AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. HRG. 107–1040

NOMINATION OF JOHN W. MAGAW TO BE UNDER SECRETARY OF TRANSPORTATION FOR SECURITY AT THE DEPARTMENT OF TRANSPORTATION

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

DECEMBER 20, 2001

Printed for the use of the Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

87–605 PDF WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ERNEST F. HOLLINGS, South Carolina, *Chairman*

DANIEL K. INOUYE, Hawaii
JOHN D. ROCKEFELLER IV, West Virginia
JOHN F. KERRY, Massachusetts
JOHN B. BREAUX, Louisiana
BYRON L. DORGAN, North Dakota
RON WYDEN, Oregon
MAX CLELAND, Georgia
BARBARA BOXER, California
JOHN EDWARDS, North Carolina
JEAN CARNAHAN, Missouri
BILL NELSON, Florida

JOHN McCAIN, Arizona
TED STEVENS, Alaska
CONRAD BURNS, Montana
TRENT LOTT, Mississippi
KAY BAILEY HUTCHISON, Texas
OLYMPIA J. SNOWE, Maine
SAM BROWNBACK, Kansas
GORDON SMITH, Oregon
PETER G. FITZGERALD, Illinois
JOHN ENSIGN, Nevada
GEORGE ALLEN, Virginia

KEVIN D. KAYES, *Democratic Staff Director*
MOSES BOYD, *Democratic Chief Counsel*
MARK BUSE, *Republican Staff Director*
JEANNE BUMPUS, *Republican General Counsel*

C O N T E N T S

	Page
Hearing held on December 20, 2001	1
Statement of Senator Burns	8
Statement of Senator Hollings	1
Statement of Senator Hutchison	6
Statement of Senator McCain	4
Prepared statement	5
Statement of Senator Rockefeller	1
Statement of Senator Wyden	5

WITNESS

Magaw, John W., nominated to be Under Secretary of Transportation for Security, Department of Transportation	11
Prepared statement	13
Biographical information	14
Mineta, Hon. Norman, Secretary of Transportation, Department of Transportation	9
Specter, Senator Arlen, U.S. Senator from Pennsylvania	8

APPENDIX

Written answers to questions from Hon. John McCain	35

THE NOMINATION OF JOHN W. MAGAW TO BE UNDER SECRETARY OF TRANSPORTATION FOR SECURITY AT THE DEPARTMENT OF TRANSPORTATION

THURSDAY, DECEMBER 20, 2001

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 9:38 a.m. in room SR-253, Russell Senate Office Building, Hon. Ernest F. Hollings, presiding.

OPENING STATEMENT OF HON. ERNEST F. HOLLINGS U.S. SENATOR FROM SOUTH CAROLINA

The CHAIRMAN. The hearing will please come to order. The Subcommitte Chairman, Senator Rockefeller, is on his way over. Having an office in the Hart Building has made for all kinds of difficulties and he is on his way actually from his little office over there in the Capitol.

I am trying to get down to the floor during the last couple of days to talk about port security—there is our Chairman, good.

Senator ROCKEFELLER. My apologies.

The CHAIRMAN. I was just telling them you had to come all the way over from the Capitol.

STATEMENT OF HON. JOHN D. ROCKEFELLER IV, U.S. SENATOR FROM WEST VIRGINIA

Senator ROCKEFELLER. We welcome both of you. I did not expect you, Mr. Secretary, but here you are and that is an added pleasure. Thank you.

We have worked very hard on this on the Committee and I will be frank to say that there were some of us who at the beginning felt that the law enforcement aspect of this ought to be done through the Department of Justice, not out of any lack of consideration for the Department of Transportation, just because the Department of Justice obviously had more law enforcement experience at a deeper level.

It did not work out that way and we are not disappointed in that because the responsibility now rests under the law with the Department of Transportation and with you, sir, as the person who will be in charge of that.

I will say that I think all of us on this Committee believe that the status quo is not acceptable. That is why we passed the law

that we did. There are people that board big planes in West Virginia. But anybody who boards planes in West Virginia has the same right, it seems to me, to security as somebody who boards a big plane in Chicago or some other place.

We put in some pretty tough deadlines. People have raised questions about that. We did that because we think that it is part of what our responsibility to take a system which is accustomed to operating more or less at a certain level and saying, no, this is different, September 11th changed the world and it is going to change all of us. It certainly has changed the way we have and have not done business in the Congress, and it has to change the way everybody operates.

You obviously face a lot of very critical deadlines, by putting out new screening employee standards right away and screening every ongoing passenger aircraft by mid-January—that is a deadline of pressure. Deploying new EDS systems by the end of 2002; you know, two companies making it now. Can there be more? Does the market system work for us? Well, it looks like the DOT is going to have to make sure that it does.

I think we have given you the tools and the money to do a good job. You need to tell us whether you think we have or not. I think the one thing that we cannot accept is the phrase "it cannot be done." That is the one thing we cannot accept and I think that is the one thing where we will be very nettlesome in the national interest.

During the Second World War it was really stunning the way factories all of a sudden sprung up and they were producing tanks and airplanes, and they had been producing other things before and then like that, all of a sudden, women were in the workforce. America really changed, and that was one kind of a shock.

This is actually a more severe kind of a shock because it has longer term implications. It is much more complex, and in a sense it has given the country a chance to say: All right, let us prepare ourselves for the next 25 or 40 years because we think this is what we are going to be facing, so we better do it right and we have to do it fast, because 2 years from now, if something happens 2 months from now, is not good enough.

The hiring, training, and deploying of more than 30,000 people, that is not going to be easy. We want to hear about that. New technologies, new systems, that will be perhaps more easy, but needs to be hurried along. We want to hear about that. Intelligence information is going to be shared. That is an extremely critical factor. What is the relationship between screeners and intelligence agencies within our own country and other countries in terms of monitoring a suspicious passenger.

So all this calls upon an experience that you, Mr. Magaw, have in my judgment. Your job will not be easy. We know, for example, that you are going to have to purchase a thousand new EDSs, and they are meant to be a million dollars apiece. You have got to deploy, as I indicated, 30,000 people.

We had a hearing in November in Morgantown, West Virginia, Mr. Secretary. Jane Garvey was there. It was all about biometrics and that is the whole interesting part of the technology of all of this.

Again, we are with you. We do oversight, but in this case we are all on the same side in the national interest, and therefore we are pushing like you are pushing, and we want to hear how you are pushing, understanding that neither of us want no for an answer.

With that, if the Ranking Member, or obviously, the Chairman of the Full Committee want to make a statement, or anybody else, I would be happy to have that, and then we will hear from you gentlemen.

The CHAIRMAN. Thank you very much, Mr. Chairman. We welcome our colleague Senator Specter, who has an interest in this particular hearing, to sit with the Committee and participate.

Otherwise, Mr. Secretary, you and I have got two serious concerns. One of course at the moment is the airline security. The other is port security. I want to thank you publicly for all of your help in clearing that bill. We have got it cleared now by the Department of Transportation and by the Office of Management and Budget.

But we have got political machinations going on the floor and we know that bin Laden and his terrorist group came into the port of Mombassa, offloaded their terrorists and their explosives, blew up the embassies in both Kenya and Tanzania, and that could happen to us very easily because we do not have any port security and we have got to move this as expeditiously as we possibly can.

In that light, we have not, in this Senator's judgment, moved as expeditiously on airline security. There was foot-dragging with respect to actually moving it. Everyone seemed to want to protect the contractors, particularly on the House side. We wasted a month on this side of the Capitol trying to put employees, airline employees that we thought we had taken care of under the bailout, on the airline security bill, and we wasted another month over on the House side with Mr. DeLay calling up the lobbyists and saying: Come on up and please lobby us and help us get the votes for what the House voted on almost unanimously, only 9 dissenting votes, for.

Now, that is the program. It is a tough, tough mission. There is not any question about that. What nettles this particular Senator is the constant PR coming out of the Department of Transportation how difficult it is, how we are never going to be able to get it, how we cannot do this and we cannot do that.

Just say, tell that PR man to say: We are working as hard as we can. Airline security and checking of baggage is in the airline interest. Do not worry about the delays. I worry about the delays. I am going to travel again this weekend, as I have almost every weekend this year, in air travel, and I do not like to be delayed. But foremost now, and that has got to be in our minds, is the security and the checking of that baggage, as well as the securing of that airplane itself.

So we constantly are hearing how difficult it is going to be. What the Committee wants to know is that you are doing the best you can. We know it is tough all the way around, and let us see how it works out and we are going to be working together on it.

But tell whoever is putting it out that, whatever it is, he cannot get the equipment, he cannot do this, he cannot do that, we want to know what can be done. In that light, just tell DOT's PR person to take a weekend off, come back, and say: We are doing all we pos-

sibly can. That is what we want to know, and then we will check to see that that is a true statement.

Thank you, Mr. Chairman.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Senator McCain.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA

Senator MCCAIN. Thank you, Mr. Chairman. I will be brief. Republican Senators, I believe, have a meeting called around 10 o'clock. Also, I want to be on the floor to support Senator Hollings on this very important seaport security issue. I want to congratulate the Chairman for his almost singlehanded effort to bring this important issue to fruition before we leave for our break.

I am going to support Mr. Magaw as strongly as I can. I believe the President should have the right to select the people that he feels are most qualified to serve him in this very important, very critical position. I also feel that Mr. Magaw's accomplishments at ATF are on the record and indicate that he is well qualified to perform these functions.

Mr. Magaw, two points. One, and the Chairman referred to it, in an almost unprecedented fashion, that the Secretary of Transportation and his people canceled several meetings that were scheduled with us during the consideration of the Airport-Airline Security Act, because the House obviously drove the agenda until finally they could no longer sustain a position, with the support of most of the lobbyists in town and the major airlines. The fact is, the Department of Transportation people were in the room when we came up with these, finalized our provisions of the bill, and there was never a word from the Department of Transportation that they could not make a 60-day mandate on checked baggage. There was never a comment, never. They were in the room, at least at the end after they had exhausted all their efforts on the other side, and completely ignored the Senate views on this issue. Fortunately, public opinion crushed the opposition to the Senate bill.

The second thing is, Mr. Magaw, the major airlines, not all airlines, the major airlines continue to have an inordinate, inordinate, influence not only on this side of Capitol Hill here in the Senate and the House because of the big money and the donations, but they have an inordinate influence in the Department of Transportation as well. That is my opinion. That is my view from many years membership on this Committee, both as Ranking Member and as Chairman of it.

You cannot let the major airlines drive your agenda, Mr. Magaw. If you do, you will not be able to carry out your responsibilities to the American people. It is well known that the major airlines have complete and open access to every member of the Senate and the House and to the Secretary of Transportation and his people. That is fine. But they should not have an inordinate influence over the decisions that are made by the Department of Transportation, including decisions that could be harmful to smaller airlines.

So I hope you will keep that in mind. I tell you that, Mr. Magaw, from many years of experience in watching the major airlines block

reforms, whether they be an airline passengers bill of rights or now an attempt to block this provision concerning checked baggage.

So if the Department of Transportation cannot meet the guidelines laid down in the legislation that was passed, then they must answer as to why they did not speak up at the time the legislation was being written since they were in the room at the time.

I wish you every success. It is a very difficult challenge that you are taking on. I pledge, as well as every other member of this Committee, to work with you as closely as possible because you will have very, very significant and heavy responsibilities.

I thank you, Mr. Chairman.

[The prepared statement of Senator McCain follows:]

PREPARED STATEMENT OF SENATOR JOHN MCCAIN,
U.S. SENATOR FROM ARIZONA

Thank you, Mr. Chairman. I commend you for moving so quickly on this hearing.

The terrorist attacks of September 11 took a devastating toll on our country in terms of lives and physical destruction. As we continue to deal with the immediate impact of those tragic losses, there are significant long-term ramifications that must be addressed. One such matter is the security of our air transportation system, which is now linked inextricably with national security.

Undoubtedly, aviation security has been one of the most important issues confronting the Nation in the past 3 months. It has been 5 weeks since Congress finally took action by passing the Aviation and Transportation Security Act. This landmark legislation is just the first step in the long process of overhauling aviation security. The new Transportation Security Administration, or TSA, will have significant responsibilities, including the screening of all people and property that go aboard passenger aircraft.

The challenges facing the head of this agency are daunting. Almost from scratch, the Under Secretary will have to build an enormous security and law enforcement structure in a short period of time. Congress has provided many of the needed resources to get this effort off the ground, but following through will require dedication and determination on the part of many people; especially the Under Secretary. That is why I am pleased the President acted so swiftly on the nomination of Mr. Magaw, who has an impressive record of public service in law enforcement and security. The sooner he can get on the job, the sooner we can restore the confidence of the flying public. While the system is safer now than it was before September 11, there is still much that needs to be done.

It will be important for the Under Secretary to be as independent as possible. There were more than a few Senators and others who wanted the TSA to be under the jurisdiction of the Justice Department. Some people believe that DOT is too close to the industries it regulates. While the TSA should be concerned with customer service, under no circumstances should security be compromised because airlines or passengers find it inconvenient or a little more costly.

