. And the system was state of the art, is state of the art. It contains a lot of names. These people were not known to intelligence or to law enforcement. At least 17 of the 19 were not known at all. And even if we interviewed everybody, I do not believe that we would have uncovered the fact that they were terrorists.

MR. LEHMAN: I think our staff disagrees with that.

But, Ms. Meissner, I don't want to let you off the hook here. You, for better or for worse, had a reputation in the -- during your tenure, and we got this from a number of your subordinates, that there was a clear culture of de-emphasizing enforcement. You deferred, you did not spend the money that was appropriated on the student tracking system, the biometrics for student tracking. There were stop work orders on it. It was never fully implemented. You personally -- you told us during your interviews that you personally opposed the entry-exit program that was put in and even supported repeal of it. And so

why this bias in both of our frontline outer defenses against enforcement?

MS. MEISSNER: I have to disagree with that characterization. The enforcement responsibilities of the INS have always been its primary responsibilities. And I spent more time and effort on the enforcement portfolio at INS than any other single thing. I did and do believe that in order to enforce the immigration law properly and effectively, it has to be done in a balanced way. In other words, the enforcement of the law simply done along the southwest border by border patrol agents is not sufficient. The entire agency's responsibilities have to be done in an integrated and robust fashion.

The staff statement today is a good example in talking about foreign student visas and applications for visa changes. If INS's backlogs were up to date the way they should be, you wouldn't have to have the kinds of regulations that allow people to come on a visitor visa and then apply for a student visa because the application for student visa would be timely and the information would be available and the regulations that create the workarounds wouldn't be required. That kind of work is considered facilitation work but it has an extremely important impact on our ability to enforce the law properly.

Now, where student tracking is concerned and entry-exit are concerned, my difficulties with those programs were not difficulties of the basic concept. Student tracking in the first place did not have any funding allocated for it. The way that student tracking was to take place was through a fee which was described in the legislation which was to be collected from the foreign student by the schools themselves. There was a great deal of objection to that by the schools and by members of Congress. And ultimately, that legislative formula was changed so that the fee was collected in a different way.

Notwithstanding that there was no budget for foreign student tracking, we took funds, \$10 million as the staff statement describes, from other automation projects in order to design a pilot and test a pilot along the timetable that was set out in the legislation. So what we did was work on parallel tracks. We moved ahead with the automation planning just as we were advocating and working with the Congress on a legislative change that would make the funding mechanism be a more sensible one and one that all the stakeholders could live with.

Similarly, on entry-exit. On entry-exit, the timetable that was set up in the legislation was absolutely undoable. They were calling for, in the 1996 law, an entry-exit program to be in place by 1998. That could not happen. As I explained, we have never had departure controls from this country. We went ahead and designed what the front end of a system for entry-exit could be, again working on a parallel track with the Congress to try to change the timetable in the legislation so that there would be the opportunity to design the kind of a system that could actually work.

In fact, on entry-exit, we -- INS itself very early in my tenure made a very big effort to publish research that showed that 40 percent of the people in the United States who were here in an illegal status were here, not because they had come improperly across the southwest border, but because they had overstayed a visa and that the effort to deal with illegal migration to the United States had to be one that dealt with ports of entry and with overstays just as it dealt with southwest border circumstances.

But an entry-exit system is a massive system to put into place and it continues to be a problem even with the high priority that is now being given to it since September 11 because we don't have the highway systems, we don't have the set-ups in our airports to physically handle people checking out when they leave the country. So I think that there -- I don't doubt that people that were in the INS have told you what they did and mistook -- you know, were mistaken or misunderstood what it is that I was trying to do. But what it is that I was trying to do was put a balanced system into place so that the parts actually could work effectively on both the facilitation and the enforcement side because they are mutually supporting. They are not contradictory.

MR. LEHMAN: Thank you. I have one final question and, if you could keep your answers brief, we're running a little over time. There was a famous quote, when the Berlin Wall fell, from an East German worker that said, "You know, our system was based on the state pretending to pay us and we pretended to work." It's my belief that what has been revealed in our investigations is that Congress and a succession of administrations pretended to want enforcement of immigration law and your two agencies pretended to try to enforce it.

The gap between the stated purpose of immigration law and the execution is so vast that it makes a farce of the whole

concept of rule of law. And so, for instance, today there's still -- before 9/11 there were only 2,000 interior enforcers in the immigration function. As you rightly complain, how can you go check students overstaying their visas with only 2,000 people. Today, there is still only 2,000 people. So enforcement, not everybody really wants illegals put under a rule of law and that's a huge hypocrisy.

So, with that preamble, could you each of you give us, in 25 words or less, your recommendation on how to fix this lamentable situation?

MS. RYAN: I would say, Mr. Secretary, there was no pretence on the part of consular officers, either in Washington or abroad, on enforcing our immigration laws. It's up to the Administration and to the American people to decide what kind of immigration laws they want. I think that this country cries out for immigration reform but I can assure you that consular officers take their responsibilities to enforce the law very, very seriously. They do the best they can with the tools they have and I think it's an unfair characterization to say that they were pretending to enforce the law.

MS. MEISSNER: I would say that, as a country, we are ambivalent and always have been ambivalent about what we want out of our immigration system and out of our immigration policy. Immigration is an area that has -- the pendulum has swung widely back and forth over history as between tough enforcement, exclusion, discriminatory policies and very permissive, lax approaches when it serves our interest. And that remains unsettled. That's very different, however, from being in the agency and having a set of specific responsibilities and people whose work you direct on a day-to-day basis. And where that is concerned, I certainly must say that during my tenure we made every possible effort to rationalize the system and the political ambivalence that continues today.

MR. LEHMAN: Thank you very much.

MR. KEAN: Senator Gorton.

MR. SLADE GORTON: Ms. Meissner, you have, I think, quite eloquently outlined dramatic changes in INS and, in contrast with Ms. Ryan, at least increasing resources with which to carry out its functions. But, looking at it today, would you tell me your one or perhaps two highest priorities for additional change with an emphasis on what those changes would do to better control or

add a greater ability to control terrorism, which is the function of this commission? Let's say, what two changes that are realistically possible would provide the greatest degree of improvement in meeting that mandate?

MS. MEISSNER: Absolutely and thank you. The two changes that I believe are the most critical are, number one, integrated information databases that talk to each other. You now have immigration functions divided up, fragmented within the Department of Homeland Security and you do not have an immigration history for every person that comes to the United States or is in the United States. Those databases do not talk to each other. So not only do you need to continue to invest in the kind of technology that gives you a good foreign student tracking system and exit-entry and so forth, but those that somebody, an immigration officer or a consular officer must be able to click into a computer and on a particular person know everything, be able to get to everything that the U.S. government knows about that individual. That is not the case right now. That should have the absolute highest order of importance. It's the connective tissue that is missing now with the way that the restructuring of the immigration function has taken place.

The second thing is the kind of interagency coordination between the frontline agencies and the intelligence community that was suggested in the staff statement. The frontline agencies are Consular Affairs, the new immigration bureaus, the Customs officers, the Department of Agriculture, those entities that are in what we used to call -- we're in retail -- we've got to open the store every day. And the upstairs agencies, the back room agencies, the FBI, the CIA, the intelligence community, there has to be the trust and the information sharing that allows those frontline officers to do their job in identifying wrongdoers.

MR. GORTON: So, if I can summarize, you're saying we need the technology to do the job and then we need people who will actually do it.

MS. MEISSNER: Well -- and the relationships.

MR. GORTON: Between agencies. Ms. Ryan, you have retired from an agency which was losing resources during much of your time of responsibility. But, nonetheless, within the ambit of what the Department of State does, what would be your two highest priorities?

MS. RYAN: I share Commissioner Meissner's concern about the integration of databases. In, I think it was October of 2001, there was created what was called the Foreign Terrorist Tracking Task Force which was supposed to merge all the databases in the government so that everyone had the same information on everyone who was in the various databases. I detailed an officer from the Visa Office to that task force to ensure that the information that we got was information that we could use. I mean, we can't just use a name. We have to have at least a country of birth and an approximation of date of birth. Nothing ever happened with that and it disappeared. It was disbanded.

Now there's a new terrorist screening center, something like that. I'm not current on all of this because I am no longer in the government. But that is the highest priority. I hope that this commission can break down the stovepipes that exist between agencies of this government, one agency having some information and another agency having some information and perhaps another agency having no information. There has to be integration of these databases so that we all know who the people are that we want to keep out of this country.

The other thing that I think is desperately needed is -- I would argue for increased consular staffing at posts abroad. Interviewing 200 people a day, as we did 30 years ago, we should have advanced beyond that. We should not be asking people to work like that. And then the third thing, even though you didn't ask for a third thing, is that the administration, the Congress, the people of this country have to decide what they want in terms of immigration. Commissioner Meissner put it very correctly. We are very ambivalent, as a nation, about immigration. I don't think we can afford to be ambivalent anymore. I think we have to decide what we want and then give the people who are charged with carrying out that responsibility the tools that they need to do their jobs.

MR. GORTON: I want to thank both of you for those cogent answers and thank you, Mr. Chairman.

MR. KEAN: Commissioner Ben-Veniste.

MR. RICHARD BEN-VENISTE: Thank you, Mr. Chairman. My first question is directed to Ms. Ryan. First, I want to express my personal gratitude for your long service to the interests of this country and recognize the difficulties under which you operated during the period most at issue here. However, following up on Secretary Lehman's question and looking at the fact that the

terrorists were able to exploit a vulnerability that they perceived in the system particularly with respect to Saudi passports and visas, I see something of a disconnect in the situation as you described it.

Here, in the summer of '01 and somewhat before, you have recognized that a crowd control at the embassy or at the consular office, officers in Saudi Arabia posed a problem because of the potential harm to individuals from those who meant the United States and its interests harm. If we take that just one step further, would you agree that the individuals in the Kingdom of Saudi Arabia who might pose such a threat to cause harm to individuals at or about the embassy would be Saudis rather than foreigners? Would you accept that?

MS. RYAN: That the people who mean us harm would be more likely to be Saudis than --

MR. BEN-VENISTE: Yes. The people who you are talking about who posed a threat to the numbers of individuals who were seeking visas in Saudi Arabia must have been largely Saudis.

MS. RYAN: Yes, they were probably largely Saudis although there were a lot of third country nationals in Saudi Arabia who also applied for visas.

MR. BEN-VENISTE: And I guess, on the issue of the disconnect, that Secretary Lehman was talking about, once you acknowledge that there is certainly a number of Saudis who might be in a position to do us harm through violence against individuals at or near our consular offices, it doesn't take a whole lot to go to the next step, even without specific information from our intelligence agencies, that such individuals who mean us harm might in fact wish to come to the United States. So the notion, would you not agree, of Saudis not posing a particular threat being taken out of that threat matrix really doesn't stand up even on the basis of cursory information that you had available.

MS. RYAN: I'm not sure I'm following you, I'm sorry.

MR. BEN-VENISTE: Saudis mean us harm in Saudi Arabia because they might blow up the embassy or harm individuals in the vicinity of the embassy but the Saudis who might seek entrance to the United States were not considered a problem.

MS. RYAN: Of course, they were considered a problem. They required visas. They were checked through our consular lookout systems. You know, in the absence of information that someone is a threat to the nation, we are dependent on the information that we have in our system developed by intelligence and law enforcement agencies about people who mean us harm. I don't imagine that -- I don't know but I can't imagine that you would think that we could on the basis of the fact that some people might mean us harm not issue visas to the entire nationality.

MR. BEN-VENISTE: I'm not suggesting that but that then begs the question of the usefulness of individual face-to-face interviews during periods of increased threat where there is some suggestion of potential wrongdoers. And I think we'll hear next from a witness who makes that point very explicitly. Let me turn to another issue which hasn't, I think, been brought up to this point and that is the issue of the use of interpreters by the consular service in the visa application process.

It has come to our attention from individuals who have had considerable experience that there is a problem, and perhaps a widespread problem, with respect to corrupt interpreters who are brought into the process because consular officers often in certain countries do not have language facility in the native language of that country. And therefore the consular office must rely upon an interpreter to assist in the visa application process and the interview process. Had it come to your attention as of the time that you left the service that this was an issue, and what, if anything, had been done during your tenure to try to correct it?

MS. RYAN: This all goes back to the fact that we don't have enough staff and enough money in the State Department. We recognize that it's a tremendous advantage if officers, consular and otherwise speak the language of the country and don't have to depend on interpreters. But we don't have enough people to be able to put officers into language training, long-term language training, which Arabic would be, or Chinese or Russian or Korean or Japanese, because we've never had a person in motion -- we've never had enough people to do that. And so that's always a concern, that's always a worry that an interpreter might not be interpreting accurately. It's one of the handicaps that the State Department operates under.

MR. BEN-VENISTE: Could I interrupt you for just a moment and ask you whether rather in the theoretical you did not have some practical and substantial information that in various places

in the world for a relatively small amount of money an interpreter could be bribed to provide the answers that the consular officer needed to hear in order to approve a visa.

MS. RYAN: I've never heard that about Saudi Arabia.

MR. BEN-VENISTE: I'm not limiting my question to Saudi Arabia. At many places throughout the world you had not heard of such a problem?

MS. RYAN: If I remember correctly, there was a problem once at one post that I knew of at the time where the interpreter was not interpreting accurately, and a Foreign Service national, one of the locally engaged staff, heard that and advised the officer. But that it's a widespread problem, no, I'm not aware of that. I was not aware of that.

MR. BEN-VENISTE: Thank you.

MR. KEAN: Commissioner Gorelick.

MS. JAMIE S. GORELICK: Thank you, Mr. Chairman.

Ambassador Ryan, after 9/11 did you order an after-action report to determine how and in what circumstances the hijackers got into this country?

MS. RYAN: I sent a retired senior Foreign Service officer to Saudi Arabia to look at the operations of the consular sections in both Riyadh and Jeddah, and he advised me that they had followed all the procedures that we had in place at the time. In other words, no one didn't follow the way visas should be adjudicated, that they adjudicated the visas correctly, that we lacked information.

MS. GORELICK: Did he make a written report to you?

MS. RYAN: Yes, I believe he did. I think he made a written report, which should be available to the Commission.

MS. GORELICK: Thank you. The biggest inconsistency on the face of it between the staff statement and your view of the efficacy of interviews is what I understand you to be saying, is if these names had been in the system, we would have found these people and prevented them from getting visas, because the name would have been in the system. And I take your point. But then the question is would you have found out anything had you

interviewed them? Now, I thought you said that you did not think an interview of the sort that is contemplated in the visa process would determine or provoke a question whether someone was a terrorist. Was that your testimony?

MS. RYAN: Yes. In the type of visa interview that we were doing when I was in the Bureau of Consular Affairs, it's not a law enforcement kind of interview, it's just an interview -- what we were basically trying to get at was whether the person was likely to remain in the country, in our country, illegally after his proposed visit to the United States. If you're doing 200 interviews a day, you can't spend a lot of time in an interview. And what you ask is where are they going to go and whom do they know and, you know, why they want to go.

We always interviewed first-time students because we wanted to ensure that their English was sufficient to be able to undertake the course of study that they were planning to take and that their previous study in their own country had been of the type of study that would lead to higher education in the United States. It was a very cursory interview. There's also a body of thinking that the interpersonal interaction that you have with the applicant makes it harder to refuse the applicant because you get to know him or her a little bit by your questioning. So I think it will be very instructive now that so many more people are being interviewed since September 11th, once we have enough information about these interviews to see whether the interview alone will be able to detect a terrorist.

MS. GORELICK: But certainly there is a statutory obligation to assess the visa applicant not just for whether they intend to violate in terms of their visa and stay here illegally or inappropriately but also to keep out terrorists. Now, the staff points out pieces of information which either were omitted from the visa application or which presented inconsistencies with data that were not on the face of the visa application but which were accessible somewhere in the U.S. government. And my question to you is whether, had the interviewers, the consular officers, who had these materials in front of them, had had access to that additional information, whether in that circumstance your view is that the interviews could not have produced a negative response to the visa application? Because you seem to be saying -- and I understand why you might be saying it, but you seem to be saying that really unless the name is in the computer, the interview element of our scrutiny is really not meaningful, and I'm trying to probe that.

MS. RYAN: I think that it's unlikely that we would detect a terrorist in an interview, in a straightforward interview. There is a question on the visa application form which asks the applicant whether he or she belongs to a terrorist organization, and they always say no. You know, if they understand the question they always say no. So, I mean, asking that kind of a question in an interview, I mean, I think you would most likely get the answer, no, I'm not a terrorist. I mean, I don't see how in the interview process, as it was pre-9/11/2001, we would be able to have detected these terrorists. I will never know. None of us will ever know.

MS. GORELICK: Well, let me just ask one follow-up question then. Can you imagine an interview process consistent with the nature of the processing that you've got to do with however many large numbers of people a consular officer has to interview, can you imagine an interview process which would have efficacy in preventing terrorists from entering the country?

MS. RYAN: It would have to be a completely different interview process from the one that was before September 11th. It would have to be a much lengthier interview process. It's conceivable that in a much more law enforcement kind of interview you would detect a terrorist, but that's something that, you know, is for the administration and the Congress and the people to decide, whether that's the kind of interviewing that we want. It's a risk management issue and that's up to people who make our laws to decide that.

MS. GORELICK: Thank you.

MR. KEAN: Commissioner Roemer.

MR. TIMOTHY J. ROEMER: Thank you, Mr. Chairman.

I want to start with just a couple questions to Mary Ryan, and appreciate your attendance here at our hearing this morning. Certainly it seems that there are a couple of consistent themes from the post-9/11 analysis of the attacks on our country on September the 11th, 2001 that both the Joint Inquiry of Congress and the 9/11 Commission today have concluded that the Consular Affairs offices and our INS border were not integral parts of the strategy and included in the key meetings to fight the war on terrorism prior to 9/11. Would you agree with that?

MS. RYAN: No, sir. I think we always regarded ourselves as the outer ring of border security, with all that that means. Our

responsibility was to protect the country, as well as to facilitate travel.

MR. ROEMER: Well, that was not the question, Ms. Ryan. The question was, and due to your testimony here and the interviews that you conducted with our staff, you talk about -- in the interview on 9/29/03, you say that you had no direct contact with anyone in the FBI prior to 9/11.

MS. RYAN: That's right.

MR. ROEMER: Now, that seems to me that you were not integrally part of a national security apparatus to catch and detain terrorists that may be coming into our country, especially as our system, as you've noted in your testimony, has resource problems, has problems with contacts with the FBI, has problems communicating or not communicating through stovepipes, yet al Qaeda makes travel one of their highest priorities, maybe even higher than financing. So there doesn't seem to me to be the commensurate allocation of emphasis between our government adjusting to what al Qaeda is just about to do or planning to do throughout the 1990s and our response. Now, you say that we had no knowledge that any of the 19 terrorists were -- we had information on them. How do we expect to have information on them if you have no contact with the FBI?

MS. RYAN: We were dependent on the FBI's providing information to us through TIPOFF and through Visas Viper if they had any information.

MR. ROEMER: And how would you characterize their ability to provide that information to the TIPOFF program prior to 9/11?

MS. RYAN: I thought prior to 9/11 that they had the capability and that they knew about people who were -- who meant us harm. I learned after September 11th that they didn't have information and that they didn't know about people who mean us harm.

MR. ROEMER: Would it surprise you, Ms. Ryan, to learn that there were more people in 2001 recommended for the TIPOFF list from the press and from a foreign government than from the FBI?

MS. RYAN: Yes, it would surprise me.

MR. ROEMER: It would surprise you. Would it surprise you, according to our staff, that the FBI did not have a written

policy on the TIPOFF program for recommending people for that list prior to 9/11?

MS. RYAN: When we set up the Visas Viper program in 1993, we wanted the information that was developed at post to be given to us at post for inclusion in our system. And both the intelligence and law enforcement agencies were very reluctant to give us the information at post because consular sections are unclassified environments, and they were concerned about protection of sources and methods. They said that they were comfortable with providing the information through the intelligence and research bureau, which would then put it into TIPOFF. I believed them.

MR. ROEMER: Okay. Well, you believed them, but in an interview with the 9/11 Commission staff, you say that you were outraged when you learned that government agencies knew things, that two hijackers had this information and it was never passed onto the TIPOFF program until they already had their visas. Now, outraged seems to me not gravely disappointed, not very upset, outraged seems to me that you're indicating that mistakes were made, that terrible communication failures were part of this.

MS. RYAN: Yes, sir. That's correct.

MR. ROEMER: And please elaborate. We need to fix this problem as well. And from your further interviews with the 9/11 --

MS. RYAN: I'm not sure how --

MR. ROEMER: Excuse me. With your further interviews with the 9/11 Commission staff, you go on to say that you don't think that this problem has been solved in subsequent meetings post-9/11 with the FBI.

MS. RYAN: Shortly after September 11th, my senior staff and I met with the senior staff and the DCI, Mr. Tenet, and at that meeting we were told that the CIA had passed information on two of the terrorists to the FBI in January of 2000.

MR. ROEMER: Ms. Ryan, is this the meeting with George Tenet, Cofer Black, George Lannon, Ken Duncan, Wayne Griffith and others?

MS. RYAN: Yes, sir.

MR. ROEMER: Okay. Thank you.

MS. RYAN: It was at that meeting that we learned that there was information in the hands of parts of our government on two of the terrorists that was never given to the Bureau of Consular Affairs, never given to INR, to the Bureau of Intelligence and Research, for inclusion into TIPOFF. So, yes, I was outraged. I was furious. I'm still angry about it.

MR. ROEMER: And do you think that this fury and this outrage that you express now -- are we going to feel the same way if something else happens, if this problem hasn't been solved. "After the meeting, however, Ryan said Consular Affairs got more information from the CIA but nothing more from the FBI." That's your interview.

MS. RYAN: We got --

MR. ROEMER: This is post-9/11.

MS. RYAN: We got tremendous increase in information from the CIA. The remedy that we sought to get the information from the FBI was from the Congress. And included in the PATRIOT Act was the requirement that the FBI give us all of their NCIC-3 information. So we got an additional eight million records of criminal aliens, terrorists, that the FBI had that they had refused to give us without the legislation because we were not a law enforcement agency.

MR. ROEMER: So finally, Ms. Ryan, how would you categorize the pre-9/11 relationship and exchange of information that you had with the FBI?

MS. RYAN: It was not sufficient.

MR. ROEMER: Enough to make you furious and outraged after 9/11?

MS. RYAN: Yes, sir.

MR. ROEMER: And how would you categorize the communication that you had with the CIA pre-9/11?

MS. RYAN: I was --

MR. ROEMER: Outrage? Fury?

MS. RYAN: I said at one of the hearings in 2001 that I thought 9/11 was the result of either a colossal intelligence failure or failure to share information. I think now that it was both.

MR. ROEMER: So we don't have a stovepipe problem here, we have a steel wall problem here prior to 9/11?

MS. RYAN: We certainly had problems getting information that we thought we had, that we believed we had, that we needed to protect the country. Now, there were 17 others that didn't come to anybody's attention, but two were known about and those two we also should have known about.

MR. ROEMER: Finally, so my colleagues can ask some questions, you're also quoted in one of your interviews as saying, quote, you "have no recollection of having learned about Tenet's" -- that's the director of the CIA -- "declaration of war in al Qaeda in 1998."

MS. RYAN: No, that's not correct. I knew --

MR. ROEMER: It's not right.

MS. RYAN: -- about the war on al Qaeda. Our embassies were blown up in 1998. I lost colleagues and friends in Nairobi.

MR. ROEMER: That wasn't my question. My question was not the war on al Qaeda, it was the director of the CIA's declaration of war on al Qaeda. Were you aware of his memo that was circulated at the CIA on the war, or did you learn of that --

MS. RYAN: It was in the --

MR. ROEMER: -- through the newspapers and through the --

MS. RYAN: It was in the media that he had declared war on al Qaeda.

MR. ROEMER: So you read about the declaration in the media, not through something that was circulated directly from Langley or from a government document?

MS. RYAN: Not that I remember. Internally government, no. Not that I remember.

MR. ROEMER: Thank you again, Ms. Ryan.

MS. RYAN: Thank you, sir.

MR. KEAN: Commissioner Fielding.

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

I would like to ask both of you some questions about the student tracking before we get off the subject. But following up on what Commissioner Roemer asked you, Ambassador Ryan, historically, probably from the first days of our republic, the visa process has been part of the Department of State and it's had a long history. And you've had a great deal of experience about it. You know, one of the things that we're chartered to do is try to figure out not only what mistakes were made but how to correct the mistakes of the past. Let me ask you what seems like a pretty basic question. Should the visa processing still remain in the Department of State?

MS. RYAN: Yes, sir. I think so. I'm very biased about the offices in the State Department. I think that the people who work in the State Department are the finest public servants in the U.S. government today, and so I don't think that moving visas to another agency is the answer. I think strengthening the information and the intelligence that visa officers have, giving them more tools, giving them more staff, more money, those are all requirements. But I would hate to see, you know, moving people around just to do something, to make the American people think that they're safer. I don't believe that they would be any safer by moving it to another agency.

MR. FIELDING: Of course, I'm not questioning the individuals themselves at this juncture. I'm just questioning the functionality of this and the duplicative nature of some of the problems that we run into all the time. And so if -- it's not to move it away from State and it's not to move it away from certain people that are doing it. What I was really asking is, is it better served and better integrated into our system by moving it elsewhere?

MS. RYAN: I don't think so, sir, no.

MR. FIELDING: Thank you. Let me go to my original quick line of questioning on student tracking. Ms. Meissner, you testified that, even if the student tracking system had been in place pre-9/11, I understand your testimony is that it's very unlikely that there would be any arrest or that anybody would

have picked up someone who had overstayed or had not even attended classes because there is a shortage of staff. Am I correct in understanding?

MS. MEISSNER: That's correct.

MR. FIELDING: If there are not enough agents available, would you have any suggestions to provide to us as to how we could involve the education community into assisting the government in this regard, either by carrot or stick, by sanction if they don't or by incentive to do so? Anything in that regard?

MS. MEISSNER: I think that the education community since September 11th does understand that it's an integral part of this element of immigration control. The problem with people who fall out of status or don't show up for classes, I think, is one where you have to essentially do triage in terms of -- or think of it that way in terms of your actual ability to arrest those people. My own sense is that, if we had a better idea of who, not by names, but of a profile of the types of individuals among the foreign student population that might be of highest concern for national security purposes that you could start there.

MR. FIELDING: If I may interrupt you for a moment, I mean, triage presumes that you can't do everything at once so therefore -- but, of course, we're letting these people in so we control the numbers of this. But I guess what I'm really looking at is you don't need a profile if somebody doesn't show up for class.

MS. MEISSNER: But, let's say, you have about 500,000 foreign students. So class starts presumably some time during the first two weeks in September. Even if you know how many people haven't turned up in those two weeks, even if it's one half of one percent, it's -- let me do the math -- it's thousands of people. So then the question is, even if you had many more thousands of investigators to check that out, where would you go first? That's what I mean by triage.

You, it seems to me, have to do one of two things. You either have to have a very well developed random check kind of a program where whoever doesn't turn up for class, phalanxes of people go out and have the information in the data system of their addresses and find them. If they didn't turn up for class, their address in that data system may very well not be current. So right there, you have another set of things that have to happen.

Or you have a good idea of who the most likely problem students are. They're either people that are studying certain very sensitive subjects. They are people that are in trade schools rather than in graduate schools. They are people who come from a particular country or from a particular set of countries, are studying certain fields and, you know, have prior visa problems. Something that gives you, that narrows the field.

But I would have to tell you that I don't think that the thinking has advanced any further than that on how you would do this even, as I say, if you did have the thousands of investigators because you've got to get to the point where you have some sense of what the threat is. That kind of communication and that kind of analysis has not taken place in the past and my understanding is that it's not taking place today.

MR. FIELDING: Not to beat this into the ground but what role does the university play? What role does the school play? There's a lot of fraud out there and we know it.

MS. MEISSNER: I am assuming that the university is doing its job of reporting the data because the only way that you know who didn't turn up for class is that the university told you who didn't turn up for class through the data system. Now, you know, the suggestion -- the implication of your question is that you also have to have an ongoing monitoring effort of the universities because they are not a one-size-fits-all. Most of them are very conscientious, some of them are not and that monitoring will have to be a parallel effort.

MR. FIELDING: That's for sure. That's something we will have to address.

Ambassador Ryan, on the same subject, in your interview, you were aware of this issue and discussed this issue with our staff but you also noted that there had been a lot of opposition from the education community to the imposition of this tracking system in years past. Is that correct?

MS. RYAN: Yes, sir. That was pre-9/11 of course.

MR. FIELDING: I understand that. But could you give us some idea of that history, please?

MS. RYAN: Well, as I remember it, when we were talking, we at the INS, about how to set up what is now called SEVIS, the

student tracking system, the universities were -- at least the universities that made their opinions or positions known -- were very opposed to it. They were concerned about issues of academic freedom. They were concerned about the fact that they would be reporting on students to the government. They were also concerned about the fact that there would be a fee involved that the student would have to pay and that we were expecting the universities to collect that fee and they didn't want to do that. Those were what I remember. But again, this was before September 11th.

MR. FIELDING: Is that problem solved now? Either of you, I'd be curious for your answers.

MS. RYAN: I mean, there may still be philosophical objections but it's -- you know, the door is closed.

MR. FIELDING: It's no longer as influential?

MS. RYAN: It's no longer for debate.

MS. MEISSNER: I think one thing that might help you in understanding this is that this -- because I would agree with Ambassador Ryan's characterization of the debate that was taking place during that time. There was a debate not only of concerns expressed by the schools. There was a strong feeling among some in the Congress that was similar and there was a lot of conversation that took place between the government agencies and members of committees and others about how intrusive a system like this would be and whether it was appropriate.

One of the things that happened with this particular issue is that it was put into the legislation in 1996 at the last moment in quite a closed setting and there had been no hearings. There had been no public debate so that it was the kind of a situation where once the legislation passed, you had the debate that typically happens before legislation passes when some of these things start to get sorted out and that was the environment that we were working in.

MR. FIELDING: Okay, thank you. Thank you both. Thank you, Mr. Chairman.

MR. KEAN: Thank you. I have one question. We saw in the staff statement -- I actually saw it in the video of something called The Red Book -- and the language sounded very much like something we would want to do today. I mean, people were being

alerted very strongly to the threat of terrorism in this country and people were being told, "Watch out for these people." What happened to the Red Book and did anybody ever consider bringing it back?

MS. MEISSNER: I didn't see the video and I don't -- it doesn't ring a bell.

MS. RYAN: I was here for the video. I had not heard of the Red Book before today. The Office of Fraud Prevention programs within the Bureau of Consular Affairs tried to do something similar in terms of training, showing officers examples of fraudulent passports or fraudulent visas or fraudulent stamps in passports, in foreign passports. One of the reasons why we developed the database of lost and stolen passports that we did develop, but I had not heard of the Red Book and I think it would be a very good idea to have something like that where people are trained to identify all the kinds of passports, stamps, visas that might exist and that might be fraudulently used.

MR. KEAN: Thank you.

Commissioner Lehman?

MR. LEHMAN: Yes. There are two huge loopholes in enforcement that I'd like to get both of your views on. One of them has been temporarily suspended, the other is politically correct even to mention. Transit Without Visa is one that has been temporarily suspended, in both of these loopholes we know that terrorists have used them and we must assume they'll continue to use them in the future if they remain.

Transit Without Visa is -- seems to be based on the fact that the airlines say, well we don't have any secure transit lounges and so therefore we need this system which is a form of additional revenue for them. Your former employees in INS say that they have been trying for 10 years to get this stopped but they've been blocked by airline lobbyists at every turn. In fact it was only suspended last August, nearly two years after the fact.

