
October 16-17, 2004 Annual Meeting

... *Looking for answers because of our "need to know"*...

The 9/11 Commission Report – Aviation Security Brian J. Alexander, with Kreindler & Kreindler

At our 10th Annual Meeting we learned more about how the 9/11 Commission Report addressed aviation security from **Brian Alexander, our Keynote Speaker, with Kreindler & Kreindler**, and a Lead Attorney representing 9/11 survivors and family members. Key points of his excellent presentation are included in the September 2005 newsletter. 9/11 was the worst aviation disaster in history, and people should be shocked at the history of poor aviation security.

NADA/F members will continue to press our government for the Truth about 9/11, and support survivors and family members.

The article below consists of excerpts from the PowerPoint presentation given to NADA/F in Washington DC at the 2004 annual meeting. The information is "spin-free" and represents only that evidence which is available in the public domain.

1. Who Is Really Responsible? The Airlines and Aviation Security Companies

As a threshold matter, we start with the law. Federal law states that the airlines have a duty "to provide for the safety of persons and property **against acts of criminal violence and air piracy**" and "**to prevent or deter the carriage of any explosive, incendiary, or deadly or dangerous weapon** on or about each individual's person or accessible property before boarding an aircraft or entering the sterile area." [CFR 108.103 and 108.201]

2. Indeed, in addressing airlines' responsibility for aviation security, the Hon. Judge Alvin K. Hellerstein, who is presiding over the 9/11 tort litigation in NY, stated:

"The airlines, airport authorities and security companies controlled who came onto the planes and what was carried aboard. They had an obligation to take reasonable care in screening precisely because of the risk of terrorist hijackings, and the dangerous consequences that would inevitably follow." In Re September 11 Litigation, 280 F.Supp.2d 279,296 (SDNY 2003)

3. The government accounting office, the investigatory arm of the government, describes the scope of the airlines duty and its critical importance to the aviation security system as follows:

"The air carriers are responsible for screening all passengers and baggage, hiring and training their employees or contracting for screening services, and procuring equipment to screen passengers and baggage. The screening of passengers and baggage is a critical element in the FAA's strategy against terrorism." [GAO Report, Aviation Security, February 1999]

4. The airlines acknowledge their duty. According to the CEO of American Airlines, Gerard Arpey, "**...the airlines are responsible** for implementing the security procedures... Airlines and Airports were required to implement the aviation security rules." [9/11 Commission Report, p.83]

5. Heightened Security? Remarkably, the terrorist did not just beat our system they beat it at airports that were known targets with heightened security status.

"All three airports used by the 9/11 hijackers (Newark Liberty International Airport, Washington Dulles International Airport and Boston Logan International Airport) were "Category X" airports, i.e. among the largest facilities liable to the highest threat, and generally **subject to greater security requirements.**"

[FAA Report, "Civil Aviation Security Reference Handbook: May 1999 pp. 117-118; 9/11 Commission Report p.451,n.1]

6. A Dysfunctional System While the airlines share the responsibility for intelligence with the government, they had exclusive control over passenger screening, checkpoint screening, and onboard security. Evaluating the **Aviation Security System** as a whole the 9/11 Commission concluded: "Each layer relevant to hijacking – **Intelligence, Passenger Prescreening, Checkpoint Screening, and Onboard Security** – was **seriously flawed** prior to 9/11." [9/11 Commission Report p. 83]

7. The Red Herring Regarding the 9/11 tragedy, you have no doubt heard this statement uttered from any senior government bureaucrat or airline official you ask: "**We never considered or expected that terrorist would use planes as missiles.**" This is a myth!

The only relevant question is what was being done to protect and deter against hijackings in the first place? **The uncertain use to which the plane would be put after the hijacking becomes irrelevant if the hijacking is prevented in the first instance.**

8. The Airlines Knew the Danger and the Risk of Hijacking Despite the political spin since 9/11, the evidence demonstrates that the airlines knew: There was an **increasing terrorist threat** to civil aviation from hijackings and bombings; and the aviation security system they were charged with implementing was completely "**vulnerable**" and in "**urgent**" need of repair.

9. The Airlines Knew the Danger and the Risk of Hijacking

In **1999**, the FAA published its annual report on **Criminal Acts Against Civil Aviation (CAACA)**. The report specifically identifies Bin Laden as a threat: "**Another threat to civil aviation is from Saudi terrorist financier Osama Bin Laden**, who has been indicted for the August 1998 bombings of U.S. embassies... A[n] Islamic leader in the United Kingdom proclaimed in August 1998 that Bin Laden would '**bring down an airliner, or hijack an airliner to humiliate the U.S.**'"

10. The **1999 CAACA Report** also reminded the airlines of another recent example "which suggests that the threat to civil aviation" is still real – the infamous Manila Air or **Bojinka plot** which contemplated the simultaneous destruction of as many as twelve U.S. airliners flying out of the Far East.

