

Doomed to Repeat the Past: How the TSA Is Picking Up Where the FAA Left Off

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I. INTRODUCTION

From the Federal Aviation Administration (“FAA”) to the current Transportation Security Administration (“TSA”), aviation security has been riddled with problems.¹ This paper will focus on the similarities of the issues that plagued the FAA and are plaguing the TSA.² By taking note of the mishandling of security in years past and avoiding the hard lessons the FAA had to learn, the TSA can provide the much needed security, within budgetary constraints, in a manner that strengthens our nation’s economy.

September 11th was not the dawn of terrorism. Hijackings have been a factor in airline security since the 1960s.³ The FAA tried many times to repair aviation security to avoid these tragic events.⁴ But the overreaching problem with the FAA was its implementation of security programs.⁵

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1. Rita Murphy, *OSHA, AIR21 and Whistleblower Protection for Aviation Workers*, 56 ADMIN. L. REV. 901, 924-25 (2004).

2. *Id.*

3. *See United States v. Fannon*, 556 F.2d 961 (9th Cir. 1977).

4. *See* 49 U.S.C. §§ 44901, 46501 (1994).

5. *See* John Rogers, *Bomb, Borders, and Boarding: Combating International Terrorism at United States Airports and the Fourth Amendment*, 20 SUFFOLK TRANSNAT’L L. REV. 501, 506-07 (1997).

Another serious problem with the FAA was its budgetary policy.⁶ There was a lack of funds, overspending, and an over reliance on airlines.⁷

By the 1990s President George H. Bush formed a Commission to investigate the inner workings of the FAA.⁸ The report card came back as a solid "F."⁹ The Commission found research and development was not properly used and that there was a severe lack of coordination and organization.¹⁰ Within the FAA, employees were discontent and aviation security was in jeopardy.¹¹

After September 11th, the TSA picked up where the FAA left off.¹² Due to the rush in which the TSA was established, many of the FAA's problems were not addressed and are therefore being repeated.¹³ The overspending continues and even more money is being proposed.¹⁴ Airlines and passengers are still picking up the shortage to the extreme detriment of our economy.¹⁵ The lack of budgetary restraint and an unorganized research and development ("R&D") department still exists so research and development projects can't take off.¹⁶ And finally, employees are still as discontent as they were many years ago.¹⁷

The good news is that there is a solution. After analyzing the major issues that hamper aviation security, this paper will address solutions that can give the TSA a solid foundation, fiscal responsibility, and an eager

6. See generally Nancy Jean Strantz, *Aviation Security and Pan Am Flight 103: What Have we Learned?*, 56 J. AIR L & COM. 413 (1990).

7. *Id.* UNITED STATES GENERAL ACCOUNTING OFFICE, AVIATION SECURITY: FAA'S ACTIONS TO STUDY RESPONSIBILITIES AND FUNDING FOR AIRPORT SECURITY AND TO CERTIFY SCREENING COMPANIES, RCED-99-53, at 3 (Feb. 25, 1999) [hereinafter GAO AVIATION SECURITY REPORT], available at www.gao.gov/archive/1999/rc99053.pdf.

8. Exec. Order No. 12,686, 54 Fed. Reg. 32, 629 (Aug. 4, 1989) [hereinafter "Executive Order"].

9. Findings and Recommendations of the Commission on Aviation Security and Terrorism (May 15, 1990) [hereinafter Presidential Commission Report], available at http://www.global-security.org/security/library/congress/1990_cr/s900511-terror.htm.

10. *Id.* Robert W. Poole, Jr. & Viggo Butler, *Fixing Airport Security, 21st-Century Strategies for 21st-Century Threats*, REASON PUB. POL'Y INST. RAPID RESPONSE NO. 106, available at <http://www.rp-pi.org/rr106.html>.

11. Matt Wilde, *Transportation Security: Freedom of Movement in the September 12 Era*, 46-AUG. ADVOC. 19, 19-20 (Aug. 2003).

12. See Murphy, *supra* note 1, at 916-17.

13. *Id.* at 924-25.