The other huge loophole is the sanctuary system. Deep cynicism has been expressed to us by immigration enforcement officers about the fact that New York City, L.A. and a number of other cities in -- Florida as an example, prohibit their enforcement officials from cooperating with Immigration. So much so that while the Commission was at Kennedy, a group of illegals

managed to get past Immigration and Customs and were waiting in the terminal quite visibly, but the INS or the security people said they can't, they're not allowed to go past the Customs Hall and the Port Authority Police are not allowed to enforce federal laws on immigration.

One would seem that both of these sort of cry out for a little bit of attention. Did either of you cry out against either of these huge loopholes that terrorists were using?

MS. MEISSNER: Well, let me begin with the Transit Without Visa. I think the Transit Without Visa, the way that you characterize that is -- I couldn't disagree with that. It is now, you know, as you say suspended, I don't know whether it should stay suspended or what. Obviously the way that it is a loophole needs to be addressed and I don't know whether the best way to do that is by maintaining this suspension of the Transit Without Visa or combining that and/or with a much more careful look as airports are being redesigned to be sure that, indeed there are secure lounges. Which ever way it's done, you know, we want to be certain, you know, that this is not -- this doesn't become a loophole again in the future as attention, you know, wanes.

And that is part of, you know, what I refer to as this pendulum problem that we have. We have a very difficult time just maintaining a steady course on these issues. So that would be one where it would be very important to maintain a steady course which is close the loophole whichever way is the appropriate way to do it.

Now, on state and local law enforcement, state and local law enforcement and its cooperation with federal law enforcement is a long standing issue in immigration and, you know, in other fields of law enforcement as well. But there is a real line between federal authority and federal expertise and responsibility to enforce the immigration law, and the responsibilities of state and local law enforcement. Now, you can resolve and work with that by good liaison and good cooperation, but that doesn't always exist.

So I think, you know, as far as I'm concerned the answer here is that the federal government has to take the lead in being absolutely certain that the working relationships are such that state and local law enforcement understands what's taking place, but the airport authorities according to the kind of a, you know, scenario that you're describing are also involved because people

like that shouldn't be able to leave the customs area so that it even becomes a problem for state and local law enforcement. That just sounds to me like a kind of a breakdown that can be solved administratively that does not -- I'm not sure that it requires -

MR. LEHMAN: It's a little hard because the cities that I'm talking about actually have written laws against cooperation.

MS. MEISSNER: And those originated -- I mean some of those have been around for a very long time. It traditionally -- it has not been state and local responsibility, this is federal responsibility and it should be done properly by the federal government.

MR. LEHMAN: How about treason? They shouldn't enforce treason either or selectively choose the ones they feel like enforcing? Is that the rule of law?

MS. MEISSNER: Well, but -- no, state and local governments don't have the responsibility to enforce immigration law. Federal government should do it.

MR. LEHMAN: I mean, that is the most preposterous statement I think I've heard all morning.

MS. MEISSNER: Well then, maybe I'm not understanding --

MR. LEHMAN: That local police don't have to enforce federal laws, and indeed it's quite all right to have them prohibited from enforcing federal laws?

MS. MEISSNER: I'm not sure that they've passed -- my understanding is that what they have said is that they will not -- they will not enforce immigration law and they will not work with federal authorities to do so. I mean, is it your information that that continues to be the case, post September 11th?

MR. LEHMAN: Absolutely. It was just reaffirmed in New York about three months ago. And nothing's been done by the federal government. I mean, they just say, oh well, okay.

MS. MEISSNER: Well --

MR. LEHMAN: I haven't seen any injunctions or court orders or cutting off of funds or whatever.

MS. MEISSNER: Well, what I can tell you is that we made a very aggressive effort during the time that I was at INS to make information available to state and local law enforcement so that they could determine whether they had somebody who was of interest to the federal government. We established a law -- what was called a law enforcement support center, which was an automated information resource so that -- 24/7 so that state and local law enforcement could get help from the federal government and information from the federal government. We felt that that was the proper way for the two sets of authorities to work together, and I think that -- I would still stand by that being a proper way and those relationships need to be --

MR. LEHMAN: Service rather than enforcement?

MS. MEISSNER: That's not a contradiction, that is communication and coordination and each law enforcement authority exercising its authorities in the way that it's been trained to do.

MR. LEHMAN: And Ambassador Ryan, did Consular ever get involved in these issues?

MS. RYAN: Not in the sanctuary issue. Transit Without Visa, I would agree with Commissioner Meissner that it is -- it was a problem. I think that the suspension is a good idea, probably should be made permanent. Before September 11th, one of the reasons why it was one of the rules that allowed people to do this was because airlines, American Airlines profited from people coming to the United States to transit the United States to go somewhere else. And that was always the reason why we were told that, you know, it was something that was just going to have to continue. If one could be sure that the airports had secure transit lounges --

MR. LEHMAN: Like every other country in the world?

MS. RYAN: Like every other country in the world, or most other countries in the world, then I think you could have an effective Transit Without Visa program, but I don't think that all of our airports have such secure transit lounges, and so then it becomes a problem that people could come to the United States and get out of the transit lounge and just disappear into the country.

MR. LEHMAN: Thank you both for your honesty and frankness on those.

MS. RYAN: Thank you, sir.

MR. KEAN: Thank you, this has been a very, very useful discussion.

MR. KERREY: Mr. Chairman, I've got a couple of questions down here.

MR. KEAN: I'm sorry, I didn't know, Senator Kerrey.

MR. KERREY: Well, I just came on board, so. Well, John, I can tell you Doris Meissner and I got to know each other very well when I was representing the state of Nebraska and there were a lot of business interests that did not want to enforce the law when it came to people working in meat packing plants in the States. I know that she was constantly running against people who did in fact put pressure on her not to enforce the law, and I'm encouraged that there has been a lot of training going on with people trying to get them to understand that the law needs to be enforced.

One of the areas of great interest to me is, what I think in a remarkable democratic system such as the United States has, there is a weakness in transition, a transitional weakness. We saw it in 1993 and Ambassador Ryan, you span the full roughly nine year period when there were two transitions. In 1993, I remember it very well, it was Somalia where mission creep got us into a considerable amount of trouble in Mogadishu in October, and in my view there's a similar sort of weakness that could be at play here.

And one of the questions I want to ask you begins with this. Look, this wasn't just terrorism, this is an Islamist form of terrorism. This is a religious based act against the United States of America. And you can't -- and part of the problem it seems to me is when we lump terrorism all together, it seems to me we miss a very important narrative, I think that -- and you could really see it after the World Trade Center I bombing. I mean there was a significant amount of disdain when Nosair tried to get the refund on the Ryder truck and there was a presumption these guys couldn't possibly be sufficiently sophisticated to carry out a really serious attack against the United States, and that was shattered on the 7th of August. And, Ambassador Ryan, I have great sympathy for your loss on that day of 1998.

But talk to me. I mean, during that period of time, you've got World Trade Center I, not -- this is not Tamil Tigers, this is not nationalists who are trying to territory, this was basically the beginning of an Islamist attack on the United States. And then you've got Mir Kansi open fire at CIA headquarters within 30 days of that moment in 1993. And then you've got, the big one for me, you've got three of them actually in a row, '96, '98 and 2000. And I'd like to know, in both of your cases, did you have a sense of increased urgency coming from the top? Either from President Clinton, and Berger and your own bosses in Justice and in State? Or from President Bush, following the declaration that al Qaeda was responsible for the USS Cole on October of 2000?

Because unless there's action from the top which occur obviously after the 11th, nothing's going to happen. I mean just say what among the things that I've acquired thus far in a relatively short time of reading the documents, is a surprising sense of the sophistication of 19 men plus some others who did in fact observe and were able to get visas and passports to come to the United States and in spite of the published story to the contrary, as you heard staff say, they were fraudulently manipulated. They came to the United States and as Secretary Lehman's pointing out, they broke the law.

And then we'll hear later in the panel, the observed U.S. commercial aircraft and saw additional weaknesses and they exploited those weaknesses. So we'll hear this afternoon staff say to us that by the spring 2001 there was a high probability they were going to be successful. And the question I've got over and over here I hear from people asking, well how in the heck did that happen? How -- I mean how could they be so successful against the United States of America? How could they exploit all of these weaknesses?

Every single point along the way we hear, didn't get enough money from the Congress, that was the problem, they didn't deliver the right intelligence, I didn't get this, I didn't get that, everybody's got, you know, a pretty good case of plausible deniability along the line. But did at any point in this point moment, take '93 as an example. You were there in 1993, did President Clinton say in 1993, after World Trade Center, either '93 or '95 after the trial of Ramzi Yousef had made it clear what was going on?

Did at any point in that time did you hear from the President of the United States through the principal, your principal in this case being the secretary of State, that we've got to change the way we're doing it? That we're going after Islamist extremists, that's who we're going after, it's not terrorists, its Islamist extremists and we know where they come from?

MS. RYAN: There were a couple of presidential decision directives on terrorism, on sharing information, I don't remember specifically talk about Islamic terrorists. The intelligence that we had, despite World Trade Center I seem to be always directed overseas, at our interests over seas.

MR. KERREY: Mir Kanshi was not directed overseas --

MS. RYAN: Mir Kanshi, is that --

MR. KERREY: -- he was at CIA headquarters, for God's sake.

MS. RYAN: That's correct, that's a single individual.

MR. KERREY: And those 19 airmen at Khobar Towers certainly came from the United States of America. They weren't going after Saudi citizens in '92.

MS. RYAN: No, but the attacks were abroad, the attacks on our embassies were abroad, so Consular Affairs put out all kinds of worldwide cautions and public announcements and travel warnings to alert Americans to dangers that we saw abroad.

MR. KERREY: How about after the millennium? How about after the millennium, I mean, my God, we were afraid the country was going to come to an end on New Year's Eve, and we got lucky, again as we'll hear later on in our hearings, we got lucky in Seattle. I mean, after -- are you saying to me that generally speaking that there was no expression from the top either during President Clinton's or President Bush's administration, that an attack on the United States can occur and one of the points of weakness might be the way we're granting visas overseas?

MS. RYAN: Not that I remember, that we were looking internally. We were looking at people who might attack us abroad --

MR. KERREY: Why, why? Didn't it surprise you today, you must -- I mean, it's got to cause you great pain to look at these

visas and passports, I mean, these documents that we put up earlier. I mean, doesn't it surprise you that neither President Clinton nor President Bush came and said that Islamist extremism is a serious threat and we've got to tighten up our consular offices or immigration policies in the United States?

MS. RYAN: But we had -- we required visas of Saudis, if that's the issue that you're talking about?

MR. KERREY: Oh no, I'm talking specifically the President of the United States saying not that terrorism or illegal or criminals are a problem, but that Islamist extremism is a problem. That that is a threat to the United States of America on our own soil?

MS. RYAN: Well, we knew that bin Laden is a threat to the United States of America and that he is an Islamic extremist, but I would ask you, sir, how would -- I mean, would you not issue to everyone who's a Muslim? Would you not issue visas? I mean, how would you get at this particular problem in terms of visas other than the way I described as we were trying to do?

MR. KERREY: Ambassador, with great respect, that's closing the Washington Monument solution, it's a straw man. No, I'm not proposing that we not grant visas to all Muslims, I'm merely suggesting that it seems to me, that in '93 and again in 2001 that presidential directives shouldn't have said that terrorism is a priority, it should have said that Islamist terrorism is the top priority and in neither case does it seem to be that that happened.

I mean, in your own words you didn't hear it in '93, you didn't hear it in '96, did you hear it in '98? After -- I mean, after Dar es Salaam in Nairobi that was a very sophisticated military operation.

MS. RYAN: Well, we knew that the CIA director, the director of Central Intelligence declared war on al Qaeda and bin Laden in '98 as a result of the bombings of our embassies. But again we ask you, I mean, Islamic extremism, what would we -- how -- I mean, I don't understand how --

MR. KERREY: But we attacked al Qaeda's camps on the 20th of August, 1998, and normally in that kind of situation you expect a counter attack, you expect something to happen. And I'm just asking -- I'd ask either one of you, did after 20 August 1998 you hear from the President that we're going to alter our

directive and we've got to change the way we're doing business issuing visas to people that are suspected Islamic terrorists?

MS. RYAN: No.

MR. KERREY: Was there any change coming from the top, either in Immigration or in the Consular Office? Either from the secretary of State or from the attorney general?

MS. RYAN: Not that I remember.

MR. KERREY: And I -- first of all -- I lastly join everybody else in thanking you for coming. Mr. Chairman, that's the end of my questions, I appreciate very much, your coming.

MR. KEAN: Thank you, Senator.

Ambassador, I thank you very, very much for your testimony.

MS. RYAN: Thank you.

MR. KEAN: We now come to our second panel, which we have entitled "An Incident in Florida." We have a single witness, Jose Melendez-Perez. Mr Melendez-Perez is a 26-year honorable veteran of the United States Army and in his 12th year as an immigration inspector at Orlando International Airport. Formally an employee of the Immigration and Naturalization Service, he is now employed by the Department of Homeland Security's Bureau of Customs and Border Protection. Would you rise, sir, to take the oath?

(Witness sworn.)

Thank you very much, sir. Mr. Melendez-Perez?

MR. JOSE MELENDEZ-PEREZ: Good morning, Mr. Chairman Kean, Vice Chairman Hamilton, members of the Commission, thanks for letting me speak to you today. Before I begin to relay this story of encountering. I had on August 4, 2001 would a Saudi male there are two things you should know. Number one, on this day I was just doing my job. I'm honored and proud that the work I did apparently did help stop a potential hijacker in September 11 tragedy and I'm honored to be here today.

Two, when I conducted the secondary inspection of the subject, I was going on my experience and training in interview techniques that I learned primarily in the military, immigration

law and fraud learning in the Immigration and Naturalization Service and my years of experience at Orlando International Airport of serving and working with Saudi nationals, many of whom come with their families through Orlando International on their way to Disneyworld.

On August 4, 2001 I was assigned as a secondary inspection officer at the Orlando International Airport. My supervisor at the inspection between primary and secondary inspections and on this day I was assigned to secondary inspection. At approximately 17:35 hours I was assigned the case of a Saudi national who had arrived on Virgin Atlantic flight 15 from London Gatwick Airport. As Saudis coming through Orlando to travel to Disneyworld are common, I have plenty of line experience with Saudis.

In this particular case the subject was referred to secondary inspection because the primary inspector could not communicate with him and his arrival/departure form I-94 and custom declaration form C6059-B were not properly completed. I first queried the subject's name, date of birth and passport number through the computer system with negative results. Subject documents appeared to be genuine. A search of the subject and his personal belongings were also negative.

Subject was in IDENT and photographed. In addition a complete set of fingerprints was taken on form FD-249. Through my INS training and military experience my first impression of the subject was that he was a young male, well groomed with short hair, thin mustache, black long sleeved shirt, black trousers and black shoes. He was about 5'6" and in impeccable shape with large shoulders and thin waist, he had a military appearance.

Upon establishing eye contact he exhibited body language that appeared arrogant. In fact, when I first called his name in secondary room and matched his name with papers, he had a disturbing look. I had the impression of the subject that he had knowledge of interview techniques and had military training. Upon my initial review of the subject paperwork and documents, I noticed that he did not have a return airline ticket or hotel reservation. Upon learning that the subject did not speak English, at least that is what he want us to believe, I contacted an Arabic interpreter from the Department of Justice interpreter list.

My first question to the subject through the interpreter, why he was not in possession of a return airline ticket, the subject became visibly upset and in an arrogant and threatening

manner, which include pointing his finger at my face, stated that he did not know where he was going when he departed the United States. What first came to mind at this point was the subject was a hit man. A hit man doesn't know where he's going because if he's caught, that way he doesn't have anything or any information to bargain with. My wife said that I was watching too much movies -- (laughter).

Subject then continued stating that a friend of his was to arrive in United States at a later date and that his friend knew where he was going. He also stated that his friend will make all the arrangements for subject departure. I asked him if he knew where his friend was to arrive in the United States and he respond that his friend was to arrive in three or four days. I asked him the purpose of his trip was and how long he want to stay. He responded that he will be vacation and traveling through the United States for six days.

At this point I realized his story did not seem plausible. Why would he be vacationing for only six days and he spend half of his time waiting for his friend? It became apparent that the subject was being less than truthful concerning his true intention. At this time I ask him again where he was going to stay? He say a hotel. I then told him that without knowledge of the English language or a hotel reservation he would have difficulty getting around Orlando. He answered that there was someone waiting for him upstairs.

When asked the person's name he changed story and said no one was meeting him. He said he was to call someone's home, that he would contact someone locally to pick him up. I then asked the subject for the person's phone number and name and he refused to provide, stating that it was none of my business. He stated that it was a personal matter and he did not see any reason for me to contact that person. The subject was very hostile throughout the entire interview that took approximately one and half hours.

Subject was in possession of \$2,800. U.S. dollars and no credit card. This amount did not appear sufficient for a six day vacation plus a hotel room and a return ticket since one way to Dubai where he originated from would cost approximately \$2,200. When confronted with these facts he responded that his friend was going to bring him some money. I then asked why he will bring you some money. He reply, " Because he's my friend." I then ask how long do you plan to stay or how long do you know this person.

He answer, "Not too long." I don't have any friends who would buy a plane ticket for me, I know that fact.

And then I say to myself I would try to place him under oath and explain the consequence of giving a false statement and see how he respond. He agreed to answer under oath. However, when I ask the first question, he say, "I won't answer." The Arabic interpreter stated to me something to the effect that something is not right. At this point I gave my supervisor a synopsis of the case and explained my suspicions that the individual was malafide i.e. that his true intent in coming to the United States was not clear and he appeared to be very evasive.

After presenting the case to my supervisor, he felt that assistant airport director should be contacted for further instructions. Normally second line supervisor such as AAPD are not contacted in such matters but because of the fact that we have provided no specific ground for removal, higher up confirmation was needed. My supervisor then proceeded to call the AAPD at home to explain the case and get concurrence for removal. After my supervisor presented the fact to the AAPD, he then asked to speak directly with me.

The AAPD asked me numerous questions concerning the case. I explained that apart from not having a return ticket and possibly not having sufficient funds, the subject appeared to be malafide. I further explained to the AAPD that when the subject looked at me I felt bone chilling cold effect -- the bottom line, he gave me the chills. You would have to be present to understand what I'm trying to explain. The AAPD then asked if I had tried to place him under oath. I replied that I had tried to place the subject under oath, but the subject refused to answer my questions.

The AAPD then stated that under section 235(1)(a)(5) of the Immigration Nationality Act, an applicant could be required to state under oath any information sought by the immigration officer regarding the purposes and intention of the applicant in seeking admission to the United States. The AAPD further stated that he was convinced from what I have stated and my belief about the subject, that the individual was malafide and should be allowed to withdraw his application or be set up for expedited removal.

I then proceeded to advise the subject that he did not appear to be admissible to the United States. He was offered the opportunity to voluntarily withdraw his application for

admission. However, at this time he became very upset and stated that he wasn't about to pay for a return ticket. I stated to him, "No problem. We will place you in a detention facility overnight and tomorrow we will make the necessary arrangement to get you a plane ticket so you come back where you came from." The interpreter stated to him the fact that we were planning to place him in a detention facility and then he agreed to withdraw and sign his I-275.

Along with another immigration inspector, I escorted the subject to his departure gate for his removal. Before boarding the aircraft, the subject turned to the other inspector and myself and said in English something to the effect, "I'll be back." On August 4, 2001, the subject departed via Virgin Atlantic flight 16 to London with connection flight to Dubai.

On September 11th, 2001, while attending a meeting with the warden at the Central Florida Processing Center (Department of Corrections) concerning the use of their firing range, a correction officer came in and advised the warden of the incident that just occurred in New York City. As I watched the television, I could not help but think of the two cases I processed and others concerning Saudi nationals. I immediately contacted Orlando Airport. I do not remember which officer I spoke with but I asked them to look up the cases and contact the FBI agent assigned to the airport. To the best of my knowledge, the immigration officers made copies of the August 2001 incident and provided the paperwork to the FBI. The FBI have never interviewed me. I do not recall ever speaking with Gitmo officials, INS headquarters contacted me twice.

I have no other contact with intelligence or law enforcement officials outside of legacy INS. The only government contact I have had about this incident came from the September 11th Commission this past fall when the border team investigating the incident.

MR. KEAN: Thank you very much, sir.

Commissioner Ben-Veniste.

MR. BEN-VENISTE: Thank you for your testimony, Officer Melendez. Let me ask whether it is correct that at no point during the summer of 2001 did you receive any notification that there was a higher danger or threat level of potential terrorists coming into the United States.

MR. MELENDEZ-PEREZ: Which timeframe, sir?

MR. BEN-VENISTE: In the summer of '01 at the same time as this incident.

MR. MELENDEZ-PEREZ: Not that I recall, sir.

MR. BEN-VENISTE: And in looking back at this matter, had you received any information as to whether this individual, Mr. Kahtani, had actually been interviewed in connection with his visa application to obtain a visa to visit the United States?

MR. MELENDEZ-PEREZ: That is negative, sir.

MR. BEN-VENISTE: And that is the case that our staff has found no indication that Mr. Kahtani was physically interviewed by a consular officer. Let me ask you this, as of August '01, when this incident occurred, among the INS inspectors in Orlando, was there a recognition, sir, that greater deference would be given to a Saudi national than, say, a Mexican or a Jamaican?

MR. MELENDEZ-PEREZ: Could you rephrase the question?

MR. BEN-VENISTE: That you would be more permissive in admitting a Saudi rather than individuals from certain other nations?

MR. MELENDEZ-PEREZ: Well, since I came in the service in 1992, the consents of the Saudi people was they have to be treated with more tact for their nation. You know what I mean. That's something that is not inviting. However, any time that a new person come on board, basically, that feeling is communicated by the more experienced inspectors.

MR. BEN-VENISTE: That if you hassled a Saudi citizen or that you took more time up to the point even of permitting entry but you gave them more attention that you might catch some kind of negative criticism?

MR. MELENDEZ-PEREZ: That is correct. Normally, as a matter of fact, the day that I was working on this particular incident, one of my co-workers stated to me, "You're going to get into trouble because you're trying to refuse a Saudi." My answer was, "You know, I have to do my job and I cannot use nationality as a guidance how to do or conduct my interview or take care of my business."

MR. BEN-VENISTE: Officer Melendez, let's review the factors that you considered on that day with respect to Mr. Kahtani. He was a young man of 26 years of age traveling alone whereas the vast majority of Saudi visitors to this country who depart at Orlando are in family groups.

MR. MELENDEZ-PEREZ: That's correct.

MR. BEN-VENISTE: Mr. Kahtani appeared unable to speak or understand the English language.

MR. MELENDEZ-PEREZ: Correct.

MR. BEN-VENISTE: Mr. Kahtani was travelling on a one-way ticket and had no good explanation about where he was going once he was to depart from the United States.

MR. MELENDEZ-PEREZ: That is correct.

MR. BEN-VENISTE: His physical appearance was that of an individual who was very fit and perhaps had military training.

MR. MELENDEZ-PEREZ: That is correct.

MR. BEN-VENISTE: His attitude was strikingly unusual. He was arrogant and combative from the start, fixing you with a piercing glare and became even more confrontational as the interview process proceeded.

MR. MELENDEZ-PEREZ: That is correct, sir.

MR. BEN-VENISTE: And despite his lack of facility in the English language, he had no hotel reservation and gave contradictory answers as to who was supposed to have assisted him either immediately or within three days of his arrival.

MR. MELENDEZ-PEREZ: That is correct, sir.

MR. BEN-VENISTE: And, seven, he had insufficient funds to spend six days as a tourist in the United States and then to purchase a return ticket to Dubai.

MR. MELENDEZ-PEREZ: That is correct.

MR. BEN-VENISTE: And when you asked for reasonable information about the identity of the individual who would be meeting him or assisting him or the person he would contact back

at home who would arrange for information to be provided about the friend who was going to lend him money, he refused to answer.

MR. MELENDEZ-PEREZ: That is correct, sir.

MR. BEN-VENISTE: Your interpreter confirmed that there was something seriously suspicious about this man.

MR. MELENDEZ-PEREZ: That is affirmative.

MR. BEN-VENISTE: And Mr. Kahtani refused to answer questions once you administered an oath.

MR. MELENDEZ-PEREZ: That's correct.

MR. BEN-VENISTE: And on the basis of all these factors, you concluded that Kahtani might well be a hit man here in the United States to do harm.

MR. MELENDEZ-PEREZ: That is correct.

MR. BEN-VENISTE: And yet, despite all of these factors, because you were dealing with a Saudi national, you were not certain by any means that your superiors would agree with your determination to deny entry.

MR. MELENDEZ-PEREZ: That is correct.

MR. BEN-VENISTE: What was the perception at that time at the INS among your colleagues as to whether the supervisors or the higher-ups would back up a line officer such as yourself under such circumstances?

MR. MELENDEZ-PEREZ: Well, I think that the difference on the supervisor decision to continue on to get higher approval, it was based on credibility. I mean, once you establish credibility with your subordinates and your superiors and they know when you claim something is not right, it's because you really indeed have the facts. You know, that's the reason that I think I did make a difference and he went along to contact somebody else, high echelon supervisor. And sometimes I feel that if the outcome could have been the same if somebody else was making the phone call. I wish inspector was the one who was doing the secondary inspection. That's not taking anything less from my co-workers, but would they have pursued the phone call taking in consideration that he was a Saudi national.

MR. BEN-VENISTE: So the presumption was against the line officer, the secondary officer determination that an individual of Saudi nationality ought to be refused entry. You had to make you case, the burden was on you.

MR. MELENDEZ-PEREZ: That is correct. That is correct.

MR. BEN-VENISTE: Now, as we now know, with the benefit of investigations subsequent to 9/11, Mohamed Atta, perhaps the ringleader of all the terrorists here in the 9/11 plot, was at Orlando International Airport on August 4, 2001, the very day that Mohamed Kahtani claimed at least in part of his interview with you that someone was upstairs to meet him. And we know that Mohamed Atta made a telephone call from that location to a telephone number associated with the 9/11 plot. On the basis of that information, as well as significant additional information which we are now not at liberty to discuss in public session, it is extremely possible and perhaps probable that Mohamed al Kahtani was to be the 20th hijacker.

Based on that premise, and taking into account that the only plane commandeered by four hijackers, rather than five, crashed before reaching its target, it is entirely plausible to suggest that your actions in doing your job efficiently and competently may well have contributed to saving the Capitol or the White House, and all the people who were in those buildings, those monuments to our democracy, from being included in the catastrophe of 9/11, and for that we all owe you a debt of thanks and gratitude.

(Applause.)

Let me ask you a couple of questions. We are running a bit late. With respect to your recommendations that you would make, with respect to perhaps training or otherwise empowering individuals now in the Department of Homeland Security, where you are an officer, what would you recommend that the higher ups here from the people on the line every day doing their job?

MR. MELENDEZ-PEREZ: I would like to emphasize in training, training is extremely important. I don't know what kind of training -- interview techniques are there conducted -- are conducted at the academy at the present time because it's under a new program, but I think that the interview techniques not only should address why the person is coming to the United States but also should include consequence, and going to another line of

questioning, that when you feel that something is wrong, you can go that direction.

I strongly feel that time should not be a factor. You know, you've got to take as long as you need to, to complete your job. Knowledge is wonderful. We have greater knowledge since 2001, however, the human factor has got to be there. The human factor has got to be there. The questions have to be asked, the body language has to be checked, because by conducting a good interview there's a lot you can determine. That sixth sense must come to play to make the right decision.

About the round trip tickets, I think that that is something that some other countries will not take, i.e. United Kingdom. If you go to the United Kingdom without a return ticket, they will turn you right around. You won't get in the country. It's only one piece of paper, that you are inadmissible.

Support the supervisor's decision without fear that they are going to get in trouble. I mean, we will make some wrong decisions. I mean, that's human nature. But they have to understand -- everybody in the chain of command has to understand that we have to do what we have to do. And you're better off to make a wrong decision and send somebody home that didn't have no reasons by going home than to admit somebody because we will be afraid of the letters and the congressional letters or letters from somebody and hamper the inspector and supervisors from making the right decision in some locations.

The US-VISIT, we think that is a great program; however, we have concerns about the departure portion of it. I mean, being (manned just by a machine) how can we determine that this person went home. I think that it would be a great tool. We've been talking about it for years but by just having that system not manned by human beings that we can confirm, I don't think that that is the right way to do it. My example for that is that when we decline or refuse somebody, we escort the person to the aircraft. We sit in the jet-way until that plane push back to ensure that the person go home. So we should use the same principle when we use in the departure portion of the US-VISIT program. I mean, that is my personal opinion.

MR. BEN-VENISTE: Now, you are with Customs, the last line of formal interception of individuals coming into this country. Would you have a recommendation with respect to consular officers who are interviewing or who perhaps should be interviewing visa applicants in terms of training for and providing techniques for

interviews in order to make determinations on the other end of the journey, on the start end of the journey, rather than on the very last point at which an individual could be refused entry?

MR. MELENDEZ-PEREZ: My recommendation on that regard would be that we should receive the same type of training for our interviewing techniques and we should know what the consular is asking this person abroad so we can continue perhaps in a different line of questions to ensure that this person has obtained a visa through the proper -- say legally, all right, because sometimes we have people that go to the embassy, get their visa, and then we have determined through the line of question that the visa was obtained through fraud, that the guy didn't have what was required in order to obtain that visa. And then it would be our job to turn those people back.

MR. BEN-VENISTE: And finally, let me ask you, Officer Melendez, about the documentation for one of the hijackers who did successfully enter and reenter the United States, Mohamed Atta. Our staff has shown you the documents relating to Mr. Atta's entry into the United States and had asked for your view in hindsight, but trying to put yourself in the present moment looking at an individual who presented himself with the documents that Mr. Atta presented when he entered the United States in 2001. And what did you conclude?

MR. MELENDEZ-PEREZ: Well, based on the guidance from the law, the person coming in to be a student, he must be in possession of a M-1 or F-1 visa. When he presented himself to the primary inspector without the proper documents, that was grounds to be recommended refusal. I would have recommended refusal to my supervisor. He was not in possession of the right visa.

MR. BEN-VENISTE: Can you explain that?

MR. MELENDEZ-PEREZ: Well, the person is coming to the United States as a student, must carry an I-20, take it to the embassy and get the proper visa. If the person, for example, comes to the United States as a prospective student, he will come with a B-1 or V-2, B-1 which will be a business, or V-2 will be a visitor for pleasure, find a school of his choice, and if he's accepted, he will submit a change of his status. When the person is in the United States, if the status is approved, the change of status is approved, he won't need the visa. He'll only need the form the action form that he sent for the service center, and he will go ahead and continue his studies.

However, once the person departs the United States, if he's coming back to resume his studies, he must have the proper visa, which means that he must take the I-20 from the particular school, go to the embassy and obtain the proper visa. If the person fails to do that, then he is not in possession of the right visa, so he could be denied entry to the United States.

MR. BEN-VENISTE: So in summary, is it your view that because he presented himself with an inappropriate visa, that he somehow talked his way into the United States, despite the fact that his papers were not in order?

MR. MELENDEZ-PEREZ: It is possible. That's my perception because he didn't have the document.

MR. BEN-VENISTE: And if Mr. Atta on the spot had said, well, never mind about that, let me just come in as a tourist, what would have happened with respect to that?

MR. MELENDEZ-PEREZ: He presented himself as a student. He must have proof that he was a student. He cannot change the reason that he's come into the United States after he makes the initial presentation to the primary inspector.

MR. BEN-VENISTE: Was there any other characteristic about Mr. Atta such as his age that would have influenced you?