I also expect the Under Secretary to work closely with the DOT's Inspector General. The IG's office has extensive experience monitoring aviation security. I believe the IG and 2 his personnel have much to offer the overall effort to improve security.

I thank Mr. Magaw for his willingness to undertake this difficult challenge, not only in aviation, but in other critical areas such as maritime and surface transportation. I do not envy him the task he faces, but I appreciate his continuing service to our country. If he is confirmed, as I expect to happen, I will look forward to working with him in the weeks and months ahead.

Senator ROCKEFELLER. Thank you, Senator McCain.

Senator Wyden.

STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON

Senator WYDEN. Thank you, Mr. Chairman. First let me say, Mr. Chairman, I very much agree with your opening statement. I would only make a couple of additional points.

The first is that when it comes to actually implementing airline security rules there is a long history of backsliding, of whittling down, of lost momentum. What I want to hear this morning from Mr. Magaw is how it is going to be different this time.

As of right now, there is something like only 160 of the 2,000 screening devices that are needed in place. I want to hear, for example, how that is going to be done. I also want to hear how Mr. Magaw is going to use the huge amount of power that this office has been given in terms of transportation security to bypass the traditional rulemaking kind of process. There is an opportunity here to really expedite the security rules that are necessary and I want to hear how that is going to be used.

At the end of the day, if the job is going to get done right in terms of airline security, Mr. Magaw, you are going to have to be the point person to get it done, and I want to make sure this time it is going to be different than the history of the last 10 or 15 years where there would be a tragedy, Congress would respond, and then there would be slow motion implementation. That is what has got to change.

I thank Chairman Rockefeller, who as usual is working with our colleagues, for the chance to make this opening statement, and I yield my time.

Senator ROCKEFELLER. Thank you.

I recognize the pressure on the other side and I call Kay Bailey Hutchison.

STATEMENT OF HON. KAY BAILEY HUTCHISON, U.S. SENATOR FROM TEXAS

Senator HUTCHISON. I will accept the co-chair designation. But you started the early bird rule, so go ahead with Senator Burns.

Senator ROCKEFELLER. Texas is bigger than Montana.

[Laughter.]

Senator HUTCHISON. Thank you, Mr. Chairman.

Like so many people here, I think we got off to a rocky start on this transportation security bill and the process has not been perfect. However, we have got to put it behind us. I think it is a very positive sign that President Bush has made this very early appointment. He has said this is a top priority, and we need the person in place who is going to have the full responsibility of putting the system in place.

I am going to support your nomination, and I think we can learn from some of the lapses of the past and go forward and do things right. One of the things that has concerned me is the record of the FAA and the Department of Transportation missing congressionally-mandated deadlines. I am not talking about this bill. I am talking about 5 years ago, and I am talking about 1 year ago. We have waited 5 years for a rule setting forth the qualifications and standards for security screening companies.

I think it was the lack of progress that caused many of the lapses that people see in airports across the country, specifically, in airport screening and the lack of professionalism. Now, we have a chance to do this right. Congress did not have faith that we could put a band-aid on a bad system. They decided to take it out by its

roots and start from scratch and put in a professional law enforcement security system in our airports.

Mr. Magaw, obviously your background is law enforcement and security, not transportation. Therefore, I think the signal has been sent that this is a law enforcement security function. I want that to work. I want that assumption to work, because it has been the premise of federalizing the system that we would make this a security career track and that is what I want it to be. I think you have the opportunity to put in place a security career track in this department.

There are some other areas that I think have been largely neglected that you must address. General aviation is very much a part of aviation security. Thank heavens the FBI and our intelligence agencies immediately saw the possibility of the use of crop dusters and small aircraft for disseminating chemical and biological weapons and shut it down. However, you are going to need to put a system in place that keeps the tight security in general aviation that we are seeing in airports and in large aviation companies.

Our Chairman and Ranking Member mentioned port security. This is going to be in your bailiwick, and you cannot ignore it because it is one of the security threats. I happen to be from a State that has the largest chemical complex in the world and it is right on the water. We must address the issue of port security and security for that complex that can be accessed by rail, by highway, and by water. This is something that I am going to ask you to look at immediately and put in your priority. Of course, we are going to have a port security bill that is going to give you the capability to do this and we will make sure that you have the money you will need to have security put in our ports.

I happen to know about my ports on the Gulf Coast, but of course, our Pacific and Atlantic ports are every bit as vulnerable. This will be a major issue for you.

Rail security and highway security are also major issues. Many chemical weapons could be transported by these means. You have a huge job and there is no doubt that you have had a big role in law enforcement and hopefully, you will be able to put people in place who have the background and experience to make these systems work.

I appreciate the job that you are taking. It is certainly one that will be a challenge for you. We want to be helpful. That means we have to have a lot of communication, and we will make sure that you have the tools you need to do this job.

I will just end, Mr. Chairman, by saying that this morning I saw the venerable Jack Welch on television talking about many of the issues that we are facing today. One of the things he said that I thought was very important is that one of the reasons that people have gone back to flying is because they trust what the government has been doing to address the crisis of our country since September 11th. The President and Congress have taken many actions to stop more crises from occurring.

You are going to be the sole person responsible for assuring that trust is warranted and is merited, because you have a vast responsibility to keep our transportation system secure. Not only will it

address the security issues of the people of our country, but also the economy.

Thank you.

Senator ROCKEFELLER. I think both you gentlemen can understand why I am proud to work with Kay Bailey Hutchison. That was a superb and thoughtful statement, which will be followed by another one by Conrad Burns.

STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Senator BURNS. Thank you, Mr. Chairman. My statement will be very brief.

You know, as we worked our way through the new law it kept coming back to me that, how do we protect the American public or anybody and keep them safe as long as you have a mind set that those who would commit such horrendous acts are willing to die in the commitment of that act? That is a tough job.

Also, on September the 11th, how many laws were broken other than the hijacking of the airplane or the commitment of crimes of harm and injury to the people? In other words, the actual, did they break any laws at the airports? I do not think so. Now, under existing law are they breaking any law? I do not think so.

America has got to realize that this is what makes this a very, very difficult job. I am not real sure that you can band-aid or pass a law that would prevent what happened on September the 11th. But I know one thing. I think we have an obligation and a duty to support this. I would imagine that it will have to be revisited later to change some things because of just the nature of the beast more than anything else.

So I congratulate you for stepping forward and I look forward to working with you and the Department of Transportation as we try to get this in place and make it work. I thank you for coming today.

Senator ROCKEFELLER. Thank you, Senator Burns.

Senator Specter, who is our welcome visitor.

STATEMENT OF HON. ARLEN SPECTER, U.S. SENATOR FROM PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman, and thank you for permitting me to participate briefly in this proceeding.

Mr. Magaw was a key witness in an oversight hearing which I chaired on the Judiciary Subcommittee on Ruby Ridge and Mr. Magaw's testimony at that time raised substantial questions in my mind as to his judgment. When I noted in the press a week ago Tuesday that he had been nominated for this important position, I called the Secretary of Transportation and told him of my concerns.

Senator Craig, who was in the hearing of the subcommittee and I met extensively for a little more than an hour with Mr. Magaw on Tuesday, and I wanted to bring this matter to the attention of my colleagues expeditiously because I am very much concerned that the Secretary and the Administration be able to move ahead very promptly with the critical issue of airport security.

Very briefly stated, Ruby Ridge was an incident which occurred in August 1992, which originated when agents of Alcohol, Tobacco and Firearms contacted Randy Weaver, entrapping him and asking him to sell them sawed-off shotguns. When I say "entrap," a pretty clear case, based on my experience in the criminal law, also the conclusion of the jury which acquitted Weaver on those charges.

When Weaver did get two sawed-off shotguns, the ATF agents then sought to have him be an informant, which he declined. Thereafter, Weaver was indicted. Weaver did not get notice of the hearing and did not show up, and the Alcohol, Tobacco and Firearms unit informed the U.S. Attorney's Office that Weaver was suspected of bank robberies, which was, in fact, false, and that he had certain convictions.

As a result, the marshals went to arrest Weaver and during the course of their effort to arrest him, there was a firefight. U.S. Marshal Deagan was killed and Randy Weaver's 14-year-old son Sammy Weaver was killed.

Then the matter became the subject of a full-scale Federal invasion, with the FBI getting into the matter and the hostage rescue team being dispatched. Stated very briefly, Weaver's wife was killed in the process.

The subcommittee found that the conduct of the FBI and Alcohol, Tobacco and Firearms was atrocious, many, many mistakes made. As a result of those hearings, FBI Director Freeh conceded that the FBI was wrong and changed the rules of engagement, conceded that the use of deadly force was, in fact, unconstitutional.

Mr. Magaw steadfastly insisted that everything the Alcohol, Tobacco and Firearms unit did was correct. In the face of Agent Byerly's statement that did not remember correcting the record to the U.S. Attorney, Mr. Magaw said that he had, although Byerly, the man who knew, said he could not remember having corrected that.

My purpose here is to try to get what is an obvious concession of impropriety by Alcohol, Tobacco and Firearms both as to the substantive matter and also my own view as to Mr. Magaw's judgment and competency, since I, as every other Senator, has a rule in passing on his confirmation.

I really only have one question, Mr. Chairman, and that question to Mr. Magaw is——

Senator ROCKEFELLER. You will have a chance to ask that.

Senator SPECTER. OK.

Senator ROCKEFELLER. But not yet, unless you want to conclude your statement.

Senator SPECTER. That is all I have to say.

Senator ROCKEFELLER. OK, OK. Thank you very much, Senator Specter.

Obviously, I think we now turn to our two witnesses, Senator Mineta, Under Secretary Designate, who will have my vote, Mr. Magaw. Gentlemen, whatever you wish to say we want to hear.

STATEMENT OF HON. NORMAN MINETA, SECRETARY OF TRANSPORTATION, DEPARTMENT OF TRANSPORTATION

Secretary MINETA. Mr. Chairman, thank you very, very much to you and Chairman Hollings, Senator McCain, and all the Members

of the Committee for allowing me to have this opportunity to introduce John Magaw.

On behalf of President Bush, I am honored and pleased to present President Bush's nominee to lead the new Transportation Security Administration as the Under Secretary of Transportation for Security, a position created by this Committee under the Aviation and Transportation Security Act.

Before proceeding, I want to thank Members of the Committee for the leadership that all of you have demonstrated in passing this very historic security legislation and for the expeditious manner in which you folks have scheduled this confirmation hearing. Confirming the new Under Secretary as we enter the busy holiday season punctuates Congress' resolve to make the aviation transportation system and all modes the safest in the world.

So I am here today to share with you that if we could have designed an individual for this job, it would have been John Magaw. In today's world of ever-present threats, I am confident that a man to whom eight Presidents have entrusted their lives possesses the type of courage and integrity that this Committee must have envisioned for the position of Under Secretary.

Since 1967, as all of you are aware, John has served in 14 assignments with the Secret Service, before being appointed Director in 1992. In 1993, the Bureau of Alcohol, Tobacco and Firearms was in trouble and the President turned to John Magaw. Today John is the Acting Director of the Office of National Preparedness at the Federal Emergency Management Agency.

The American traveling public could not ask for a finer, more devoted public servant, nor an individual more qualified in law enforcement and security than John Magaw. The skills that he has developed over the course of his stellar career will prove instrumental as he goes about the job of rebuilding public trust and confidence in our transportation systems.

I will close by saying this; John Magaw is a man who has stood shoulder to shoulder with eight Presidents and he has been willing to lay down his life for every one of them. Today another President has asked him to stand shoulder-to-shoulder with the American people and to demonstrate the same courage and the same resolve and the same leadership on their behalf. I am confident, Mr. Chairman, that he will do nothing less.

So it is my honor to present to you at this point John Magaw.

Mr. Chairman, if you would excuse me, I would appreciate it, since I have another appointment or hearing or another meeting to attend to with another former colleague of the U.S. Senate.

Senator ROCKEFELLER. We are very grateful that you came, Mr. Secretary, and we wish you well at your next hearing. I know that is just one joy after another.

Secretary MINETA. Thank you very much, Mr. Chairman.

Senator HUTCHISON. Mr. Chairman, I would just like to also thank the Secretary for coming and highlighting the importance of this part of his Administration and say that I look forward to having him work with us in this positive way.

Thank you.

Secretary MINETA. Absolutely. Thank you very much.

Senator ROCKEFELLER. Mr. Magaw, we welcome your testimony, sir.