14. DOT IG Cites Lack of TSA Cost Controls for \$3 Billion Overrun, 45 GOV'T CONTRACTOR 60 (Feb. 12, 2003) [hereinafter *Lack of TSA Cost Controls*].

15. See generally Associated Press, *Survey: Jet Blue No. 1 for Airline Service* [hereinafter "Jet Blue"], available at <http://www.wjla.com/n-ews/stories/0405/218110.html> (Apr. 4, 2005).

16. *TSA and DHS Need to Improve R&D Management*, 46 GOV'T CONTRACTOR 418 (Oct. 27, 2004) [hereinafter *TSA to Improve R&D*].

17. Joseph Slater, *Homeland Security v. Workers' Rights? What the Federal Government Should Learn From History and Experience, and Why*, 6 U. PA. J. LAB. & EMP. L. 295, 343 (2004).

and loyal workforce. By remembering the past the TSA can avoid repeating it . . . anymore.

II. FEDERAL AVIATION ADMINISTRATION

In 1958, Congress enacted the Federal Aviation Act.¹⁸ Under this legislation the FAA was established and given the power to take action and proscribe regulations to ensure the safety of air passengers and cargo.¹⁹ This power also includes the responsibility of protecting passengers and guarding against violence and piracy.²⁰ Airline violence, hijacking, and terrorism are not 21st century inventions.²¹ Many may look at the horrifying events of September 11, 2001 and conclude that our government had never considered the possibility of an airline hijacking. Furthermore, many may also conclude that the current Bush administration is giving the first wholehearted effort to protect us as we travel through the air.²² The truth is Congress addressed “terrorism” over 40 years ago.²³ And along the same lines, airline violence and terrorism has a history that dates back to the beginning of commercial aviation.²⁴ This section will explore how the FAA dealt with airline security breaches and how these reactions have laid the foundation for the current TSA.

A. THE EARLY HISTORY OF THE FAA

Soon after the passage of the Federal Aviation Act security breaches and airline hijackings were on the rise.²⁵ Airline hijackings were extremely high from 1968-1969.²⁶ Following these numerous hijackings, the FAA responded by forming a special task force.²⁷ “The FAA Task Force [“Task Force”] proposed the initial anti-hijacking system which involved notices to the public, the use of hijacker detection system magnetome-

18. Federal Aviation Act of 1958, Pub. L. No. 85-726, 72 Stat. 731 (codified as amended at 49 U.S.C. § 14101 (2002)).

19. 49 U.S.C. § 40113 (2002).

20. 49 U.S.C. § 44903(b) (2004).

21. See Sanford L. Dow, *Airport Security, Terrorism, and the Fourth Amendment: A Look Back and a Step Forward*, 58 J. AIR L. & COM. 1149, 1158-65 (1993); Kent C. Krause, *Putting the Transportation Security Administration in Historical Context*, 68 J. AIR L. & COM. 233, 237 (2003).

22. See Aviation and Transportation Security Act, Pub. L. No. 107-71, 115 Stat. 597 (2001).

23. Dow, *supra* note 21, at 1158.

24. See *Fannon*, 556 F.2d at 963.

25. Dow, *supra* note 21, at 1162-64.

26. In 1968, there were eighteen successful hijackings of American aircrafts. In 1969, there were thirty-three successful hijackings. Dow, *supra* note 21, at 1159.

27. JIN TAI CHOI, AVIATION TERRORISM: HISTORICAL SURVEY, PERSPECTIVES AND RESPONSES 30 (1994). This task force was comprised of individuals from the airlines, the FAA, the Department of Justice, and the Department of Commerce.

ters,²⁸ and searches of any individual activating the magnetometer.”²⁹ The problem with this new system was not the system itself, but its implementation.³⁰ The Task Force left the system in the hands of the individual airlines.³¹ This attempt at curbing hijackings turned out to be dreadfully unsuccessful.³²

At this point, in the early 1970s, Congress stepped in and put some more muscle behind the Federal Aviation Act.³³ This strengthening came in the form of the Anti-hijacking Act of 1974.³⁴ This Anti-hijacking Act imposed penalties on skyjackers and “empower[ed] the President to suspend air service to any nation that permits the use of its territory as a base of operation or refuge for a terrorist organization. . . .”³⁵ These new and improved hijacking laws helped to reduce the number of hijackings in the 1970s.³⁶ But, hijacking still continued in many areas of the world.³⁷