MR. MELENDEZ-PEREZ: Well, his age and traveling by himself. Normally a person traveling by himself coming to this country normally is coming on business. Most of the time persons coming by themselves -- I can say a good percentage of the time they came with their families when they came to vacation. Remember that normally in my case, Orlando International, normally all those people are coming to go to the attractions, so that automatically would raise a flag if a person has come by himself with a V-2 as a visitor. Unless the family is already here, because that happened sometimes. A family came a few days prior and the person is going to meet his family. But a male traveling by himself, no, sir.

MR. BEN-VENISTE: Mr. Chairman, I don't have any further questions, only because of the time, and I know we have much to do, but again, I want to thank Mr. Melendez from all of us and for a grateful nation for an individual using his common sense and his skills, doing his job in a way that makes us all proud.

MR. KEAN: Commissioner Roemer.

MR. ROEMER: Thank you, Mr. Chairman.

I want to join in the salutes and the accolades to you on a job well done and a job that's extremely difficult to do on a daily and hourly and minute-by-minute basis, especially the good detective work in that sense and the common sense that you used prior to 9/11. Let me ask you a couple of questions about this case in particular, just to try and get a better sense for what you were feeling in your heart and your gut. You said that you recommended this case and you say in your testimony from Mr. Bosch, who was a supervisor to you --

MR. MELENDEZ-PEREZ: That's correct.

MR. ROEMER: And you presented the case to Mr. Bosch and you took the suspect into another room, even though his documents were clean. What were the top two reasons? What was it that really bothered you about this guy? His documents were clean, there's no really obvious compelling reason why you might pick him out. You've just said to our commissioner that there might have even been some pressure on some of the inspectors to not be as tough on Saudis. What was it in particular, two things that you could, you know, recommend to other people in your job?

MR. MELENDEZ-PEREZ: Well, number one was the person's behavior, okay, the demeanor, the way he was addressing, arrogant. Number two, that he was impeccably dressed with a military appearance, by spending 26 and a half years in the military, wearing short haircut and well, well trimmed moustache normally is done in the military. And then the real, real truth about the whole issue was that was a gut feeling that something wasn't right. The more questions that I asked, the less plausible answers that I get -- i.e., you know, why he was going to spend three or four days waiting for somebody when he was going to be traveling through the United States for six days. I mean, that doesn't make any sense, you know. And then every time that he come up with one answer, he'd go to another and he'd contradict himself, you know, and so evasive. So he rang all the whistles, you know, that something wasn't right.

MR. ROEMER: So in order to then take this to the higher level and get Mr. Bosch to recommend to Mr. Hernandez, his supervisor, who's at home and has the day off and maybe is in bed, you then say, I feel strongly enough about this particular case. This guy's impeccably dressed. I have a gut sense about

him. Something's not right. I have no facts to base this on but something really bothers me about this person. How often is it that Mr. Bosch might have said to you in this kind of case, let's not get Mr. Hernandez out of bed on his day off. We don't have this factually based. This is just your gut sense. As good a person as you are, maybe you have the right sense on this one, I'm not going to buck this one up. Does that happen very often?

MR. MELENDEZ-PEREZ: No, sir. No, sir.

MR. ROEMER: Once you decide that this is even a case not based on fact, you can get this bucked up from Mr. Bosch to Mr. Hernandez?

MR. MELENDEZ-PEREZ: Yes, sir. I feel strongly that that's the case. I have this in previous incidents, in a few occasions when I have similar -- or some kind of same problem and they are backing me up and we have been right.

MR. ROEMER: With respect to Mr. Hernandez's conversation with you, he asked to get on the phone directly with you?

MR. MELENDEZ-PEREZ: Yes, sir.

MR. ROEMER: And he agrees with you right away?

MR. MELENDEZ-PEREZ: Well, he asked me a few questions first. You know, I mean, I explained to him the line of question, that he didn't have a return ticket, that he said that somebody was waiting for him. You know, I just give him a whole synopsis of it and then he asked me had I tried to place him under oath. And when I said, "Yes, but he refused to answer," then he went to understand -- you know, and then when I told him that he should be there to see how this guy's behaving, you know, I mean, something is not right, that's when he started to -- hey, I agree with you. If you're telling me that's the way it is, that's the way it is. So when I told -- when he asked me about the oath and I told him that he refused to answer, so he says, "We got him under 235."

MR. ROEMER: And you're doing all this through interpreter when you're asking Mr. Kahtani questions about his cash and who he's meeting and he lies about trying to meet somebody, this is all through an interpreter where?

MR. MELENDEZ-PEREZ: That is correct. Right in the -- what we call secondary offices.

MR. ROEMER: So this interpreter is sitting with you?

MR. MELENDEZ-PEREZ: No, sir, he's on the phone. He's here in Washington.

MR. ROEMER: On the telephone?

MR. MELENDEZ-PEREZ: We got a speaker phone and that's what we do all day interviews when we use interpreters.

MR. ROEMER: And is this awkward at all for you or is this communicated pretty quickly when you're doing it through a speaker phone?

MR. MELENDEZ-PEREZ: We don't have no problems.

MR. ROEMER: Finally, on a question about post-9/11 now, you say in your interview with your staff -- the question is "Do you have the manpower today to make this work?" And you say, "Well, we only have four secondary rooms and that's not enough," meaning that these four rooms now in a post-9/11 environment, people are a lot more diligent, they're looking for these clues, they're picking them up. These rooms fill up very quickly now?

MR. MELENDEZ-PEREZ: Very quickly. Yes, that's affirmative, sir.

MR. ROEMER: And how quickly do they fill up? If you're on an average day and your first couple of hours on the job, how fast are these secondary rooms filled up?

MR. MELENDEZ-PEREZ: Well, normally in Orlando International we have all the international flights come about the same time. They are 747s. Virgin Atlantic have three flights, British Airlines have one, and we can fill those things in about 40 minutes. I mean, sometimes we have even about 20, 25 people just waiting to be interviewed for one reason or another.

MR. ROEMER: You have a long queue then waiting for --

MR. MELENDEZ-PEREZ: Yes, sir.

MR. ROEMER: -- the four rooms.

MR. MELENDEZ-PEREZ: We have right now, yes, sir.

MR. ROEMER: And is there ever any subtle pressure on you not to get that line too long or do you keep --

MR. MELENDEZ-PEREZ: No, sir.

MR. ROEMER: Good.

MR. MELENDEZ-PEREZ: No, sir. All that has changed since that day.

MR. ROEMER: And do you need more rooms and more personnel?

MR. MELENDEZ-PEREZ: Well, that's affirmative. We need more space. But my understanding is that they're working on it because the new merger with Customs and Border Protection, they're going to rearrange the setting of the area.

MR. ROEMER: And split up the rooms or build more?

MR. MELENDEZ-PEREZ: I don't have any idea how they're doing it but I know that they're building some engineering people for the Orlando Greater International Airport personnel and they're working on some blueprints.

MR. ROEMER: And finally, last question, has the attitude of some deference to the Saudis changed in the post-9/11 environment?

MR. MELENDEZ-PEREZ: Yes. Most definitely yes, sir.

MR. ROEMER: Thank you very much and thank you again for a job well done.

MR. MELENDEZ-PEREZ: Thank you, sir.

MR. KEAN: Commissioner Lehman.

MR. LEHMAN: Yes, you are a first class professional and you did your job. One would have hoped that higher up the chain, someone would have said this being two years after -- three years after the attacks on the embassies and after the director of CIA had declared war on al Qaeda and all of the American lives that had been lost in various attacks of the previous decade, that someone would have said above your level, "We need to have the FBI come in and perhaps CIA to talk to this guy," because your initial reaction was valid. He was obviously up to no good. He was a Saudi. He was certainly in the prime suspect area. Why

was he just sent back? I'm talking above your level. Why didn't somebody call the FBI and say, "You may want to talk to this guy"? Is the relationship at the working level good enough between FBI and Border Security? Was it then and is it now? Is there any relationship between, for instance, your team at Orlando and CIA? Is there a way to call them in.

MR. MELENDEZ-PEREZ: Yes, sir. Well, the reason that we didn't contact the FBI or any other agency at that time, I tell you the truth, it never went through our mind. Our main intention was to refuse the entry. Just ensure that he didn't make the entry into the United States. That was my main concern at that time. Number two, I didn't have any grounds as far as the 235 which is refusing to answer under oath. So, at that time, I believe that we didn't have that mentality, you know, to contact the FBI. We didn't have anything. If we had found some documents or something that is related to something that would incriminate a person, yes, we will have contacted the FBI.

MR. LEHMAN: So the whole framework was one of law enforcement and criminality rather than intelligence and policy?

MR. MELENDEZ-PEREZ: That is correct, sir. The FBI, we have a great relation with them. We always have. I have never spoken to them with reference to this particular case but I can tell you that they are always in the area. As a matter of fact, last couple of days or last couple of weeks, we have some incidents in which we had tipped off and both agents have come up and show up. I think there is an outstanding relation with them.

MR. LEHMAN: One last question. If everybody in the chain in the different agencies involved had been as professional as you were, the attack would not have taken place. Yet in the statistics, the turnover in the officers now in the new Border Control combined agencies is about 15 percent, which is double what it is in the rest of the government. At least, it was at the time of 9/11. Is your feeling today that people like yourself are being retained? Is the morale high? Do people want to stay or is there still a sense of frustration that is driving good people out? Tell the truth and chain the devil --
(laughter.)

MR. MELENDEZ-PEREZ: Well, it is a small problem that we have and we're looking forward that that get corrected down the line. But we have to understand something. We have three legacy units coming to become one and each one have an individual task. When you have a large family, you know, you have a family and

then you have a large family at once, then everybody wants to have their own share or everybody wants to go their own direction. So I foresee that, in the future, you know, it will take time, everybody understands that we are one big family now and that is coming throughout the whole United States. It going to take time to determine if people will have a better morale and will want to stay, we'll have to see and wait because right now, perception is perhaps this side is getting a large portion of the cake versus this portion is getting this less part of the cake and I'm going to leave it at that. Okay.

MR. KEAN: Last question, I guess, from the Commission. Commissioner Gorelick.

MS. GORELICK: Thank you, Mr. Chairman.

Inspector Melendez, at the time that you had your exchange with al Kahtani, Mohamed Atta is in fact upstairs. He is outside of your jurisdiction. But he is in that airport, we believe, and that airport has security. Local law enforcement has a presence there. Would it have been possible at the time under the rules that you were operating under at the time for you to call law enforcement that was on the other side of the barrier that you manned to say there may be someone here that we want to look for and talk to?

MR. MELENDEZ-PEREZ: Normally what we do is when we identify that somebody is waiting for somebody, we ask him the name of the person and we page him. Or we go and look for that person if that person identifies himself, we go and look for that person at the main terminal and we ask them the question to verify the intent or the reason that the person that they are waiting for is coming to the United States. In this case, we didn't call anybody because the person didn't want to identify or give me the person's name. He only said somebody was waiting for him and then when I asked him for the name, he changed his mind, No, nobody is waiting for me.

MS. GORELICK: Do you have the authority in these secondary interviews to search the person?

MR. MELENDEZ-PEREZ: Yes, we do.

MS. GORELICK: And did you search Mr. Kahtani?

MR. MELENDEZ-PEREZ: You know that I have been asked the same question previously. At that time normally what we do when

we have what we call a turnaround which we have aircraft that we won't admit, we get a few different officers involved on it. Like I was doing the interview and somebody else might check his luggage and things like that. We have another officer that does the fingerprinting. So I can't state for a fact that we did check his luggage. But it's my belief that it was checked but I really can't confirm it because I didn't do it myself.

MS. GORELICK: But, in the ordinary course, you had the authority to --

MR. MELENDEZ-PEREZ: Oh, yes.

MS. GORELICK: -- both search and to reach, again, across the barrier to find the person who is supposedly accompanying or meeting the person as to whom you have suspicions?

MR. MELENDEZ-PEREZ: That is correct. The policy is we check the system, we check the luggage, we check the personal belongings, we check everything before. Normally, the checking of the luggage is very interesting when you don't have anything that you can base yourself on. You're looking for additional information to --

MS. GORELICK: If the person doesn't respond to the page, would you reach out to the security and law enforcement otherwise in the airport to apprehend such a person?

MR. MELENDEZ-PEREZ: No. Normally what we do is we get the airline involved to search for that person that we're looking for. But we have never been in a position to get the law enforcement officer to arrest somebody. If somebody is in the United States, you know, he's here. We concentrate on the people making the entry to the United States. That's the one that we concentrate on.

MS. GORELICK: Thank you.

MR. KEAN: Thank you very much, Mr. Melendez-Perez.

MR. KERREY: Mr. Chairman, I have one --

MR. KEAN: Yes. Very briefly, Senator Kerrey.

MR. KERREY: I will try and be brief. Officer Melendez, can one presume that if this gentleman had been skinny and an unkempt moustache and chewed gum and spoke a little English and had a

return trip and plenty of cash and somebody could possibly identify him, that he could have gotten through?

MR. MELENDEZ-PEREZ: It could have been possible, yes, sir.

MR. KERREY: So do you feel confident relying on the kind of remarkable instincts that you showed at the border, relying on instinct alone to make sure that somebody who does have hostile intent against the United States of America is not getting through?

MR. MELENDEZ-PEREZ: Yes, sir. I feel like if the primary inspector refer because she could not communicate with the individual and then it was in my hands to make that decision and perhaps the alert was raised because of the way he was dressing but perhaps a good line of question will never -- I mean, never assume that everything in right. Just go with your gut feelings and ask the questions and pass the battle line.

MR. KEAN: Thank you, Mr. Melendez-Perez. Thank you very much. You are an honor to your profession, an honor to the United States government and thank you very, very much for your service to this country.

MR. MELENDEZ-PEREZ: Thank you for the invitation, sir.

MR. KEAN: We will adjourn now until 1:00.

(Lunch recess.)

MR. KEAN: We will now reconvene. Once again we're going to begin with a staff statement, introducing Dr. Zelikow.

MR. ZELIKOW: Members of the Commission, working with you your staff has developed initial findings on the identification, watchlisting and tracking of three individuals who helped carry out the 9/11 attacks upon the United States. Those individuals are Nawaf al Hazmi, Salem al Hazmi and Khalid al Mihdhar. These findings and judgments may help your conduct of today's public hearing and inform the development of your recommendations. This report reflects the results of our work so far. We remain ready to revise our understanding of these topics as our work continues.

This staff statement represents the collective effort of a number of members of our staff: Douglas MacEachin, Barbara Grewe, Susan Ginsburg, Lloyd Salvetti, Alexis Albion, Thomas

Eldridge, Michael Hurley and Lorry Fenner did most of the investigative work reflected in this statement.

Our staff was fortunate. We could build upon a substantial body of work carried out by the Joint Inquiry organized in 2002 by the Intelligence Committees of the House and Senate. We also relied on some high quality work performed by the National Security Agency along with cooperation from the Central Intelligence Agency and the Department of State. Again we were impressed by the high caliber of the professionals engaged in public service.

The Congressional Joint Inquiry highlighted this story as one of failed opportunities to put these suspected terrorists on a watchlist to prevent them from entering the United States. Therefore the lesson learned, as director of Central Intelligence, George Tenet put it, was to do a better job of putting people on the watchlist to correct what he called, quote, "A weakness in our internal training and an inconsistent understanding of watchlist thresholds," close quote. We believe the portrayal of this story as a watchlisting failure may literally be true but we think this label is profoundly misleading.

One: no one can know the might-have-beens, but we do not think it is likely that putting the three future hijackers on a watchlist would, by itself, have prevented the 9/11 attacks. As we pointed out earlier today, al Qaeda adapted to the failure of some its operatives to gain entry into the United States. None of these three individuals were pilots.

Two: the watchlisting label reinforces the sense that watchlisting is a chore off to the side of core intelligence work. Of course, everyone rightly acknowledges it is a necessary chore, something that busy intelligence officials just have to remember to do, yet they did not see it as an integral part of their own intelligence work. The opportunity to prevent the attacks would not have arisen just from preventing these people from entering the United States, it would have come from intelligence work that used watchlisting as a tool.

Three: the watchlisting label also distorts the analysis of accountability. It tends to cast a harsh light on whether one or two people at headquarters did their job. That focus may be unfair. It certainly is too narrow. We suggest instead that the watchlisting failure was just one symptom of a larger intelligence failure. The failure raises questions for the

Commission about the CIA's and the intelligence community's management of transnational intelligence operations.

We will do what we can to reconstruct this story given the appropriate constraints on what can be said about such topics in public. The story is detailed, but the details are essential. We'll start with the initial lead and the hindsight issue. The lead in this case came from the analysis of communications by the National Security Agency or NSA. The NSA and the intelligence community obtains what it calls signals intelligence or SIGINT. Some sources relevant to this case are no longer operational. We are therefore able to say a little more about it now without disclosing any of the details about the methods used to collect such intelligence.

The intelligence community obtained additional sources after the embassy bombings in East Africa. These particular sources were important. They offered insight into a larger al Qaeda network in the Middle East and were linked directly to the East Africa bombings. In late 1999, NSA analyzed communications associated with a man named Khalid, a man named Nawaf and a man named Salem. NSA analysts at the time thought Salem was Nawaf's younger brother. They were right.

We now know Nawaf was in Karachi, Pakistan. Khalid was in Yemen. Nawaf planned to leave Karachi on January 2nd, 2000 and they were making plans to meet in Malaysia. Nawaf planned to leave Karachi on January 2nd, important detail. By early on December 31st, Pakistani time, U.S. officials in Islamabad, Pakistan's capital, were following the situation. At this point the relevant working level officials in the intelligence community knew little more than this, but they correctly concluded that Nawaf and Khalid may be part of, quote, "an operational cadre," close quote. And that, quote, "Something nefarious might be afoot," close quote.

We believe every available resource should have been devoted to learning who these people were and trying to spot and track them. NSA did not think it was its job to initiate this research on its own. It saw itself as an agency to support consumers such as CIA. It tried to respond energetically to any requests made of them, but it tends to wait to be asked. If NSA had been asked to try to identify these people, NSA would have started by checking its own database of earlier information from these same sources. Some of this information had been reported and disseminated around the community, some had not. But it was all readily accessible in NSA's database.

NSA's analysts would promptly have discovered who Nawaf was, that his full name was Nawaf al Hazmi and that he was an old friend of Khalid. NSA analysts also could then have readily inferred that Salem might be named Salem al Hazmi. But NSA was not asked to do this work, at least not until much, much later. Some might say that such comments display 20/20 hindsight, elevating the importance of these reports out of hundreds of items. This is a reasonable argument. But in this case, we think our critique is fair and not distorted by hindsight. Why?

At the end of 1999 and in early 2000, the period of the Millennium alert, the danger from al Qaeda was, by all accounts, the number one national security priority of the United States. It was the focus of practically daily meetings by the top officials of the government. These particular sources of information were especially important ones. Their links to al Qaeda were, in the words of one cable, quote, "notorious," close quote. They had been linked directly with the East Africa embassy attacks. The relevant analysts have told us, that at the time these sources were among the very best on al Qaeda.

The intelligence community had reported that Nawaf and Khalid were deploying to meet in Kuala Lumpur. Following up on intelligence, U.S. officials were active in Yemen and in the United Arab Emirates where Khalid would get his connecting flight. Other information reinforced the picture of an emerging operation of some kind, and Salem's plans to arrive in Yemen soon.

Nawaf, Khalid and now Salem made further arrangements. Nawaf made plans to arrive in Malaysia on January 4th. The intelligence community thought Nawaf was still in Pakistan and was not leaving there until the 4th. Other officials could have worked on logical flight itineraries and perhaps realized that Nawaf could and probably did keep to his original plan, leaving Pakistan for South East Asia on January 2nd. He then planned to, and did leave his Asian stopover, probably Singapore, for Kuala Lumpur on January 4th. This detail matters because it meant that a possible opportunity to check and track Nawaf's departure from Pakistan had already been lost.

Officials in Pakistan tried to do this on the 4th, they had already missed Nawaf. On January 3rd, both CIA headquarters and U.S. officials around the world began springing energetically into action. With the information about Khalid's travel itinerary, U.S. officials in Yemen, the United Arab Emirates and

Malaysia performed as well as could be hoped. Long standing efforts to build relationships with friendly foreign services paid dividends. Though they had missed Nawaf, officials had more success in tracking Khalid. He was identified as Khalid al Mihdhar. His Saudi passport was photocopied. It showed he had a visa to visit the United States.

U.S. officials in Jeddah quickly confirmed that their post had issued this visa in April 1999. Khalid al Mihdhar was tracked as he arrived at Kuala Lumpur on January 5th. He and other Arabs, still unidentified were surveilled as they congregated in the Malaysian capital. On January 5th, CIA headquarters notified officials around the world that, quote, "We need to continue the effort to identify these travelers and their activities to determine if there is any true threat posed," close quote. The same cable said the FBI had been notified. The cable also asserts that Mihdhar's travel documents also were given to the FBI.

The weight of available evidence does not support that latter assertion. At this point the case was considered important enough to mention it in the regular updates on al Qaeda being given to the top officials in the U.S. government. On January 3rd and 5th, the head of CIA's unit on al Qaeda apparently briefed his bosses on these developments as part of his regular daily updates. These updates, which included other ongoing operational developments, were usually reviewed every day by Director Tenet and by the National Security Advisor Sandy Berger. On January 5th and 6th, the director of the FBI, Louis Freeh, and other top FBI officials were briefed on the operation as one of their regular updates and we're told, correctly, that CIA was in the lead and that CIA had promised to let FBI know if an FBI angle to the case developed.

On January 6th, two of the Arabs being tracked in Malaysia left for new destinations, one in Thailand and another in Singapore. After the fact, efforts were made to track them. U.S. officials in Kuala Lumpur wondered if one of these Arabs was the still mysterious Nawaf. Both returned to Kuala Lumpur within the next 24 hours, though the authorities did not know it at the time. The two individuals apparently were Nawaf al Hazmi and an individual now known as Khallad bin Attash. We'll discuss Khallad again in a moment.

On January 7th and then again on January 10, CIA headquarters notified the field that it had run searches on the names it had so far about this case and said these searches

produced no hits. Headquarters was trying to support the operations in the field. The field had given them information about people being tracked. Headquarters had checked CIA's own database and found nothing. These headquarters officials had not checked the databases at NSA or specifically asked NSA to do so.

As mentioned earlier, if NSA had done this job its analysts would quickly have identified Nawaf as Nawaf al Hazmi. Someone then could have asked the State Department to check that name too. State would promptly have found its own record on Nawaf al Hazmi. That record would have shown that he too had been issued a visa to visit the United States. They would have learned that the visa had been issued at the same place, Jeddah, and on almost the same day as the one given to Khalid al Mihdhar. But none of this was known at the time.

On January 8th, surveillance reported that three of the Arabs under surveillance suddenly left Kuala Lumpur on a short flight to Bangkok traveling together. U.S. officials in Kuala Lumpur asked U.S. officials in Bangkok for help. The next day, headquarters, noticing what was going on and working on a Sunday, backed up Kuala Lumpur's message with another message marked NIACT immediate. That meant the incoming cable would alert the duty officer and ensure that it was read and acted upon regardless of the hour. Kuala Lumpur was able to identify one of the travelers as Khalid al Mihdhar.

After the flight left they learned that one of his companions had the name al Hazmi. Remember, that the officials did not have information that would have allowed them to put that last name together with the name they did know about, Nawaf. About the third person all they had was part of a name, it was part of the name of the alias being used by Khallad bin Attash. Khallad is a nickname, the Arabic word for silver, and refers to Khallad's artificial leg. Khallad was then traveling under an alias. One reason he may have been traveling around East Asia at this time is that he may have been helping to plan possibly hijackings on aircraft, perhaps in connection with an early idea for what would become the 9/11 plot.

Khallad also had completed his work in helping plan the destruction of a U.S. warship visiting Yemen, the USS The Sullivans. The attack had just failed, unnoticed. The boat filled with explosives had sunk. Only the terrorists knew what had gone wrong. Almost everything was salvaged and prepared for another day. Khallad would later be a principal planner in the

next try nine months later. That was the October 2000 attack on another U.S. ship visiting Yemen, the USS Cole, an attack which almost sank the warship and did kill 17 American sailors.

Bangkok and beyond. The information came to Bangkok too late to track these travelers as they came in. Had authorities in Bangkok already been alerted for Khalid al Mihdhar as part of a general regional or worldwide alert, they might have tracked him coming in. Had they been alerted to look for a possible companion named Nawaf, they might have noticed him too and even tracked Khallad as well. Instead, the authorities were alerted only after Kuala Lumpur sounded the alarm. By that time, the travelers had already disappeared into the streets of Bangkok.

We now know that two other al Qaeda operatives, two in addition to the three, then flew to Bangkok to meet with Khallad in order to pass him money. Some of this money was reportedly given to Hazmi and Mihdhar for their upcoming work in the United States. None of this was known at the time.

On January 12th, the head of the CIA's al Qaeda unit updated his bosses that surveillance in Kuala Lumpur was continuing. He may not have known that in fact the Arabs had dispersed and the tracking was falling apart. U.S. officials in Bangkok regretfully reported the bad news on January 13th. The names they had were put on a watchlist in Bangkok so that Thai authorities might notice if they left the country. U.S. intelligence did learn that one of the travelers was using the name that was Khallad's alias. Kuala Lumpur promptly asked for more information and agreement, quote, "to share that information for watchlisting purposes," close quote. There was no apparent response and Kuala Lumpur didn't follow through on its own watchlisting ideas.

On January 14th, the head of the CIA's al Qaeda unit updated his bosses that officials were continuing to track the suspicious individuals who had now dispersed to various countries. Unfortunately there is no evidence of any tracking efforts actually being undertaken by anyone after the Arabs disappeared into Bangkok.

CIA headquarters asked NSA to put al Mihdhar on that agency's watchlist which had limited effectiveness. But there was no other effort to consider the onward destinations of these Arabs and to set up other opportunities to spot them in case the screen in Bangkok failed.

Just from the evidence in al Mihdhar's passport, one of those possible destinations and interdiction points would logically have been the United States. Hence this watchlisting effort could have been seen as integral to reviving a faltering tracking effort quite apart from the other interests involved.

Weeks passed. Meanwhile, NSA would occasionally pass new information generally of a personal nature associated with Khalid, Salem, Salem's brother, Nawaf and perhaps Khallad as well. At this time, although the intelligence community did not know it, Mihdhar was in San Diego, California.

None of these reports seemed to have jogged renewed attention until another matter reminded Kuala Lumpur about the case. That post prodded Bangkok a bit in February about what had happened with those missing Arabs. A few weeks later, in early March 2000, Bangkok responded to Kuala Lumpur's question. It was reported that Nawaf al Hazmi, now identified for the first time with his full name, had departed on January 15th on a United Airlines flight to Los Angeles. We have found no evidence that this information was sent to the FBI.

It was further reported that a person under the name Khallad was using had departed Thailand for the last time on January 20th. His destination was Karachi. As for Khalid al Mihdhar, his arrival on January 8th had been noted but there was no record of his departure. In fact, Mihdhar had been on the United flight to Los Angeles with Hazmi on January 15th.

We presume this departure information was obtained back in January on the days that these individuals made their departures. Because these names were watchlisted with the Thai authorities, we cannot yet explain the delay in reporting this news. But since nothing particular was done with this information even in March, we cannot attribute much significance to this failure alone. By March 2000, Mihdhar and Hazmi had already established their residence in San Diego. No one knew this at the time because no follow-up was done with any of this information until much later.

In January 2001, while working on the Cole attack, the CIA received information that Khallad had attended the meeting in Kuala Lumpur. As Director Tenet testified publicly before the joint inquiry, the Kuala Lumpur meeting quote, "took on greater significance," close quote, because this information placed the Arabs who were there with a known al Qaeda operative. This discovery, however, did not lead to any fresh effort to pick up

the trail of Mihdhar and Hazmi. By that time, Mihdhar had left the United States and returned to Yemen. But if a retrospective of existing information had been conducted at this point, Hazmi might have been tracked down in the United States and there would still have been time to watchlist Mihdhar before he obtained a new United States visa and reentered the United States to join in the 9/11 attacks.

Finally, in the summer of 2001, a thoughtful CIA official detailed to the FBI, working with an FBI employee detailed to the CIA, did some energetic detective work that at last unearthed and reexamined these old puzzle pieces. It became apparent that both Mihdhar and Hazmi were in the United States. They were watchlisted in late August 2001. It was then too late to catch Mihdhar before he got another visa and returned to the United States to rejoin the operation.

The connection to Salem al Hazmi, Nawaf's younger brother, had never been made. So there was no effort to track his movements while in Yemen, watchlist him before he obtained his visa or catch him as he entered the United States on a Swiss Air flight to New York in June 2001. The search in the United States for Nawaf al Hazmi and Mihdhar began. It had gotten off to a stuttering, quarrelsome start by September 11th.

The watchlisting issue. The Department of State initiated and sponsored the U.S. government's only pre-9/11 watchlist solely dedicated to catching terrorists. This list, called TIPOFF, was created in 1987 by an unassuming and enterprising public servant named John Arriza who still helps sustain the program which is now considerably expanded. The program was meant to keep terrorists from getting visas, of course. But as the name implies, it also was a system to tip off intelligence and law enforcement agencies that a suspected terrorist was attempting to come to the United States.

Any overseas post that obtained appropriate derogatory information about an individual had been told to enter into TIPOFF by sending the appropriate cable. If the State Department's Bureau of Intelligence and Research saw the information, they could and often did take the initiative to add the individual into TIPOFF. In 2001, the State Department provided more source documents for TIPOFF than any other agency, more than 2,000. In December 1999, CIA headquarters had repeated this guidance to its posts overseas which technically also included its al Qaeda unit at headquarters. In 2001, CIA provided more than 1,500 source documents for TIPOFF. It was CIA

headquarters that finally nominated Hazmi and Mihdhar for inclusion in TIPOFF.

Sharing of information with the FBI was vital from an intelligence perspective, if the individuals were coming into the United States. But FBI did not maintain the terrorists watchlist. That was the State Department's job. FBI could contribute names like everyone else. In 2001, the FBI provided about 60 source documents for TIPOFF, fewer than were obtained from the public media and a number approximately equivalent to the contribution that year from the Australian intelligence service.

It is worth noting that the Federal Aviation Administration's own no-fly list was totally independent from TIPOFF. Few names were on this no-fly list. So before 9/11, adding someone to TIPOFF would not have any particular effect on their ability to board a commercial flight inside the United States. So, to be specific, adding Hazmi and Mihdhar to TIPOFF did not put them on a no-fly list and did not keep them from flying on September 11th.

Therefore, in thinking about the question of accountability, that potential list tends to expand to everyone. In effect, though, this means no one. At the time of the Joint Inquiry report, the general assumption was that the responsibility rested with some working level official at CIA headquarters. Yet as we can see, many of the recipients of those January 2000 cables could have done their part. Kuala Lumpur thought about it and so on.

That is why we think this issue must be examined from a broader perspective, that at the overall management of transnational intelligence operations. After all, why would the watchlisting make a difference? One purpose would have been to turn Hazmi and Mihdhar back when they reached Los Angeles. In effect, throwing them back into the sea. That would have served one purpose, but it might not have prevented any attacks.

We think it may be more interesting to consider the intelligence mission. Remember why TIPOFF had that name. The intelligence mission was why the suspects were tracked in Malaysia rather than detained or deported. If the FBI had been given the opportunity to monitor Hazmi and Mihdhar in California and had been patient for months or a year, then some larger results might have been possible, even after Mihdhar left. The universe of possibilities expands after Hani Hanjour joined Hazmi

in December 2000, after which the two of them lived in Phoenix for several months before driving across the country and linking up with other future hijackers in Northern Virginia.