The report concluded by noting that, “there is every reason to believe that civil aviation will continue to be an attractive target for terrorist groups.”

11. In **1996** the GAO warned that, “The threat of terrorism has increased and aviation is an attractive target well into the foreseeable future. The World Trade Center bombing [and other plots to bomb landmarks] ... revealed that the international terrorist threat in the U.S. is more serious and more extensive than previously believed.”

The report warned of increased attacks by “radical fundamentalist groups” inside the U.S. and that the terrorists “were aware of airport’ vulnerabilities and how existing security measures could be defeated.”

12. In **March 2000**, the GAO warned that “events over the past decade have shown that the threat of terrorism against the U.S. is an ever-present danger.”

In a tragic prophetic statement the GAO noted: “A single lapse in aviation security can result in hundreds of deaths, destruction ... and have immeasurable negative impacts on the economy.”

13. In **April 2000**, the GAO cautioned the airlines: “The fact that there have been no major security incidents in recent years could breed an attitude of complacency. However, serious vulnerabilities in our aviation system exist and must be adequately addressed.”

The report also again warned that the threat to aviation was increasing, “including threats from hostile and criminal acts which could be potentially catastrophic if dangerous objects, such as weapons, were to be involved.”

14. In **June 2000**, the GAO again reminded the airlines that the Bojinka plot demonstrates that the “potential for the destruction of aircraft and great loss of life has increased” and that “concerns are growing about the potential for attacks within the U.S.”

15. According to Press Reports: In 1998 the FAA warned airline officials about possible hijackings at a metropolitan airport in the Eastern U.S. by OBL (Osama Bin Laden).

16. The FAA issued 15 warnings to the airlines in the months leading up to 9/11. Beginning in January 2001 the FAA warned the airlines that terrorists might attack U.S. interests and mentioned OBL in the alerts. Interestingly, United Airlines confirmed they received “alerts and cautions” regarding possible terrorist attacks.

17. 1/01 – Alerts U.S. carriers to the continuing possibility of violence against Americans.

4/01 – Advising “some of the current active [terrorist] groups are known to plan and train for hijackings... The FAA encourages U.S. carriers to demonstrate a high degree of alertness.”

6/01 – warning that the “potential for terrorist operations, such as an airline hijacking ... remains a concern.”

7/01 – encouraging airlines to be on high alert and warning that the terrorists are known to be planning and training for a hijacking.

8/01 – FAA warns about disguised weapons based on reports that terrorists might use key chains, pens and cell phones as weapons.

18. The Airlines Knew Suicide Hijackings Were Possible

According to the 9/11 Commission: Prior to 9/11, the FAA presented a CD-ROM to air carriers describing the increased threat to civil aviation. “The presentation mentioned the possibility of suicide hijackings...”

Buried in a footnote, the Commission adds: “The presentation did indicate that if a hijacker was intending to commit suicide in a spectacular explosion, the terrorist would be likely to prefer a domestic hijacking.”

[9/11 Commission Report p. 264, 535 n.47]

19. The 9/11 Commission belies the myth that suicide hijackings were not foreseeable stating: “THE POSSIBILITY WAS IMAGINABLE AND IMAGINED. “In early **August 1999**, the FAA Civil Aviation Security intelligence office summarized the Bin Laden hijacking threat. After a solid recitation of all information available on this topic, the paper identified a few principal scenarios, one of which was a “suicide hijacking operation.” [9/11 Commission Report p.345]

One former FAA official has stated that there was an FAA Report issued in the late 1990’s which evaluated nearly ten years of hijacking incidents and concluded that small knives were the most frequently used weapons to hijack aircraft.

Conclusion: The means by which hijackers would take over an aircraft were neither predictable nor unexpected.

20. The Airlines Knew The Danger and The Risk of Hijacking

In the three decades prior to 9/11 there were at least 800 reported hijacking incidents with nearly 175 involving U.S. carriers. To attack iconic targets was not a new idea.

9/11/94 – Cessna crashes into the White House

12/24/94 – Algerian terrorists hijack a Boeing 767, loaded with fuel and explosive, planned to crash into the Eiffel Tower

7/96 – Planes banned from vicinity of Olympic events

21. A System Designed to Fail

- Since the early 1990’s the GAO published numerous reports critical of aviation security focusing on screener performance problems, low pay, inadequate training and high turnover rates.
- Two Presidential Commissions detailed dangerous flaws in airport security.
- FAA audits, red team inspections and years of documented security violations demonstrated the system was vulnerable and getting worse.
- A Pre-9/11 study of reported aviation security violations at the nation’s top 25 airports from 1991-2000 revealed more than 50,000 violations.

22. Passenger Prescreening:

The 9/11 Commission focused on the Computer Assisted Passenger Prescreening System (CAPPS) which was “designed to identify passengers whose profile suggested they might pose more than a minimal risk to aircraft.”