STATEMENT OF JOHN W. MAGAW, NOMINATED TO BE UNDER SECRETARY OF TRANSPORTATION FOR SECURITY, DEPARTMENT OF TRANSPORTATION

Mr. MAGAW. Thank you, Mr. Chairman and the Members of the Committee. It is a pleasure for me to be here today. Needless to say, I am honored that President Bush has nominated me to serve as the first Under Secretary of Transportation for Security. I am grateful that you have called this hearing in just a few days after Secretary Mineta recommended me to the President. I am grateful for your leadership, as the Secretary has just mentioned, in drafting and shepherding through the Congress, and all of the things that need to be coordinated to do that, this Aviation and Transportation Security Act. The legislation has created the post that I hope to fill and it was a very critical element in the Nation's response to the events of September 11th.

Mr. Chairman, I look forward to working with this Committee to address the challenges that face the Department of Transportation and the Transportation Security Administration in the coming months and indeed in the coming years.

I have had the great honor of serving the American people for over 40 years and in the process, as the Secretary mentioned, have been honored to serve eight Presidents. But it is a special privilege to be nominated by this President at this time in our history. Transportation security is an enormously important issue. It just cannot be overstated. It effects every element of our society. The work of the Transportation Security Administration is to restore confidence of the traveling public and the commercial shippers, while protecting the system from daily threats.

I am both moved and challenged by the opportunity to oversee and coordinate a national plan that establishes the highest degree of safety and at the same time functions with the least amount of disruption to all those who move about this great country.

Mr. Chairman, you will not hear me say "can't." It is not in my vocabulary in this particular case, sir, and we will work to make sure that it does not creep in there.

I will dedicate my efforts every day to the memory of those who lost their lives and their families in the tragic events of September 11th. We owe them nothing less.

For most of the last 2 years, I have been serving as Senior Adviser for Terrorism Preparedness to the Director of the Federal Emergency Management Agency and in a variety of roles, including the Acting Director of FEMA during the inauguration and the transition period. The events of September 11th make clear that our transportation system does present an attractive target to terrorists. My experience at FEMA will help me build an agency that can help prevent such attacks in the future.

For 6 years before being at FEMA, I was the Director of the Bureau of Alcohol, Tobacco and Firearms. I filled that role at the request of the Treasury Secretary, who asked me to apply my management expertise and law enforcement background to an agency

suffering in the wake of tragedy. As Secretary Specter mentioned this morning, Ruby Ridge occurred before I went to BATF.

The experience will be useful because that agency required an organizational transformation while at the same time carrying out its investigative, law enforcement, regulatory functions as well as its tax collection responsibility. At the Transportation Security Administration, we must make our national system safer as we build the organizational structure. This agency is tasked with transforming how we secure all modes of transportation in the U.S. and the Congress has made it clear many times before today and you, Mr. Chairman very clearly, and both Senators clearly that it has to be done in a different paradigm, with a different paradigm in consideration.

I began my career with the U.S. Secret Service in 1967 and, as the Secretary mentioned, served in 12 different assignments before managing the unit responsible for protecting the President and the First Family, and I was appointed the Director of the Secret Service in 1992. My time at the Secret Service provides an excellent foundation for the job of Under Secretary. Not only is the Secret Service tasked with protecting the President and the Vice President and their families, as well as numerous other senior U.S. and foreign officials, including when they travel and by all modes of transportation, but it is also, the Secret Service, a highly successful investigative and law enforcement organization.

There are other key aspects in the Secret Service that are applicable here. They include but are not limited to: the proactive and real-time use of highly sensitive intelligence information to ferret out dangerous threats; a system-by-system approach of security, that is to say, you never have one line of defense. There has to be rings of defense and you have to have more than one security clearance that allows you into an area where you can do damage.

Another one is operating in a highly visible environment, in which every public move is heavily scrutinized. This will certainly be the case as TSA functions to make the public safer.

The job of standing up the Transportation Security Administration, a new Federal agency that will have sweeping authority and more than 30,000 employees and at the same time the mission of protecting the Nation's entire transportation system, in some ways is an unprecedented undertaking. Secretary Mineta has already formed a special task force with starting the new agency, identifying all the department's statutory requirements, and developing a modern approach to securing the Nation's transportation system.

If confirmed, my focus will be on building a well-trained, professional and diverse workforce. This workforce will operate in a flat, flexible, agile and responsive organization and will use the best technology to move critical information around the system in real time. This workforce will be led by a world-class team that understands law enforcement, understands security, understands the importance of this task, as well as the opportunities and constraints facing consumers and providers of transportation.

This workforce will operate in a structure that meets the needs of all the players in transportation at every level, in every organization, at every site, in every mode. This workforce will achieve

high marks for efficiency and effectiveness at the Nation's airports, its seaports, its bus and rail terminals, and so on and so forth.

In many ways, although unknowingly, I have spent my entire career preparing for the job of Under Secretary of Transportation of Security. President Bush, Secretary Mineta, the Congress, indeed the entire Nation, face great challenges in making the world's greatest transportation system the world's safest.

I am ready to lead that effort. I look forward to working closely with this Committee and your talented staffs throughout my 5-year term to realize that aim.

Mr. Chairman, that concludes my statement.

[The prepared statement and biographical information of Mr. Magaw follow:]

PREPARED STATEMENT OF JOHN W. MAGAW, NOMINEE TO THE OFFICE OF UNDER SECRETARY OF TRANSPORTATION FOR SECURITY AT THE DEPARTMENT OF TRANSPORTATION

Chairman Hollings, Senator McCain, and Members of the Committee: It is a pleasure for me to be here today; I am honored that President Bush has nominated me to serve as the first Under Secretary of Transportation for Security, and am grateful that you have called this hearing just a few days after Secretary Mineta recommended me to the President.

Your leadership in drafting and shepherding through Congress the Aviation and Transportation Security Act—the legislation that created the post I hope to fill—was a critical element in the Nation's response to the events of September 11. Mr. Chairman and Senator McCain, I look forward to working with this Committee to address the challenges that face the Department of Transportation and the Transportation Security Administration in the coming months and years.

I have had the great honor of serving the American people for over 40 years, and in the process have served 8 Presidents. It is a special privilege to be nominated by this President.

Transportation security is an enormously important issue—it affects every element of our society. The work of the Transportation Security Administration is to restore the confidence of the traveling public and commercial shippers while protecting the system from daily threats.

I am both moved and challenged by the opportunity to oversee and coordinate a national plan that establishes the highest degree of safety and, at the same time, functions with the least amount of disruption to all those who move about this great country.

I will dedicate my efforts every day to the memory of those who lost their lives in the tragic events of September 11. We owe them nothing less.

For most of the last 2 years, I have been serving as Senior Advisor for terrorism preparedness to the Director of the Federal Emergency Management Agency, and in a variety of other roles, including that of Acting Director. The events of September 11 make clear that our transportation system does present an attractive target to terrorists; my experience at FEMA will help me build an agency that can help prevent such attacks in the future.

For 6 years before joining FEMA, I was Director of the Bureau of Alcohol, Tobacco and Firearms. I filled that role at the request of the Treasury Secretary, who asked me to apply my management expertise and law enforcement background to an agency suffering the wake of a tragedy.

That experience will be useful because that agency required an organizational transformation while at the same time carrying out its investigative, law enforcement, and regulatory functions, including commodity tax collection.

At the Transportation Security Administration, we must make our national system safer as we build the organizational structure. This agency is tasked with transforming how we secure all modes of transportation in the U.S., and the Congress has made clear that a new paradigm is in order.

I began my career with the U.S. Secret Service in 1967, and served in 12 different assignments before managing the unit responsible for protecting the President and the First Family. I was appointed Director of the Secret Service in 1992.

My time at the Secret Service provides an excellent foundation for the job of Under Secretary. Not only is the Secret Service tasked with protecting the President and Vice President and their families, as well as numerous other senior U.S. and

foreign officials, including when they travel by all modes of transportation, but it is also a highly successful investigative and law enforcement organization. There are other key aspects of the Secret Service that are applicable here. These include, but are not limited, to:

• The proactive, real-time use of highly sensitive intelligence information to ferret out dangerous threats;

• A system of systems approach to security—that is, integrating tools so that there is never just one line of defense, but always several; and

• Operating in a highly visible environment in which every public move is heavily scrutinized—this will certainly be the case as TSA functions to make the public safer.

The job of standing up the TSA, a new Federal agency that will have sweeping authority, more than 30,000 employees, and the mission of protecting the Nation's entire transportation system, is in some ways an unprecedented undertaking.

Secretary Mineta has already formed a special task force charged with starting the new agency, identifying all of the department's statutory requirements, and developing a modern approach to securing the Nation's transportation system.

If confirmed, my focus will be on building a well-trained, professional, and diverse workforce.

This workforce will operate in a flat, flexible, agile, and responsive organization, and will use the best technology to move critical information around the system in real time.

This workforce will be led by a world-class team that understands law enforcement and security, as well as the opportunities and constraints facing consumers and providers of transportation.

This workforce will operate in a structure that meets the needs of all the players in transportation, at every level of every organization, and at every site in every mode.

This workforce will achieve high marks for efficiency and effectiveness at the Nation's airports, seaports, bus and rail terminals.

In many ways, although unknowingly, I have spent my entire career preparing for the job of Under Secretary of Transportation for Security. President Bush, Secretary Mineta, the Congress—indeed, the entire Nation—face great challenges in making the world's greatest transportation system the world's safest. I am ready to lead this effort.

I look forward to working closely with this Committee and your talented staffs throughout my 5-year term to realize that aim. Mr. Chairman, that concludes my statement; I would be pleased to answer questions.

A. BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF DEPARTMENT/AGENCY NOMINEES

1. Name: John William Magaw.
2. Position to which nominated: Under Secretary of Transportation for Security.
3. Date of nomination: December 13, 2001.
4. Address: [Information not made available to the public.]
5. Date and place of birth: [Information not made available to the public.]
6. Marital status: Married—Helen F. Mahley.
7. Names and ages of children: Jayne Mazzei, 45; Janet Schrom, 44; Mark Magaw, 43; Gary Magaw, 41; and Craig Magaw, 38.
8. Education: B.S. Education—Otterbein College, 1957—Westerville, Ohio.
9. Employment record: St. Mary High School—Coach & Teacher 1957–1959 Columbus, Ohio; City of Columbus—Street Maintenance Summer Work Engineering Department 1957–1959 Columbus, Ohio; Ohio State Patrol—Patrolmen & Instructor at OSP Agency 1959–1966 Columbus and Dayton, Ohio; Ohio State Department of Education—School Bus Safety 1966–1967 Columbus, Ohio; U.S. Secret Service—Each Rank Thru Director 1967–1995, Columbus, Ohio and Washington, DC.; Detailed to ATF (October 1993); Bureau of Alcohol, Tobacco and Firearms—Director 1993–1999 Washington, DC; Federal Emergency Management Agency: Acting Director (Administration Change)—Jan.-Feb., 2001 Acting Deputy Director (Administration Change), Feb.-July, 2001; Acting Director of Office of National Preparedness, May-Dec., 2001; Senior Advisor to the Director, Dec. 1999-Jan. 2001 Washington, DC.
10. Government experience: None other than listed.
11. Business relationships: None.

12. Memberships: International Association Chiefs of Police, Law Enforcement Committee; Explorer Scouts of America; Board of Trustees—Otterbein College, Westerville, Ohio.

13. Political affiliations and activities: (a) None. (b) None. (c) None.

14. Honors and awards: Presidential Rank Meritorious, 1991-1999 and Presidential Rank Distinguished, 1995.

15. Published writings: None.

16. Speeches: See attached.

17. Selection: (a) Yes, I have the leadership and management background, relevant experience, and knowledge required to stand up the new agency and meet the goals of the President, the Secretary and the Congress to ensure the security of Nation's transportation system infrastructure.

(b) My extensive experience in law enforcement and national security with Federal, State and local government organizations, and in dealing with the private sector, coupled with my diverse managerial experience in successfully building and managing large organization, provide me with the tools I need to accomplish the mission of building an effective transportation security capability for the Nation.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers. None.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. None.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. None.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.) Please refer to the Deputy General Counsel's opinion letter.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a compliant to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. No. However; in my official capacity as the Director, ATF, I was named in a number of lawsuits in connection with routine regulatory matters of the Bureau.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details? No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. None.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistleblowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee? Yes.

4. Please explain how you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress. I will consult with committee staff as regulations are developed.

5. Describe your department/agency's current mission, major programs, and major operational objectives. The Department of Transportation is responsible for implementing the provisions of the Aviation and Transportation Security Act of 2001.

6. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualifies you for the position for which you have been nominated? During my forty plus years of government service, I have had the opportunity to direct and manage several agencies and activities involved in security, law enforcement, regulatory activities, and emergency management. I believe my experience has prepared me well to assume the leadership of a new agency with a high profile mission of profound importance to the President, the Congress and the American people.

Over the course of my career, I have taken on many challenges in leading highly visible but distinctly different government agencies and activities. I was appointed the Director of the U.S. Secret Service after a progression from a career ladder that spanned 25 years of outstanding achievements, including top level assignments in each of the Service's diverse areas of responsibility including technical security, research and investigation, as well as, authority over the protection of dignitaries, the Vice President and President of the United States.