Up to this point, all of these hijackers named so far were involved in the hijacking of American Airlines 77, which hit the Pentagon. But in Northern Virginia, they linked up with a hijacker who had joined the team assigned to United 175, thus creating a possible opportunity to penetrate other teams associated with the Hamburg cell as well.

These are difficult what ifs. It is possible that the intelligence community might have judged that the risks of conducting such a prolonged intelligence operation were too high. The risk of losing track of potential terrorists, for example. It is possible that the pre-9/11 FBI would not have been judged capable of conducting such an operation.

But surely the intelligence community would have preferred to have the chance to make these choices. That is why we see this as an intelligence story and a challenge for intelligence community management, management of a transnational case. In trying to second-guess the management of intelligence operations, the staff feels humbled as we encounter the experience and hard work of so many of the officials we have interviewed, although we have some very seasoned intelligence professionals on our staff. We have listened hard to what the serving officials have told us, as you can see.

These people cared deeply about combating terrorism. They have poured much of their life energy into this cause. And we believe that many of them were working in a system that was not well designed to take full advantage of their accumulated talents. From the detail of this case, one can see how hard it is for the intelligence community to assemble enough of the puzzle pieces gathered by different agencies to make some sense from them and then coordinate needed action to collect or to disrupt. It is especially hard to do all this in a transnational case.

That was and is a challenge for management. In this case, there appears to have been at least two strategic errors in management. First, the managers of the case failed to get an all-source background analysis of the players, canvassing what all agencies might know so they could assemble the best possible picture for action. This omission is already evident by the end of December 1999.

The second strategic error was that the managers of the case did not systematically set up ways to track the hijackers as they moved in predictable directions. Even if they slipped through the net in Bangkok, it was foreseeable that a traveler with a U.S. visa in his passport might seek to visit the United States. No one had the clear job of ensuring that all the likely routes were covered. Who had the job of managing the case to make sure these things were done?

One answer is that everyone had the job. That was the perspective the Commission heard in its interview of the CIA's deputy director for Operations, James Pavitt. Deputy Director Pavitt has been at or near the top of this directorate for about six and a half years. He stressed that the responsibility resided with all involved. Above all, he stressed the primacy of the field. The field had the lead in managing operations. The job of headquarters, he stressed, was to support the field and do so without delay. If the field asked for information or other support, the job of headquarters was to get it, and right away.

This is a traditional perspective on operations, and traditionally it has great merit. It reminded us of the FBI's pre-9/11 emphasis on the primacy of their field offices. When asked about how this traditional structure would adapt to the challenge of managing a transnational case, one that hopped from place to place, as this one did, the deputy director argued that all involved were responsible for making it work. He underscored the responsibility of the particular field location where the suspects were being tracked at any given time. On the other hand, he also said that the Counterterrorism Center was supposed to, quote, "manage all the moving parts," close quote, while what happened on the ground was the responsibility of managers in the field.

With this background, it is easier to understand why the way headquarters handled this case may not have been so unusual. As pointed out this morning, travel intelligence was not seen as a central concern. Headquarters tended to support and facilitate, trying to make sure that everyone was in the loop. From time to time, a particular post would push one way or headquarters would urge someone to do something, but headquarters never really took responsibility for the successful management of this case. Hence the managers at headquarters did not realize that the two strategic errors cited above had occurred, and they scarcely knew that the case had fallen apart.

The director of the Counterterrorism Center at the time, Cofer Black, recalled to us that this operation was one among many and that at the time, quote, "It was considered interesting but not heavy water yet," close quote. He recalls the failure to get the word to Bangkok fast enough, but has no evident recollection of why the case then dissolved unnoticed.

Going the next level down, the director of the al Qaeda unit in CIA at the time recalled to us that he did not think it was his job to direct what should or should not be done. He did not pay attention when the individuals dispersed and things fell apart. He would not have expected NSA to do the retrospective work in its own database, but he was uncertain of his own authority to order them to do it. There was no conscious decision to stop the operation after the trail was temporarily lost in Bangkok, but he acknowledged that perhaps there had been a let down after the extreme tension and long hours in the period of the millennium alert.

We believe both Mr. Black and the former al Qaeda unit head are capable veterans of the Directorate of Operations, among the best the agency has produced. Therefore we find these accounts more telling about the system than about the people. In this system, no one was managing the effort to ensure seamless handoffs of information or develop an overall interagency strategy for the operation.

Such management of transnational operations fully integrating all source analysis might require more employees. Deputy Director Pavitt told us, as he has told Congress, that he does not think the availability of more money would have prevented the 9/11 attacks. We are not sure that is right.

Certainly since 9/11 the application of vast new resources within older management models has achieved some significant gains, but this story is not just about the past. We wonder whether the management of transnational intelligence operations has adapted enough to cope with the challenge of the war on terrorism.

Today's focus on travel intelligence has spotlighted the transnational character of the problem. This particular story is especially tragic. But we do not believe this operating style is unique to this case. We are not sure that these problems have been addressed. We are not sure they are even adequately acknowledged as a problem. And in an environment driven by reactions to the latest threat report and preoccupied with

immediate operations, clear, accountable and strategic management is a challenge. The intelligence community must overcome it. Thank you.

MR. KEAN: Thank you very much, Dr. Zelikow.

MR. KERREY: Mr. Chairman, I just want to note for the record, we were given this yesterday, I read this last night and I feel the same way now. I just want to publicly make it clear that I think it's a very good statement but there are many conclusions in here that I could not sign off on. And I don't want the public to presume that because staff has presented it to the Commission that the Commission embraces the conclusions that have been reached fully.

MR. KEAN: No, that is correct. These are staff reports, not part of the Commission conclusions.

If we have -- ask the next panel to come forward, please? Our next panel is entitled, "Visas and Watchlisting Today." Heading it off will be Ambassador Maura Harty, assistant secretary for Consular Affairs at the United States Department of State. Ms. Harty has formerly served as executive secretary at the Department of State and ambassador to Paraguay. The ambassador will be followed by Russell E. Travers, associate director for Defense Issues at the Terrorist Threat Integration Center, known as the TTIC, where he manages TTIC's government wide information sharing initiative and the development of the USG's terrorist identities database.

Our third witness on this panel will be Donna Bucella, director, Terrorist Screening Center at the FBI. Ms. Bucella served as United States attorney for the middle district of Florida. She received the attorney general's Exceptional Service Award for her extraordinary work as a prosecutor in the Oklahoma City bombing investigation. She is on detail to the FBI from the Transportation Security Administration where she was a southeast areas director. If you could all rise please to take the oath?

(Witnesses sworn.)

Ambassador Harty?

MS. HARTY: Mr. Chairman, members of the Commission, I am very pleased to be here today with my colleagues from TTIC and TSC. The fact that we are three testifying here together highlights the unprecedented level of cooperation among U.S.

government agencies, aimed at improving border security through enhanced information sharing and the fact that we are using new approaches to border security to keep ahead of the changing threat to our national security.

I appreciate the opportunity to discuss the critical role of the visa process in defending our nation's borders and how we have strengthened that system in the wake of the tragic events on September 11th, 2001. Before I proceed further, however, I want to acknowledge the family members of the victims of September 11th. None of us can know the pain and suffering they have endured, but all Americans and people of decency everywhere will forever remember the horror and condemn the actions of those who inflicted such an outrage on our nation.

The Department of State together with other U.S. government agencies is determined to eliminate potential vulnerabilities to terrorist attacks. State's visa work is a vital element in providing for our national border security. We have no higher responsibility than protecting our citizens and safeguarding our country's borders. My goal since I was confirmed as assistant secretary of State in November 2002 has been to examine our processes from top to bottom to make them as strong a shield against terrorists and criminals as we possibly can.

To this end, we have more than doubled the number of entries of terrorists and criminals in our lookout database, enhanced our data sharing capabilities with other agencies of U.S. government, revised our consular officer training, and implemented new biometric programs for foreign travelers so that we can adjudicate visas in light of these new security threats, while continuing to welcome to our shores the visitors, business people, students, researchers and immigrants who enrich our society by their presence and who contribute to our nation's economic well-being.

Now I'd like to provide a bit of detail about these efforts. The consular officers of the Foreign Service, who adjudicate visas at over 200 embassies and consulates abroad, are truly our first line of defense. Through them, our goal is to push the very borders of the United States out as far as from our own shores as possible, so that we stop a potential terrorist overseas. To do so, we must have the best information available within the United States government on terrorist threats. I cannot overemphasize this point.

One of the most reliable ways to stop those who intend to do us harm, is to identify them to consular officers abroad. The Department of State, working with other agencies, has made significant improvements to our ability to share lookout information. Thanks to this new level of collaboration, the data holdings in our consular lookout system now total almost 18 million records of people ineligible or possibly ineligible to receive visas. Much more than double what we had prior to September 11. Most of the data in our lookout system now derives from other agencies, especially those in the law enforcement and intelligence communities.

We have cooperated in this important endeavor by working with my colleagues from TTIC and TSC to integrate terrorist watchlists from numerous government sources into one centralized point of reference for everyone who needs to screen members of the public, from the police officer on the beat to the consular officer abroad. Together with the Terrorist Threat Integration Center, we will rely on TSC to ensure that consular officers have access to the information they need to deny visas to known or suspected terrorists.

We are proud that these institutions rest on a foundation that the Department of State laid in the form of TIPOFF, a pioneering system in the use of classified information for screening purposes, created in 1987. The TIPOFF database with its approximately 120,000 records is now housed at TTIC. TTIC and TSC together will eliminate the stove piping of terrorist data and provide a more systematic approach to posting lookouts on potential and known terrorists.

We have also entered into a robust partnership with the Department of Homeland Security and worked closely with them on a number of initiatives to improve border security. DHS and State collaborated on the implementation of the congressionally mandated SEVIS system to verify student status and assist in student monitoring. We have strengthened procedures following revocation of a visa by State, to ensure timely notice to the DHS lookout systems.

We are currently engaged with DHS in implementing a biometrics program to track the entry and exit of foreign visitors by using electronically scanned fingerprints. Secretaries Powell and Ridge signed a memorandum of understanding in September of 2003 which sets the terms under which officers of the two departments will work together in the visa process. We at the Bureau of Consular Affairs have undertaken a systematic

review of the visa process since September 11th to identify and eliminate vulnerabilities in the system. Our overriding goal has been to provide consular officers with the very best tools and the best training possible.

We have made major changes in the consular training course by adding four security counterterrorism sessions since 2001, two of which deal specifically with counterterrorism. The third is a session provided by diplomatic security on visa fraud and malfeasance, and a fourth session teaches consular officers how to apply the terrorism provisions of the Immigration and Nationality Act.

To improve interviewing at deception detection techniques, we contracted outside interviewing experts to develop training specifically designed for consular officers. Together we developed a module on analytic interviewing which has -- which was introduced last November. Our goal is to provide new consular officers with the best tools available as they begin their critical roles in protecting U.S. border security. The interviewing course is also being taught at the consular leadership development courses which we conduct each year around the world, and in the advanced consular course here in Washington to train our mid and senior level officers as well.

After more than a decade of doing more with less, when the increasing workload outstripped our resources, we are now hiring well above attrition thanks to Secretary Powell's Diplomatic Readiness Initiative. The department is establishing 161 new consular officer positions for FY '04 and is requesting 123 more for 2005. These additional positions will give us the ground troops necessary to staff our first line of defense. We have established a new worldwide standard for visa interviewing policy to comply with the congressional mandate, that we collect biometric identifiers and include such in the non-immigrant visa.

We have implemented new regulations requiring that most visa applicants appear for an interview. The following month we begin deployment of a congressionally mandated biometric program at posts abroad to collect electronically scanned fingerprints of all visa applicants. These fingerprints will be matched against the Department of Homeland Security's fingerprint database known as IDENT. In fact, we are already successfully doing so at three posts, and will continue to bring online even more posts just as quickly as we can.

When visa travelers enter the United States their identity will be verified through DHS's U.S. visit program. We are now collecting fingerprints at 55 posts overseas. All visa adjudicating posts will be online and collecting biometrics by the congressionally mandated deadline of October 26th, 2004.

Just as we are committed to the most secure visa adjudication process and documentation, the same holds true for what I consider to be the world's most valuable document, the U.S. passport. We recently completed the systemwide introduction of the photo-digitized process for passports. We then moved the production of passports issued abroad to our U.S. domestic production facilities to take advantage of the significant security improvements embodied in what we call the PhotoDig process.

We are planning to introduce a new contact-list chip, passports to strengthen our ability to link the authorized bearer of a passport and its user. The department has also proposed implementing a travel document requirement for U.S. citizens traveling to those parts of the Western Hemisphere where a passport is currently not required and we are engaged in discussions on that matter with DHS even as I speak.

We are by no means done. The systematic review is a continuing process. Looking ahead now, we are actively working on new initiatives to build on what I have just described. In 2004, we will introduce a new tamper resistant machine readable immigrant visa foil to include digitized photo and fingerprints. We will complete the worldwide deployment of biometric visa capability and we will continue discussions with Canada, Mexico and the rest of the international community to expand on datashare.

Mr. Chairman and members of the Commission, the terrorist attacks of September 11th highlighted as never before the crucial role the Department plays in U.S. border security. Our response has been energetic and committed to meeting the highest national security standards. I want to assure you and especially the families of the victims of terrorism that the Department of State and its Bureau of Consular Affairs are determined to spare no effort to secure our borders against terrorism, criminality, illegal migration and to create a visa process in which the American people can place their confidence and trust.

Thank you.

MR. KEAN: Thank you, Ambassador.

Who's going next?

Mr. Travers?

RUSSELL E. TRAVERS: Mr. Chairman, members of the Commission, I'm pleased to be here today to discuss the role of TTIC, the Terrorist Threat Integration Center in the defense of our nation's borders.

As the Commission knows, TTIC was a presidential initiative announced at last year's State of the Union address almost exactly one year ago. We formally stood up on 1 May, 2003. Operating as an interagency joint venture, TTIC currently has assignees from 16 separate federal intelligence, law enforcement and homeland security organizations. The mission, simply put, is to integrate and analyze terrorist threat information collected domestically or abroad and to disseminate such information to appropriate recipients.

As a part of that mission, TTIC is charged with maintaining an up-to-date database of known and suspected terrorists. It is that aspect of our mission that I want to discuss today. In doing so, I'll briefly elaborate on three points. First, the community has corrected previously identified shortcomings associated with database and watchlisting support. Second, TTIC working with our community partners has a series of initiatives to further enhance our support to the newly created Terrorist Screening Center. And third, we are making significant progress in the critical area of information sharing across the government.

First, our progress to date. Over the last two years, the intelligence and law enforcement communities have been engaged in a comprehensive scrub of historical reporting to ensure that our databases are current. Led primarily by CIA, CTC and the FBI, this has involved respectively the review of literally millions of intelligence cables and previous international terrorism cases. The goal is to ensure that anyone who should have been watchlisted has been in fact so listed.

This historical review has been coupled with a significant growth in new reporting that has occurred against the terrorism target over the past two years. The net effect is that the number of records in the TIPOFF terrorist identities database has grown from approximately 60,000 in September of '01 to over

120,000 records at the beginning of this year. A similar percentage growth has occurred in the number of individuals actually watchlisted. These ongoing efforts have been supplemented by a significant streamlining of the U.S. government's approach to maintaining terrorist identity databases and supporting watchlisting.

Homeland Security Presidential Directive 6, signed in September of '03, assigns to TTIC and the newly created Terrorist Screening Center precise responsibilities. TTIC is required to maintain an up-to-date database of known and suspected terrorists and to service TSC's single source of terrorist information. The one exception to this is for purely domestic terrorism information that will be provided by the FBI.

One particular aspect of HSPD-6 has already been implemented. Specifically, the movement of State Department's highly regarded TIPOFF database into TTIC occurred in mid-November and it has been fully operational since. Similarly, we are in the midst of receiving data holdings from other federal intelligence and law enforcement organizations. We have already increased the analytic resources devoted to TIPOFF by a factor of four, as we prepare to receive this additional data.

With that description of our progress to date, we also have a number of very near-term initiatives tied to HSPD-6 and oriented toward enhancing the quality of our support to the watchlisting effort. First, we are working with data collectors to increase the amount of unclassified data that we can make available to the TSC. The more unclassified information we can provide, the greater the likelihood of achieving positive matches and the lower the possibility of false positives.

Second, we will be receiving additional FBI officers this spring and will subsequently be adding to the database records on U.S. persons known or appropriately suspected of being involved in international terrorism. Third, under HSPD-6 the State Department is developing a proposal for enhancing cooperation with certain foreign governments to establish access to their terrorism screening information.

And fourth, we have under development and will deploy this summer the initial version of a far more powerful database that will bring together all the disparate streams of international terrorist identities information. Operating with vastly more fields, all data will be XML-tagged and will be postured to

incorporate biometrics. Significant program resource growth accompanies this initiative.

Mr. Chairman, these initiatives are critically important because this is a very hard problem. Despite our best efforts, a names-based terrorist identification system has inherent limitations. Under any circumstances, the potential for false positives is high. With foreign names and particularly with Arabic names, the challenges are even greater. For instance, the transliteration of Arab names is a very inexact science. Spelling can vary and the protocols for which particular names are actually used can be difficult for Westerners to understand.

Couple this with the standard terrorist use of nicknames, alias, noms de guerre and increasingly sophisticated forgeries and the analytic challenge for the intelligence, law enforcement and homeland security community becomes increasingly complex. Moreover, we are dealing with an enemy that is focused on recruiting Westerners, women and generally, quote unquote, "clean" individuals who haven't yet come to our attention.

Finally, as we have seen with the Transit Without Visa program, terrorists are always looking to exploit potential vulnerabilities that might give them a further edge. For all these reasons, the community is leveraging experience to build new organizations, develop new methods and techniques and deploy advanced technologies and tools that are required to respond to this exceptionally difficult challenge.

That brings me to the third and final issue I want to briefly address this afternoon, the subject of information sharing. There is no question that TTIC's ability to establish and maintain a database of known and suspected terrorists is directly related to a free flow of relevant information across the government. While there is undoubtedly room for improvement, substantial progress has been made since 9/11.

To begin with, a solid legal and policy framework for information sharing has been put in place since 2001. The PATRIOT Act, the Homeland Security Act, the presidential decision to create TTIC, the Information Sharing Memorandum of Understanding and HSPD-6 have all played a critical role in driving the improvements in sharing terrorism related information.

A few metrics provide a useful comparison. First, we have seen a substantial growth in reporting on terrorism and WMD

matters in the last two years, roughly 250 percent. In September '01, we received approximately 900 cables per day. In January '04, that figure had grown to about 2,200 per day. The second useful metric relates to the use of ORCON, originator controlled information. This can be a major impediment to the free flow of information. In September '01, over 11 percent of all our reporting was ORCON. In January '04, that figure had fallen to roughly 6 percent.

And the third useful metric relates to the use of tear lines, the means by which material that must remain ORCON is nevertheless sanitized to allow for further dissemination. From September '01 to January '04, tear line utilization increased almost by 70 percent in the community.

Is information sharing fixed? Certainly not, but huge strides have been made. Indeed, one reflection of that progress can be seen in the ability to electronically access terrorist related information. For the past eight months of our existence, TTIC has focused on the technical initiatives necessary to promote information sharing and in August of last year, we launched the TTIC online website. This serves as a means to access a broad range of terrorism threat information. This highly secure capability can reach virtually the entire structure of the federal government boasting over 2,500 users currently in the joint worldwide intelligence communication system's top secret environment.

TTIC online reaches traditional intelligence community terrorism analytic elements but also the joint terrorism task forces, all our military commands and numerous other organizations that have a need for terrorism threat information, for example, the Departments of Interior and Agriculture.

The success of TTIC Online can be seen by a comparison with the analogous capability that existed in 2001. The user base is almost six times greater, five times as many organizations participate. The average number of document hits per week has grown by 400 times, and the total repository of documents has grown from one to three million. We anticipate even greater success when we deploy a new secret level version on SIPRNET later this year. Subsequently, TTIC plans to deploy a sensitive but unclassified presence of TTIC Online on the Open Source Information System network.

In summary, Mr. Chairman, TTIC continues to work with our partners across the government to implement the President's

vision and to ensure that the most accurate data on known and suspected terrorists is made available to the TSC and many other organizations involved in border security and the war on terrorism. I hope you will agree that we have made demonstrable progress in both the creation of a single database as well as the ongoing effort to share relevant information across the government.

Given the complexity of the analytic problem, as well as the challenge of integrating diffuse data sets from a wide range of organizations, we undoubtedly had a great deal to do. Nevertheless, in our eight months of existence, TTIC has already accomplished a great deal, and we have both a sound plan and I believe adequate resources for the future. Thank you for the opportunity to testify and I look forward to your questions.

MR. KEAN: Thank you, Mr. Travers.

Ms. Bucella.

DONNA A. BUCELLA: Good afternoon, Chairman Kean and members of the Commission. Thank you for this opportunity to discuss the missions and objectives of the new Terrorist Screening Center. The Terrorist Screening Center was created to consolidate terrorist watchlists for multiple agencies and provide 24/7 operational support for all federal, state and local law enforcement officers across the country and around the world. When fully operational, the TSC will dramatically increase our ability to ensure that we are working off the same unified comprehensive set of anti-terrorist information. This is an enormous task and it requires cooperation and coordination from multiple agencies.

Pursuant to the September 16th Homeland Security Presidential Directive 6, the FBI administers the TSC with support from the intelligence community and the Departments of State, Homeland Security and Justice. Each of these agencies have representatives assigned to the TSC. The TSC was required to begin operations by December 1st. We met that goal and became a single coordination point for terrorist screening data. Today the TSC has the ability to make the names and identifying information of terrorists known to or suspected by the United States government accessible to all law enforcement.

We have a system for reviewing whether a known or suspected terrorist should be included in or deleted from additional screening processes. The TSC's initial capabilities are limited,

due to the need to integrate records ensuring that all data about suspected terrorists is accurate. Each agency contributing data to the TSC is using its own database. These databases, which were created to support the mission of the individual agencies, are in many instances their case management systems, not terrorist watchlists. By this summer, the TSC will have a single consolidated database. And before the end of this year, the TSC will have an even more dynamic database, thereby allowing private sector agencies and foreign governments to submit a list of persons to the United States government to identify possible terrorists.

Our database will be continuously updated. The TSC allows the consolidation of information currently held by multiple agencies and used in different ways to be brought together for a single purpose: to help identify and detain potential terrorists. The TSC is supplied with information from two avenues. One, all international terrorist information from the Terrorist Threat Integration Center, TTIC; and two, all domestic terrorist information from the FBI. The TSC will then consolidate this identifying information from these records and make it accessible for queries from state, federal and local agencies.

When a government agency makes a recommendation to include a name in our database, it is reviewed and instructions are provided as to how an encounter with this individual will be handled by a United States government agency. The system is tailored to give different instructions, depending on where the encounter takes place, either outside, inside or at our borders.

Let me take a moment to describe for you a typical process at the border. When a passenger arrives in the United States and is a possible match to the TSC record, Customs and Border Protection contacts the TSC for assistance in the identification process. Taking advantage of its electronic access to all information contained in the FBI and TTIC databases, we attempt to determine if that person is a positive match. If there is a positive match, the TSC telephonically conferences in the FBI's counterterrorism watch for specific instructions about what appropriate action may be taken. Such specific instructions may include arrest, detain or question the individual further.

In the case of a police inquiry, by querying the National Crime Information Center, NCIC, database, which contains an instruction to contact the TSC, for the very first time, a local police officer who pulls over an individual during a routine traffic stop will now know if the person encountered is a known

or suspected terrorist. The TSC contacts the FBI counterterrorism watch and simultaneously the watch coordinates with the local Joint Terrorism Task Force, who will then assist the police officer. The results of that follow-up action is then reported back to the originating agency. The TSC will continue to facilitate the feedback back to TTIC and other appropriate agencies.

We recognize with all these capabilities also comes a responsibility to ensure that we continue to protect our civil liberties. The TSC has absolutely no independent authority to conduct intelligence collection or other operations. In fact, we don't collect information at all. We only receive information collected by other agencies with a pre-existing authority to do so, each with their own policies and procedures to protect privacy rights and civil liberties. The handling and use of information, including U.S. person information, is governed by the same statutory, regulatory and constitutional requirements, as if the information was not to be concluded in TSC managed database.

Our primary mission is to ensure that terrorist identities are located in one place. The structures which are also in place also ensure that information about U.S. persons that has been determined to be purely domestic information does not go through the TTIC but is placed directly into the TSC by the FBI. Also, the attorney general has been directed to implement procedures and safeguards regarding information about U.S. persons in coordination with the other government agencies.

We are also committed to addressing the issues and inconveniences arising from the misidentifications of persons under previous watchlisting practices. Procedures are in place to review and promptly adjust or delete erroneous or outdated information, and several such records have already been identified and updated or removed. The creation of the TSC marks a significant step forward in protecting America's communities and families by detecting, disrupting or preempting terrorist threats. The TSC builds on the improvements to U.S. watchlist capabilities that began following the horrific events of September 11th.

The TSC is already contributing to nationwide efforts to keep terrorists out of the United States and locate those who may already be in our country. The TSC will be able to fulfill this mission more effectively and efficiently after we receive full operating capability later this calendar year. I appreciate the

Commission's interest in the TSC's activities and would be happy to answer any questions the Commission may have.

MR. KEAN: Thank you very much.

Commissioner Gorelick.

MS. GORELICK: Thank you, Mr. Chairman.

First of all, let me thank the members of the panel. Several of you are known to me and I very much appreciate your service to the country. I'd like to make a comment at the outset. We heard from the two staff statements that we've heard so far today that there were many opportunities to stop the 9/11 plot, and the focus of those statements has been on, number one, lack of communication among the CIA or even within the CIA and between it and the FBI, the NSA, the State Department, particularly consular affairs.

Second, that there was no systematic mechanism for tracking terrorists. And third, and overarching, a failure to think strategically about what the terrorists need in order to proceed, and particularly how to deprive them of what they needed in the way of freedom to travel. And I would like to focus, however briefly, on all three of those. You are here to tell us what has been fixed, and we very much appreciate the efforts that the three of you and your agencies have been making to try to fix a number of problems that have been identified.

It is clear that we will have suggestions and ideas about elements of what you're doing that remain broken and that could be fixed further, but we are quite constrained in talking about that in open session, because it's the last thing that we want to do, is to provide a roadmap to where the seams still may be that could be exploited, if you will. So, I'm going to forbear from that and we will follow those conversations in closed sessions.

I'd like to begin with Associate Director Travers. As I noted, the salient point I think of the staff statement was that we as a government had a failure of strategic management of our effort to stop al Qaeda. There wasn't one person who was accountable; there wasn't one person who said this is my job, I'm the quarterback, here are the assets at my disposal and here's how we're going to proceed.

As you noted, TTIC has been stood up with great fanfare. Not every agency gets mentioned in the State of the Union

address, and it is featured as an answer to the question how are we better working together today than we were in the past? And for that reason I would like to really pursue with you what it is that TTIC does and doesn't do. I was very interested in the briefing that you gave to our staff in which you're very clear that TTIC, quote, "Does not engage in collection or operations and does not belong to any department or agency."

And I put that against the statement by the director of the CIA's al Qaeda unit, that he didn't think it was his job to direct what should be done in the field, and I put that next to Pavitt's statement that it was everybody's job. My question to you is, is TTIC the answer to that problem? Is it the entity that directs or controls the investigation of al Qaeda right now?

MR. TRAVERS: TTIC is an analytic organization and, as you accurately quoted, we don't do collection and we don't do operations. Those are the province of other parts of the government. So we certainly do track al Qaeda and we look at plots and the development of those plots and so forth, but there is a division of responsibility in terms of the various functions that you mentioned.

MS. GORELICK: So you are on the receiving end of other agencies efforts and you try to meld them together. Would that be a fair description of what you do?

MR. TRAVERS: That is certainly true we can -- where we identify intelligence gaps we can levy requirements on the collectors to go out and collect information on various gaps that we may have on knowledge base, but other than that, yes ma'am.

MS. GORELICK: Well, to the extent that we are in a war and the other side appears to be fairly well coordinated, the question is are we as well coordinated and if it isn't TTIC that is running operations against al Qaeda, who in our government is responsible for making those strategic judgments and directions?

MR. TRAVERS: I mean, I think there are a few objective realities out there in terms of the blurring of distinctions between foreign and domestic and intel and ops and indeed many different parts of the government have got various responsibilities for the global war on terrorism. With respect to TTIC itself, there is a degree of ambiguity between our mission and some other analytic organizations within the government, I think it's fair to say that there are -- these are being worked through within the government, how much should be

done at the departmental level, how much should be done within TTIC.

I think we have to acknowledge that these are very difficult questions that we're dealing with, legacy organizations and responsibilities and we are all trying to work them out to the whatever the good governance solution is. But I mean it's certainly fair to say that there is an ambiguity there.

MS. GORELICK: Thank you for the candor of that response. I noticed in your testimony that, as you noted, you are dependent upon the constituent agencies to share with you the information that they have so that you can get it into your TTIC database, which is now the inheritor of TIPOFF and that therefore you can then feed the Terrorist Screening Center, and I was quite surprised to read that -- in your testimony that to date, only 16 of the 56 FBI field officers have completed reviews of their -- they data they have extant as to -- in order to take the names from their files and provide them to you. Is that a correct statement?

MR. TRAVERS: You'd have to check with the FBI to give the exact figure. You need to understand that what they've been asked to do is to go back 13 years and look at all previous international terrorism cases through 1990 and provide us an assessment of whether individuals in those cases need to be in our database. But it is not a trivial question and I believe this -- they've only been working on this for a few months, I mean, it came out of HSPD-6.

MS. GORELICK: So, in other words, prior to a few months ago there was not an effort on the part of the FBI to share with the government as a whole the information it had in its files about terrorists in historical cases?

MR. TRAVERS: Again, the whole issue of U.S. persons data being in intelligence community databases was an issue and we believe we've clarified that and the HSPD makes it quite clear that we're to include appropriate U.S. persons data in our database, since that decision and clearly goes back to the Patriot Act, and that process is being worked.

MS. GORELICK: Before TIPOFF moved from the State Department over to you, it's my understanding that the State Department was in fact unable to reach an agreement with the FBI, under which the FBI would provide the information in its files, is that correct?

MR. TRAVERS: I wouldn't be able to answer that question.

MS. GORELICK: Let me turn for a moment to Ambassador Harty. You've described additional training that you were undertaking for consular officers, and we heard this morning that the interview process pre-9/11 was summary, to say the least, and in some cases non-existent. When your process is complete for consular officers on interviews, how long do you expect an interview will take?

MS. HARTY: Thanks for the question, because I think that there's a pretty broad answer and a wide range of answers to that, as you probably expected me to say. The -- first I'd like to say that you're right, as I have briefly detailed, the training has changed dramatically for us. We have put an emphasis on that interview because we want to be able to drill down through an individual's story by asking questions that that individual's persona, by the documents they present to us, by the way they present themselves, gives us pause and gives rise to questions we wouldn't normally be able to ask, or drill down through if we were simply looking at a package of papers.

I've traveled to some probably 25 posts in the time I've been on the job, and again and again the officers on the line who have a pretty hard job and who are patriots in doing it say they prefer to see the people than see the paper. Having said that, quite naturally I think it fair to say we would spend considerably less time on a 67-year-old Norwegian grandmother than we might spend on a 20-year-old young man who had -- no story didn't sort of hold water and for whom we had sort of an abundance of questions and an abundance of caution. We'll take less time with the grandmother and take as much time as we need with the individual who gives us pause.

MS. GORELICK: So you expect to have results from these interviews?

MS. HARTY: I do.

MS. GORELICK: You do?

MS. HARTY: I do.