Significantly, the Commission notes that before 1997 “selectees” were subject to extraordinary screening of their carry-on baggage. These measures were curtailed because

non-suicide sabotage was the perceived threat. This raises the question: **Why didn't the industry change back when "suicide hijackings" were again a threat?**

23. Checkpoint Screening:

As noted by the GAO and 9/11 Commission, the screening checkpoints and screeners who operate them are "the most important line of defense against the introduction of dangerous objects into the aviation system."

"All passengers and their baggage must be checked for weapons, explosives, or other dangerous articles that could pose a threat to the safety of an aircraft and those aboard it."

Despite its importance, the poor performance of the checkpoint screening was well known and well documented for years leading up to 9/11. After several years and numerous reports on the long-standing problems, a GAO official testified in May 2000, that the airline industry "had made little progress in improving the effectiveness of airport checkpoint screeners." He added, "Screeners are not adequately detecting dangerous objects and long-standing problems affecting screeners' performance [low wages, inadequate training and rapid turnover] remain."

Prior to 9/11 the GAO unambiguously identified the scope and magnitude of the checkpoint vulnerabilities in a series of reports.

Relying on FAA tests the GAO noted that in 1978, screeners failed to detect 13% of the FAA tests. By 1987 the failure rate had grown to 20%. Test data for the period between 1991-1999 is designated sensitive secure information (SSI), but the GAO noted that the declining trend in detection rates continues.

Several years prior to 9/11, an FAA requirement for screeners to conduct "continuous" and "random" hand searches of carry-on luggage at checkpoints had ... simply become ignored by the air carriers. Therefore, secondary screening of individuals and their carry-on bags to identify weapons was non-existent, except for passengers who triggered the metal detectors. [9/11 Commission Report, p.84]

24. According to their own guidelines, box cutters, mace, tear gas and menacing knives of a size were strictly prohibited items which were not allowed into the sterile area or on aircraft. Yet each of these deadly items were smuggled through security. In the words of 9/11 Commissioner John Lehman the checkpoint screening on 9/11 represents "gross negligence."

25. On Board Security:

The Commission appears to have accepted the convenient excuses proffered by the airline industry: a need for emergency egress and common strategy of cooperation.

Again the airlines had ample warnings of the dangers of unlocked, penetrable doors as evidenced by the hundreds of cockpit intrusions in recent years. As noted by the Commission, the doors should have been locked as was required by rules established in the 1960's. [9/11 Commission Report, p.85]

Hardened cockpit doors were known to be a critical last line of defense and were technologically feasible for a relatively

minor cost – unfortunately it was a cost the airlines were not willing to bear.

26. A Glimpse at Why the System Failed

The air carriers played a major role in pre-9/11 security and were therefore able to exert "great pressures to control security costs and to limit the impact of security requirements on aviation operations so that the industry could concentrate on its primary mission of moving passengers and aircraft ... [T]hose counter pressures in turn manifested themselves as significant weaknesses in security." [9/11 Commission Report, p.85] Translation: Once again, the airlines put profits ahead of safety and security of their passengers.

One long time FAA security official described the airlines approach to security as "decry, deny and delay."

What is clear is that the terrorists recognized the weaknesses the airlines now say they could not see. Tragically their denials and delays cost many brave Americans their lives.

Government Accountability Office www.GAO.gov

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To access copies of GAO reports enter the report number at the top right of the Homepage www.GAO.gov . The following GAO reports, from prior to 9/11, were mentioned in Brian Alexander's presentation. For a longer list of Aviation Security Reports check the GAO website.

Aviation Security: Long-Standing Problems Impair Airport Screeners' Performance. RCED-00-75 June 28, 2000

Aviation Security: Vulnerabilities Still Exist in the Aviation Security System. T-RCED/AIMD-00-142 April 6, 2000

Aviation Security: Slow Progress in Addressing Long-Standing Screener Performance Problems. T-RCED-00-125 Mar. 16, 2000

Aviation Security: FAA's Actions to Study Responsibilities and Funding for Airport Security and to Certify Screening Companies. RCED-99-53 February 25, 1999

Aviation Security: Urgent Issues Need to Be Addressed. T-RCED/NSIAD-96-251 September 11, 1996

Aviation Security: Immediate Action Needed to Improve Security. T-RCED/NSIAD-96-237 August 1, 1996

Aviation Security: Additional Actions Needed to Meet Domestic and International Challenges. RCED-94-38 January 27, 1994

"The 9/11 Commission Report," the Official Government Edition of the Final Report of the National Commission on Terrorist Attacks Upon the U.S. is available in most book stores for \$10. Or, copies may be ordered for \$13.25 including postage from: U.S. Printing Office, (866) 512-1800, or Mail Stop SSOP, Washington DC 20402-0001.