While Director of the Secret Service, I was asked by the Secretary of Treasury to assume the helm of Bureau of Alcohol, Tobacco and Firearms (ATF) after the tragic raid at Waco, Texas. With the commitment and support of the men and women of ATF, we created a new vision of the agency that inspired us to make sweeping and bold organizational changes propelling the Bureau to the top echelons of law enforcement and, of equal importance, reestablishing public confidence and trust in us.

In 1999, FEMA Director James Lee Witt asked me take on the position of Senior Advisor to the Director for terrorism preparedness. With the change of Administration, I then assumed the role of Acting Director for the agency and subsequently served as Acting Deputy Director until July 2002. As the Senior Advisor, I worked with directorates and offices to better focus the FEMA efforts in conjunction with other Federal agencies, the States and localities in providing assistance to support national capability building efforts for terrorism preparedness and response. This activity resulted in an increasing recognition that FEMA needed to assume a broader leadership role for the Federal effort. As a result, on May 8, 2001, the President asked the FEMA Director to create an Office of National Preparedness (ONP) to coordinate all Federal programs dealing with weapons of mass destruction consequence management, and requested funding support from Congress to carry out this important activity.

The ONP is now working in conjunction with the Office of Homeland Security headed by Governor Ridge, and will play an important part in supporting the national homeland security efforts, particularly in preparing local and State responders to better deal with terrorist attacks.

2. Why do you wish to serve in the position for which you have been nominated? I am honored that the President has asked be to take on this challenge. As I said to the President, I have had the great honor of being of service to the American people for over 40 years and in the process have served eight Presidents. It is a special privilege to be nominated by this President and to continue to serve him and my country at this critical time in our history.

Like all Americans, I am eager to do my part in responding to the recent attacks, and I dedicate my efforts to the memory of those who lost their lives in the tragic events of September 11.

Transportation security is an enormously important issue affecting every element and every citizen of our mobile society. I can think of no greater need than to ensure the utmost security for all Americans as they enjoy their freedom and opportunity to travel about this great country and throughout the world, as we to better protect all of our vital transportation infrastructures.

If confirmed by the U.S. Senate, I am looking forward to assisting Secretary Mineta and helping him fulfill the President's goal of a safe and secure America.

3. What goals have you established for your first two, years in this position, if confirmed? My overarching goal is the same as the President's, the Secretary of Transportation, and the Congress in creating, standing up and supporting this new organization. That goal is to meet the critical need to enhance the security of the entire national transportation infrastructure, to ensure and maintain the highest level of protection and integrity of these most vital assets.

I am fully committed to implementing the provisions of the Aviation and Transportation Security Act, to include meeting the timelines established by Congress as the Federal Government assumes leadership and responsibility for enhancing the security of the various transportation modes.

Within the first 2 years, I intend to develop and implement the necessary actions to increase airport security, airline and crew security, and baggage screening security. To accomplish this, I will direct the hiring and training of the needed security personnel, coupled with using the newest and best technology available with the overarching goal to build and maintain the finest and most secure transportation system in the world.

During this 2-year period, it is equally critical to implement the strong new authority in section 101 of the Act to centralize security for all of the Nation's transportation facilities, operations, and passengers in the new Transportation Security Administration. Significant new duties for gathering and disseminating intelligence, conducting needed research and development, planning for national emergencies (including terrorism) and coordinating security improvements across the modes are just a few elements of this new function. In addition, the new administration must work closely with the Transportation Security Oversight Board established by section 102 of the Act.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills? From my many years of experience in positions dealing with law enforcement, regulatory programs, and developing and building new organizations, I feel I have the right mix of background, knowledge and tools to immediately perform at the highest level in this important position.

I will rely on the considerable expertise and knowledge of the management and support staff already available to help me become better acquainted with the details of transportation security issues, the resources available to support this effort, and assistance in developing procedures to most effectively implement this large and important undertaking.

5. Who are the stakeholders in the work of this agency? Every single American and many important business and services are stakeholders in this new agency. Almost every day, most Americans have some connection to the transportation infrastructure. In aviation, it includes owners or operators of airports and airlines, and crewmember and passengers flying on airplanes. Beyond the aviation industry, stakeholders include millions of people steering, engineering, conducting or riding trains, subways, buses, boats and ferries; or working in one of our many port facilities around the country.

Beyond individuals and businesses, the economy as a whole and the strength of our homeland security are also stakeholders in terms of a secure, safe and robust transportation infrastructure.

6. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question No. 10 (above). If confirmed for this position, I intend to include all relevant stakeholders to solicit information and their views on issues affecting transportation security. I want to solicit all points of view regarding

issues and concerns in this area as it affects important and large segments of the economy, industries, companies, and individuals.

My first priority will always be to achieve the paramount goal of enhancing and maintaining the highest levels of security and integrity for our transportations systems.

7. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced in the private sector. (a) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting controls? In all of my leadership positions, I have always assumed the responsibility for the agency bottom line, supported by a robust management and financial accounting system. If confirmed, I would ensure that the new agency builds on such a system from the beginning to track its resources and costs, and ensure accountability to the Congress and the American people.

At the Secret Service, I recognized the need to address a more efficient means of tracking the costs and staffing resources critical to the extensive travel conducted by Secret Service protectees. As a result, I drove the development and successful accomplishment of a mainframe program that resulted in significant cost savings to the government.

At the ATF, I applied the same cost saving principles to the integration of criminal, regulatory, and tax programs which now enables ATF to take full advantage of the array of specialized tools Congress has provided to carry out the Nation's laws regarding alcohol, tobacco, firearms, and explosives without stratification and redundancies. These concerted efforts toward maximum efficiency earned ATF the highest rating on five consecutive audits by the Department of Treasury, won four Vice Presidential Hammer Awards, and warranted selection of the agency as finalist in Harvard University's Innovation in Government Awards for creative firearms trafficking programs and alcohol industry partnerships.

(b) What experience do you have in managing a large organization? As I have already stated, I have led and managed several large organizations. This includes serving as the Director of the U.S. Secret Service with almost 5,000 employees, 58 field offices and other facilities; and as the Director of the Bureau of Alcohol, Tobacco and Firearms, with some 4,000 employees, 23 field divisions, and laboratories, training, and other support facilities.

8. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals. (a) Please discuss what you believe to be the benefits of identifying performance goals and reporting on your progress in achieving those goals. I am a firm supporter of the GPRA process. I have directed its use in organizations I have led by fully utilizing GPRA principles and strategic planning to identify measurable performance goals and outcomes.

At the ATF, I established a strategic plan for that agency that is used as a model by other law-enforcement-related agencies. ATF's budget is driven by a Strategic Plan designed to provide the most effective method for achieving ATF's vision for a sound and safer America. That plan has been lauded by the General Accounting Office and the National Academy of Public Administration, a Performance Consortium chartered by Congress, for its adherence to the principles of Government reinvention.

At FEMA, I supported four key Annual Goals in the FEMA fiscal year 2001 performance plan focusing on the agency activity to support the FEMA Director, the White House and the National Security Council in the area of national security policy, programs and plans related to terrorism and for specifically building the national capability to respond to the consequences of terrorist acts. Over the past year FEMA has taken major steps in assuming the leadership role for Federal terrorism consequence management preparedness and response programs and activities.

At FEMA, I directed the development of a Terrorism Preparedness Strategic Plan and a Terrorism Preparedness Implementation Plan in mid-2000: that together describe the vision, mission, strategic goals, program objectives, and roles and responsibilities for the implementation of FEMA-wide programs and activities in terrorism preparedness. The documents have been used to reinforce the agency Annual Performance Goals and continue to provide a baseline of activity for me to address in facilitating the development of agency positions regarding our roles and responsibilities in this area, especially in the areas of interagency planning, training and exercises.

(b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs? In its responsibility for funding agency missions and programs, Congress has a great responsibility for

ensuring that taxpayer dollars are effectively and efficiently spent. Agencies need to have well-articulated, measurable and achievable goals and should be held accountable for their implementation. Agencies should keep Congress apprised of progress in achieving goals and informed when their implementation may be delayed or impeded. I believe an open dialog is the best approach to finding a mutually acceptable solution to any problem or concern.

(c) What performance goals do you believe should be applicable to your personal performance, if confirmed? I will be personally involved in the development of the agency strategic plan and the identification of the performance goals and tasks. Once committed to by management and staff, I will assume personal responsibility for their implementation and delivery of outcomes.

9. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you? I believe in a collegial, collaborative management style that fosters teamwork and sharing of resources, both within and outside of the agency. This sharing leads to the most effective application of Federal resources in addressing and solving complex problems.

I am a strong believer in long-range, strategic planning and hold myself and my subordinate leaders accountable for getting maximum results from available resources.

I insist on the highest standards of ethics and integrity from all of my staff and model those standards personally.

I believe in the value of every employee and that each has an opportunity to strive for excellence and contribute to the success of the organization. I encourage all who work with me to do their best and to "autograph their daily work with excellence".

I am a vigorous proponent for the development of a workforce that looks like America, and will work tirelessly toward building and maintaining a diverse workforce at all levels.

10. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe. I respect and honor the role of Congress in making our Nation's laws and carrying out its responsibilities for their implementation. Over the course of my career, I have participated in numerous hearings before several committees in both the House and Senate. To the best of my knowledge and ability, I have tried to be responsive to member needs to provide information that is requested.

11. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency. Throughout my government service, I have had very positive experiences working with the Inspectors General in various agencies. My previous positions as Director of the U.S. Secret Service and the Director of the Bureau of Alcohol, Tobacco and Firearms, as well as my recent assignments at FEMA provided me with a wealth of knowledge regarding the Inspector General operations. The Inspector General rightly provides an independent and objective review of agency programs and operations.

I welcome an open and professional working relationship with the Inspector General. I am aware of the statutory authority and requirements for that function and believe it can provide valuable assistance and recommendations as I direct the development of policies and procedures for the new agency.

If confirmed, I will utilize the resources of the Inspector General to help develop policies to improve economy and efficiency, with particular regard to preventing waste, fraud and abuse in agency programs.

12. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your department/agency comply with the spirit of the laws passed by Congress. I will work closely with the Committee to implement the provisions of the Act as passed and signed into law.

I will report back to the Committee on a regular basis to keep it apprised of progress made in implementing the Act as well as issues and concerns that may arise as we build the needed transportation security capabilities.

13. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views. I believe the provisions of the recently signed Aviation and Transportation Security Act of 2001 provide sufficient legislation and authority to stand up the new agency and its functions.

If confirmed, I will continue to work with the Committee to help identify areas that may require additional legislative action in the future.

14. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes,

please state what steps you intend to take and a timeframe for their implementation. Yes. I will adhere to the timeframe established for implementation of the Act.

Senator ROCKEFELLER. Thank you very much, Mr. Magaw. It was a good statement and we appreciate it. You are certainly right about the gravity of the position to which I think you will be easily confirmed.

Let me just start with two questions. One has to do with the screeners, which is kind of what got the most attention during the debate up and until the bill. You have a lot of discretion, and in my judgment rightly so. You can do a lot of things there. The law specifically says: "Notwithstanding any other position of the law, the Under Secretary of Transportation for Security may employ, appoint, discipline, terminate, fix the compensation, terms, and conditions of employment in Federal service for such members or individuals as the Under Secretary determines may be necessary to carry out the screening functions." That is sort of Presidential in sweep.

"The Under Secretary shall establish levels of compensation and other benefits for individuals so employed."

I read that only to ask the following question. During the course of the debate, there was a lot of discussion, and some of it probably unfair and read as—interpreted as hostile to some of those who were screening, who were trying to hold down two jobs and getting 4 hours of sleep a night because of that, that we are dealing here with first-class citizens, and I want to make sure we are.

Their rights, their privileges, their integrity has to be protected. We are doing that in a variety of ways because we have made a lot of money, much more money available for salaries. On the other hand, when we were doing the bill we were talking about 28,000. We were not exactly sure how many. Now it is 30,000, and it is a lot of people when you hire, when you have to go out and get a lot of people fairly fast, screen them; the FBI overloaded already; maybe you will be doing that yourself—I would like to hear about that if that is the case—find out what their backgrounds are, and then to train them, as well as to watch them as they start their work screening.

I am not talking about just the people what check what you carry. I am talking about also the people who check 100 percent of the baggage that goes into the cargoes, where damage can be done even more easily.

It is going to be very important that the concept of fairness and equal treatment, that they feel that, because my own view is that one of the reasons that the average rate of their service was 3 months on a national basis was, one, they were not being paid anything, were not getting health benefits for the most part, but also that they were not being treated with respect. They did not really have any reason to have self-esteem except as they felt they were doing their jobs or were told that they were not doing their jobs, either by the American public through its impatience or by the media or by us.

So I would like to have a little bit of your philosophy about as these folks are selected, backgrounded, trained, put into position, watched, developed, etcetera, because these are people that we

want for the longer term, that that is going to be done carefully, wisely, thoughtfully, and fairly.