MS. GORELICK: If someone comes through a country that's in the Visa Waiver Program there is no interview, is that correct?

MS. HARTY: That's correct, if they're coming for, sort of the needs and bounds of the Visa Waiver Program, that's tourists 90 days or less. If they're coming for other reasons they're students, they're people coming for a longer stay of some sort, for business reasons, they in fact have to go through a regular visa process.

MS. GORELICK: But if I've applied for a tourist visa --

MS. HARTY: If you're coming to Disneyworld for 10 days, yes, you do not need at this point, an interview.

MS. GORELICK: So there's no interview, and so even today there are literally millions of visitors coming to this country with no interview process, is that correct?

MS. HARTY: From the 27 visa waiver countries, that's in fact true.

MS. GORELICK: Now, as I understand it, the statute that permits these countries to remain in the Visa Waiver Program and thus all of those visitors to come in without the process that you've described and the process that you're trying to enhance, conditions their continuation on the country having a biometric passport scheme, is that correct?

MS. HARTY: That's right, by October 26, 2004.

MS. GORELICK: And what are the chances of any of those countries meeting that deadline?

MS. HARTY: Very few will make it. Very few at this point have indicated to us that they will have an ability to do that. In fact, I feel it really necessary to say that the decision on what the biometric would be -- the statute gave the decision, if you will, to ICAO and that decision was made last May, and so those countries have not had that much time to do it. There are robust efforts in place to put such programs in place, but most will not be ready by October 26, 2004.

MS. GORELICK: When do you expect them to be ready?

MS. HARTY: It differs from country to country. Some say by the end of 2005, most actually -- the larger ones say probably by the end of 2005 or early 2006, which means that we'll be able to begin issuing but not in the volume that we would like to see, certainly.

MS. GORELICK: So between now and that time, to the extent that people come in without the interview process that you've described, that will continue for several more years?

MS. HARTY: Well, they will --

MS. GORELICK: If the statute is extended.

MS. HARTY: Well, until 26 October '04, that is the case. But I would like to say as well that, while they do not have the visa interview at an embassy, they do in fact have an interview at a port of entry, and that is in fact -- an inspector has the same information that a consular officer has overseas, access to the consular officers CLASS database, access to IBIS, access to the same information that we would see during an interview and can ask the same kind of questions should they so desire.

The 27 countries in the program have had to face sort of a rigorous definition of their own abilities to issue valuable documentation. We -- the 27 countries that are in the program are in fact in the program because their travelers, it has been assessed over the course of time, are a much lower risk than others from other countries. So it is a program that has been assessed from its very inception and continues to be assessed regularly, an obligation that originally belonging to the Justice Department now belongs to Department of Homeland Security.

As a matter of fact, since the inception of the program, several countries have been bounced because they failed to continue to maintain that level of confidence that we have in the program in the countries that are participating.

MS. GORELICK: But we know that there are countries like Germany and France, just to pick two, or U.K. to pick a third, that have active al Qaeda cells operating in them and that yet they are under this Visa Waiver Program. What would happen if the statutory deadline were really enforced and therefore the Visa Waiver Program were to end? What -- could you function?

MS. HARTY: If the statutory deadline were to remain in place and countries were unable on an individual basis to continue to participate or to comply with the program as it exists, we estimate that we would see an approximate 5.3 million additional visa interviews that would need to be done. That's -- that would be a daunting, daunting challenge for us, given our

current resources. We would not be able to in fact fulfill those obligations to the best -- to the way we would want to do it.

The GAO wrote about this just a couple of years ago, as they talked about the Visa Waiver Program and they in fact estimated that for the year 2000, visa waiver travelers spent about \$39.6 billion in this country and that's about 57 percent of overseas tourist spending in this country. The GAO also went on to say that it would take the State Department between two and four years to ramp up to be able to meet the necessary workload. Having said that, it would be a difficult management challenge for us to have to bridge the gap to hire and train and perhaps even build brick and mortar facilities to interview people to bridge the gap between the October 26, '04 deadline and the time when the countries would be able to come online, because it's not really on a toggle switch, they are on a trajectory. They are going to continue to try and meet the bounds of that program just as quickly as they can, so we are talking about a challenge with a, sort of a, you know, finite --

MS. GORELICK: Do U.S. passports meet the conditions that we would impose on other countries?

MS. HARTY: U.S. passports do not meet the conditions we would impose on other countries, nor are -- nor does the law require that. Having said that, we have every expectation that reciprocity would be fairly rigorously enforced, and so we have, as I sort of briefly mentioned in my opening remarks, we have a plan for what we're calling the intelligent passport -- I've got a sample of it here.

The intelligent passport has in the front of it the photo digitization process that I originally discussed. I know you can't see it from here but I'll happily show it to you later. But in the back of it -- in fact we envision it having a contact-list chip embedded in the back of the passport with an antenna, so that you could at a port of entry -- at a U.S. port of entry or overseas, access this documentation quite rapidly. It would have the same information currently as is on the biographic page of the passport and it would function not unlike a speed pass at a tollbooth, so it would be a very quick process through the system.

MS. GORELICK: But how far off is this in reality?

MS. HARTY: Well, actually I'm glad you asked that question.

MS. GORELICK: Like the one you have in your hand?

MS. HARTY: Yeah, the one I have in my hand. We will begin by the end of '05 to begin to be able to produce these, but also not mass produce them -- we have some procurement issues. Happy to talk about that to you. As we try and stay a step ahead of the people who would do us harm, in some ways we juggle with the difficulties as we have all described with sharing information and making current systems talk to each other. We have procurement issues too, and the rules of procurement and the rules that allow us to access new technology sometimes cause us to be very hidebound by processes that we would like to move along that much more quickly.

MS. GORELICK: You need to check names against essentially the terrorist screening center list, but as I understand it under the Condor program you were also required to check any essentially Arab males against a list, against an FBI list. Is that correct?

MS. HARTY: Yes. Condor was one of -- Condor is one of a number of different kinds of name checks we do with other agencies, yes.

MS. GORELICK: How many checks have you done to date?

MS. HARTY: Approximately 125,000.

MS. GORELICK: Have you had any hits?

MS. HARTY: We have had a number of hits, but none of them resulted in a finding of a terrorist through the running of a Condor name check.

MS. GORELICK: And are there -- as I understand it there is yet a group of people who have neither been denied nor permitted to come in --

MS. HARTY: Yes, that's right.

MS. GORELICK: -- who are in limbo, is that correct?

MS. HARTY: That's also right.

MS. GORELICK: What is your advice to this commission as to whether that program should be maintained?

MS. HARTY: Thank you for asking. What I would like to do is work very, very hard with my colleagues at this table to make sure that our systems work just exactly as they have described as quickly as they possibly can, at which point I would make a run at Condor and say that if all of the information is in fact contained in the databases stored at TTIC and TSC, I'm not entirely sure and not convinced at all, in fact, that we would continue to need to do a separate name check. If it's all in there, then it's all in there but I'm reluctant to pull the plug until we're up and running as complete and total partners. It's a little bit off, but I will not be shy about that -- 125,000 anything is a lot and we need to make sure that we're spending our resources as appropriately as possible. We could be doing something different with that time.

MS. GORELICK: Thank you for that, for that answer. I think it tells us where we need to go with that. A quick question for my former colleague, Donna Bucella who couldn't be a better person in a tough job, so I'm very pleased to see that you have been tapped for this difficult coalescence of many functions. My question for you is this: you are now substituting for a unit at the State Department that used to respond to consular officers who had someone problematic or potentially problematic in front of them, and they could call a fellow colleague in the State Department and say what do we do?

My understanding is that that group provided pretty good customer service, that is it made it its business to get it back and not leave issues hanging and to coordinate across government to make sure that the answers got back to the consular official sitting there with a person or a piece of paper. What -- how confident are you that moving this service to the FBI which is known as an enforcement agency, not a service agency, to return to my colleague, Secretary Lehman's theme of this morning, how confident are you that the FBI can provide that service to our consular officers?

MS. BUCELLA: Well, fortunately those colleagues are now my colleagues, because they physically are housed at with the TSC, and so there has not been a degradation of service and I know that Ambassador Harty and I talked about this when we were setting up that as long there was no degradation of service. In fact I believe we've been able to enhance the service, and I'll tell you why.

One is many of these agencies, while on the books you know how each another operates, but when you see them in action, it's

very, very different. And we have been able to really learn from our State Department colleagues, the center that we have access to now, we have access to all of the TIPOFF information, for example. All of the different assignees, whether they're from the Secret Service, the FBI, they have the ability now, because they've been trained, to go into the TIPOFF database.

As well, the people from the State Department have access to be able to go into FBI's ACS and the text IBIS database, so we really are sharing the information and it really is a cooperative effort, in that if we find that we need more information or different types of information, or for example, if we have the reach back authority to go back to the State Department, we could actually go back to TTIC and say, we need more information. And so, we actually have all the parties that need that information to go back and articulate what it is that we need.

The TSC database is an identities database so we have the names, we do not have the background files, but the way we are setup we have the accessibility to go back to those files and then ask our State Department colleagues, what does this mean? And it's right there and it's real-time.

MS. GORELICK: One final question. One of your jobs is to make available a tool that local law enforcement can use. There are nearly a million law enforcement personnel in this country. How are you going to ensure the integrity of that database and that a terrorist doesn't figure out a way to pulse the database to see if he's in it?

MS. BUCELLA: Right now we've been up in operation for a little less than two months. Many of our customers really are the state and locals. We don't have a database so we just have accessibility, we worry about verification and authentication. In developing our database such that state and locals as well as other federal agencies can sort of dip in and pull information out of our database, we're going to sit down with our colleagues from both federal state agencies to figure out what the requirements are. We need to have a verification process such that the local law enforcement can't call on their cell phone because we won't be able to verify that. That are some of the requirements we have been talking about, exactly how we accomplish that, and in many instances we're going to accomplish it as we've done through the NCIC. But again, there are some vulnerabilities that we have to address in creating our branded database.

MS. GORELICK: I'm glad to hear that it's top of mine. Thank you very much.

MR. KEAN: Senator Gorton?

MR. GORTON: Each of you has been a part, in the last more than two years, of a response to 9/11 in an attempt to substantially to improve the ability of the United States to anticipate and frustrate future 9/11's and I know each of you regards it as a process which is long from being done. But each of you has testified to believing that major steps forward have been taken. I want to ask each of you to use his or her imagination and because you're not collectors to assume that no additional information or intelligence were available but that all of the reforms that you have participated in had been -- were in place on 9/11. Interagency communication among agencies or the like, the whole rest of the works. What would you rate our chances under those circumstances of having been able to frustrate or to prevent 9/11 from taking place?

MR. TRAVERS: I have absolutely no idea. I listened to the staff statement quite closely, recognizing two years ago I didn't follow this, I've learned a great deal in the last year plus, of the watchlisting challenges that went on. I can only deal with the subject from sort of the perspective of an analyst and I've listened to sort of the connections and they make sense to me. But again, we're talking about thousands of pieces of traffic that come across people's desks and they're all trying very hard, as the staff suggested, to do their jobs and all it takes is one breakable link and you may lose the trail.

This analysis business is really hard and I am -- I have a great deal of sympathy for the argument that dealing with transnational issues generally cuts across so many different organizations of the intelligence community and indeed the U.S. government writ large that I'm not personally convinced that it would have made a substantially better chance. I mean, we are certainly sharing information and I think that in the context of the intelligence community we are training people to do watchlisting better and make sure that we get all the names but there are, as I suggested in my statement, a lot of ways around watchlistings as well, so -- that's all I'll say.

MS. HARTY: I have to agree with Russ. I also don't have any idea and I certainly wouldn't present to you, sir, that everything we've done has made us a foolproof operation. But speaking not only for my colleagues who are adjudicating visas

every day but for all of the hundreds of people I've met in the last two years who have together wrapped their brains around these issues and stepped up to the challenges, there isn't a person out there that doesn't want every day in every way to make it the tightest system possible.

I do believe that that's the genesis of the kinds of changes we've made in the order in which we've made them, to close as many vulnerabilities and holes and knit up as many different ways as we can. Would it have gotten us to a different place on September 11th, I don't know. Like Russ, I listened very carefully to Mr. Zelikow's statement and greatly saddened as we all were by it and what we could see now, those are teaching moments for all of us, we will continue to apply our efforts to doing the very best job we can.

MS. BUCELLA: I, of course, would echo what my colleagues have said, but there are too many ifs. I can tell you that I was out of the United States government for about a year and when I came back, the cooperation, the visible cooperation and the tone has totally changed after 9/11. And we have a lot more work to do, but we actually have people sitting around the table and trying to articulate and go through the processes, not as to what they should be doing, but how they actually are operating, and we on a daily basis, clearly at my center with the cooperation of all of the assignees there, are constantly trying to figure out ways of, is there a hole here, how are we not communicating?

And then we regularly hear, between Maura, Russ and I as well as a number of other people in different agencies, meet pretty routinely just trying to figure out how can we improve? The process will never be over because we'll always look for ways to fill the gaps and to improve.

MR. GORTON: So, each of you as a very dedicated public servant, was putting his or her full time into the kind of challenges that we're facing, can't really tell us whether all of the work that you have done and that your colleagues have done, would have substantially increased our ability to prevent 9/11 based on exactly the amount of information we had then? One of our challenges, one of the things we're asked to do, is to make a determination as to whether or not the system in effect at 9/11, you know, should not have been able to do better, and to prevent it.

So you can see the frustration we have, the investment that the people of the United States have made in you and I know that

what you're doing is very substantial. But you have no way of telling us we would have had a -- even a substantially better chance of preventing 9/11 if everything you'd have done had been in place then? That's the summary of your answers as well as I can understand them. Is that correct?

MR. TRAVERS: Times change, sir. I absolutely believe that the interagency model is the right one from the TTIC perspective. And I certainly believe that the amount of information sharing is just plain good government and the fact that we are bringing all these databases together is almost a blinding flash of the obvious, frankly. Those are all good things, but I can also tell you that terrorists are responding to what we are doing and they're getting smarter in their own way and we could talk about that at length off line, sir, if you'd like?

MR. GORTON: Well, I thank you very much for your candid answers.

Thank you, Mr. Chairman.

MR. KEAN: Congressman Hamilton?

MR. HAMILTON: Thank you, Mr. Chairman.

We heard a lot this morning about inadequate budgets and a lot better jobs could be done if the budgets had been a lot larger and so I want to ask each of you, given the responsibilities that you have in your particular areas, is your budget satisfactory?

MS. HARTY: If I might speak first, sir? Secretary Powell's Diplomatic Readiness Initiative has given an ability to hire considerably more people than we would have been able to at another time, we're delighted by that. The State Department's budget this year does envision several different additional ways of collecting fees that we could keep and I could use and I would -- I'm obviously quite supportive of that budget and hopeful that it will bear fruit for us in the way we need it to.

MR. HAMILTON: Is the budget sufficient?

MS. HARTY: Yes, sir.

MR. HAMILTON: Mr. Travers?

MR. TRAVERS: I'm not a budget expert, sir. TTIC does not have a budget because we are not legislated. And that may be the wrong way of saying it, but we are an interagency joint venture so as a result we are borrowing people. They are assigned to TTIC. I'm a DIA officer. I'm paid by DIA as my assignee colleagues are paid by their home organizations. I can certainly say that we have a substantial amount of money and feel quite comfortable that we're going to bring on our database, for example, on time, on schedule.

MR. HAMILTON: Do you believe your resources are sufficient?

MR. TRAVERS: Yes, sir, right now I do for this year, yes.

MR. HAMILTON: Ms. Bucella?

MS. BUCELLA: Yes, TSC also operates by each of the different agencies donating money to the TSC. Since we've only been in operation about a month and a half, almost two months, we have not only the financial aspect comes from all the different agencies that are assigned to us, but also my manpower is my two deputies. One is from DHS and one is from the State Department, and currently under our two month longevity so far, I believe that we have adequate funding.

MR. HAMILTON: Ms. Harty, I work at an institution now where I deal with a lot of academics. This is kind of the flipside of the problem we've been talking about here: we all want to stop terrorists coming in. But I hear a lot of anecdotal evidence from scientists and from researchers, from students, about how tough it is to get into the country. And I know you're very familiar with this problem and I know a number of university presidents -- the chairman, I think will confirm this -- that are deeply worried about the flow of people into the country. They're very important to us, of course, that they come in. How do you -- what can you tell us about this? We've always got this tough problem of balancing openness and security, just a matter of hitting the right balance.

MS. HARTY: It certainly is, sir, it's one of the many balances we try and strike on a daily basis. Secretary Powell describes it as a balance between secure borders and open doors. No one in the consular field or in any of our fields will do anything ever but put security as job one. And having said that, we have a requirement to look at the other side too, and the definition of security might in fact be more broad than we

sometimes think. In part, that definition of security I think includes the economic security of the nation.

We have, for instance, an \$88 billion travel and tourism industry. We have a \$12 billion international student industry; one out of every seven civilian adults employed in this country is employed in some facet of the travel and tourism industry. When those young people choose to go somewhere else for their education, we lose a generation. I have a colleague who's our ambassador in Islamabad, and she told me that this past summer some 6,000 students, Pakistani students, opted for studies in the United Kingdom. Normally in previous years they'd issue visas to about 2,000 students, and I look at that and I say that too is a security problem for us.

When students choose to go somewhere else, they're choosing for themselves at that moment in time certainly, they're choosing for their younger brothers and sisters, they're probably choosing for their children at a later date, they're certainly choosing who they want to do business with at a later date when they are then sort of leaders in their civic or civil societies. It is a concern of ours. Secretary Powell has said since September 11th itself, we cannot erect a gate around America that terrorists win again. It is however a balance we have to strike.

When I came into the job there were tremendous backlogs, tremendous backlogs mostly engendered by a variety of new name checks and a series of systems that could not speak to each other. We have whacked that way back in almost all cases. For instance, now it's only about 2 percent of all cases worldwide that need in fact an additional Washington based name check. Over time, as we mentioned, with respect to the Condor program, over time when we are completely up and running and feel very good about every element of our new partnership with TTIC and TSC. Maybe we can trim that down even further.

At embassies now, any embassy you go to, there are programs in place to allow a medical emergency, a student with a valid I-20 and a ticking clock, so here she needs to get to their place of education, and a business person with an emergency to move to the front of the line. Out of the 211 visa adjudicating posts around the world, only fewer than 30 have more than a 30-day wait to get an appointment anyway.

MR. HAMILTON: I don't know what the data is, but I do know that there is a very intense feeling in the academic community generally that we haven't got the balance struck right yet and

that I hear stories about thousands of students who would ordinarily come to the United States are now planning not to come to the United States but to go elsewhere. Perhaps not a big deal --

MS. HARTY: Oh, sir, excuse me for talking, I think it's a terribly big deal. The Institute for International Education, I believe, did a report earlier this summer and it in fact indicated that the growth rate of foreign students to the United States was in fact smaller than anybody wanted or anticipated. The overall number of students in the country was still a little bit higher than previous years.

MR. HAMILTON: I know you've got a tough problem here. I'm glad to know you're sensitive to it. We do indeed want to keep terrorists out, but there are an awful lot of good people we want to let in.

MS. HARTY: I couldn't agree with you more, sir.

MR. HAMILTON: Thank you, Mr. Chairman.

MR. KEAN: Commissioner Fielding?

MR. FIELDING: First, I'd like to thank you all as well, not only for your service but for appearing here today, and for the candor of some of your answers. They're not exactly always what we want to hear, but we do want to hear your candor. My fellow commissioners have covered a lot of the ground that I wanted to deal with, in particular though we all would yearn to have the ability to know not only that there's coordinating body that can now assemble all these facts, but there will be a body that can connect those dots, to use the overused phrase, so anything that anyone can give us, either in these sessions or maybe more appropriately, much more appropriately in private sessions, the Commission would welcome and would like to extend that charge to you, if we could.

In specific regard to just clearing up a few things, I must say, Ms. Bucella, I need your help on something, because good old Washington, if there is any way that there's a division of responsibility or if there's any power shifting around, there's the temptation to duplicate effort and to replicate task. And you said that in your testimony, I believe you said it's good terrorism information is now in one place. But now, as I understand it, TSC checks intelligence that's gathered from agencies against terrorist watchlists?

MS. BUCELLA: What we do is we have the terrorist identities information. There is -- it would be the name of the terrorist and a few other identifiers. We do not maintain the actual file or background information about that. That information is still maintained by all the gathering agencies, the originating agencies. So what we have is the location of knowing the names and identities of the terrorists.

MR. FIELDING: Okay then, bear with me just a little here. DHS had a press release and they said that the majority of information received from you comes from TTIC. After it's assembled and analyzed the information from numerous sources then it ends up going to you. Now, if TTIC gathers most of the information and was created to bridge the gap we all sense between foreign and domestic gathering sources, and you receive the information from the FBI and it receives information from the FBI as well, why isn't TSC simply located in TTIC? What added benefit is achieved by you being located in the FBI? If any.

MS. BUCELLA: I don't know if I have an answer to that, since I -- the creation of the TSC came out of HSPD-6. But the information that we have comes from two different sources. The domestic terrorism information comes from the FBI. That is not sitting at TTIC. The international terrorist information goes through the TTIC. So there are two trunks of information coming in. That information though is again only the identities of terrorists that are known and suspected. The background information still resides at TTIC.

MS. GORELICK: Excuse me, if I could just interrupt. When you say domestic, you mean non-terrorism related. In other words, the FBI's information on terrorists, that is, people who are in the United States but have some relationship with terrorism would go to TTIC. Is that correct?

MS. BUCELLA: Not if they were abortion bombers or something.

MS. GORELICK: No. I'm saying if they were related to international terrorists.

MS. BUCELLA: That's correct, yes.

MS. GORELICK: So the only piece -- just to clarify here, the only piece that TSC has that TTIC wouldn't have would be what

we call a domestic terrorist, an abortion clinic bomber or the Oklahoma City model militia terrorist?

MR. FIELDING: Do you agree? Am I missing something here? You see what my question was?

MR. TRAVERS: TTIC is an analytic organization. We have no operational function whatsoever so that a decision to -- we will nominate to a watchlist but Donna's people will decide whether or not it meets the criteria and will put it on the watchlist and interact with CT watchlist and so forth. We don't do that.

MR. FIELDING: Well, okay.

Ambassador Harty, just let me ask a follow-up question. We're dealing unfortunately with what-ifs all the time here. One of the areas that really was troublesome in analyzing what's happened on 9/11 was the whole visa applicant issue. The questioning of applicants in Saudi Arabia has caused problems of concern. So I guess, a couple part question to you. Have the changes in interview policies since 9/11 changed that as well? Are you now interviewing far more these applicants and are there any examples you can help us to demonstrate whether this is leading to anything positive?

And the other side of that, I would like to also say, one of the major concerns was that people were getting visas without really giving fulsome information or even complete information. Are you satisfied now that there is a policy and an implementation policy that now differs today so that that would not happen again under ordinary circumstances?

MS. HARTY: Yes, sir. Thank you for the question. With respect to changes in visa interview policy, we, last August, put into place a policy that had already, in the immediate aftermath of September 11th, begun informally by many, many posts and that is we see just about everybody now. The reasons for that or that we believe the interview is a useful thing to do, as I said earlier, to sort of drill down through a story. The other part of this is we have a congressional mandate to collect a biometric feature to embed in a non-immigrant visa. And so we are seeing people because we are also taking a digital sort of scan of their fingerprints. So we are seeing almost everybody. The exceptions concord with the exceptions given by DHS at ports of entry, younger than 14, older than 79.

With respect to your question, whether or not we have anything to show for it. You didn't put that way. I will. The real truth is when you see people and you can drill down through a story, you may not, certainly almost never, if ever, at the end of an interview, say, Yep, that was a terrorist. I got him. What you do say is what you heard that inspector say earlier today. Somebody gives you pause. Somebody, in his words, gives you the creeps. Somebody's story doesn't concord with the reality. You know, speaking the language and living in that country, that somebody doesn't get the right to go to America and that's a very useful thing to do in an interview.

MR. FIELDING: Great. Thank you all very much.

Thank you, Mr. Chairman.

MR. KEAN: Commissioner Ben-Veniste.

MR. BEN-VENISTE Thank you and thank you to members of the panel for your contribution here today and in working with our staff. I have a question first for Mr. Travers. You've indicated that there is some ambiguity with respect to the job that you're trying to perform at TTIC and the analytic efforts of others within the government and you mentioned that some of the legacy organizations may not be on board. I would like you to elaborate on that if you would be kind enough to do so.

MR. TRAVERS: I didn't mean to imply that there were legacy organizations that weren't on board. My point was that you can go back in the National Security Act and you've got a whole bunch of departments and organizations and agencies that have been around a very long while. They have got missions for which they need intelligence. We have TTIC that is now extant as an interagency joint venture that will try to bring together terrorist threat warning material.

What responsibilities should devolve from some of these other organizations to TTIC, what should stay put? I don't believe that there is a clear cut answer to that question. There is no doubt that CTC needs operational support. There is no doubt that the DOD organization needs force protection support from its terrorist analytic organization. So there are no bright red lines, I think, that allow one to decide this should go there, this should stay here. That was my only point.

MR. BEN-VENISTE Well, I guess the issue we're struggling with is what has been frequently called stovepiping or turf or

owning information. There is a natural tendency, at least among men, maybe not so much among women -- I'm probably going to get in trouble for saying this. I'm glad to see that two of the representatives of these agencies now are women who, according to others who have studied this subject suggest they are more inclined to share information into personal relationships.

But to be very serious about this, part of the problem has been the inability of one agency which develops information to provide that information to another agency which did not develop it but which may well use it for the common good. That's exactly the reason why TTIC was created. The question is whether it's functioning as it was intended, whether you're getting the kind of cooperation that you ought to get. Would you agree with me that the only way in which that function can be made viable is by leadership from the very top of the government? Someone has to tell the agencies, Look, don't just pay mouth service to this. You've got to do it.

MR. TRAVERS: I don't believe that's what's happening, sir. I mean, we've had the Information Sharing Memorandum of Understanding, for example. Puts a positive duty on organizations to share with TTIC information. Again, getting back to the notion of legacy systems, we've got architectures out there that -- my personal desk has five CPUs under it. I have a whole host of organizations piping information to me. We have some security policy questions that preclude us from being able to do federated search across all those CPUs and so we are having to work through those details.

But I don't -- I won't sit here and suggest that the heart is not willing. We have had FBI over the last six months bringing FBI Net into our system. As I suggested, they are providing for us all this historical data. They're going to provide people on our floor, working for Mike Resnick, my database guy, to make sure that we're including all of the international terrorism individuals that they suspect. So I don't think it's a question frankly of a willingness to share information.

MR. BEN-VENISTE What about on the follow-up side? You're receiving information. You're analyzing it. You have no operational capability. But clearly a function of an intelligence analytical operation is the ability to direct the follow-up or the future collection of intelligence information. What is your function and experience with respect to that and is that running as smoothly or as vigorously as you would like?

MR. TRAVERS: Recognizing that we're still a relatively young organization, just since last summer, but the -- Charlie Allen, the DCI for collection, has placed an individual into TTIC to do just exactly that. We have a collection manager in TTIC who works on a daily basis with the analyst to ensure that collection requirements are being registered with the appropriate collector, and we will compete quite well, I'm convinced, against all of the other collection requirements that are out there.

MR. BEN-VENISTE So are you saying that it is functioning in a way that you are well satisfied with?

MR. TRAVERS: As I said a number of times in my statement, we have a long ways to go. The issue of how we bring together foreign intelligence collection requirements and domestic intelligence collection requirements is new business for this government. And so we have not yet fixed that problem, but we are certainly working it.

MR. BEN-VENISTE But in terms of your ability to communicate your collection needs and the responsiveness of those with whom that collection request is charged, is that functioning well or is that among the areas in which you are ambivalent in your praise?

MR. TRAVERS: On every priority list that this government has, terrorism is at the top. And so while I have not -- I couldn't sit here and give you examples of how a TTIC intelligence collection requirement stacked up against the Pacific Command intelligence collection requirement if the collector was the same, I can say with a great deal of confidence that TTIC would do very well.

MR. BEN-VENISTE Ambassador Harty, let me ask you a question that I put early to Mary Ryan, and that is whether you have discovered in the course of your service in the consular office that there are -- that there is an issue with respect to the integrity of translators used in the visa application process in various locations throughout the world where you do not have native language speakers performing the consular functions.

MS. HARTY: The short answer is no. I do not -- I'm not aware of any systemic problem that way. But there are a couple of things I'd like to add if I might, sir. First is when I came into the job, we sent a cable to all ambassadors all around the world and said, please look at the language requirements of every

officer at that embassy, with specific reference to the consular section, and make sure that we are sending out language qualified officers at the level you believe you ought to have. Number one.

Number two, in those posts where we do in fact use native speakers as interpreters, there's a number of anti-fraud, anti-malfeasance steps that should and ought to be taken, and I believe in most places where there might be an issue or where we do have native speakers serving as translators, we do do. And that is you rotate them. You avoid all patterns of predictable behavior so that any given interpreter today doesn't know which officer they're going to work with tomorrow, which window they're going to sit at after lunch, and so that you are constantly sort of mixing the field so that there isn't any way for anybody to really sort of plan who they're going to interview, how they're going to interview.

But I think there's no substitute for training all Foreign Service Officers in the languages that they need to do the job. They're living in a country. They are simply better when they speak that language well to the very best of their abilities.

MR. BEN-VENISTE Let me ask you, if there are no systemic problems with regard to the corruption or corruptibility of translators, are there anecdotal instances with which you're familiar?

MS. HARTY: No, sir. I have to say I'm not. I can certainly find out for you. It seems you may know something I don't know, but don't have a story.

MR. BEN-VENISTE Well, as I say, we've received anecdotal information about it. I'm not suggesting it's systemic. Korea is a country which has been mentioned. There are others that it's specifically mentioned where for a relatively modest amount of money a virtual lock on a visa can be purchased. That's the information we've received, and not from people unacquainted with the system.

MS. HARTY: I will certainly, sir, look at that. There are very few things we take more seriously than malfeasance, and the Bureau of Diplomatic Security and the Bureau of Consular Affairs since Assistant Secretary Taylor and I came on board have a robust partnership in ferreting it out, in exonerating people who ought to be exonerated, and in punishing swiftly those who ought to be punished.

MR. BEN-VENISTE I'm pleased to hear that. Let me just finish by asking you whether it is feasible to train consular officers in foreign languages of their assignment, given the rotation and the fact that they will be moving to other posts.

MS. HARTY: Yes, sir, I think it is. One of the things that has also changed are some of the rules as to how much language training an officer can get before they go to post. Junior officers have five years, during which time -- the first five years of their employment is the time that they are under a tenure process. In pre-9/11 times it used to be that you could only get a certain amount of language training, I think it was six months, during the five years, because they wanted to make sure that you had an ability to demonstrate how you were going to do on the job.

The Office of Personnel, Foreign Service Institute have changed those rules, have moved those meets and bans. We need to give people the language they need to do the job. Physical presence isn't enough. You have to be able to do the job.

MR. BEN-VENISTE That's encouraging. Thank you.

MR. KEAN: Congressman Roemer, then Senator Kerrey.

MR. ROEMER: Thank you, Mr. Chairman.

I want to go back to Ambassador Harty's initial remarks when she opened up our hearing, thank her for acknowledging the very valuable contributions that the 9/11 families have made, both to this commission and to the type of questions we sometimes ask in these open hearings. And I think it's safe to say that we probably wouldn't be here as a commission if it weren't for the 9/11 families' fierce determination and hard work. We certainly would not have gotten the funding increase that we requested several months ago.