B. THE 1980s – PAN AM FLIGHT 103

Although the 1970s may have shown a relative slowing of hijackings, the early 1980s was certainly a decade where hijackings were back on the

28. “A magnetometer is an instrument used to measure the strength and sometimes the direction of magnetic fields . . . Magnetometers are also used to calibrate electromagnets and permanent magnets and to determine the magnetization of materials.” ENCYCLOPAEDIA BRITANNICA ONLINE, Magnetometer (2005), available at <http://www.britannica.com/eb/article?tocId=9050040&query=magnetometer&ct=> (last visited May 29, 2005).

29. Rogers, *supra* note 5, at 506 (citing U.S. v. Davis, 482 F.2d 893, 898 (1973)). Under the old system, passengers who fit the profile and activated the magnetometer were subject to questioning. Under the new anti-hijacking system, passengers who fit the profile and activated the magnetometer were asked to empty their pockets and go through the machine again. If the machine was set off again, the passenger could be searched for weapons and have their carry-on bags searched. Rogers, *supra* note 5, at 898 n.29.

30. *Id.* at 506-07.

31. *Id.*

32. CHOI, *supra* note 27, at 24. In 1969, there were forty attempted hijackings. From 1970 to 1971 there were twenty-seven hijacking attempts. In 1972, there were thirty-one hijacking attempts.

33. Krause, *supra* note 21, at 234 n.13.

34. Anti-hijacking Act of 1974, Pub. L. No. 93-366, 88 Stat. 409 (codified as amended at 49 U.S.C. §§ 46501, 44901 (1994)).

35. Paul Stephen Dempsey, *Aviation Security: The Role of Law in the War Against Terrorism*, 41 COLUM. J. TRANSNAT'L L. 649, 699 (2003).

36. Krause, *supra* note 21, at 237-38. Hijacking is the “forcible seizure of any vehicle while in transit in order to commit robbery, extort money, kidnap passengers, or carry out other crimes.” ENCYCLOPAEDIA BRITANNICA ONLINE, Hijacking (2005), available at http://en-carta.msn.com/encyclopedia_7-61578496/Hijacking.html.

37. For example, in 1976, an Air France plane was forced into Uganda. Once in Uganda, Israeli commandos freed the passengers. In 1977 a Lufthansa plane was hijacked and forced into Somalia. The pilot was killed and eighty-six hostages were released. Krause, *supra* note 21, at 237.

rise.³⁸ One of the reasons these “terrorist” were becoming more effective during the 1980s is because there was a shift in the way they chose to threaten aviation.³⁹ The culprits in these hijacking schemes were unable to bring metallic weapons on the airplanes.⁴⁰ Therefore, the “hijackers began to utilize small quantities of gasoline or explosives which were undetectable to traditional magnetometers.”⁴¹ Throughout aviation history, terrorist have always found new ways of causing terror.⁴² The FAA was unable to keep up with these changes, technologically or financially.

The FAA was not given adequate resources to deal with these hijackings, so the misappropriation of funds was the chosen solution.⁴³ Since the early 1970’s fuel taxes, cargo taxes, and an 8% surcharge on passenger tickets have been used to finance capital improvement projects.⁴⁴ The Airport and Airway Improvement Act of 1982 dictated how these funds would be allocated.⁴⁵ By amending section 506 of this act, the Airport Technology and Research Act (“ATRA”) wanted to increase the FAA budget by \$8 million for research and engineering.⁴⁶ The total budget had proposed to give the FAA \$16 million for “research on, and evaluation of aviation and airport security projects . . . not all of them capital improvement projects.”⁴⁷ The effect of these efforts was that the trust fund money was used to fund security projects and not capital improvement as designed.⁴⁸ It is these types of antics that caused problems in passing the Aviation Security Act.⁴⁹

C. THE PRESIDENT’S COMMISSION ON AVIATION SECURITY AND TERRORISM

In 1988, the unforgettable explosion of Pan Am flight 103 took the

38. *Id.* For example, in the early 1980s, a TWA flight from Greece was hijacked and a U.S. Naval Petty officer was murdered. Dow, *supra* note 21, at 1162-63.