Mr. MAGAW. Yes, Mr. Chairman. On a much smaller scale, but with the same degree of effect, I think, when I went to ATF, if one can just remember back to 1995 and 1993 and 1994 when they were getting so much criticism. They lost four agents there that day. They had 20 injured. They were looking at to be abandoned and torn up and put in other agencies.

So I know how to treat people. I think people may say a number of things about me, but they will always say that I watch out that we are very fair for people, not only in terms of the individuals, but in terms of the whole workforce, diversity, and diversity through the entire ranks. You will find that at both the ATF and the Secret Service now.

But at the same token, let me get specifically to this particular job. The airlines and the airline industry and the airports, they do not want to be working at that airport that is looked at as an unsafe airport. So their motivation is going to be there.

You have given us some very good guidelines in the law in terms of who would be eligible to come into the category. As we go through that and as we select people and as we train people, we will keep all of those things in mind that you have just stated. If you select qualified people—and we can do that now with the pay that you have set up—you hire qualified people and you train them properly and then you continue to train them, so that there is no long period of time that they are not trained, and you have good solid oversight that is understanding, that is compassionate, that helps them with family situations; then they ought not to be on there that day, they can do something else.

All of those kind of things have to be brought in to this plan, and I am very, very aware and always concerned with people issues. I will keep that in my thoughts as we go along.

Having said that, those who do not meet the requirements or those what meet the requirements and then make mistakes that they should not be making, we will not allow that to continue.

Senator ROCKEFELLER. The background checks will be done by?

Mr. MAGAW. Well, we are going to have to see about that. I realize I should be saying on each one of these answers "if confirmed." Can I stipulate that?

Senator ROCKEFELLER. Yes, that is included as the end of all of your answers.

Mr. MAGAW. Thank you, sir.

Again, on a smaller scale, but the same principle will work, and I know it will, is that when I was in charge of the Secret Service's Washington Field Division we had something like 28 or 30 agents full-time, Secret Service agents, doing career backgrounds and all kind of background checks. So we came up with the idea of, why do we not take our retired cadre? There is a lot of them out there that would like to do this kind of work.

We brought a group in, we trained them, and it came out magnificent. Most of the other Federal agencies now do that. So I would certainly use that process. There are also some very good private sector companies that do it.

Now, while I have not specifically decided exactly how, it is clear that I know how to approach this problem once I understand a little bit more about the actual problem today. I was asked to come over just 2 weeks ago today to be interviewed and talk about this job, so I was trying to also carry on my FEMA responsibilities, at the same time getting all of the requirements that are necessary.

But I will address that issue and we will not have long, drawn-out—for instance, it used to take an agent who would work on the background, because we would have them come off of that and stand post and do other things, they would sometimes be 5 or 6, 7 weeks getting a background done. The FBI is under the same circumstances, they have got so many things on their plate now.

So we isolated that group, and not only did they want to turn out a good product to show that, hey, I can still contribute—and especially now after 9/11, they are all sitting out there saying, how can I help? Well, they can help this way.

Not only did they turn out a good product, they arrived and found things that the other investigations sometimes did not find, because they took that other extra step. Almost always, they will have it back to you in 4 or 5 days. They will work 12 or 14 hours a day to get it done. Now, if it has to be moved to another location because of a person living there—but still, you are not talking long periods of time here.

Some of your security companies are branching off into this area and they are employing former Federal and State and local law enforcement. That is going to be another source. So we will look at all the sources.

Senator ROCKEFELLER. My time is up.

Those who have on cellular phones, please turn them off or leave the hearing room.

Under the early bird rule, Senator Wyden is next.

Senator WYDEN. Thank you very much, Mr. Chairman.

Mr. Magaw, thank you for being willing to serve. I think it is one of the most important positions in government. Let me ask you a few questions that I think are very much on the mind of the public today. Obviously, you have got to begin the task of restoring confidence for the flying public. Communications is a major component of your job. What do you intend to do, not just to improve safety, but to let the American people know where this country stands with respect to security?

Mr. MAGAW. That also is one of the main concerns of Secretary Mineta and, although only for just a few minutes, we have discussed this issue. So I intend to not only bring the people within Transportation that the Secretary might identify, but to reach out to the airport personnel, the airline industry, the maritime industry, and all of the affected industries to get all the ideas that we possibly can about how to address the communications.

The airlines have their own way of communicating. Now, what do we have to do in order to make sure that it gets to that airline and gets past there? What is it we have to do to make sure that it gets to the general public? One of the first things that I will do upon being confirmed is reach out and hire an outstanding public affairs, a highly qualified public affairs and communications person to help me do that.

Senator WYDEN. I mentioned the history of airline security. Again and again, the airline industry offers these arguments for extending the deadlines in the law. I would like to know whether you are going to seek to hold fast to the Act's timetable. We have already got requests for extensions, modifications of the deadlines and requirements. Tell us your position with respect to whether you are going to seek to hold fast to the deadlines and the time requirements laid out in the bill?

Mr. MAGAW. My answer to that, sir, is that we must meet those deadlines, and we will make every, every effort to meet them. One of the things that—and that is the thing that I think I have to address first—but we put together a chart, which each one of these columns represent a deadline and each one represents what is going to have to be done to meet that deadline, to include the one that was met yesterday.

We did meet four deadlines yesterday. Transportation did; I did not. But I plan to make sure that we are following this on a minute by minute basis and I expect us to meet those deadlines.

Obviously, there will probably be a hiccup somewhere along in there. I do not know where it is. I do not see it. So we are going to make every effort, working with this Committee and all the other entities of transportation, to make sure that we do meet those deadlines, sir.

Senator WYDEN. The first is key, and a lot of us are concerned about is on January 18th there is a requirement that all checked bags be screened. Secretary Mineta said that he did not think that that particular deadline could be met. Do you agree?

Mr. MAGAW. Secretary Mineta, I believe since that time, has taken the position that there are ways, by using all different aspects of checking bags, that this deadline can be met, and also taken the position that this is the first baggage deadline. The one that is also very, very important is the one that is a year, dealing with the companies that are manufacturing those machines now, to figure out how we can increase the manufacturing, can we do something with other companies to help get the production up, while at the same time the American ingenuity and the money that you have now placed in the marketplace will bring people into that marketplace that were not in there before.

So I think when you look at all the capabilities here and the country who always responds when they are struggling, every company, every individual around the country, a lot of people with good ideas, we need to listen to all of them and get as much and the best technology as we can out there.

Senator WYDEN. What about the deadline for explosive detection systems for checked bags? This is obviously critically important to the public. This deadline is, the stipulation is that these systems have to be deployed and used throughout the Nation by December 31st, 2002. Do you have any questions about whether that deadline to make sure that bags are checked as relates to explosives would be met?

Mr. MAGAW. Well, I have questions, but I do not have doubts. I have questions because in this short period of time I have not understood the total problem. But it seems to me, with the money that you have put out there and with the companies who are now

manufacturing them and the companies who have other technology on the horizon, they just did not have the money to build it, when we put all of those possibilities together and look at all the technology that is possible, I am confident that we can reach that goal.

Senator WYDEN. What priority do you place on air marshals? As you know, under the statute you are going to be responsible for training and deploying additional Federal air marshals. They are going to be required on every flight determined to be high risk. But the statute did not stipulate a specific time line for this provision.

How fast do you think that this country can get where you want us to be on the air marshal issue?

Mr. MAGAW. This can go and is going very, very fast.

There are again a number of agencies out there right now that are lending us agents, as they did in 1972. I worked in that program in 1972 and of course that was all foreign carriers.

This, though, you take DEA, you take the U.S. Marshals, you take ATF, Secret Service, FBI.

All the different investigative units—there are many, many more—are providing agents to fly on those aircraft now. They are going through an additional training. If they have had their basic and they are already operating Federal agents, we can do the training in approximately 2 weeks. That is being done as we speak, and the Federal Law Enforcement Training Center has been very, very helpful in doing this. So they are going to come on very fast.

The ones that are on there now, those agencies have said: You know, this is a time of war; we are going to help as long a we need to, if it is 6 months, if it is 8 months, if it is 12 months.

There is a huge number of applications and most all of them have law enforcement background. So in order to ramp up and get us to that point, we are going to use an awful lot of law enforcement prepared people already and at the same time start bringing in those that will have to have the 6 or 8 or 10-week training that are new. So the combination of both of those, plus the agencies being very helpful in assigning their personnel to this program.

Senator WYDEN. Mr. Chairman, I know my light is on.

Senator ROCKEFELLER. Thank you very much, Senator.

Senator Hutchison.

Senator HUTCHISON. Thank you, Mr. Chairman.

I have a couple of questions, but I wanted to follow up on the train of thought of air marshals, and ask if you would look at the age deadline. You mentioned that you have a number of applications, most with law enforcement experience, which I think is terrific because you will not have to do training from scratch.

It is also my hope that in the future, you could have air marshals come from your own system, perhaps people who start as screeners. Hopefully, you could attract a better quality of person to go into the entry level knowing there is going to be something beyond that, such as supervisory capabilities and then air marshals.

However, there is an age limit of 35, I think, in the bill for the air marshal position, with an exemption for retired law enforcement and military with certain number of years. Do you think that is enough of an exemption, because there would be many people, I am sure, at the age of 40 or 45 who could do a great job as an

air marshal? Have you looked at that enough to know if we would need to change that requirement?

Mr. MAGAW. From my past experience both in the Secret Service and also being familiar with the air marshal program in 1972, there are a number of studies, Senator, that say beyond the age of 40 and 45, certainly 50, you get to the point where you are in terrific shape, but you are just not what you were earlier on.

So we have really got to look at that.

Senator HUTCHISON. Be careful.

Mr. MAGAW. Well, I am 66. But at any rate, I could not be an air marshal today. I know my reactions are not quick enough. I know that my young thinking would not be young enough to move forward.

But at any rate, in answer to your question, we do need to watch that. While a lot of them coming in are going to be in that 40, 35 to 50 category, what happens to them after they are in for 5 years? Because what you have said is very, very important. We started a program in ATF that we wanted to try to make everybody look at their career. We have stay-in schools. They came in as stay-in schools, some of them under hardship cases in low income areas, that are now agents, that are now inspectors.

So that career track is very important to me, and especially in a job like this, because this job, if you do not rotate them from their positions very often during the day, you do not give them periodic training—I mean almost weekly at least sit down and talk to them about issues—it becomes a very static kind of an employment. So we do want to have the career track and we do want to make sure that we are very careful and monitor how they are reacting, how they are functioning.

There is going to have to be a very good psychological unit with the air marshal program, because flying 10 hours a day 4 days a week or 8 hours a day 5 days a week, you can imagine what that could cause. So we want to be very careful with that.

Senator HUTCHISON. Well, I appreciate that and I hope you will keep in mind that I am certainly willing to change the law if we need it on the 35 age. I agree totally with your concept, which has been my concept, that if you can bring people in at the ground level with screening and establish a career track, that would probably be the best if you have enough available people.

Let me just ask you, though, if you have the screening job, which is even, I think, more prone to burnout, could you also assess how the best way to do this at some rotation and some use of personnel—for instance, if a person is an air marshal and flies a round trip and has only worked maybe 4 or 5 hours, maybe rotating them into supervisory jobs or screening jobs, just to break up the day, and have the screeners then be able to do something else.

I am not even asking you to comment on that right now, but to look at that as you are deciding how it is best to keep the screeners sharp and the air marshals sharp during a day where you are doing the same thing. I hope there is an opportunity to be creative in the rotation for that purpose.

I just want to ask you another question concerning the need for the freedom to fire. One of the big sticking points in the bill as we were writing it was whether we had enough capability to fire on

the spot someone who was letting down on the job, especially in the screening position. Do you think the bill gives you the flexibility to fire at will, and do you think that the treatment of these screeners as security personnel, and therefore putting them in a different category from civil service personnel, was done correctly in the bill?

Mr. MAGAW. We will have to see. I am not a personnel specialist, but I will reach out and hire the best personnel specialists that I can find, both from the private industry and also the Federal industry. You have given what appears to me in the bill a very wide leeway. What I want to make sure is that in none of this enormous jurisdiction and responsibility that I take that lightly. I want to make sure that, since you have given us this authority, that we guard it very closely.

But I want to look at how we can do this. It has to be a force the is accountable, that is efficient, and if they cannot function or continually make mistakes we just cannot keep them in the system.

Senator HUTCHISON. Well, I know my time is up. Let me just say that we knew when we passed this very comprehensive piece of legislation that there might be a need for some fine-tuning after we were up and running. I hope that you will come to us after you have been in office for 9 months or so and tell us where you need the technical corrections that would give you the ability to do your job better. I think that is going to be essential.

Thank you.

Mr. MAGAW. Thank you so much.

Senator HUTCHISON. Thank you, Mr. Chairman.

Senator WYDEN [presiding]. Thank you, Senator Hutchison.