And I'm hopeful that this commission will forcefully and aggressively ask for an extension so that we can complete our business, and I'm hopeful that those families will help us in that effort to make sure that we can definitively write the account of the plot of 9/11 and work in a bipartisan way to make recommendations to make this country safer. You acknowledged that participation by 9/11 families in your opening statement and I want to thank you for that.

One of the issues that they've been very interested in has been the reports about a plane that left a few days after 9/11 that had a number of Saudis on it that was cleared out of our airspace and had members of the bin Laden family. Are any of the three of you aware of this? Have you requested after-action reports on this planeload of Saudis that left? What do you know about it?

MS. HARTY: I'm sorry, Commissioner Roemer, I don't have any knowledge of that. I'm happy to try and find out if it's in State's purview, but I don't have any knowledge of that.

MR. TRAVERS: Nor do I.

MS. BUCELLA: I don't.

MR. ROEMER: We've heard reports that they left a few days after 9/11. There have been even some reports, I don't know if they're accurate or not, that this happened on the 15th or 16th. I'd be interested in if you could task back to your agencies, if you all have asked to interview any of those Saudis that left our country a few days after 9/11, whether or not the FBI accompanied the people to the plane, to the airport. I'd be interested in any after-action reports that your agencies have on this and who might have approved the plane leaving U.S. airspace. If you could help us with that we would greatly appreciate it.

On a different note, Mr. Travers, with respect to privacy, here's an issue that Americans care deeply about. On the one hand, we want to make sure that the terrorists are not successful in their next attack on America. On the other hand, we greatly respect our civil liberties and our civil rights, and we need that balance. One of the few people that has lost a job since 9/11 has been a man by the name of John Poindexter, who started a program called Total Information Awareness.

I know you in your statement addressed advanced analytical tools and the role they can play in helping us watchlist people. I think that there are some positive things that we might be able to ascertain and develop as a result of some of these programs, but I also think that we have to be very, very careful what we label them and how we work them and task them, and that we balance these with the respect for civil rights and civil liberties that is firmly enshrined in our documents in this country. What if any part is your organization trying to take from this initial development of Total Information Awareness and

how can you explain the value of this in a positive way as an analytical tool to people watching today?

MR. TRAVERS: The tools themselves, from my perspective, are benign. The question is what information streams go into the tools and you can envision a number of different cases. On the one extreme, we could have our intelligence community databases that could be -- the information could be compared to one another to look for patterns or linkages that, as I suggested, with in excess of 2,000 cables per day plus everything in history, it is beyond the realm of reason to think that any intelligence analyst by himself or herself would be able to in fact draw linkages. Did that phone number match that phone number, or whatever?

So you do need very powerful tools to do that. My own thinking would be that, if you're entirely on the intelligence community side, then this really is no problem at all. This is all foreign intelligence information that we are passing to determine linkages. If you have a linkage with a U.S. person, now our ability to query a transactional database, for example, from a known --

MR. ROEMER: What's a transactional one?

MR. TRAVERS: Credit card databases or something along those lines, we wouldn't do but we could ask the foreign terrorist tracking task force to do that or we could in essence throw it over the transom to determine if there's a linkage back to the United States and then we could have that data because there's a nexus to terrorism. There's a 12333 exception and I think we're fine as far as our view of privacy would be.

The hard question gets to be how do you bring together databases that have foreign intelligence information but then information with U.S. persons that isn't such a transactional database. You can't bring those all together because there, there is clearly problems with privacy and so what I think large numbers of people in the private sector and the government are trying to think through is can you anonymize data? Is there a way that you can in fact benefit from the power of technology and bring together these streams of information but still be completely in accord with all the privacy concerns which we share? I can all tell you that we're bending over backwards not to go too far in that direction.

MR. ROEMER: So the long and short of it is you are trying to develop some firewalls to protect those transactional accounts --

MR. TRAVERS: Absolutely, yeah.

MR. ROEMER: -- but you are moving in some of the same directions that that terrorist awareness program or total information program began.

MR. TRAVERS: There are a number of programs that will help us do data mining and I talk about data mining in TIA in sort of the same general phraseology and certainly the intelligence community believes we need to do these things. But right now, we're focusing on only using foreign intelligence now trying to decide, trying to work with the attorneys to decide how far we can go or can't go with respect to U.S. persons data.

MR. ROEMER: Those firewalls are certainly very important to this commission and the American people and if you could provide in writing for the Commission a more specific and thorough listing of the databases and the transactional accounts and the program that you're developing, I would appreciate it.

MR. TRAVERS: Sure.

MR. ROEMER: Thank you, sir.

MR. KEAN: Senator Kerrey and then last questions from Secretary Lehman.

MR. KERREY: Mr. Travers, I'm going to come at this question that you've been asked in three or four different ways. I'm going to try and ask it somewhat differently. But it gets down to who do you report to and what kind of accountability do we have in the system? If Ambassador Harty issues a visa, if somebody out there gets a visa and comes to the United States and does something bad, she's going to be up in front of both the House and the Senate, Foreign and International Affairs Committee. She's going to be up there testifying and asking why she isn't resigning, et cetera. The heat will go on her immediately. Who do you report to on the other hand?

It seems like you got a situation where everybody reports to their own individual bosses. They come into this center -- you, for example, you are a DIA employee. Number one, how do you establish the kind of accountability relationships that you need

to have in order to be able to -- it's okay, we now know who to blame if I got a problem. Who takes responsibility for doing it right and who takes responsibility for doing it wrong?

MR. TRAVERS: I'm one of the day-to-day managers with John Brennan, the director of TTIC, who responds to the DCI.

MR. KERREY: He reports to DCI?

MR. TRAVERS: Yes, sir.

MR. KERREY: So if there's a mistake either not getting somebody on a watchlist who should be on a watchlist or getting somebody on a watchlist who doesn't belong on a watchlist, it's Director Tenet or the DCI's responsibility for that mistake?

MR. TRAVERS: As I said a couple of times, we are interagency. So we bring together information that comes from a whole host of organizations within the intelligence community and outside the intelligence community and we are partnered with CIA, DOD, DHS and FBI.

MR. KERREY: I've heard you say that several times but now I'm putting it to you in the form of a question. If a mistake is made and somebody is not on a watchlist who should have been or somebody is on a watchlist and shouldn't, do we hold Director Tenet or the DCI responsible for that?

MR. TRAVERS: I can envision --

MR. KERREY: Do we hold you responsible for it? Do we hold DIA responsible for it? Who do we hold responsible for it?

MR. TRAVERS: We are setting a protocol so that organizations other than -- the watchlisting support function has been largely CIA and State Department in the past. We are working with DIA to get all of their names into a database, also working with --

MR. KERREY: You're saying you don't know who we hold responsible or --

MR. TRAVERS: No, I'm saying that if you can pull the string on --

MR. KERREY: I'm trying to get to a question with a yes or no as an answer. Do I hold Tenet responsible or not?

MR. TRAVERS: I don't think it lends itself, sir, to a yes or no question because -- a yes or no answer. You pull the string on an individual, he may have been in a DIA IIR and that didn't get submitted for watchlisting. So is that the director of DIA or is that the DCI? What if it was an FBI TRRS?

MR. KERREY: Do you have any concern about an environment where eventually I can pull the string and go into a hundred different directions and you don't end up being able to say, well, this happened on my watch and therefore I'm responsible for it?

MR. TRAVERS: As I suggested earlier on, sir, it is a difficult problem. Unless you're going to put the entire counterterrorism effort under one individual in the U.S. government -- and I don't know how you'd do that because now you're picking up Treasury responsibilities and special ops functions, this is a matrix managed across the government by a lot of different people. And that I think is a fact.

MR. KERREY: I mean, currently do you report to any committee in Congress? Do you --

MR. TRAVERS: I believe there are six committees and 17 subcommittees that claim jurisdiction.

MR. KERREY: For you?

MR. TRAVERS: Yes.

MR. KERREY: And do you report to them? I mean, they hold hearings and all that sort of thing on you?

MR. TRAVERS: There are varying degrees of responsiveness and I'm now out on my own and I won't go any further than that in terms of what we provide to the subcommittees.

MR. KERREY: Thank you.

MR. KEAN: Secretary Lehman.

MR. LEHMAN: Thank you. I have one question for Ambassador Harty. We had an interesting discussion in this morning's panel with your predecessor and we talked about what has been at least a 30-year decline in Consular Affairs, a steady erosion of influence, closing of consulates around the world in every

administration, a shrinking, a diminishment of resources, reduction of manpower, the loss of what in many periods was seen as an elite professional consular corps and, in my experience, which again is in about the middle of that period, a dropping out of the assistant secretary from the crucial seventh floor meetings. In State, perhaps more than in any other bureaucracy, where you sit is where you stand and it was quite evident from your predecessor's fairly forthright complaint after 9/11 that nobody told her. She didn't have the intelligence. She wasn't in the loop and that was exactly what we got from the interviews with the officers in Saudi Arabia. Why didn't anybody tell us?

So where are you today? The reduction of prestige in consular function to being an entry level scut work job as opposed to a long-term professional elite career, is that being restored? Do you sit in the secretary's staff meetings? Are you part of the loop? Do you ask for intelligence as opposed to waiting to have something be dropped on your desk? Do your people feel that you are in the loop, you're a player, that they don't have to depend on a cable.

As some of them said, "Well, you know, official doctrine was Saudi Arabia was our close friends. So why would we look for a terrorist among the Saudi Arabians?" I mean, if you're part of what's going on, you think in a broader sense. And I guess, the question is, are you raising or have you raised Consular Affairs back up to its elite-ness with esprit and reality of being the outer defenses of this country?

MS. HARTY: Gosh, I appreciate the question and I could go on at some lengths about this, so I thank you for it. I won't, but I'll try and summarize very quickly, sir. It is true that in the 1990s there was a great diminution in resources across the board at the State Department and the resulting closure of consulates abroad affected not only consular functions but every other function a consulate might perform. Having said that, I am really very pleased and proud to assure you that Secretary Powell practically charges me rent. I am there, I am at his meetings. I was his executive secretary immediately before taking this job.

He chose for the first time ever to put a career consular officer in the job as assistant secretary for Consular Affairs. This is the first time in the history of the Bureau of Consular Affairs that a consular officer has actually run it. I think that speaks to -- although I respect all of my predecessors who have had this job. When you have had 23 years in the field

knowing exactly what the people who work for you know, that helps you get the job done.

A quick anecdote if I might about the spirit of the consular cone at this point. I just came back about six weeks ago from a trip to seven posts in the Middle East, including Baghdad, and then ended the trip in London. At each of those posts, one or more than one non-consular officer said to me, "Your work has meaning. It's where it's happening now. How do we switch into the consular cone?" And I've got an e-mail from a guy in Jakarta, asked the same thing today.

I think that we have proven that in consular work, what we do, among other things, is touch lives. We touch the lives of private American citizens every day as we protect and defend them overseas. We touch the lives of American citizens who seek and need passports from us quickly or in a rather more routine fashion.

We also touch the lives of the people who come to the embassies who seek to immigrate or seek to visit our country. How we treat those people is important because we need information from them about whether or not they are legitimate travelers to our country. It's also important because even if we refuse them a visa, they have a right to a dignified experience and we don't have any rights to defile the reputation of the United States by not treating them in a cordial fashion.

It is, in fact, very much where things are happening. I mentioned Assistant Secretary Taylor a little while ago, who's our assistant secretary for Diplomatic Security. He and Cofer Black and I are attached at the hip on a regular basis, as are various of my counterparts at the Department of Homeland Security, and as Donna mentioned earlier, we're in touch all of the time. I think it is exactly the time to be in Consular Affairs. I think an awful lot of Foreign Service Officers have realized that, and we take all comers. It's a time to step up. It's a time, frankly, to be a patriot, and we have an awful lot of young people who are very interested in doing that.

MR. LEHMAN: Thank you.

MS. HARTY: Thank you, sir.

MR. KEAN: Thank you all very, very much. We appreciate the time you took with us today and certainly appreciate your government service.

Thank you.

We've come now to our fourth panel. Our first witness will be James W. Ziglar Senior, a former commissioner, Immigration and Naturalization Service, Department of Justice. He formerly served as assistant secretary of the Interior, where he's responsible for a successful restructuring of the Bureau of Reclamation.

Following Mr. Ziglar will be Robert C. Bonner, commissioner of the U.S. Customs Service since September 20th, 2001. On March 1st, 2003, Mr. Bonner became the first head of the Bureau of Customs and Border Protection in the Department of Homeland Security. He is currently responsible for uniting all aspects of border activities, including the U.S. Customs Service, Immigration inspectors and Border Patrol of legacy INS, and the Agricultural inspectors from the Department of Agriculture. He previously served as a United States district judge in California and the administrator of the DEA.

Our last witness is Peter Verga, principal deputy assistant secretary of Defense for Homeland Defense. Immediately following September 11th, 2001, Mr. Verga served as a special assistant for Homeland Security and director of the Department of Defense Homeland Security Task Force. Would you please all rise and raise your hand.

(Witnesses sworn.)

Thank you. Mr. Ziglar, you going first?

MR. JAMES ZIGLAR: Mr. Chairman and members of the Commission, I appreciate the invitation to appear today to assist in your effort to establish a complete and accurate record of the events leading up to September 11th and the actions that were taken in the aftermath.

As you know, my first day of commissioner was August the 6th, 2001, one month and five days before the attacks of September 11th. Consequently, I have little to offer in terms of your investigation of events occurring before September 11th. In my written testimony I have attempted to tell the story of the INS' response to September 11th and the story of our efforts to improve our performance in the many areas for which we had jurisdiction. It's been 14 months since I retired from federal service, so I hope you understand that I did not have access to

records or staff in preparing my testimony. I did my best to be as thorough as possible with the resources and records and the time available.

When I was first approached about the possibility of taking the Commissioners job in March of 2001, it was explained to me that the President was looking for someone with management experience to fulfill two mandates. These mandates were based upon promises that the President had made during the campaign. The first was to restructure and reform the INS by separating the service and enforcement functions to create more accountability, effectiveness and efficiency. The second was to reduce the backlog of applications and petitions to an average processing time of not more than six months.

When I entered the INS building on August the 6th, 2001, I felt a sense of great urgency about moving forward with the restructuring. I knew from my experience as an assistant secretary of the Interior during the Reagan administration that moving quickly in a new job and getting buy-in from employees for major change were necessary to success. It worked for me in restructuring the Bureau of Reclamation and I had high hopes that it would work here.

In my first month in the office, I spent most of my time learning about the INS bureaucracy, directing the process of creating a restructuring plan, and talking to and with employees about the need for fundamental change. In fact, in my first 30 days, I met with every employee in the Washington area through a series of group meetings and question and answer sessions, and I used our audio and video communications capacities to reach out to those in the field.

The restructuring task force that I put into place within the first 48 hours of joining the INS worked diligently through the month of August to fashion a restructuring plan that met the President's goals and that would rebuild the INS to achieve accountability and effectiveness. We drew heavily on the work that had been done before, including a good restructuring plan that had been proposed by Commissioner Meissner. On September the 10th, we delivered our proposed restructuring plan to the attorney general. September 11th obviously changed the focus of our efforts at the INS.

From that day on we were engaged in participating in the investigation of the events that transpired, we were working to prevent any further terrorist attacks, we were developing and

implementing new initiatives to increase our effectiveness, and we were actively engaged in hardening our borders to prevent the entry of terrorists into the United States. And I use the term borders in a very broad sense.

In my written statement I have attempted to give you at least a partial summary of the many actions that we took in these regards. The events of September 11th itself brought home to me just how important it was to continue the process of restructuring and reforming the INS. An experience during those first hours after the attacks convinced me that I could not take my eye off the ball of the restructuring. As I mentioned in my written testimony, the INS was responsible for suggesting to the attorney general that federal law enforcement agencies should provide agents to supplement security at airport checkpoints.

We offered up 300 border patrol agents as the first contingent, and in fact, we had 317 agents on the ground at nine airports, beginning within 36 hours of the attacks. When the President approved this initiative at the suggestion of the attorney general and we set up about mobilizing our agents, it came to my attention that the chief of the border patrol was not actually in charge of the border patrol. You can imagine my amazement at that. But given this reality, it was also obvious to me that it would take days or even weeks to work our way through the bureaucratic decision making process. I quickly suspended the established chain of command, put the border control chief in direct command, and we started moving agents to the airports immediately.

In April 2002, after finally receiving reprogramming authority from the House and Senate Appropriations Committees to start the restructuring, the first change I announced as part one -- as the first part of phase one was the permanent realignment of the border control chain of command to put the chief of the border control as its actual operating head. As we were preparing to implement phase two of the restructuring, the President announced his Homeland Security Department initiative and we altered our process to blend in with that initiative. It was clear to me that in the now hot war on terrorism, we had to simplify and clarify our command and management structure, we had to impose accountability and performance standards, and we had to upgrade and integrate our technology.

As noted in my written testimony on September the 14th, three days after September 11th, I gave clear directions to my senior staff that we were not going to drop the ball on

restructuring. On October 3rd we briefed the attorney general on the plan and got his signoff to submit it to the White House for review. On November the 14th, we submitted it to the Congress. What this commission and the American people need to understand and appreciate is that the scope of the duties and mandates imposed on the INS far exceeded the resources that Congress had made available to it for many years.

Even though the budget of the INS began to increase in the early 1990s, primarily to hire more Border Patrol agents for the southwest border, things such as interior enforcement, technology improvements, integration of information systems, benefits processing, adequate expansion of detention and removal capabilities and a host of other important functions were the subject of neglect, benign and otherwise. Yet even if Congress had supported and funded all of the things that should have been done, I doubt whether that would have prevented the events of September the 11th. The real failure was, in my personal opinion, a failure to gather intelligence information, analyze it and disseminate it to the points, including especially the INS and the Department of State, where it could be used to thwart terrorists.

Since I wasn't part of the pre-September 11th structure, I can't speak directly to those issues. However, I have a keen grasp of the obvious. And it was abundantly obvious to me that September 11th was in most part an intelligence failure. It's also obvious to me that the next terrorist attack will be prevented by constantly improving our intelligence gathering capabilities and the development of modalities for the rapid dissemination of usable intelligence information for those on the front line.

If our first encounter with a terrorist is when he or she comes and shows up at the border and we don't know or suspect that he or she is a terrorist, then we've lost the battle. As good as the people are who work for Commissioner Bonner at Customs and Border Protection, and they are good, they are not mind readers. They must have the information and tools necessary to make the split-second decisions that we expect of them, and they must be thoroughly trained to know exactly what it is they're looking for.

In the near-term aftermath of the attacks on September 11th, we took a number of important steps, including, among others, the identification of the hijackers, which was a process that actually went on over several days. It was -- the first process

was just to look at the seating charts on the airplanes, figure out who probably they were, check them against entry records, so you had a pretty good idea, but from there then you had to confirm who it was. And that's where, frankly, as I mentioned in my testimony, where I saw the lack of interconnection of our information systems, because the actual confirmation of who they were was contained in records that were in the records center and district offices, things like that. So we really had -- we identified them immediately but then we really had to confirm who they were.

MR. KEAN: Start to wrap up please, Mr. Ziglar. We're running a little long on time.

MR. ZIGLAR: I'm sorry. I beg your indulgence. I have a couple of other things I'd love to say.

MR. KEAN: As quick as possible.

MR. ZIGLAR: The assignment of 1,000 of our special agents to the FBI. We disseminated departure list, we deployed more inspectors to the northern border, we accelerated the existing northern border strategy of the Border Patrol and started to move toward reaching the 969 Border Patrol agents that we wanted -- or we had established as a goal at the northern border. We developed what turned out to be exactly 50 potential initiatives for the attorney general, and we also put on warp speed the development of our information enterprise architecture for the INS. And I'm pleased to note that we got that done on my watch.

Perhaps the most important thing we did, though, was to go to Threat Level One, which we did in coordination with the Customs Service. There are a number of protocols, and I won't go through those because I'm trying to wrap it up, sir. Needless to say, though, those -- the Threat Level One at the border created enormous backups, and we had to work pretty hard -- it's still a challenge I think out there -- to try to get those backups down to not impede commerce and the flow of people across those borders. And we worked I think very cooperatively with the Customs Service.

The lessons from this experience for me were, one, we must develop surge capacity at the border in order not to have events like this have such draconian impacts. And the second is that we must move as many functions and inspection functions as far away from the border as we possibly can so we don't have this physical border problem that we've got. Protecting the American people,

enforcing our immigration laws and protecting our economy are extremely important, but when these goals have impact or perceived impact on the agendas of various groups, the goals get lost in the noise.

Let me give you one example, because I have to take full responsibility for this controversy. In March 2002, I propose that we should reduce the default period of admission for B-2 visitors to 30 days from the then existing default period of six months. In layman's language, a visitor to the United States is usually granted admission for six months' stay unless the immigration inspector decides to make it shorter. Generally the six month default is what you get when you come in.

My view was that this length of stay exacerbated the problem we had with overstays and that we made it easy for people like the 9/11 hijackers to come in and to do their thing for six months while we didn't even know where they were. My view was that the default period should be 30 days, and if someone had a legitimate reason to stay longer, they would present it to the inspector and the inspector would give them an extended stay, but not exceeding six months. It seemed clear to me that combining these tighter controls with an entry-exit system that would tell us when they came and went would give us better control over the people who came here with an intent to overstay, as well as it will put a little tightening on the people who were here with evil intent.

The Department of Justice supported my view, and on April 22nd we proposed those regs. You would have thought that I had committed treason. An untold number of congressmen, governors -- no offense, Governor -- mayors and travel industry representatives were outraged. The horror stories about people having to sell their houses in Florida and came from Canada because they could only stay here for 30 days, the stories about grandparents not being able to visit their grandchildren because they could only stay 30 days, all of these things were blown out of proportion.

There were congressional hearings and even though we plainly stated that people would be granted stays longer than 30 days for legitimate reasons, the hysteria was rampant. The irony was that a lot of the people who were bashing us for being too lax were the people that were on our case about this one. I should note that those regulations were withdrawn after I retired.

In closing, Mr. Chairman, I want to emphasize that our priority at the INS during my tenure were focused on improving the performance of the agency in the war on terrorism and in the enforcement of our immigration laws as well as providing the services to which people are entitled under our laws. These goals can be achieved through better management structures, enhanced employee morale and productivity, obtaining adequate resources and vastly improving our information technology systems.

The achievement of these goals require patience, hard work and political support. The implementation of programs such as SEVIS and US-VISIT won't mean much if the whole spectrum of things that need to be done is ignored. We can bring our immigration system under control consistent with our legacy as a nation of immigrants and our dedication to being a free and open society. But it will take much work and thoughtful, mature analysis and decision-making.

Thank you.

MR. KEAN: Thank you, sir.

Mr. Bonner.

MR. ROBERT C. BONNER: Thank you, Mr. Chairman and members of the Commission. It's a pleasure to have a chance to appear before the 9/11 Commission and to discuss with you the ways that 9/11 and the aftermath impacted on the United States Customs, how Customs responded to 9/11 and ultimately, the evolution, as Mr. Ziglar alluded to, of the creation of the U.S. Customs and Border Protection Bureau within a new department of our government.

On the morning of 9/11, I had not been confirmed yet as the Commissioner of Customs. I was, I guess, a commissioner designate, had a temporary office on the fourth floor of Treasury Department and with all the other employees of Treasury, at about 9:30, 9:35 a.m., I evacuated the Treasury Department and joined the then acting secretary of the Treasury, Ken Dam at the Secret Service Headquarters Command Center a few blocks away. And, once there, I did establish immediately contact with U.S. Customs Headquarters at the Ronald Reagan building.

At about 10:05 a.m. on the morning of September 11th, U.S. Customs went to Level 1 alert at all the ports of entry in the country and that is the highest level of security alert short of actually shutting down the border ports of entry. We did so, as

Commissioner Ziglar indicated, in coordination with the INS. Besides going to Level 1 alert, which, by the way, means significantly increasing the questioning of people entering the United States, passengers, vehicles, as well as the inspection of vehicles and cargo, Customs also repositioned some of its Black Hawk helicopters from the southern border with Mexico to the northeast to aid the recovery efforts.

On the morning of 9/11, through an evaluation of data -- by the way, this was the passing through manifest, which U.S. Customs was able to access from the airlines -- I would say, within about an hour of 9/11 U.S. Customs Office of Intelligence had identified the 19 probable hijackers as well as the complete list of the passengers on the aircraft. By the way, Customs was also struck directly on 9/11. The U.S. Customs cell in New York City was located at 6 World Trade Center. It's an eight story building that was immediately north of the North Tower and it was destroyed, of course, completely when the North Tower fell. Fortunately, all 800 Customs employees in New York City that were in that building, that worked in that building were unharmed. Of course, the loss of our building is nothing in comparison to the thousands of people that were murdered on the morning of 9/11.

I was confirmed on September 19th by the Senate and sworn in a few days later. Let me just say, first of all, that it was very apparent to me and I think many people at U.S. Customs that the agency's mission and its future had been dramatically changed by what had happened. It certainly was clear to me that our priority mission had changed from one of interdiction of illegal drugs and trade regulation and the like to a security prevention mission and, to put it very plainly and bluntly, preventing terrorists or terrorist weapons from entering our country.

We also saw, by the way, after 9/11, on the 12th and 13th and 14th, we saw that Level 1 alert was one thing but on the day after and the few days after 9/11, we saw wait times go at our border ports of entry go jump, particularly at our northern border, from about an average of 20 minutes before 9/11 at the Ambassador Bridge, for example, from Ontario into Detroit, they jumped from 20 minutes to 12 hours overnight.

So, by September 12th, there was a 12-hour wait time which was impacting many of the companies on our side of the borders, including auto makers who had just in time inventories. By the way, that was across the border. At Buffalo, the bridges over Buffalo were also 10- to 12-hour wait times within a day or two

of 9/11 as well as the bridge at Port Huron. So we virtually shut down the borders by going to Level 1 alert.

Suffice it to say -- and I won't go into detail, it's in my testimony -- we worked with Governor Engler to get National Guard support. We worked -- the inspectors were working 12 or 16 hours a day, seven days a week. We TDY'd temporarily duty assigned people to the northern ports of entry from as far away as Los Angeles. We did everything necessary to both maintain security but by September 17th or September 18th, we had gotten the wait times down to near where they had been prior to 9/11.

It was also clear to me that, if we were going to be able to perform our anti-terrorism mission, that we were going to need to have advance information about people and cargo coming into the United States. And we did -- just very quickly, there were a couple of things that were very important. One was, we did obtain legislation, with support of the Administration, in the Transportation Security Act that mandated for the first time that all airlines that were flying passengers into the United States from abroad had to -- were required to provide the advance passenger information with respect to everybody on that flight and also the personal name data with respect to those passengers. That was enacted in November of 2001 and we were able to get very fast compliance with that law, in part by making it clear to airlines that didn't comply with the law that Customs was going up to 100 percent inspection of all their passengers arriving at JFK and other airports around the country.

The second thing we did was we also needed advance information electronically with respect to cargo shipments coming into the country and we promulgated in Customs what's called the 24-hour rule. But that rule essentially required that Customs be given advance information with respect to a complete information electronically with respect to all cargo shipments, ocean-going cargo shipments that were being shipped to the United States 24 hours before those cargo containers were loaded on board vessels outbound from the foreign ports. Not 24 hours before arrival into the U.S., 24 hours before they left the foreign ports for the U.S. Similarly, under what's called the Trade Act legislation of 2002, we were able to essentially extend these advance manifest information on cargo shipments to all other modes, commercial trucks, rails, rail shipments and air cargo and the like.

We also, as Mr. Ziglar indicated, realized that we had to push our border outward. We had to extend our zone of security

and we did three key things in that direction. One was to create in late 2001, November 2001, the Customs Trade Partnership Against Terrorism. This was essentially partnering with the private sector to get a commitment from them to give increased supply chain security literally from the foreign loading docks of their vendors to the U.S. borders.

In an exchange, if they met the security standards that we set out, in exchange, we would give those companies -- we call it C-TPAT -- expedited processing through the borders of the U.S. That started off with just seven companies, seven major importers of the U.S. in December 2001. There's over 5,000 companies that are now members of the Customs-Trade Partnership Against Terrorism and they represent over 40 percent of the volume by value of imports into the United States. That's probably the largest, and I believe, most successful public-private sector partnership that was formed out of the ashes of 9/11.

And then secondly, as an extended border program, we implemented the Container Security Initiative. And the Container Security Initiative was to recognize that particularly when you're talking about the terrorist threat and potential use of a container to conceal a terrorist weapon, even -- particularly a weapon of mass destruction -- or use the container as a weapon, that we needed to do our targeting of cargo containers that we're moving for the U.S., and the screening of those containers for at least the high-risk containers, the containers that were identified as posing a potential terrorist threat at foreign seaports. And we proposed in January of 2002 that we start with the top 20 foreign ports, which represented almost 70 percent, over two-thirds of all the containers coming to the United States, and that we implement it at those ports.

And we have been able to implement the Container Security Initiative. The countries representing 19 of the top 20 ports have agreed to implement CSI, the Container Security Initiative, and we have in fact implemented it at 17 foreign ports around the world. And we are continuing, by the way, now to expand that to other ports that ship significant volumes and are strategically located, of cargo containers to the U.S., places like Malaysia.

Let me also just say -- it's in my testimony -- we've had some excellent cooperation with Canada and Mexico with respect to smarter borders, that is to say borders that add security to both the movement of people and the movement of goods across our borders, and at the same time do it with respect to some initiatives that actually facilitate the flow of legitimate trade

and people. These are programs like the Free and Secure Trade Program with Canada, which we've expanded to Mexico, programs that we worked on with the INS, the NEXUS program, which we've expanded, which is for people who are travelling across our border who are willing to give up basically some of their privacy to submit an application, pay a small fee, and are vetted through the criminal and terrorist indices of both Canada and the United States, and are personally interviewed. And if they are determined not to pose a terrorist threat or a threat for smuggling, they are given a proximity card and can get through the border expeditiously.

MR. KEAN: Mr. Bonner, could you start to sum up, please?

MR. BONNER: I will. Those are a few of the initiatives that we took as part of U.S. Customs. One of the most important initiatives actually was the creation of the Department of Homeland Security, and within this new department the Customs and Border Protection, which is for the first time unifying all of the personnel or agencies that had border responsibilities into one border agency to manage and secure the borders of our country. We have begun to do that as of March 1, 2003, with the stand-up to the department. That is to create what Secretary Ridge has called one agency -- one face at the border, which is one border agency of the federal government to manage, secure and control our borders.

And I can't tell you how important that is to our effectiveness in terms of the terrorist threat. It is extraordinarily important to bring together men and women like Inspector Melendez, who testified earlier here, a former INS inspector, and people like Diana Dean, who was a Customs inspector in the state of Washington who was responsible for catching Ahmed Ressay, the millennium bomber.

So let me conclude my remarks with that. Mr. Chairman, thank you and the Commission for your indulgence. I'll answer any questions you have when we get to question time.

MR. KEAN: Thank you very much.

Mr. Verga.

MR. PETER F. VERGA: Thank you, Mr. Chairman, and members of the Commission. I appreciate the opportunity to help you with your important work and to discuss the Department of Defense role in relation to civilian border authorities. My comments today

are distilled from the longer, more detailed written statement I have submitted to you, and I would ask that that written statement be made a part of the Commission's record.

I am the principal deputy assistant secretary of Defense for Homeland Defense, serving under Assistant Secretary Paul McHale in the Office of the Secretary. I'm a career member of the Senior Executive Service, and at the time of the terrorist attacks of September 11th, 2001, I was serving as deputy undersecretary of Defense for policy integration. Soon after the attacks, Secretary Rumsfeld designated then secretary of the Army, Thomas White, to manage the day-to-day execution of Homeland Security and Defense activities in the department on a temporary basis. And in January of 2002, I was appointed as a special assistant for Homeland Security, managing a newly created Homeland Security Task Force which served as a temporary bridge between the immediate post-9/11 aftermath and the establishment of new homeland defense and civil support organizations within the department.