39. Rogers, *supra* note 5, at 508.

40. *Id.*

41. *Id.* For more extensive discussion of the new bomb making technologies from the 1980s, see Rogers, *supra* note 5, at 508, n.42-43; Judith Yeaple, *The Bomb Catchers*, 239 *POPULAR SCI.* 61 (Oct. 1991). Plastic explosives can be molded and fit into hidden spaces like the lining of luggage. There are many forms plastic explosives can take. A common form is “C-4.” An airplane can be disabled with less than 1 pound of plastic explosive. Most airports are only trying to detect metal objects. Plastic explosives are comprised of nitrogen, carbon, and oxygen which make them undetectable using traditional security measures. *Id.*

42. See generally *id.*

43. See Strantz, *supra* note 6, at 432-34.

44. *Id.* at 433.

45. Airport and Airway Improvement Act of 1982, Pub. L. No. 97-248, 96 Stat. 701 (codified as amended at 49 U.S.C. app. § 2205(a) (1988)).

46. Strantz, *supra* note 6, at 433-34.

47. *Id.* at 434.

48. Strantz, *supra* note 6, at 434.

49. *Id.*

lives of over 250 passengers and flight crew members.⁵⁰ This tragic event spurred the family members of the deceased to form a group (“Victims of Pan Am Flight 103”) that would put pressure on the Bush Administration to tighten airport security to ensure these catastrophes would never happen again.⁵¹ The President heard the cries of the victim’s group and formed a Commission to look into aviation security.⁵²

The report that the Commission brought back to the President was nothing less than detailed analysis of the FAA’s shortcomings.⁵³ The Commission quickly pointed out how the bombing of flight 103 could and should “have been prevented.”⁵⁴ The Commission stated that the FAA had insufficiencies in practically every area they oversaw.⁵⁵ Sixty-four recommendations were proposed to improve the FAA’s system of aviation security.⁵⁶ One of the main recommendations dealt with the lack of priority the FAA gives to aviation security.⁵⁷

The FAA’s handling of research and development also fell under severe scrutiny.⁵⁸ The Commission believed there was too much effort being pumped into thermal neutron analysis (“TNA”).⁵⁹ TNA technology is capable of finding baggage that contains plastic explosives.⁶⁰ One the one

50. *Id.* at 413. Pan Am Flight 103 was headed to Kennedy Airport in New York from Heathrow Airport in London. Once over Lockerbie, Scotland the plane exploded. Investigations were done by West German, British, Scottish, and American authorities. They determined the bomb was made near Damascus or by the Popular Front for the Liberation of Palestine-General Command (PFLP-GC). *Id.* at 414-15.

51. *Id.* at 420.

52. Executive Order, *supra* note 8, at 32,629.

53. Presidential Commission Report, *supra* note 9.

54. *Id.*

55. *Id.* For example some of the shortcomings the Commission noted: “[t]he gathering, assessment, and dissemination of intelligence; the Federal Government’s oversight of airline and airport activities; counterterrorism research and development; our Government’s response to tragedies; and in the area of negotiations and agreements with foreign governments. . .”

56. *Id.*

57. *Id.* The Commission noted that the security functions were “buried deep within the FAA” and the Secretary of Transportation and Administrator were isolated from these functions.

58. *Id.*

59. *Id.*

? Thermal neutrons are produced by slowing down fast neutrons generated by sources or accelerators in specifically designed moderators

? Neutron particles generated excite the nucleus of the atoms within the material being inspected, and the resulted rays are characterized by their intensity and energy

? TNA characterizes high explosives by their nitrogen and hydrogen traces

Usha Kiran Sureddy, *Explosive Detection Technologies*, available at www.glue.umd.edu/~nsw/enp808b/sureddy.ppt (last visited May 29, 2005).