Here is where we are at this point, Mr. Magaw. You have said in response to a question I asked earlier that you are going to hold fast to the deadlines and timetables in the Airline Security Act. I am obviously, and I think my colleagues are, looking for dogged determination on that point. I am going to ask some additional questions with respect to some of the deadlines and timetables and parts of the Act.

But Senator Specter is under a very tight timeline and managing a bill on the floor, so I am going to recognize him at this time.

Senator SPECTER. Well, thank you. Thank you very much, Mr. Chairman. I am the manager for the Republicans on the conference report of the appropriation bill on Labor, Health, Human Services, and Education, so I appreciate your courtesy in permitting me to question at this time.

Mr. Magaw, in my opening statement, I summarized what had happened with Alcohol, Tobacco and Firearms on having entrapped Randy Weaver by going to him and asking him to find sawed-off shotguns, which was a violation of law, but the initiative was taken by the Alcohol, Tobacco and Firearms agent. The law on entrapment is when the idea originates with the law enforcement officer that is entrapment. That was found by the jury.

Then they sought to turn him to an informant because they had—ATF—had lost its informant. When he refused, he was indicted. He was not notified of the hearing date, and then ATF informed the U.S. Attorney that Weaver was a suspect in bank robbery cases and had convictions. In the hearing Mr. Byerly, who was

the ATF agent, said he did not remember clarifying that with the U.S. Attorney.

Then the marshals went to arrest Randy Weaver. There was a gunfight. Deputy Marshal Deagan was killed. Sammy Weaver, Randy Weaver's 14-year-old son, was killed. They brought the hostage rescue team in from the FBI, the sharpshooters, and during the course of that incident Randy Weaver's wife Vicky was killed.

During the course of the hearings, the subcommittee which I chaired, a subcommittee of Judiciary, concluded that there was egregious wrongful conduct by both Alcohol, Tobacco and Firearms and the FBI. FBI Director Louis Freeh conceded that there was an unconstitutional use of deadly force and changed the rules of engagement.

As I noted earlier, I saw your nomination for this important position and did not want to hold up the Administration on moving ahead here, so I acted very promptly to notify Secretary Mineta, of my concerns and sat down with you with Senator Craig for more than an hour the day before yesterday, because I am concerned about your judgment, Mr. Magaw, your judgment on handling an important matter like this.

You started your testimony, your written statement before the Judiciary Subcommittee back in 1995, saying: "After reviewing the actions of special agents regarding"—and let me also add that you had told us in the hearing, Senator Craig and me, the Alcohol, Tobacco and Firearms had made very substantial changes under your leadership. I then questioned why the subcommittee was not informed about that congressional oversight. It is very important that when changes are made and there is a mistake that it be acknowledged publicly so that Americans know what is going on and so that Randy Weaver would know.

My view was that an apology was in order for Randy Weaver. He was no saint, but he did not deserve that armada to come storm the hill and have the gunfights which resulted in the deaths of two members of his family and the marshal. Weaver said at the conclusion of the hearings, had he known that he would have been treated so well by the Senate Committee he would have come down off the hill.

We have not gotten much documentation, I might say, Mr. Magaw. We have one extract of a report which shows some changes you made, but only one reference to Ruby Ridge. If there is more I would like to see it.

But, coming back to my question, your prepared statement said: "After reviewing the actions of special agents regarding Mr. Weaver in a complete review on my part, I am convinced that our agents' conduct was lawful and proper in every respect." Is it your judgment today that their conduct was "proper in every respect"?

Mr. MAGAW. Senator, we have been over this topic many, many times. Let me, if I could, address it in a little bit of detail. What everyone needs to understand is that I was not at ATF when Ruby Ridge occurred. I came there partly as a result of Ruby Ridge and also as a part of Waco. When I came, I saw the kinds of things that needed to be repaired. One was trying to get the employees back on their feet and looking at the structure and looking at everything that we have done.

The court clearly, Senator Specter, did rule that it was entrapment. When that court ruled that it was entrapment, we changed our procedures so that some of these things would not happen again.

As far as the congressional oversight, my apologies certainly for not coming to the Judiciary Committee, but at that time my responsibility I felt was to the Appropriations Committee, both the Treasury and Postal Service Committees, both in the House and the Senate. As we went along over the next 6 years, we reported to them all the time. They know the training changes, they know the recruitment changes, they know the kind of things that ATF was doing, and moved heavily toward training.

One of the problems with all the shortcomings that we are talking about in these very unsettling incidents that occurred were primarily lack of training. So all of those things as we went through it were changed, and I did report to those Committees. In fact, when I went there their budget was something like $284 million. Now it is almost a billion or a little bit over.

So I did everything that I could do to not only support them as they recovered, but correct them as we went along. So I would answer it in that way, sir.

Senator SPECTER. Mr. Magaw, you accurately state that it was not your watch in 1992 when this happened, Randy Weaver, just as it was not on Director Freeh's watch of the FBI. He was not appointed until 1993. Now, I am on the Appropriations Committee and was at the time you reference, but it was never called to my attention that you had made these changes. When you have an oversight committee, obviously there is a lot of overlap in the Congress, and these were very extended hearings, lasted months. A 150-page report was filed, notes of testimony in a thick volume. This was the oversight committee that you had a duty to come back and report to.

But I want to pursue further what you did. If there is further documentation beyond the single sheet which you have given me or the couple of sheets with only one reference to Ruby Ridge, I would like to have it. I want to be in a position to vote on you today if the Committee moves forward. I do not know if the Committee will or not, but I want to be very diligent and very prompt in concluding my part of this matter, my evaluation as to your judgment.

I appreciated the last answer you gave, Mr. Magaw, but you did not quite come to grips with my question. This was not your Alcohol, Tobacco and Firearms unit in 1992, but you came in and, in the context of this what I considered egregious, reprehensible conduct, you said that it was "proper in every respect." My question to you that I asked you before, that I repeat, is: Is it your judgment today that it was "proper in every respect"?

Mr. MAGAW. As we looked at it closer, Senator, we found a number of mistakes in the investigation and in the understanding of how some of these investigations should be worked, and we made those corrections.

Senator SPECTER. OK. I think that is very important to acknowledge, Mr. Magaw, because you are being considered for a very, very important position and there are a lot of people who are still con-

cerned about what happened at Ruby Ridge. I think it is very important that your judgment today is not that it was proper in every respect. I think that is something which is very, very important. I thank you, Mr. Magaw.

I thank you, Mr. Chairman.

Senator WYDEN. Thank you.

Mr. MAGAW. Mr. Chairman, can I just make one statement?

In 40 years in law enforcement both at the State level and the Federal level, nobody is more concerned about what happened that day or at Waco, not only the loss of life, but the injury to those who are still alive. I have carried that with me in everything that I did at ATF, and it shows.

Senator SPECTER. Mr. Chairman, I appreciate that last statement. I do not have 40 years in law enforcement, but I have a fair sized record there myself, and there are tremendous problems about governmental misconduct and law enforcement misconduct. This is something that I faced day in and day out in the turbulent decade of the 1960s and 1970s when I was the district attorney of Philadelphia.

Where you have recurrent activities, but where you have the FBI, which is the model of law enforcement, it seems to me very important as a signal to every law enforcement officer in America who uses deadly force that that concession be made, and where you had the activities of Alcohol, Tobacco and Firearms, which is not as well known obviously as the FBI, but a very important agency, highly respected and looked to.

When you talk about the funding, I wrote the Armed Career Criminal bill which was passed in 1984, which provides for life sentences for career criminals who are caught carrying firearms. That brought the first wave of funding to ATF. ATF was funded at a very low level, but Alcohol, Tobacco and Firearms had the responsibility for enforcing the Armed Career Criminal bill. So that it was especially of concern to me when I saw this Ruby Ridge conduct.

But I am glad we got the record straight today.

Thank you, Mr. Magaw.

Senator WYDEN. I thank my colleague and appreciate his long interest in law enforcement. As to your House sponsor of the Armed Career Criminal law, I am glad you mentioned that. I appreciate it.

Senator SPECTER. Good teamwork.

Senator WYDEN. Let me ask you now, Mr. Magaw. There is a 15-year history of backsliding on airline security. Again and again, the Congress has sought to actually get these rules implemented, get them in place. They always get watered down and whittled down. Why do you think that happened again and again over the last 15 years?

Mr. MAGAW. Well, this would strictly be a judgment on my part here from looking at it as a citizen might. But it is a case where money would be placed in the effort, but then be moved someplace else. It was one that did not get the attention that it is getting today, and probably would not be getting the attention today if 9/11 did not happen.

We did not as a country and as law enforcement, we did not focus on these risks. Almost like Pearl Harbor, we did not realize.

Although we knew the threat was out there, we did not focus on it. I think it was lack of focus, and there is no lack of focus now.

Senator WYDEN. I appreciate your sincerity. I think there was more to it than that. There was an enormous amount of lobbying and public pressure by powerful interests. You have basically told us today that you are going to stand up to them, that you are going to make sure that this law is adhered to. That is something we feel very strongly about.

Now let me ask you some more about the deadlines with respect to some of these provisions that are so important. The Act stipulates that the deadline for deployment of Federal screening personnel at all airports is 1 year from enactment. A training program for security screening personnel has to be in place within 60 days. Do you have any concerns about these deadlines?

Mr. MAGAW. No, sir, and it is my understanding that within the next day or 2 that process is going to get well under way. I do not know it in detail because I should not until confirmed, but my understanding is that the plan is there and it is going to be successful.

Senator WYDEN. Under the statute, you are responsible for establishing procedures for security screening of people providing ground services for airlines, such as catering, and supplies they put on board. How long do you expect that this is going to take and how do you plan to pursue implementing that?

Mr. MAGAW. Some of that is being done right now. In fact, most of the airports do some of that. It just needs a little closer oversight. Those meals, once they are prepared, as I understand it, are sealed into containers, taken by a particular driver to that particular flight, unloaded, the seals are checked to make sure that none of them have been altered.

Now, it seems to me that in that process there needs to be people making sure that that is consistent across the board. But I do not know enough about it to really go much deeper than that, but I will.

Senator WYDEN. Well, when you say that there needs to be clearer oversight—because that seems to me to be a real vulnerability. That was something that the Congress was concerned about. What do you mean when you say there ought to be clearer oversight in that area?

Mr. MAGAW. Well, we are going to—as you know by the bill, we are going to go and hire a security person in charge of every airport at a fairly high level and with fairly good experience. We are going to put some more Federal law enforcement personnel, TSA personnel, in there to not only oversee the screeners, but oversee the procedures that you are talking about to make sure that the loopholes are filled in.

In terms of sometimes, you know, when you go through a checkpoint, somebody punches a number in there, they go through there in a hurry, the door takes a long time to close, it sometimes is fairly easy to violate that. We want to look at all of those areas and be helpful to get those closed down.

Senator WYDEN. Now, the statute sets a deadline of 90 days after enactment to implement an aviation security program for charter

air carriers with large aircraft. Do you have any concerns about meeting this deadline?

Mr. MAGAW. I really have not addressed that issue, Mr. Chairman What I certainly can do is address that issue in the very first days and get back to you with the proper answer to that, sir.

Senator WYDEN. Now, you told me that you are going to stick closely to the timetables and deadlines in the statute. But there are places where the Act gives you some authority to provide waivers or extensions. Can you pledge today that you are going to use those provisions sparingly and only as a last resort?

Mr. MAGAW. My goal is to use those sparingly, using them only as a last resort. My further goal is to beat those deadlines by a few days if we can.

Senator WYDEN. On the discretion point, you do have considerable discretion in areas such as promoting enhanced security measures. The Secretary, for example, can look at biometric imprints, this sort of thing. Could you tell us how you plan to use your discretion in that area and, given the fact that you do have some discretion in some of these areas, what would be your priorities with respect to those powers granted you?

Mr. MAGAW. What I had planned to do in this case would be make a statement—and I am not sure the exact terminology, but make a statement of work or make a statement of what the product needs to do, and then look at all the response, because it is everything from retina to fingerprints to all kinds of different technologies out there. So rather than setting on one kind of technology, let us look at all of them and see what applies best in the airports and the other areas where we have particular problems.

Not every airport is going to be exactly the same. So I want to have that flexibility, but I also want to be able to look at everything that is available out there.

Senator WYDEN. We would like to know your view on how technology can help promote aviation security as well. You know, the statute contains a number of provisions on research and development with respect to technology. I chair the subcommittee here on science and technology. The evidence is very clear that the people who threaten this country are not technological simpletons. These are people who are very savvy at the use of technology.

I think it was the view of the sponsors of those provisions that we would find ways to incorporate new technologies in order to get out in front of those who threaten this country's security.

Tell us your view of the role that technology can play in aviation security and particularly how you are going to get from the private sector state-of-the-art products and innovations in order to promote security at our airports?

Mr. MAGAW. Technology is absolutely essential. We cannot meet these deadlines nor can we prepare the American public to be as safe as possible without technology. So that is what I want to look at, and I want to do everything we can to generate the spirit of the inventor out there. Those who have had technology that they have been looking at, they have not had the funds to carry it forward.