To provide the necessary context for my remarks, it's important to make the distinction between homeland security and homeland defense, and the very different but complementary roles of the Department of Defense and the Department of Homeland Security in those activities. Stated simply, the Defense Department provides the military defense of our nation from all attacks that originate from abroad, while the Department of Homeland Security aims to protect the nation against and prepare for acts of terrorism. The Department of Defense has organized and prepared, however, at the direction of the President and the secretary, to support the Department of Homeland Security's mission.

In understanding DOD's activities in relation to the border, it's important to understand that there is a nexus with DOD's support in the counternarcotics arena and to recall a tragic incident in 1997 that had ramifications for how that support is executed. The Department of Defense active and Reserve component forces and the National Guard have provided a wide variety of counternarcotics support to drug law enforcement agencies along the southwest border of the United States since 1989, including surface and aerial reconnaissance, minor construction in establishing tactical observation posts, training, intelligence analysis, linguistics support, transportation, and training exercises along the border to provide terrain denial.

On May 20th of 1997, near the border in the vicinity of Redford, Texas, an active duty Marine performing a counternarcotics mission tragically killed a U.S. citizen in self-defense. Subsequently, DOD concluded that it would no longer provide support that would place active and Reserve component forces in situations in which confrontations with U.S. citizens might occur. National Guard personnel acting in state status were, however, permitted to continue to perform ground missions. It's also important to underscore that the Homeland Security Act of 2002 now gives the secretary of Homeland Security the responsibility for the security of our nation's borders. And DOD's role in border security is to provide support to those civil authorities, again, principally the Department of Homeland Security, when appropriate.

I'd now like to respond directly to the four areas of interest related to border security that were identified to us by the Commission. First, what action did DOD take to secure borders immediately after the 9/11 attacks? As detailed in the written statement I've submitted, DOD engaged in a number of actions to improve homeland defense and provide interim support to border authorities immediately following and then in the months after the attacks. These included, for example, Operation Noble Eagle, which involves air patrols over key domestic locations, U.S. Navy ships deployed off the coast, with anti-aircraft systems and integrated air defense assets located in the National Capital Region, deployment of National Guard troops operating under state control but with federal funding to guard some 421 airports, and U.S. Navy support for Coast Guard homeland security patrols and the mobilization of 1,600 National Guard troops along the southern and northern borders to support the Customs Service, Immigration and Naturalization Service and the Border Patrol in their heightened security postures.

The second area of interest is the strategic role of the military in anti-terrorism, including protecting against infiltration of the United States by terrorist groups such as al Qaeda. DOD defines anti-terrorism as defensive measures to reduce vulnerabilities and protect U.S. forces and assets worldwide. Anti-terrorism thus represents one element of a broader approach to combating terrorism that also includes counterterrorism, terrorism consequence management, and intelligence support.

The principal focus of DOD's efforts to combat terrorism is on bringing the fight to the terrorists abroad through the prosecution of the global war on terrorism. The next line of

defense also lies beyond the borders of our nation, where we are patrolling the air and maritime avenues of approach to engage terrorists before they reach our borders. In this effort, the North American Aerospace Defense Command guards, patrols and monitors the skies over and around Canada and the United States. And similarly, the U.S. Navy mans the sea approaches in international waters and works with the U.S. Coast Guard to patrol our territorial waters.

Within U.S. borders, the domestic law enforcement community is responsible for countering terrorist threats. The Department of Defense, of course, stands ready to provide assets and capabilities in support of those civil authorities consistent with U.S. law.

The third area of interest is the military's role in sharing intelligence with border inspection services. DOD policies and directives emphasize protection of the constitutional rights and privacy of U.S. citizens. In the absence of foreign involvement, military intelligence organizations are limited to performing non-intelligence functions in domestic support operations. If authorized by law to collect foreign intelligence or counterintelligence information within the United States, military intelligence organizations must do so only in support of the Federal Bureau of Investigation, the lead federal agency responsible for intelligence collection within the United States.

DOD is a full partner in the Terrorist Threat Integration Center which began operations in May 2003 and whose function it is to close the seam between analysis of foreign and domestic intelligence on terrorism. And additionally, United States Northern Command has a well established links of information and intelligence sharing on border activities. Primarily through its Joint Task Force 6, the North American Aerospace Defense Command and the National Guard.

And similarly the National Guard in most of the 54 states and territories supports intelligence analysis efforts of the Drug Enforcement Administration, the Federal Bureau of Investigation, Department of Homeland Security, Bureau of Customs and Border Protection and various federal, state and local task forces. DOD is also now installing secure Internet systems in many of the high intensity drug trafficking areas intelligence centers to facilitate information sharing that has national security and homeland security value.

The last area of interest I was requested to address is the role of the military in civil support in emergency preparedness in conjunction with U.S. land and sea border inspection and enforcement authorities. As noted earlier, DOD's role vis-à-vis border security is to support civil authorities, again primarily the Department of Homeland Security, when requested. If the President or the secretary of Defense so direct, NORTHCOM will lead DOD's response to request for assistance from those lead federal agencies for border security operations.

DOD also plays a supporting role through developing and maintaining good bilateral federal defense relationships with our neighbors. To the south, the U.S. has a positive high level relationship with the Mexican military and U.S.-Mexican civil cooperation along our shared border is well established. To the north, we enjoy a close cooperative relationship with Canada across the board, to include the areas of counterterrorism, consequence management and aerospace warning and defense.

At the strategic level, the Permanent Joint Board on Defense epitomizes our close bilateral ties. At the operational level, that long standing North American Aerospace Defense Command is a clear illustration of our bi-national commitment to counter aerospace threats to North America. In addition, a new bi-national planning group was established in Colorado Springs in December of 2002. That planning group is working to improve U.S.-Canada arrangements to defend against maritime threats to North American continent and respond to land-based attacks as well as civil support operations.

Maritime homeland security is the responsibility of the Department of Homeland Security as the lead federal agency, and is executed by the U.S. Coast Guard. Again, when directed by the President or the secretary of Defense, United States Northern Command will respond to requests for assistance to augment Coast Guard maritime security operations. The Department of Defense, Department of Homeland Security, the Coast Guard and the U.S. Navy are working together to establish a layered approach to maritime defense and security. In that same vein, the Department of Defense remains involved in supporting Coast Guard in port security and maritime domain awareness.

Today we face a challenge that is equal to or greater than any we have ever faced before. Once we could readily identify and defeat our enemy in conventional warfare. Today we must cope not only with the threats produced by proliferation of weapons of mass destruction and missile technology among nation-states, but

also with threats posed by individual terrorists and terrorist organizations with global reach. The Department of Defense has a long tradition of support to civil authorities, including border authorities while maintaining its primary mission of fighting and winning the nation's wars.

As long as terrorist networks continue to recruit new members, plan and execute attacks against U.S. national interests and seek out weapons of mass destruction, U.S. military forces and other DOD assets will remain engaged. Our goals are to thwart terrorist operations, disrupt their plans, destroy their networks and deter others who might consider such attacks on our nation. U.S. military forces stand ready to defend and protect our homeland in overseas and domestic operations. I look forward to answering any questions you may have.

MR. KEAN: Thank you all, very much.

Commissioner Ben-Veniste?

MR. BEN-VENISTE: Thank you, gentlemen, for your testimony here today.

I'd like to start with Mr. Ziglar, if I may. I was particularly interested in your analysis of the failures as you perceived them that led up to the 9/11 catastrophe. And indeed I have made statements from time to time from this vantage point about the fact that we had a considerable amount of collected intelligence prior to 9/11, but it seems as though our failures involved the inability to disseminate and utilize that information in a way in which we could interdict those individuals who participated in the 9/11 plot.

And so particularly since I agree with you, I'm very interested in that analysis. I'd like to ask you, in the run up to September 11th, we have received a great deal of information about the type, the quality and the volume of information that was being received by our intelligence community, indicating that something big was going to happen. Admittedly the emphasis in looking at this information was toward an attack on U.S. interests on foreign soil, but clearly the intelligence community did not and could not and would not rule out the possibility of a violent attack on the homeland.

Let me ask you, sir, whether you were advised or to the best of your knowledge INS was advised that we were in the summer of 2001 in a heightened period of alert, with respect to the

possibility of Jihad-est or Islamic fundamentalist terrorist activity?

MR. ZIGLAR: The answer, sir, is that I was not briefed or advised that there was any particular concern at the time, nor am I aware of anyone in our national security unit or intelligence folks being aware of that. If they were, I'm not aware of it.

MR. BEN-VENISTE: What makes this particularly troublesome is the fact that from June 1, 2001, forward nine, at least nine, of the participants in the catastrophe of 9/11 entered into the United States. Nine of them came in after June 1, 2001. During this period of increased, certainly in the midst of this increased volume and quality of potential terrorist activity, and nine, at least, came in between April and May. Now, had you been a partner, putting aside an equal partner, at least a recipient of the kind of information that was setting the hair on fire of other people elsewhere in the government because of the dramatic nature of this information, what might you have been able to do?

MR. ZIGLAR: Of course, you're asking me a question, a hypothetical question because I wasn't there, but if I had known we had information about specific individuals and specific threats, I think the first thing we would have done immediately is to put that information into what was called NAILS --

MR. BEN-VENISTE: Well, let's take that off the table because clearly with the exception of two individuals who were not watchlisted, there was no specific information that was within the databank of the U.S. However, as you have heard this morning or maybe you haven't?

MR. ZIGLAR: I'm sorry, I wasn't here.

MR. BEN-VENISTE: But our staff has developed a very broad and detailed analysis of the travel documents that were utilized as well as the profiles of the individuals, had you been notified that you were in a situation -- that we were in a situation of high alert during this period, could you have taken steps that might have interdicted any of these individuals?

MR. ZIGLAR: Well, I certainly think that the field operations people would have put out an alert to all inspectors that there is a heightened concern and that we would have probably at that point put a whole lot more people into secondary for both questioning and inspection of their documents, it would seem to me that would be a fundamental thing that you would do.

You would also go out to all the district offices for your special agents internally and put out the word that there was a high alert, then if you had a name or something that that would go to the top of the priority list of people that they would be looking for.

I mean, those would be the normal course of events sort of things. We had a national security unit, or have -- I guess we still have it, I assume, a national security unit there that was responsible for working with the field on particularly national security kinds of cases, they would have been activated in a very targeted way.

MR. BEN-VENISTE: Let me ask you about 9/11 itself and immediate aftermath. One of the things that occurred in the immediate aftermath was the order from the attorney general to take steps with respect to foreign visitors in this country who had in one way or another been in violation of their immigration status. Let me ask you whether you took a position with respect to this program?

MR. ZIGLAR: Yes, sir, I did. I suggested that it needed to be targeted to those folks that we had some kind of reasonable suspicion to believe might have some kind of connections first that we should avoid the appearance of being involved in any kind of harassment or sweep or roundup or any of that sort of thing, for some very fundamental fairness reasons, but also because I thought that it would probably scare the community, that we would be looking for to cooperate with us, so I did express that point of view.

MR. BEN-VENISTE: You saw a blanket effort to detain individuals who were out of status as counterproductive because of its general scope?

MR. ZIGLAR: I thought it had the potential of being counterproductive, yes, sir.

MR. BEN-VENISTE: And did you express a view with respect to its legality?

MR. ZIGLAR: Yes, sir.

MR. BEN-VENISTE: Let me read from your statement, at page 15. "A public record has been established indicating that INS personnel, including me, raised questions and concerns about the appropriateness of certain policies and practices that were being

pursued by the Department of Justice in the investigation. I considered it my duty to raise my hand when I felt that the bounds of law were being approached, or where a practice or policy was ineffective, ill-advised or violated notions of fundamental fairness. I make no apologies for doing what I believed to be my duty."

You go on to say, "We have a long history in our country, particularly in times of crisis, of incorrectly assuming that there is a clear nexus between immigration and terrorism or anarchy. Our public discourse needs to be better informed. This commission bears a particular burden in that respect." I agree with you. Would you like to elaborate on that point?

MR. ZIGLAR: I think it says what I feel, sir. I'm not sure I could elaborate on it.

MR. BEN-VENISTE: Can you tell us on the basis of your observation of how that policy was carried out, whether there were any terrorists or suspected terrorists who were arrested in connection with that sweep?

MR. ZIGLAR: I'm not aware of any.

MR. BEN-VENISTE: Let me turn to Mr. Bonner, if I may. Obviously mindful of what I think Commissioner Gorelick has earlier indicated in this day, long day of hearing, that we're not going to obviously talk about specific instances where our staff or we have perceived holes, in the procedures, practices or policies that are now in place, but let me ask you generally with respect to container security, which you have brought up in your statement. It has been widely discussed that only a very, very small percentage of shipping containers coming into this country from foreign ports are physically inspected. Can you provide some details with respect to that and whether there is a program underfoot to increase the physical inspection of shipping containers?

MR. BONNER: Be happy to. First of all, there's sort of a -- one of the urban myths is that there're 2 percent of the containers approximately that come into the U.S. are inspected and the reality is, of course, we've been increasing the rate of our inspections, but the premise, the underlying premise for our inspection is a risk management one. That posits with the right strategic intelligence, the right anomaly analysis, the right detection equipment, you don't necessarily have to inspect all containers coming into the U.S.

If we have to do that, we don't have the resources to do it and I think it actually would be rather foolish, a waste of resources. But basically I can tell you that if you take all cargo shipments which basically would be both trucks and ocean going cargo containers, the number is close to 10 percent.

MR. BEN-VENISTE: And if you limited yourself to ocean going containers?

MR. BONNER: If you limit it to ocean going containers, it's between four and 5 percent, I mean, it goes up and down, it varies. But I will hasten to add, as I think you know, Mr. Ben-Veniste, that the premise here is that we actually get information on all containers that come into the United States before they arrive. We do an analysis of those containers, we select out the ones that we think pose a potential risk for the terrorist threat and we screen through both radiation detection and large scale imaging equipment 100 percent of those containers.

Now, with CSI of course we're doing more and more of that, not just on arrival at USC ports, but where we have CSI in place, doing it at the outbound ports before they're even loaded on board vessels to the U.S.

MR. BEN-VENISTE: So is it fair to say that since 9/11 the percentage, the quantity of shipping containers from overseas ports have increased?

MR. BONNER: Yes, unquestionably. Probably in the order of doubled or tripled.

MR. BEN-VENISTE: So, pre-9/11 it might have been about 2 percent and now it's 4 or 5?

MR. BONNER: But by the way, I don't know that it was 2 percent before 9/11, I mean I don't know where the figure comes from.

MR. BEN-VENISTE: Well, if it's 4 percent now and it's doubled --

MR. BONNER: But I feel confident that it's increased by 100 percent and I actually think it may well be more than that.

MR. BEN-VENISTE: Do you have a goal, a target --

MR. BONNER: Yes.

MR. BEN-VENISTE: -- as to the -- where you'd want to be, can you share that with us?

MR. BONNER: Yes. The goal is screen and do a security inspection for 100 percent of all containers that we identify as potentially risky for the terrorist threat, and I believe we are doing that, that's the goal and I think we're either doing it or close to doing it at ports of arrival into the U.S. and we're now through the extended border strategy being able to do that more at foreign sea ports before they're shipped to the U.S.

MR. BEN-VENISTE: Do I understand you to say that you are at your target now?

MR. BONNER: We are -- yes, I think we are at or close to our target, which is to say that one thing I didn't mention in my testimony for a lack of time is that one of the things we set up in October 2001 for the first time in the history of Customs, was a national targeting center to target all containers, who also gets all the information on arriving passengers too, but all containers that are coming to the U.S. and essentially taking strategic intelligence and developing targeting rules, there are 150, 200 targeting rules in the system to score and target for potential threat.

It doesn't mean they are an actual terrorist threat, but because of a variety of factors, we have identified those containers that pose a potential security threat, terrorist threat. And with respect to those, we are, I believe, we are screening 100 percent, every one of those we've identified as a potential terrorist threat according to our targeting rules that have been set up through the targeting center by U.S. Customs. By the way, it's a 24/7 watch that takes all this information and essentially evaluates it and analyzes it through these rules.

Now, by the way, we need -- we are a consumer of intelligence and it's not just tactical specific intelligence, what container or what person may be a terrorist. But we are a consumer of strategic intelligence too and so, some of our rules are formed by what we get through the intelligence community and the FBI to inform us just on how we set our rules. That's the methodology. It's a risk management methodology to identify every container that poses a potential risk and then make sure every container is screened for security purposes.

MR. BEN-VENISTE: I must say that I had the occasion to observe border security operation by the Customs service at the Niagara Falls U.S.-Canadian crossing and was very impressed with the dedication of the individuals who were working there and the level of instruction that they had obviously received. Let me ask you this. With respect to the inspections that you have conducted with respect to both land and sea containers since 9/11, have you interdicted any containers that would be regarded as directed toward terrorist activities in the United States?

MR. BONNER: I can't say that there are any that are directly related to terrorist activities. We have interdicted containers that have contained automatic weapons. We have interdicted containers that contained essentially chemical, anti-chemical exposure kinds of suits and things like that. But I can't say that they're directly connected with terrorism. But I can say that the system works. I'd also say, since you were up at Niagara, you also saw -- I believe you saw that there are portal radiation monitors there for the -- coming across those bridges, both trucks and passenger vehicles.

MR. BEN-VENISTE: I did.

MR. BONNER: They didn't exist on 9/11. So we're getting a radiation read on every vehicle, truck and passenger vehicle. We also have deployed, which didn't exist on 9/11, large scale X-ray imaging machines so we can do whole container truck X-rays and images which we didn't have on 9/11. We've done that. We've put these in place on the northern border and sea ports of the country and the like. So --

MR. BEN-VENISTE: Getting a lot of hits on cancer patients who --

MR. BONNER: We do get some hits on cancer patients occasionally that are in vehicles crossing the Mexican or the northern border.

MR. BEN-VENISTE: Let me ask you briefly about your statement about the day on 9/11 which I found very interesting. You say that, on the morning of 9/11, through an evaluation of data related to the passenger manifest of the four terrorist hijacked aircraft, Customs Office of Intelligence was able to identify the likely terrorist hijackers within 45 minutes of the attack, Customs forwarded the passenger lists with the names of

the victims and 19 probable hijackers to the FBI and the intelligence community. How are your people able to do that?

MR. BONNER: Well, it was pretty simple actually. We were able to pull from the airlines the passenger manifest for each of the four flights. We ran the manifest through the TECS/IBIS system. This is essentially the lookout system that both U.S. Customs and INS use but it's maintained by Customs. We ran it through the system. Two of the passengers on those aircraft were hits for having been entered on the watchlist in August of 2001. That was al Mihdhar and I forget the other one's name but they were the two people that had gone to Singapore that the CIA had identified. But they actually were put on the watchlist in August of 2001 by the FBI. So they hit on those two.

Just using those two hits and taking a look at some other basic data about the flight manifest, both in terms of -- I don't want to go into a lot of detail -- but where they were seated, where they purchased their tickets, you could do just a quick link analysis and essentially, I remember I was at Secret Service headquarters, as I said, but I would say whether it was 45 minutes, I don't know but my recollection is that certainly by 11:00 a.m., I'd seen a sheet that essentially identified the 19 probable hijackers. And in fact, they turned out to be, based upon further follow-up in detailed investigation, to be the 19.

MR. BEN-VENISTE: Was this more than looking at the two who were hits and then checking out the other Arab names?

MR. BONNER: It was partly that, by the way, but it was more than that. No, it was seat location, ticket purchase information. Again, I am on public record here. I don't want to go into exact details since we use some of this information in terms of targeting today for potential terrorists. We actually use, as I was saying, advance passenger information to identify beyond just who's on the watch list by biography to try to do a more intelligent job as to who, as the combined immigration inspection and Customs inspection, Customs and Border Protection who would you ask a few questions to as they're arriving in the United States.

So you're doing more than just looking at a watch list. You're looking at a lot of data and trying to figure out who to look at, just as in the same way we're looking at what cargo to look at by examining a multitude of factors. That is, to some extent, strategic intelligence driven. So it was looking at a bunch of relational data. Obviously, more refinement of that

occurred later but it was -- it didn't take a lot to do, just sort of what I'd say a rudimentary link analysis to identify essentially all 19.

MR. BEN-VENISTE: With respect to Mr. Verga, obviously we don't have time to go into the -- we could spend the whole day certainly or more on each of your areas of expertise. But I'm interested in the question of the use of the military within the continental United States and in your statement, you indicated that there were several statutory exceptions to the Posse Comitatus Act, including Public Law 10740, authorizing the President utilizing military force to prevent further terrorist acts against the nation. And in that regard, I wasn't familiar with it but I found that this was a law passed by Congress seven days after 9/11 and I'd be interested to hear from you how the Department of Defense feels that this is a modification or exemption to the Posse Comitatus Act.

MR. VERGA: First, let me stipulate I'm not an attorney and I would -- obviously for an official DOD legal reading on any interpretation of the law, I would defer to our general counsel. My understanding is that the Posse Comitatus Act provides that military forces may not be used to enforce civil law except as otherwise provided by Congress through the enactment of any other legislation. I believe that our view of that particular statute is that it was not limited to overseas use of the military forces and therefore it could be construed to in fact be an exception to the Posse Comitatus law as enacted by Congress. But, as I said, I would defer either to a former DOD general counsel who is a member of the Commission or to our current general counsel for an official reading on this.

MR. BEN-VENISTE: I would ask that, if it were possible, something be submitted in writing as to that interpretation.

MR. VERGA: Sure.

MR. BEN-VENISTE: I'm also interested in the mission that you've indicated with respect to NORTHCOM. NORTHCOM has, if I understand correctly, it has -- and the military has, for some time, assisted in the interdiction of narcotics traffic into the United States either by plane or vessel. Do you interpret the mandate of NORTHCOM now to provide similar assistance with respect to anti-terrorist activities?

MR. VERGA: You very correctly state that the Department of Defense is by law the lead federal agency for the interdiction of

air and maritime drug traffic into the United States. United States Northern Command operates -- part of their subordinate elements are Joint Task Force 6, located in El Paso, Texas, which orchestrates the military's involvement in that activity, along with our joint interagency task forces, east and west, which also help work the interagency aspects of it.

There was a recent change in the law which allows the joint interagency task forces, previously established for counternarcotics use, to be used in the counterterrorist role. And we're undertaking that at this time. Now, the question I think that arises from that is the active use of military forces in interdicting traffic back and forth across the border. And, again, that comes to the sort of public policy decision that the border control authority for the United States is not the United States military but our civilian agencies. We do assist those civilian agencies by providing them information or, for example, flying helicopter patrols along the southern border and then passing that information of what we may observe onto the civilian law enforcement agency.

MR. BEN-VENISTE: And do you anticipate that that is a function which will also be supplied in connection to counterterrorism?

MR. VERGA: I think it's one of those questions of it's difficult -- if you identify somebody who's trying to sneak across the border, you can't tell why they're trying to sneak across, you just know that they are and therefore you pass that on to the appropriate authorities. It would be useful in a counterterrorist role.

MR. BEN-VENISTE: Does NORTHCOM have an intelligence capability? Does it have its own intelligence unit?

MR. VERGA: It has its own intelligence analysis capability, as do all our Combatant Commands. The J-2 in military jargon is the intelligence officer for the command, and they take intelligence product and analyze it based on the particular command's mission. We collect intelligence only in accordance with the applicable laws, which restrict the collection of intelligence inside the United States, principally to counterintelligence in conjunction with the FBI.

MR. BEN-VENISTE: So if I understand you correctly, the Department of Defense interprets its mission on NORTHCOM with respect to force protection or any other traditional intelligence

component of a command, such as NORTHCOM if it were outside the United States, to restrict the military from the collection function.

MR. VERGA: Yeah. From the gathering and collecting of intelligence inside the United States, that's correct.

MR. BEN-VENISTE: And it is, however, a customer of collected intelligence. Is that correct?

MR. VERGA: That's correct as well.

MR. BEN-VENISTE: In looking at your detailed statement, at page 8 you list a pretty good shopping list that goes on to page 9 of examples of technology transfer specific to the areas of border and transportation security, where the Department of Defense is making a contribution. Do you anywhere indicate the data-mining project that was initiated at DARPA or was then brought through this Total Information Awareness which became Terrorist Information Awareness under Admiral Poindexter?

MR. VERGA: I did not indicate that in my written statement, nor have we passed that technology on to any other agencies as of this time. There are two very similar programs, that one which is the opportunity to use -- I don't like the term data-mining, but data correlation I think is probably a more appropriate term -- data correlation techniques to do exactly what the Commissioner talked about doing manually post-9/11 but doing it in an automated basis. We also have a joint protection enterprise network which is a DOD network which we use for force protection purposes, which is the ability to exchange relevant information among the military commands associated with force protection inside the United States.

MR. BEN-VENISTE: Was there some -- that program that had been initiated in DARPA, is that continuing?

MR. VERGA: The research on that is continuing as of now.

MR. BEN-VENISTE: Okay. And if Northern Command is a customer for collected intelligence, does that include intelligence about U.S. citizens?

MR. VERGA: Only to the extent that it's permitted by law for NORTHCOM to have information about U.S. persons. We conduct all of our intelligence activities inside the United States or

outside the United States in accordance with the applicable law, and there are --

MR. BEN-VENISTE: I understand.

MR. VERGA: There are restrictions on the types of information that the Department of Defense can collect or hold on U.S. persons. If it's relative to the protection of U.S. installations or property, equipment, a criminal investigation or a counterintelligence investigation, then military intelligence activities could keep and hold that information, otherwise they're not permitted to.

MR. BEN-VENISTE: Would you agree that the creation of NORTHCOM now provides a much broader need in the traditional sense for force protection or other intelligence?

MR. VERGA: I don't think it creates any additional need. What NORTHCOM and the Northern Command provides is centralized command structure to undertake military activities that are authorized inside the United States. They have currently only command and control type forces or headquarters assigned to them. They receive forces on an as needed basis, should they be required to come to the assistance of another federal agency in response to the consequences of a terrorist attack. But they didn't -- it did not create any additional need just by the creation of Northern Command. The responsibilities for force protection remained where they were before with the services, for example, or with Joint Forces Command, which had the forces prior to the creation of NORTHCOM.

MR. BEN-VENISTE: Thank you very much.

Mr. Hamilton --

MR. HAMILTON: Chair has two more commissioners who want to ask questions. Commissioner Gorelick and then Commissioner Fielding.

Commissioner Gorelick.

MS. GORELICK: Thank you, Mr. Vice Chairman.

Let me start with you, Mr. Verga, kind of follow up on what Mr. Ben-Veniste's been asking about but from a different angle. We have what used to be a CINC and now a Combatant Commander for every part of the world except the United States. And the

American public I think would find it interesting to know that if you have a Combatant Commander for a particular area of the world, that person probes the intelligence to see what the threats are, does scenario planning against those threats, trains, makes sure that troops are trained against those missions, exercises against those missions and against those threats.

You have given what I expect is a very accurate description of what we have by contrast inside the United States. That is you are in a support mode to civil authorities basically. You have some border security functions, consequence management, of course, aerospace warning, but basically you are in service of civil authorities that have a command structure that doesn't remotely resemble, as we've heard today and certainly before this, does not remotely resemble the unitary clear command responsibility that a CINC or a Combatant Commander has.

Now, in my experience, had we had such a person here in the United States prior to 9/11, that person would have probed the intelligence, not necessarily on individual people but on the nature of the threats, and might have practiced against that scenario and might have, for example, pre-positioned aircraft in a different manner than they were indeed pre-positioned. Would you agree with that scenario that I've just drawn?

MR. VERGA: Let me just address a couple of things. The United States Northern Command, which was created and became effective on the 1st of October, 2002, is the command which is responsible for the geographic area of the world which includes the United States. They have a mission that's divided into two parts, the protection of the United States' territory, interests, et cetera from external threats and aggression, and to support civil authorities as ordered by the President or the secretary of Defense.

As part of their first mission, they do, in fact, do exactly what you said, analyze intelligence, look at threats, look at the positioning of defense forces to deal with those external threats and aggression. The difference is that the -- let's take the 9/11 attack, for example. The prevention of the hijacking of the aircraft is, in fact, not the job of the Department of Defense, it's the job of now the Department of Homeland Security or the Transportation Security Administration.

Dealing with those hijacked aircraft after they had become weapons aimed at the United States would in fact be the mission

of the Department of Defense and we position our defense forces accordingly. At the time, our defense forces were positioned in accordance with the perceived air threat against the United States, which was external threats to the United States, so therefore we were looking outward, not inward, not looking at external threats that manifest themselves internally, if that's not an inconsistent statement.

Currently, every single day United States Northern Command looks at the available intelligence and then arrays the air defense forces in accordance with their estimation of where the most probable need might arise. But we still look to the civilian agencies to prevent the hijacking of aircraft. The obvious last thing that you want to have to do is to shoot down a civilian aircraft that had been hijacked. So therefore we would expect that no civilian airliner would be allowed to take off if there were a doubt that would require us to be better positioned to shoot that aircraft down.

MS. GORELICK: All right. So just to be clear, let's talk about the pre and post-9/11 environment. Post-9/11, is the commander of NORTHCOM, Northern Command, operating as a functional equivalent of the Combatant Commanders elsewhere in the world in terms of responsibility for assessing the threat, ensuring that scenario planning is done against those threats, ensuring that troops, et cetera, are trained for missions that would meet those threats.

MR. VERGA: That's correct. Consistent with their mission statement and also consistent with the fact while he's a geographic Combatant Commander like any other, the area of operation is, in fact, unique because it contains the government of the United States, 54 sovereign states and territories to deal with, so it's not exactly the same as being an overseas Combatant Commander, but in terms of the mission to defend the United States and respond to consequence management requirements, he does all those things that you said.

MS. GORELICK: Prior to 9/11, was there any person who had that functional equivalent role to assess the intelligence with regard to the threats against the United States that might occur domestically and to address those scenarios by scenario planning, training, pre-positioning of all the means of defense? Was there any single person who had that role prior to 9/11?

MR. VERGA: No single one. The responsibility for defense was actually divided in two parts. Air defense was the

responsibility of North American Aerospace Defense Command and land and maritime defense was the responsibility of Joint Forces Command, which was headquartered down at Norfolk, Virginia.

MS. GORELICK: And did they have the same analogue response? In other words, for the person who had responsibility for our air defenses on that day, was that person charged with understand the full panoply of threats to our nation's security from the air, addressing scenarios that might arise as suggested by that intelligence, and pre-positioning both individuals that were appropriately trained and equipment to meet those threats.

MR. VERGA: I would have to answer yes to that question. I would also have to qualify that yes by saying that the emphasis of the defense activities of the United States at that particular time were external. I don't think there was anybody who was, again, concentrating on an external threat manifesting itself internally to the extent I believe your question implies.

MS. GORELICK: Thank you for that very straightforward answer.

Mr. Bonner, a question for you. We have heard that there were 33 hijacker entries and two referrals to Customs' secondary inspection. And I'd like to address one of them, which was Waleed al Shehri, who as I understand it, he was -- there was a secondary inspection report that states that a secondary inspection was complete and he was not permitted entry into the Bahamas and returned to Florida by Bahamian immigration. So my question to you is could it be that someone who would be rejected by the Bahamian authorities would be accepted by us, and if so, under what circumstances and what would we do about it?