So I want to make sure that technology is at the highest level as we move forward. Once we get caught up, then we have got to have a replacement system, we have got to have systems that put

new quirks in the system that will pick up the kind of things to stay ahead.

Senator WYDEN. So you are willing to be the point person as it relates to technology that can promote aviation security? Because I know many companies constantly contact myself and other members of this Committee with ideas and suggestions. Now, as a result of your statement we can say that those people can be in touch with you.

Mr. MAGAW. That is again one of the very first things that I am going to do, is to hire the best technology people that I can, so that they can spend full time, and as those requests come to me that we will have them constantly working on them. Bottom line is, though, I will be the one responsible.

Senator WYDEN. Let me ask you a question, if I might, about rural airports. Chairman Rockefeller in particular has led this Committee on this issue. Senator Dorgan, myself, and others have tried to assist. But there is a great deal of concern among the rural airports of this country that they are not going to have the money to get the job done, and we want to make sure that citizens in more rural areas continue to have air service and, of course, that they are secure at the same time.

How do you intend to work with the rural communities across this country to help them deal with the new security issues?

Mr. MAGAW. Well, as Chairman Rockefeller had mentioned, the traveling public, whether it is the smallest airport in the country or the largest, it has to be addressed at each level. That is why it is very important to me to get a Federal security director in every airport and then make sure we are looking at every airport and doing the very best we can to give them the first class security.

For instance, some of the airports, if you have the 300-foot rule for parking you take all their parking away. They would just have none. So what can we do in terms of technology, shields, and some of those kinds of things, deflectors? What can we do to allow them to use that parking and not have the long offset? Are there things we can do? If there are not, can we financially help them to move their parking lot a little bit?

But the big thing is take each airport, each concern, and make it work the best under their circumstances. That will be the first responsibility of those Federal security directors.

Senator WYDEN. Mr. Magaw, I do not have any additional questions. In effect, in this position you are something akin to the air marshal in chief. The job you have got is one of the most important positions in government. That is why the exceptional tenure was granted.

I think the fact of the matter is, even though progress has been made in recent months, there are significant vulnerabilities with respect to airline security today. There are vulnerabilities today that have to be dealt with. My colleagues outlined a number of those.

You do not have much time. There are a lot of agencies where people can take a bit of extra time to get settled in, but it has been noted that a year from now you have really got to have in place a long enforcement operation that I think from a simple numbers

standpoint is bigger than the FBI and the Drug Enforcement Agency combined.

So we wish you well. I think you know that this Committee, Senators on both sides of the aisle, are going to watch your office and the implementation of this law very, very closely. I can tell you, having studied the record of the last 15 years and looking specifically at the pattern, which is always the same—there is a horrible tragedy, that is the first thing that happens; huge public outcry; the Congress moves, there are recommendations made on airline security; and then again and again and again, there is slow motion implementation and it all gets whittled down and watered down and very often becomes a lawyers' full employment program as there is this huge fight in various agencies.

Our message to you is this time it has got to be different. This time it is going to be essential that you stay at it until the job is done. Senators of both political parties, led by Senators Rockefeller and Hutchison, are going to insist on it.

I want to give you the chance to have the last word. When you told me that you were going to adhere to those timetables and that you would seek to use very sparingly any possibility of deviating from those timetables, that was what I wanted to hear. You are going to have my vote both in the Committee and on the floor of the U.S. Senate.

I will tell you, I came in today wanting to clarify your position on a number of these key issues with respect to deadlines. Our papers, as you know, are filled every day with the lobbying efforts of some to try to water those deadlines down. You have told us that you are not going to give in to those efforts, the efforts to implore you to make changes, and I appreciate that.

Would you like to say anything else, or we will adjourn?

Mr. MAGAW. No, sir. I will move forward with the things that you just mentioned in front of my mind. Thank you.

Senator WYDEN. We wish you well.

The hearing is adjourned.

[Whereupon, at 11:13 a.m., the hearing was adjourned.]

A P P E N D I X

ANSWERS TO QUESTIONS FROM SENATOR JOHN MCCAIN

Question 1. While aviation security will be the focus of your immediate attention upon confirmation as Under Secretary of Transportation Security, I am confident you recognize the scope of this new position will entail focusing on all modes of transportation. As you may know, this Committee has been working to pass Port Security legislation, as well as Rail Security legislation, and next year we will be considering bus security legislation and other issues.

In your opinion, what mode or aspect of our Nation's transportation system is the most vulnerable to terrorist attack and what action would you propose the Department of Transportation (DOT) take to decrease that vulnerability?

Answer: Clearly the aviation system is at the top of the list and I believe we have covered elsewhere our plans to decrease vulnerabilities in aviation. However, terrorists can strike anywhere so can be no static ranking of threat by mode of transportation. The terrorist threat is greatest where terrorists believe they have the highest likelihood of success, however they define success. Therefore our approach to transportation security has to cover all aspects of our transportation network. We are looking at the individual pieces of the network as well as those, like information systems, that cross modal boundaries.

Question 2. The U.S. Coast Guard, which is part of DOT, plays a vital role in the security of our Nation's seaports. It is my hope the Senate will soon pass S. 1214, the Port and Maritime Security Act of 2001, which, if enacted, would give the Coast Guard additional authority and authorize funding to address identified seaport security needs. Unfortunately, for the third year in a row, the Senate has been unable to pass other legislation to authorize the basic needs of the Coast Guard due to disagreements over a matter that is unrelated to the Coast Guard or its operations.

(a) Do you believe the lack of an authorization is having an impact on the Coast Guard's ability to provide for our Nation's seaport security? How will the lack of an authorization effect future Coast Guard operations relating to seaport security?

(b) Do you believe that legislation intended to increase the level of security at our Nation's seaports should be linked to reauthorization of the U.S. Coast Guard?

Answer: On December 20, 2001, the House passed H.R. 3507, its version of a Coast Guard Authorization Act. H.R. 3507 contains a number of Coast Guard-sponsored issues that deal with a broad range of Coast Guard administrative and operational programs. Enactment of these provisions will enhance the Coast Guard's ability to effectively support and manage its workforce to respond to changes in its responsibilities.

I do not believe that enactment of the Coast Guard's reauthorization needs to be linked directly to port security legislation. The Department of Transportation strongly supports S. 1214, the Port and Maritime Security Act passed by the Senate on December 20, 2001, and appreciates the Committee's willingness to consider the Department's views on that important piece of legislation. S. 1214 provides a comprehensive approach to enhance the security of U.S. ports. Although it is not necessary to link S. 1214 directly to the Coast Guard's reauthorization, the Department also considers enactment of a Coast Guard Authorization Act to be one of its top legislative priorities. As discussed above, reauthorization of the Coast Guard, if accompanied by corresponding appropriations, will not only provide the Coast Guard with resources, but will also provide it the necessary authority to support and manage its workforce.

Question 3. Do you believe the Integrated Deepwater System, as would be authorized in the pending Coast Guard reauthorization legislation, will be a critical component in the Department of Transportation's efforts to prevent potential threats from reaching our shores?

Answer: Absolutely. The Integrated Deepwater System (IDS) is critical to continuing the Coast Guard's ability to identify, deter, and when necessary, intercept and eliminate threats as far from our homeland as possible, before they can directly threaten our security and safety.

Strengthening maritime security requires an effective awareness of all activities (i.e. vessel transits, fishing activities, pollution incidents, emergencies at sea and illegal activities) within the maritime domain. This requires integrating surface assets, support aircraft and other systems. With timely information, the Coast Guard will have improved ability to quickly identify a threat and guide an asset to intercept it, giving the Coast Guard and our law enforcement and military partners time to react before it becomes a direct threat. Dispersed, interconnected assets are key to surveillance, detection and prosecution.

Although the IDS will vary based on the winning contractor's solution, awareness can be achieved by numerous means including unmanned aerial vehicles, maritime patrol aircraft, data links between netted forces, and shipboard sensors such as air- and surface-search radars and passive electronic surveillance systems—all potential parts of the IDS. Additionally, Deepwater cutters and aircraft perform a "community policing" function within the maritime domain. "Cops on the beat" not only deter, but also play a critical role in identifying anomalies. Deepwater assets will be highly mobile and flexible, allowing the Coast Guard to respond with agility, speed and maximum effectiveness. They can also remain on-scene for extended periods, providing a command and control presence until the situation is stabilized or resolved. The IDS continues to be a near term national priority.

Question 4. The U.S. Maritime Administration (MARAD) is the modal administration for our Nation's Merchant Marines. Currently, MARAD has no defined role in securing our Nation's waterways, although it is responsible for promoting U.S. maritime commerce worldwide. What role do you envision for the U.S. Maritime Administration in relation to ensuring the safety and security of our Nation's transportation system?

Answer: MARAD has a significant role to play in the area of port security. MARAD is the Federal agency that has responsibility for the promotion of the U.S. commercial maritime industry, and is statutorily responsible for providing DOD with access to port facilities, as well as providing for the commercial carriage of defense needs, during mobilization. This activity requires ongoing planning and coordination in order to be fully ready for any contingency. This responsibility was put in the Department of Transportation to make sure that the Nation's defense and the commercial carriage of trade were balanced in the interest of the security of the Nation.

MARAD also has other roles in working with the ports and the connecting intermodal transportation modes in order to promote efficient, effective, and secure commercial ports. They include such varied activities as port security training in Latin America, cargo tracking and more efficient cargo movement projects, and training of maritime personnel in security issues.

MARAD's commercial knowledge and expertise are important assets for the TSA. TSA will look to MARAD's expertise for determinations on grant monies, port security vulnerability assessments and on a range of issues essential to the development and implementation of national port security strategy. MARAD has a long history of policy support and technical assistance to the commercial Marine Transportation System and its stakeholders. This has included the administration of cooperative agreements, including research. I expect MARAD to continue to play a major role in that area. MARAD also can continue to produce research reports and strategic planning guides to improve port security operations and continue its international engagement on foreign port security issues.

In conclusion, MARAD is a very important member of the DOT team that is looking at the U.S. maritime commerce worldwide. They will continue to be part of the total team effort that DOT is currently using to address the transportation security issues.

Question 5. MARAD administers the War Risk Insurance Program authorized under Title XII of the Merchant Marine Act of 1936, which was created to ensure the availability of adequate insurance for vessels engaged in the waterborne commerce of the United States. In your opinion, and in light of newly identified threats facing U.S. interests worldwide, what changes or additions, if any, do you believe need to be made to this program to ensure the availability of adequate insurance and more importantly, ensure that U.S. commerce is not unnecessarily interrupted because carriers engaged in waterborne commerce cannot find adequate and affordable insurance for their vessels?

Answer: Title XII of the Merchant Marine Act, 1936, provides the Secretary with sufficient authority to ensure the availability of adequate insurance for vessels engaged in the waterborne commerce of the United States. Title XII sets forth the authority to provide coverage for vessels, their cargoes, crews, and third party liabilities against war risks, including acts of terrorism, if commercial insurance is not

available on reasonable terms and conditions. This insurance may be made available to both U.S. and foreign flag vessels.

Question 6. In an effort to address jurisdictional concerns raised by the Judiciary Committee and enable Senate passage of S. 1214, the Port and Maritime Security Act of 2001, before the close of the first session of this Congress, Chairman Hollings and I reluctantly agreed to drop several provisions in the managers' substitute. These provisions were requested by the Department of Transportation and would have created Federal criminal and civil penalties for several acts relating to port and maritime crimes. Additionally, the provisions would have made several crimes at ports and on our Nation's waterways Federal offences.

(a) Do you believe passage of port security legislation without these provisions would seriously impact the Department of Transportation's ability to ensure the security and safety of our Nation's seaports?

(b) If so, will you, if confirmed as Under Secretary for Transportation Security, commit to working with this Committee and the Judiciary Committee to ensure the provisions that were removed from the bill at the insistence of the Judiciary Committee are included in port security legislation before such a measure is sent to the President for his signature?

Answer: The Department of Transportation strongly supports inclusion of the criminal provisions in the Port and Maritime Security Act, and appreciates the Committee's willingness to consider the Department's views on this important piece of legislation. As passed by the Senate, S. 1214 provides a number of tools to improve the security of our Nation's ports and waterways. It provides a framework for the development of port security response plans at the local, regional, and national levels, and promotes maritime security in a number of critical ways. It is a very positive step. Therefore, I am reluctant to recommend an "all or nothing" approach concerning inclusion of the criminal provisions. However, the Department also believes that the criminal provisions are a key component of a comprehensive approach to maritime security. Enactment of the criminal provisions will significantly enhance the Federal Government's authority to investigate threats against our maritime security and prosecute those responsible, and the Department of Transportation will continue to strongly support enactment of those provisions.

I look forward to working with the Congress toward enactment of the maritime security criminal provisions.