MR. BONNER: Well, first of all, I know nothing whatsoever of any report you might have with respect to a secondary inspection on al Shehri. So there may have been one and it may have been INS, it may have been Customs. I have no idea, not seen the report, so it gets very speculative. I don't even know how to begin to answer that. But if he were a non-immigrant who was not otherwise entitled to enter the United States, obviously one would hope that he would not have been permitted to enter the country. I have no idea -- if, in fact, I have to assume your hypothetical because I do not have any knowledge of the fact --

MS. GORELICK: Well, maybe we'll do rather than --

MR. BONNER: -- that he was turned down by the Bahamian government, I mean, the question would be why was he refused entry there? Was it because he required a visa and didn't have one? Did he have a proper visa to enter the U.S.? I mean, there are two many facts that I just don't have at my command to answer that question.

MS. GORELICK: I should not have -- I'm sorry. I should not have presumed your familiarity with this, and what I will do is ask the staff to review with you what I'm referring to and maybe you can give me your comments for the record.

MR. BONNER: I'd be happy to provide a response to you.

MS. GORELICK: Mr. Ziglar, I was struck in reading your testimony about how thematically similar it was to Doris Meissner's testimony with regard to the development of policy in the immigration area and the political environment in which the INS has had to function. You refer very strikingly to funding inadequacies, to the failure of Congress to respond to your restructuring plan, which was a modification or a carrying forward in some respects of Commissioner Meissner's restructuring plan. You've told the story about what happened to you when you tried to make a seemingly modest proposal with regard to the visa period.

And the two elements of what you say and what Commissioner Meissner said are really the same. One is that we need as a country to have a much more balanced and thoughtful approach to immigration. But, in fact, what we have is policy development characterized by a highly politicized environment, an agency buffeted by both inconsistent knee-jerk pendulum swings of points of view and inadequate funding. Now, you've been a student of the INS and certainly Doris Meissner has been for decades. Would that be a fair characterization of your view of the way in which we view immigration policy and the consequences that that might have for the security of our nation?

MR. ZIGLAR: I think that's a good characterization of it. I've had the opportunity since I left the Commission to be a fellow up at the Kennedy School, thinking and talking about this issue, then teaching at George Washington Law School in the area. And I've had the good fortune for the last year really to be able to study the history in very great detail. What we're experiencing and what we've experienced in the last decade or two decades in immigration is not new. Our schizophrenia or ambivalence or whatever word you want to have about it goes back

really literally back to the late 1700s and we have periods throughout our history where this has been through.

The one thing that struck me in my study of the history of immigration is that the one policy area that the executive and the judicial branches give the most deference to is immigration. I can't think of, based on my study, any other place where the Congress has literally more control of a policy area, from the funding to the execution, through the means that Congress can do. And so, given an issue like immigration which divides the country and has divided it so many times, it's not surprising to me that we have been going back and forth and that, you know, you get some laws but nobody wants to fund it. Everybody gets a little something and, as a result of it, what we end up with is a system that doesn't work and sometimes can't be enforced or even if it could be enforced, we don't have the resources to do it.

MS. GORELICK: So I take it's your view then is that with this high level of deference to the Congress and the highly politicized nature of immigration in our body politic that the result is an agency less competent, less able to proceed fairly and perhaps less able to protect us. Would that be your view?

MR. ZIGLAR: I would take the word "competent" or "incompetent" out of that. Sure, we had incompetent people. We have incompetent people in the private sector. We have incompetent people in other agencies. I worked up here in the Senate for many years. We even had some incompetent people up here. But the fact is that the folks at the INS are overwhelmed and there is a certain fact that when you are overwhelmed that just kind of paralyzes things at times. So that's the way I would characterize it.

MS. GORELICK: I wasn't casting aspersions at all on the tens of thousands of very able men and women who have worked in the immigration area over the years. I mean, it was my -- one of my pleasures to supervise the agency for a period of time when I was at the Department of Justice. But I was referring to the difficulty of acting competently when you have shifting requirements, inadequate funding and fear of retribution when you try your job.

Thank you very much for your comments.

MR. ZIGLAR: Thank you.

MR. KEAN: Commissioner Fielding, we are going to make short questions and succinct answers because we are running a little late on time.

MR. FIELDING: Mr. Chairman, I'll solve this problem. Thank you all, first of all, for appearing and also for your past and present years of wonderful government service and your service to this commission.

Mr. Bonner, I have a line of questioning about the targeting rule that you discussed earlier in regard to identifying terrorism threats in container ships. With your indulgence, I'd like to discuss that to the staff and we'll complete it that way, if that's --

MR. BONNER: That will be fine, Mr. Fielding.

MR. FIELDING: Thank you.

Thank you, Mr. Chairman.

MR. KEAN: Thank you.

Senator Kerrey.

MR. KERREY: You yielded some time to me, I hope.

Secretary Verga, let me -- earlier in a conversation with Commissioner Meissner and Secretary Ryan, I made what I think is an accurate point which is that a very significant fraction of our response to terrorism in all its forms is connected to our concern about Islamist terrorism. Do you share that view? We keep using the word "terrorism" as if there is like six different flavors and seven different varieties and so forth. It seems to me that we're talking about, in terms of what gets us all worked up and seriously frightened, is a singular brand of terrorism.

MR. VERGA: I think that's a fair statement. Most of the terrorist organizations with global reach could be characterized as Islamic fundamental terrorists. That's a fair statement.

MR. KERREY: I'm trying to think of terrorist organizations as a global reach. It's not.

MR. VERGA: Global reach, I'd have to think about. But I would agree with that. I can't think of one right off --

MR. KERREY: One of the presumptions that I keep hearing -- and all three of you are post-9/11 appointees, so you're off the hook. You can look back on this with a little more relief and objectivity, I hope. But because it seems to me that one of the presumptions that keep surfacing for those of us -- and I was in the Senate prior to 9/11 and a lot of that work that we did, it seems to me, was inadequate to assess the possibility that the homeland was going to be attacked. A lot of the presumptions were that simply wasn't a possibility.

And we heard Secretary Ryan say, she said to me we were focused on a potential attack overseas and yet the evidence over the past 10 years seems to suggest that that wasn't a good presumption, beginning with the World Trade Center action and following on with the attack on the CIA and even the attack on Khobar Towers was against Americans. Unclear exactly at the time who was responsible for what. But certainly the global reach and the possibility that the United States of America could be attacked should have been a front and center concern of everybody that was evaluating that threat.

MR. VERGA: I think that that's fair but I think that the evaluation of the type of attack or scope and scale led to the conclusion or to the view that prevention of that type of activity is primarily law enforcement activity. Since we're talking about internal security matters of the United States, we have throughout our history made those matters of civilian concern and not military concern. And so we, in the Department of Defense, would look to the elimination of terrorist activities overseas as our way of doing that, in military terminology, defense in depth. You know, that's why we pursue the global war on terrorism, Iraq, Afghanistan, other locations and turn to the civilian law enforcement agencies to deal with activities inside the United States.

MR. KERREY: That's actually a second opinion beyond just the DOD's responsibilities on the matter. I mean, even though it was an international event, we sent the FBI over to investigate Khobar. We sent the FBI over to investigate Dar es Salaam and Nairobi. We sent the FBI to investigate the Cole as if it was a law enforcement case.

MR. VERGA: We have throughout history dealt with acts of terrorism as violations of U.S. law. It is, you know, a sort of legalistic burden of proof kind of idea that we had gotten ourselves into prior to 9/11 or, even in some cases, post-9/11, when you talk about specific acts of terrorism because I think

that's the nature of our society is to turn to legal remedies short of war.

MR. KERREY: But the two moments that I think caused us to - - should have caused us to analyze this threat much differently. The first was the East African embassy bombings on the 7th of August that necessitated a significant amount of sophistication. Earlier I made the point that, if you look at the details of what these 19 men did on 11th September, they defeated every defense that we had in place, every single one of them. And there is no other word that you can put on it other than they defeated us.

They defeated the INS. They defeated the Department of State. They defeated the FAA. They defeated the airlines. Every single turn, they defeated and in part, the defense seems to be, gee, we thought they were going to hit us over the Middle East and it seems to me that both there and take the Bojinka plot, which is the other one that I was going to reference, we have the airlines and the FAA in here tomorrow to talk to them. It seems to me reasonable -- and I seek your educated opinion on this, not necessarily your DOD opinion.

But it seems to me that, at the very least, we should have been prepared for a multiple hijacking event and we were not prepared for a multiple hijacking event. Once again, we said, Well, gee, we didn't think that was going to happen. At some point, you run out of patience when people say, I didn't think that was going to happen when we were defeated so clearly in areas where we shouldn't have been defeated.

MR. VERGA: I can't disagree that they defeated any defenses that we had in place and that those defenses were, by evidence, inadequate. I think what we have to do is to look at what we're doing today, look at what we're doing in the future in order to learn from that mistake and not let it happen again.

MR. KERREY: Would you -- I mean, you've got combat experience -- you put a perimeter out and a guy falls asleep at nine and says, well, we haven't been attacked for months and months and months. Why should we worry about it any longer? That's not an excuse you would accept if you went out and found that somebody out on the perimeter that's providing security asleep. And yet that's the defense. There hadn't been a hijacking in 10 years. Thus we really didn't have to worry about it any longer. Am I thinking in a way that would be consistent with the way you would evaluate this?

MR. VERGA: Clearly we should have and clearly we didn't, but, you know, retrospectively that's an easy conclusion to come to. I think based on the information people had available at the time, they came to a different conclusion. And I would not be in a position -- I was not in a position to make those judgments myself and would hesitate to second guess someone. You make a judgment based on the best information you have available at the time based on your experience and the information that's brought to you. Sometimes you come to the right conclusion and sometimes you come to the wrong conclusion.

MR. KERREY: But it seems to me that -- I appreciate hesitating to second guess, but if I put somebody in charge of security and if I put someone in charge of INS and say keep us safe, if I put somebody in charge of the Consular Office, if I put somebody in charge of the FAA and the airlines and say, 'whoops, I was looking someplace else.' I mean, I can be sympathetic all I want to but at some point I need to say hey, you're responsible for this and it doesn't work any longer to say 'well, you didn't give me the intelligence, I was sitting there waiting for it. I didn't realize.' I mean, that's what Secretary Lehman was saying earlier. Everybody knew after Dar Es Salaam in Nairobi that we were up against an extremely sophisticated operation, that the old stuff we were using after World Trade Center I, which was these guys aren't very sophisticated, thank God we've got people out there that are trying to get the deposit back on the Ryder truck, all the stuff, the disparaging evaluations that were being done at the time, it was clear that that was no longer going to work.

I'm going to ask Mr. Bonner just one -- I'm going to take you off the hook here. I'm going to ask Commissioner Bonner. Earlier we had -- and I promise, Mr. Chairman, I'm going to be brief on this. Earlier we had a presentation -- it went by very quickly -- of documents that these conspirators, these hijackers used. It was put out there, the staff are making a case and I think a very effective case that the idea that the -- they just all came in legally and they're all clean and nothing could have been done about it, that's a false idea. That there was manipulation of documents and there was also some mistakes that were made on our side and one of them had to do with Mohamed Atta and I'm going to try on my own to stick this thing in so you can see it.

Can you see that from where you're sitting?

MR. BONNER: I can see it pretty well.

MR. KERREY: You can sit where you are Well, maybe you have to come over and look at it. What you have here is a visa and then a secondary evaluation that was done and the question is whether -- I mean, basically what happened here, in the case of Mohamed Atta you've got somebody says I'm coming to the United States under one kind of a visa while the secondary evaluation clearly identified that that's not true. That he's in a flight school, that he's applying for a change of status. And the question is whether or not the -- I don't know what you call them any longer, the single faced person that's INS and Customs --

MR. BONNER: Customs and Border Protection officers or inspectors.

MR. KERREY: Do they still have the discretion to make this kind of judgment?

MR. BONNER: Yeah, they do but the discretion is pursuant to guidance that I've issued, and that is that if there is a -- after a questioning of a person -- we have a right to question everybody that's coming into the United States. And after questioning if there's a concern about that person for a terrorist threat and there is a basis, and there is almost always a basis for a non-immigrant, that person is excluded from the U.S. That's what Inspector Melendez did, by the way. He did his job right. Yes, of course we could do this, and of course Mohamed Atta should have been excluded from the United States. But it's the beauty of hindsight and that sort of thing. I don't want to be -- actually this was handled by INS inspectors at the time.

Commissioner Ziglar has just alluded to the kind of pressures that were put on the INS from Congress and others to just let people in. But those days are over. I'll tell you that right now. We've issued the directions that you've got somebody coming in and he did -- he was not entitled to come in because he was coming in -- he was changing his status, he had left the United States, he was not entitled to come back in the United States. And I'm saying that if there was a concern in anybody's mind in the Immigration secondary --

MR. KERREY: I'm very impressed with the confidence that you're using here, but Khalid Shaikh Mohammed used an alias and got in. You're saying that that can't be done today?

MR. BONNER: I think it's a lot more difficult to get -- if you're talking about using --

MR. KERREY: Wait a minute, if I could use your own words. You said, "a lot more difficult." That's a lot different than the absolute certainty that you were using --

MR. BONNER: There is no foolproof system. I'm just saying, look, of course we should after -- first of all, I would say you would ask some questions of Mohamed Atta. We obviously -- you know, this is in hindsight, this is after 9/11, but we have instituted as part of CBP's procedures that somebody that is by the way identified as potential, could be a potential threat to the United States is going to go to get some questions. Very often that's going to be in secondary. If you have some concerns about them and they can be excluded from the United States, that should be done. In this instance he was not entitled, by the way, to enter the U.S.

MR. KERREY: Tell me what does this phrase "with hindsight" mean? What is that all about? I mean, if you've put me in charge of something and I make a mistake can I come and say, "Oh, sure, with hindsight you're going to come in here and tell me I did something wrong"?

MR. BONNER: I'm not excusing or condoning anything, Senator, I want you to understand that. I'm just saying, you know, there is some hindsight that's applied here and we ought to learn from it and we ought to improve what we do, and we have. And I'd be happy to tell you how we've done it.

MR. KERREY: The narrative that concerns me a bit, Mr. Commissioner, which has nothing to do with you or any of you three gentlemen, it has to do with at moments in time -- the watershed for me was 7 August '78 -- at moments in time when we should have known that we were at considerable risk to Islamic extremists, we didn't -- you didn't get a presidential directive driving it down. At the moment in time that the Cole was clearly -- sometime early in '01 the information came and said we're absolutely certain the Cole attack was done by al Qaeda, Islamic extremist terrorism. I know it may not be politically correct but that's where it comes from. Yet you earlier, in response to Commissioner Ben-Veniste's questioning you said -- I find this remarkable -- I mean, you said we can figure out who the 19 were in 45 minutes. I mean, that's a shocking thing to hear because it basically says that there were simple ways to have prevented this from happening and we didn't do it.

MR. BONNER: And knowing too -- I mean, that's a very important fact that we knew two of them --

MR. KERREY: All right, so what's it take? I run the manifest against a lookout and the planes don't take off.

MR. BONNER: Absolutely. Well, and so the question would be are you doing that? You bet. Now, if you wanted me to comment on something that was done, look, it was wrong. First of all this was -- even under the INS regulations at the time, Atta was not admissible into the United States because he had left the country and he was seeking to change status. Once you leave the country you're not entitled to come back in. So he shouldn't have been let back in -- and let me just stop there. He shouldn't have been let in.

MR. KERREY: Have you been on Crossfire before because you're very good at this -- (laughter) --

MR. BONNER: Not Crossfire but similar - -

MR. KERREY: But you did say -- in front of 12 men and women in a jury, is that what it is? Did you say though and answer in the affirmative that INS agents have the discretion today to when there's a contradiction in status such as this ---

MR. BONNER: No, in that situation, no, there is no discretion because this was not -- this person could not be admitted because he was out of status. What I'm saying is in the area -- really, what I should have clarified is in the area where there is discretion to parole somebody in or admit somebody in, that the guidance to the field -- and this is all of the legacy Immigration inspectors, legacy Customs inspectors, the guidance is that essentially if there is any concern about somebody posing a potential terrorist threat you exercise discretion to exclude that person from the United States. So I'm not saying there's discretion in this case because I believe that still -- the law and regulation is that if you're out of status you cannot be admitted back in.

Senator, I don't want to overstate things either. I actually almost want to go back and see what the discretion would be in this situation, that is to say where somebody was out of status because I believe that there ought to be some discretion here. I don't think we mindlessly apply laws and regulations. So that if this person that was out of status and had applied for

a change status, I don't know -- you know, it's the proverbial 68-year-old grandmother who doesn't fit any targeting criteria for a terrorist and we're satisfied that person isn't a terrorist. I don't want to mindlessly exercise some rule that just doesn't make any sense.

What we're trying to do is to have it clear to all the men and women on the front line what we're trying to do here, and that is our job, as I stated in my testimony, our priority mission our priority mission is preventing terrorists and terrorist weapons from entering the United States. So our job is to use our questioning skills -- those skills that Inspector Melendez has back here -- to use those skills and make a determination and then, if you're concerned about somebody you're darn right to exclude them from the country by expedited removal. And that's what we do.

So frankly, with respect to would we in a hundred percent of the cases in all circumstances not exercise any discretion here, I actually don't know. I don't know the answer to that. I'll get you the answer. But I believe we ought to have some discretion, I just think it ought to be guided in a principled way toward essentially the priority mission of homeland security, and that's keeping terrorists out.

MR. LEHMAN: But shouldn't there also be some accountability as well? I mean, following up on the Senator's theme. I mean, the only person that's been disciplined since 9/11 has been John Poindexter.

(Applause.)

MR. LEHMAN: Now, I --

MR. BONNER: I think Mary Ryan. She was here this morning. I don't know how you characterize that, but I won't characterize it.

MR. LEHMAN: Yes. She left, not because she screwed up but because she spoke out and said that she didn't get any intelligence, as I understand it.

MR. BONNER: There ought to be accountability and that is that you do -- I mean, in all circumstances we ought to make responsibility and accountability as clear as we possibly can. And so another thing -- you know, we have essentially a system where if you're going to admit somebody in where you've done this

interview, that has to be recorded. A supervisor does have to take a look at it and say that makes sense. But it's in accordance with not just the pure question of whether somebody's admissible into the United States which was, to some extent, going back to Doris Meissner and long before that -- I've been around government for 30 years. That was the central question INS was asking. That's an important question. But the more important question clearly now is: Is this person seeking admission to our country a potential terrorist? And using the combined Immigration and Customs authority to make that determination, as astutely as possible and, if there is a concern, make sure that person does not get into our country.

MR. LEHMAN: Just out of curiosity, is Officer Melendez today making any more money or is he a higher rank than the 19 of his colleagues that let in the terrorists?

(Applause.)

MR. BONNER: Well, he certainly deserves an award and commendation, but to answer your question, I don't know. I'm sure Inspector Melendez will check with me a little bit later on this one.

MR. KERREY: I hope so.

MR. KEAN: Commissioner Roemer.

MR. ROEMER: Thank you, Mr. Chairman.

MR. KEAN: We are very late on time, sir.

MR. ROEMER: I realize that. I'll try to be very brief. I did want to follow up on one of the Senator's points with respect to, with all due respect, it's not so much hindsight looking back for us as it is one of really the celebrated successes at the Millennium of Customs and INS and Border Patrol working together to stop something from happening. Senator Kerrey mentioned the turning point being Africa in 1998 and the bombings there.

Well, certainly in the Millennium we have terrorists targeting our domestic homeland and more specifically the Los Angeles airport. Ressay is trying to get across the border, up on the northwest border, and you have a celebrated success at the Millennium. You have something that has been widely reported in the media when an agent who is doing her job very diligently and with some serendipity, discovers what she seems to think might be

some drug problems and, with some combined skills from some other people, they look in the trunk and find bomb material and we catch somebody that might be coming at us to bomb the LA airport.

Now, we're not talking about specifically airlines as we were in the Bojinka plot, we are talking about a domestic threat that happened in 1993 at the World Trade Center which they came to, it happened outside Langley where there was a shooting, it happened in the Landmarks case in New York where terrorists wanted to bomb some of our most historic sites up in New York City. Why? It's not hindsight. Why is it, why is it that we aren't more focused from outside inward to the domestic threat?

MR. BONNER: Well, we definitely are more focused now. I mean, the question is why weren't we more focused on 9/11 --

MR. ROEMER: I'm talking about why on September 11th -- why aren't we more focused?

MR. BONNER: And look, I'm very aware of, as you know, very much aware. There's a Customs inspector, Diana Dean who was questioning Ahmed Ressam. Ahmed Ressam was not only an Algerian national in Canada illegally but he had gone to terrorist training camp, camps run by al Qaeda in Afghanistan. He was to link up with some al Qaeda terrorists in the United States to assist them to carry out the bombing attack on Los Angeles International Airport.

So, yeah, it's one inspector -- could hit by the way -- just like Inspector Melendez. Could hit by Inspector Dean. No advance information, just doing her job. So it is important, by the way, to have well trained people doing their job. We obviously want to be able to give them more information in terms of who it is they need to look at, what they need to look at, to improve our chances of preventing terrorists from entering our country to carry out attacks.

So I don't -- by the way, when I said hindsight I don't mean that pejoratively. The 9/11 Commission is doing exactly what it should be doing: looking at this and trying to figure out what we could have done better and what we need to do better and what we are doing better. So I don't mean to -- please don't interpret that as critical whatsoever.

MR. ROEMER: Senator Kerrey's gone, you can say anything you want about him now -- (laughter) --

MR. BONNER: Would you tell Senator Kerrey --

MR. ROEMER: We'll see. We'll see how you continue to answer these questions. On the training side, you've said that these agents did their job without advance knowledge on the border to get Ressay. Great example of fortune and training and skill and some education and combination of resources coming together to catch this person. But we also need strategic and tactical information to give them advance warning about our borders. There are reports that al Qaeda cells still exist in the United States or up in Canada. Where are you getting, Commissioner, your strategic and tactical intelligence now? Apparently it's not from the CIA.

MR. BONNER: Well, every day actually, before March 1 of 2003, every day or virtually every working day I did get an intelligence briefing in the morning by the CIA.

MR. ROEMER: Up until when?

MR. BONNER: Up until the formation of the Department of Homeland Security.

MR. ROEMER: So in March?

MR. BONNER: Yes, on March 1 of this year. And now I am getting intelligence information. We have an Office of Intelligence within Customs -- now Customs and Border Protection -- so we get all of the classified cables come into our SKIF and they are reviewed by our people in terms of one question: is this going to be helpful to the frontline inspectors at the borders to have this information. Now, by the way, if --

MR. ROEMER: Let me just ask a quick question. Are these new or newly hired people or are they, as I've experienced with debriefings from the CIA, you have some of the most experienced people at CIA with the decades of experience. You don't have those briefings any more as of March 1. Do you have the new-hired and the inexperienced people giving you these briefs now?

MR. BONNER: That was just me personally getting briefings. Which is important, by the way.

MR. ROEMER: No, no, I'm just curious as to how we're formulating the people that are coming to give us the tactical intelligence.

MR. BONNER: This is a small cadre of intelligence analysts that we had at U.S. Customs. It's smaller now because there was a break-off of Customs, but it's a small cadre of intelligence analysts that have the highest level of clearances, including SCI clearances and they are looking at -- this is just one of the mechanisms.

MR. ROEMER: Yes, but this is a new department. Where are they from? Are they detailed from another agency?

MR. BONNER: No, these are people -- the people that are looking at the classified cables are U.S. Customs and Border Protection intelligence analysts as part of our Office of Intelligence. It's not the only source where we get information. I just want you to know there are about 800 classified cables a day. We look at them -- does it have any information, not just tactically but strategically important to the border and border security. Now, if it does, as I think you know, under the rules, we have to go back, as we do, to the originating source to declassify that so we can put out an appropriate alert or information to the field, and that's what we do. That's why we have that note there.

We are also getting information from the Information Analysis Infrastructure -- can't say it -- IAIP -- Information Analysis Infrastructure Protection Directorate of the Department of Homeland Security which is drawing -- and we put our collection requirements up to -- I'm going to call it IA -- and it puts them to the intel community and we are actually pulling valuable information down that is relevant and related to border security through IAIP as a unit within the new Department of Homeland Security. You've already heard testimony today on the TTIC which is now stood up, I believe, and also the Terrorist Screening Center which is to actually develop one master terrorist watchlist for our government and the like.

So it's not that we're just getting it from one place. And I still, by the way, I do get a weekly briefing typically from the CIA and I also get another briefing once or twice a week from our own Office of Intelligence myself, just to make sure that we understand as best we can everything that's relevant and that we are then tasking operationally intelligence driven special operations to all the ports of entry in the United States, all the legacy Customs and Immigration inspectors who are now CBP officers, and to the border patrol.

MR. ROEMER: What we just continue to be very worried about is that we have these great experienced people out at CIA and new people, new hires, less experienced people coming in to new slots and new requirements at TTIC and Department of Homeland Security and that will be a task-up problem and a training problem and is something that I'm sure, Commissioner Bonner, you're experiencing. The day has been very long. We've had a great series of panels and you've been very helpful.

Let me conclude with just one last question to Mr. Ziglar. According to our staff -- and let me just read you a couple of sentences. Here's what might happen at our borders, port of entry today. "Today at ports of entry, inspectors swipe machine readable passports when they are presented. The computer then prompts the inspector to enter the visa type. The computer tells the inspector to give the B-1, B-2 applicant six months." Six months to stay. The hijacker, Waleed al Shehri, for instance, only requested 20 days but was given automatically by the computer six months. Do you think that there should be an automatic designated length of stay for people coming into this country when they're requesting significantly less than that and why aren't we addressing this?

MR. ZIGLAR: Congressman, I actually addressed that in my opening statement. In fact, I propose that we have a 30-day default period when there was ambiguity about how long somebody wanted to stay and that we operate on the basis of you come in, you say I'm going to be here for two weeks and here's my itinerary, and we give you two weeks or we give you three weeks or we give you some reasonable period of time, as opposed to just by default giving you six months. My view was that six months, number one, encourages overstays. They get here, they like it, they find a boyfriend or girlfriend -- all these things happen.

Secondly, it certainly gives a lot of time for evil folks to come in here and do their thing really undetected. And so I thought -- my view was that if we're going to have an entry-exit system that will record the comings and goings and we have this 30 day default period, or we know why you're here and how long you're going to be here, that we can match those things up a whole lot better and -- not just for terrorism though, Congressman, for better control of our borders and better enforcement of our immigration laws, because not everybody who comes across the border is a terrorist, but there are people that come across the border with the intent of staying here because they like it. And one of the biggest problems we've got are illegal aliens in the country. Forty percent of those are

overstays. And it seems to me that we can deal with that problem by not having such a wide open default period of six months. That was my view. We published a notice of proposed regulations and, boy, did the storm start.

MR. ROEMER: Mr. Ziglar, I actually -- it's been a long day but not so long that I didn't listen to your very eloquent opening statement. I heard you say that, that you proposed it. Congress hasn't listened and haven't done anything about that. How can we make your proposal effective?

MR. ZIGLAR: Congressman, Congress doesn't have to do anything about that.

MR. ROEMER: So how do we get it by the Executive Branch or by permission of somebody -- how do we accomplish what you sought out to try to achieve?

MR. ZIGLAR: They've got to convince the Executive Branch to do it and then you've got to convince the Executive Branch not to bend when Congress threatens them with the ability to cut off money or to do all the things that Congress can do to the Executive Branch. This does not require legislation. This is a regulation function.

MR. LEHMAN: Are you talking about Mr. Executive Branch Bonner?

MR. BONNER: I just made a note -- (laughter) --

MR. ROEMER: You've got the right people here today to do something about that if they'd listen to that kind of proposal.

Thank you, Mr. Chairman.

MR. KEAN: Our last question comes from Commissioner Ben-Veniste.

MR. BEN-VENISTE: Mr. Verga, you appear to want to say something and I want to say something to you so maybe it's possible we're on the same wavelength. In response to a question posed by Commissioner Gorelick and then additional questions by Senator Kerrey, you indicated that with respect to NORAD, pre-9/11 your focus was on the external threat: you were facing the wrong direction to be helpful with respect to the suicide hijackings of 9/11. But, so that the record is accurate, it is not to say that NORAD did not train for the possibility and

practice exercises for the possibility of multiple hijackings within the United States territory, isn't that so?

MR. VERGA: That's correct.

MR. BEN-VENISTE: And even going back to the Atlanta Olympics, the protection of the airspace over the Olympics, while the military was not allowed to get involved, that was a considerable issue and something which was given considerable attention by other agencies of the government. But from time to time over the years, it is correct, is it not, that NORAD recognized the potentiality for a domestic hijacking that could threaten the continental United States?

MR. VERGA: It is. I can't say with what frequency or how often. I just don't have personal knowledge of how often they did that but I'm aware they did.

MR. BEN-VENISTE: Well, that will be a subject of future hearings.

MR. VERGA: What I was going to request, sir, is you asked me a question about the Total Information Awareness program, now known as Terrorist Information Awareness, I'd like to submit you a little bit more for the record. It's a little complicated. There was a period of time when the program was suspended by Congress. That suspension expired in September of last year and we're starting it again. So I'll just give you a little sheet, if that's okay, for the record.

MR. BEN-VENISTE: I'd like to get that and I'd like to, if you wouldn't mind submitting something in writing with respect to allowing us to better understand the intelligence gathering function of the NORAD command.

MR. VERGA: Will do.

MR. BEN-VENISTE: Thank you, Mr. Chairman.

MR. KEAN: Thank you all very much, and I want to thank this panel. You've been interesting, enlightening and helpful to our investigation. Thank you all very, very much. Commissioner Hamilton and I, the Vice Chairman and I have brief statement to make, at this point we'll adjourn the hearing.

We've learned a lot today. I think we've significantly advanced our understandings of the events of 9/11. We've

learned, among other things, that the disruption of terrorist travel needs to be a vital part of our counterterrorism strategy. It seems before 9/11 that just wasn't central. So work on terrorist travel documents languished and older methods for training people to spot them were not sustained. So the visa system operated without adequate input from national security agencies and terrorism was not a major priority in our immigration policy or enforcement efforts.

We also learned that the problems with watchlisting and tracking potential terrorists go well beyond working level failures. As that staff statement pointed out, these problems raise issues about responsibility in the senior management of the intelligence community. Some of the tragic results in the 9/11 story were detailed today. We're concerned about whether the management of transnational intelligence has adapted adequately to the war on terror that exists right now.

In the past the Immigration and Naturalization Service and the Consular Service at the Department of State were not full partners in the war on terrorism. Clearly they didn't have enough resources to perform their mission. They did not apply those resources sufficiently against the counterterrorism priority.

We learned that there was an apparent lack of urgency with respect to counterterrorism. Senior officials performed their duties with dedication to the best of their ability, but the world looked very different to them at the time than it does to us now.

MR. HAMILTON: Thank you, Mr. Chairman. The system of course is different now, yet you could hear in the commissioners' questions throughout the morning and the afternoon that we are still concerned about whether old problems in sharing information are being solved or just replaced by new ones. For example, the Terrorist Threat Integration Center only coordinates analysis not operations. Then we heard the Terrorist Threat Integration Center does not sift the information from domestic agencies like the FBI, just information from international sources. So the domestic/foreign divide takes on a new form.

In other words, 9/11 is in the past but the questions revealed by our analysis of the past remain relevant today. We as a government have a profound tendency to fight the last war. After the embassy bombings, we improved embassy security. After Khobar Towers and USS Cole we improved force protection. We knew

a threat was coming in the summer of 2001, but we thought the threat was abroad, not at home. We have a highly reactive system in response to specific incidents rather than anticipation.

We heard today from a highly dedicated professional who performed his duty with great professionalism who prevented a terrible catastrophe from becoming worse. But we need our systems in place that will enable the many dedicated professionals in the United States government to maximize their ability to make America safer and more secure.

Thank you.

MR. KEAN: Thank you very much, sir.

We are now adjourned until 9:00 o'clock tomorrow morning.

Thank you all very, very much.

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