Question 7. There is a growing concern over the issues surrounding personnel fatigue at Coast Guard search and rescue facilities, as brought to our attention by the Department of Transportation Inspector General's Office (DOT-IG) and the National Transportation Safety Board (NTSB) in their reports relating to the sinking of the sailing vessel Morning Dew. The Coast Guard's standards governing watch standing provides for an individual to be on duty no more than 12 hours in a 24 hour period at Coast Guard search and rescue center facilities.

I understand the House of Representatives is seeking to pass a Coast Guard reauthorization measure, H.R. 3507, which includes a provision that would codify the12 hour limit in a 24 hour period. While all of us take very seriously the issue of fatigue and its impact on transportation safety, I am concerned one of the real contributors to fatigue affecting Coast Guard personnel may be a lack of sufficient resources to hire and train the level of staff necessary to maintaining a presence at all search and rescue stations while complying with the duty time standards. Further, I am concerned that this standard, if codified, could adversely impact the Coast Guard and degrade safety and security at our Nation's seaports.

(a) Can you tell us how many Coast Guard search and rescue center facilities currently do not meet the 12 hour limit in a 24 hour period standard for personnel standing watch duty?

(b) Why, specifically, are these facilities not meeting this standard?

(c) What legal liability issues would be created by making the 12 hour standard a statutory requirement?

(d) If this legislation is enacted, how many additional personnel would be needed for the Coast Guard to meet this standard and what would the impact be on safety and security if these personnel were not provided?

(e) Without additional resources, how would the Coast Guard be able to meet this standard? Would the Coast Guard pull these personnel from other locations to meet this standard?

Answer: The Coast Guard has advised me that: (a): There are currently 9 District Offices, 2 Sections, and 41 Activities/Groups that have search and rescue center facilities. Of that number, 1 District Command Center is standing 12-hour watches, 1 Section is standing 12-hour watches, and 13 Group/Activities are standing 12-hour watches. The remaining units are operating on a waiver granted by the Com-

mandant of the Coast Guard to allow them to continue to stand the 24-hour watch until we can provide the requisite personnel to shift to the 12-hour standard.

(b): The minimum requirement to staff the 12-hour watch standard is 1 supervisor and 5 watchstanders per operations center. It must be noted that this number is not optimal and assumes that all billets are actually filled, that all assigned personnel are trained and qualified, and that at no time is there more than one watch stander absent due to leave periods, illness, offsite training requirements and other absences. The optimal number would be 7 watchstanders plus 1 supervisor. The reason that many of our facilities are not meeting this standard is that they do not have the billets in place to provide the required number of personnel to stand a 12-hour watch.

(c): The Department is concerned that a statutory 12-hour watch limit will raise significant legal liability issues. Current law (14 U.S.C. 88) gives the Coast Guard broad authority to perform search and rescue but imposes no specific requirements. This provides the Coast Guard with the necessary discretion to allocate its scarce resources. Sadly, despite the Coast Guard's efforts, not every search and rescue case is successful, and some cases result in litigation challenging the Coast Guard's decisions during the case. The Federal Tort Claims Act includes a "discretionary function" exemption which limits judicial review of the Coast Guard's organization, resource allocation, and workforce management. Courts have implied similar immunity in the Suits in Admiralty Act. If the 12-hour watch limit is statutorily imposed, a court could view that statute as removing the Coast Guard's discretion and establishing a "negligence per se" standard in which the Coast Guard could be held liable if any watchstander involved in a case exceeded the 12-hour limit, even if that in no way affected the Coast Guard's actions during the case.

(d): To meet the minimum 5 watch stander plus 1 supervisor staffing described in (b) above, no fewer that 170 additional personnel are required. There are currently 87 new billets included in the fiscal year 2002 budget. The balance will be requested in future budget requests.

The watch standers assigned to the District and Group operations centers are responsible not only for coordinating our SAR missions, but also for managing the many missions of the Coast Guard as they take place within their units' geographic areas of responsibility. Maritime safety and security functions other than SAR, such as homeland security, are a major part of this mission mix. The Coast Guard's billet structure and operational doctrine do not provide for separate or additional operations center staff for SAR, homeland security, law enforcement, etc. A shortage of trained personnel for our operations center positions not only degrades the Coast Guard's ability to properly perform SAR missions, it adversely affects all missions. Use of Coast Guard reservists to augment the staff of its operations centers has helped it cope with this problem over recent months, but this is clearly not a satisfactory long-term solution.

(e): Without additional resources, the Coast Guard will not be able to meet this standard without adversely impacting our operating forces. The Coast Guard will have to move personnel from other units, including small boat stations, patrol boats, cutters and marine safety offices, to meet this standard. If this were done, it would not be able to operate these facilities at the level required to satisfactorily execute the very missions that the operations center staffs are tasked with managing, including SAR, homeland security, maritime law enforcement, marine safety and environmental protection, maintenance of aids to navigation and others. And even if these re-assignments were made, the re-assigned personnel would have to be retrained and re-qualified to acquire and maintain competency as SAR planners.

Question 8. The Crisis Management Center (CMC) of the Office of Emergency Transportation within DOT's Research and Special Programs Administration played a critical role in the wake of the September 11 attacks. I understand that immediately following the attacks, the CMC, which includes representatives from all 9 transportation modes, was operating on a 24/7 basis and continued to do so for several weeks, gaining "real time" information and developing situational reports for the Secretary. Given the Office of Emergency Transportation is a multimodal responsibility, should it be transferred out of RSPA and under your watch?

Answer: As you may know, the Crisis Management Center (or CMC) was established to provide information about the impact natural disasters and other crises have on our transportation infrastructure. Following the terrorist attacks of September 11, the CMC demonstrated that it is also an asset for managing a security-related crisis. Currently, I understand the Department of Transportation is engaged in an intensive study of how the CMC could be better utilized—in natural disaster emergencies as well as security-related incidents—including how it would serve the information needs of the TSA.

AVIATION QUESTIONS

Question 1. While issues of efficiency and convenience are not to be dismissed, the new Under Secretary will be under tremendous pressure to minimize even the smallest disruptions to airlines and passengers. If confirmed, what will you do to remain independent and ensure that security is always placed above other concerns?

Answer: Although I recognize the importance of balancing the competing demands of security, mobility and economic vitality, my role as Under Secretary will be to champion the Security aspect in decisionmaking to the fullest extent. Other elements within the Department are responsible for advocating the case for facilitation of transportation, minimizing passenger disruption, etc. It will be the Secretary's job to strike a balance between these competing concerns. It is in everyone's interest to quickly restore confidence in the security of our airways. Through his sustained zero-tolerance approach to dealing with security breaches, Secretary Mineta has already sent a clear and decisive message about where to draw the line in ensuring the security of aviation. Security enhancements, however, do not always come at the price of greater disruption. I believe that we can find ways to deliver greater security without sacrificing the ease and freedom of movement that Americans have a right to enjoy. The airlines and airport operators have pledged to be our partners in this effort and working together I am sure we can succeed. where he will strike this balance.

Question 2. Your law enforcement and security background and experience is extensive. Do you think that you will be able to adapt your work experience to the transportation sector? If confirmed, what steps would you take to bring yourself up to speed on the particular challenges associated with aviation security?

Answer: My law enforcement background should prove extremely useful in addressing the problems of aviation security. This is particularly true of my extensive Secret Service experience. As in aviation security, the main focus of the Secret Service is on preventing attacks rather than arresting the perpetrator after an attack has occurred. If confirmed, my first step to familiarize myself with aviation security specific issues will be a series of briefings from the relevant intelligence and security personnel to develop a deeper understanding of current threats and vulnerabilities, as well as counter-measures currently employed. I will identify potential weaknesses or security gaps in the system and determine the most appropriate responses to close those gaps.

Question 3. Has Congress given DOT and the new Transportation Security Administration the necessary resources to get the new agency underway? If not, what more is needed? Is there anything else Congress can do to assist the new Under Secretary and Transportation Security Administration to enhance security?

Answer: The Aviation and Transportation Security Act mandated several actions that must be implemented in the immediate and near-term. Identifying the resources necessary to get the new TSA underway meet these goals is a significant undertaking that is ongoing apace with meeting the requirements of the law. However, launching this organization will require more than whacking its bow with a bottle of champagne. The keel has been laid, and DOT is busily crafting life into the design. It is too early to tell whether or not we have all the resources necessary to fulfill the mandates, but we have enough steam and rudder to weigh anchor and get underway to meet the immediate tasks at hand.

Question 4. The aviation security legislation that created the new Under Secretary position includes many mandates and imposes numerous deadlines related to improving security. Have you had a chance to review the legislation? Are there any mandates or deadlines that you feel will be difficult to meet?

Answer: If confirmed, I will do everything in my power to ensure we meet the deadlines. By passing the ATSA and its aggressive schedule, both Congress and the President were clear in their common objective to have security as "job one." Screening all checked baggage by mid January; building and installing explosive detection systems by January 2003; hiring/training a workforce of over 28,000 to take over all screening and security responsibilities within the target dates will all pose enormous challenges, but I am optimistic that we will surmount them.

Question 5. The January 17 deadline for the screening of all checked bags has been the subject of some concern, particularly by the airlines. Is this a realistic goal? How about the target of December 31, 2002, for full explosive detection system equipment deployment at all airports?

Answer: The Department of Transportation elements involved are doing everything possible to meet all of the deadlines imposed by the legislation. It is our intention that the airlines, with our assistance, make the January deadline for screening all checked bags by interim means and we continue to work with them toward that end. I fully expect that we will meet the January 17 deadline regarding checked

baggage. I am also optimistic that we will be able to meet the December 31 deadline for deployment of explosive detection systems, although a tremendous amount of work remains to be done. Issues concerning the integration of explosive detection systems into existing as well as future airport terminal construction are also being addressed. Given the current production capability of existing vendors, the ability to meet the December 31st target for fully certified explosive system deployment is very optimistic. The vendors have indicated, however, they would be able to produce enough equipment to screen 100 percent of checked baggage in a much shorter timeframe than originally planned by ramping up their own production capabilities and by entering into licensing agreements with other manufacturers. The extent to which they will invest in ramped-up production capabilities or other companies will try to get new products certified will be influenced by the funding available for this project.

Issues concerning the integration of explosive detection systems into existing as well as future airport terminal construction is also being addressed.

Question 6. What is your position with regard to arming pilots in some capacity, whether those weapons are lethal or non-lethal?

Answer: We don't have all the answers at this time. Our initial analysis has raised some very complex issues. We have requested comments from the industry as well as the traveling public on this topic. We will be working in close concert with the other FAA lines of business, the airlines, crewmembers, and others to come to closure on this initiative.

For flights within the continental (lower 48) United States, we expect that a suitable landing location during an emergency will normally be available within 30 minutes. The flight crew's expertise will be needed during this period to get the aircraft on the ground as safely as possible. The addition of hardened cockpit doors and airline-operating procedures, that would keep them locked, further reduces the need for arming crewmembers. For longer, over water and international flights in which there is no emergency landing location available for a longer period, there may well be a stronger argument for arming crew with lethal or non-lethal weapons. We feel that carefully selected and fully trained Federal Air Marshals (FAMs) can, in fact, employ non-lethal or lethal force to resolve a situation in ways, which are safer for the passengers and crew. Until we have fully explored all options, we are unable to offer a definitive course of action.

Question 7. Overseeing the creation of an entirely new agency devoted to security and law enforcement is a daunting task. I am unaware of such an effort in recent history. What do you believe are the greatest challenges?

Answer: The greatest challenge must be hiring and training more than 30,000 of new employees of the required quality to serve as screeners and law enforcement professionals and developing systems to take over the Federal security requirements at over 400 airports by November.

Question 8. Is there any estimate as to how large the workforce of the TSA will have to be to handle its aviation-related duties?

Answer: Well More than 30,000 people will be required, but I can't be more specific at this time.

Question 9. Are there any existing technologies that hold particular promise for improving aviation security?

Answer: The Department is continuously reviewing new and existing technologies that will assist in improving civil aviation security. In addition to the existing certified Computed Tomography (CT) based Explosives Detection Systems (EDSs), prototypes are nearing completion for lower throughput, lower cost CT-based systems. These systems, being produced by three vendors, are scheduled for certification during the first half of 2002. With these new technologies, we will be able to achieve 100 percent screening of checked baggage by certified explosive detection systems more rapidly. The equipment will also require less change to the existing infrastructure for smaller airports.

There are two systems currently in R&D that have the potential of being certified as EDSs: x-ray diffraction and a combination of automated projection x-ray and quadruple resonance.

Ongoing research will allow the FAA TSA to continue to upgrade security technology.

The Department is currently investigating additional technologies including explosives detection portals for screening passengers and trace detection in combination with various X-ray technologies.

Question 10. Under the Aviation and Transportation Security Act, personnel and resources related to security at FAA and DOT will be transferred to the TSA. If confirmed, will you take a hard look at everyone you are inheriting to determine whether any individuals may not be suited for continuing work in transportation security?

Answer: Just as I plan to carefully choose and screen my management team, I expect that they will do the same.

○