60. Presidential Commission Report, *supra* note 9. The commission was hesitant to endorse TNA technology because of its operating problems and the fact that TNA technology “cannot detect plastic explosives in small quantities; quantities that are still large enough to destroy and airliner.”

hand, the Commission found that the presence of TNA will give the traveling public the impression of increased security, but on the other, “the level of assurance is slim, at best.”⁶¹

Another key issue that the Commission addressed was the “lack of coordination and communication between the State department, the FAA, and the American intelligence gathering community.”⁶² The Commission proposed many changes to improve the organizational structure of the FAA.⁶³ The lack of organization in the FAA could be characterized as its greatest problem.⁶⁴ Everyone involved with the airline industry seems to have a hand involved in aviation security.⁶⁵ With this discombobulated security system there are numerous airline employees with no stake in security and numerous accesses to secure areas that are “shot through with loopholes.”⁶⁶

With the lack of coordination came the lack of agreement on who would fund the ever increasing cost of aviation security.⁶⁷ The FAA itself had no proposals for funding changes even though the cost of aviation security was at \$3 billion.⁶⁸ Passenger charges and other user fees seemed to be the scapegoat for anyone funding security.⁶⁹

Finally, the discontentment of security personnel was a major issue that plagued the FAA.⁷⁰ A GAO report in 2000 noted the FAA was unhappy with the performance of security forces and characterized the personnel as “unsatisfactory.”⁷¹ Furthermore, performance tests by screeners were declining at an alarming rate when the tests accurately depicted “how a terrorist might seek to enter a checkpoint.”⁷² The reasons the FAA screeners were performing poorly are the same reasons the TSA screeners are performing poorly - “monotonous and repetitive

61. *Id.*

62. Strantz, *supra* note 6, at 464. Within the FAA, efforts were being duplicated and the system was holding no one accountable. *Id.*

63. *Id.* at 465. Two of the more prominent recommendations were that an Assistant Secretary for Aviation Security and Intelligence should be appointed by the Transportation Secretary and that “the executive heading the FAA aviation security operational function report directly to the FAA Administrator.” *Id.* Furthermore, the Commission wanted the FAA’s Office of Civil Aviation Security moved to the Department of Transportation. *Id.*

64. Poole, *supra* note 10.

65. *Id.* The FAA, airport operators, and the airlines themselves all hold joint responsibility for airport and airline security.

66. *Id.* The airlines control the passenger security checkpoints themselves. The contractors they hire do relatively boring and repetitive work and often get paid only minimum wage. The turnover rate for employees in these positions is over 100% a year. *Id.*

67. See GAO AVIATION SECURITY REPORT, *supra* note 7, at 5.

68. *Id.*

69. *Id.*

70. Wilde, *supra* note 11, at 19.

71. *Id.*

72. *Id.*

work, heaped onto a poor salary and lame benefits. . . .”⁷³ And just like our modern TSA, the results are the same. There was a high turnover rate, unnecessary screening mistakes, and greater risks to travelers.⁷⁴ The solution was the same then as it is now; better coordination, better training, and listening to employees who know the job and why the system is ineffective; working together to improve aviation security.⁷⁵

D. SECURITY IN A POST-9/11 WORLD

As we move into a post 9/11 world, it is helpful to analyze the issues that plagued the FAA throughout its forty-year life. As we examine these issues we will see the similarities in the problems that the FAA and the Transportation Security Administration have had and will have to face. In the 1960s a task force was created to combat terrorism.⁷⁶ This task force was unsuccessful.⁷⁷ With the passage of the Anti-hijacking Act of 1974, there was some curtailing of hijacking for the remainder of the decade.⁷⁸ But a real in-depth view of the FAA was provided in the late 1980s by the President’s Commission on Aviation Security and Terrorism.⁷⁹ In the Commission report we see how the problems with the FAA are similar to the problems facing the TSA.⁸⁰ Some similarities include research and development, organization, working with other agencies, and budgetary constraints. Hopefully the TSA can use these lessons of the past to shed light on our current state of aviation security and provide meaningful solutions to very important issues.

III. TRANSPORTATION SECURITY ADMINISTRATION “TSA”

A. THE TSA, PICKING UP WHERE THE FAA LEFT OFF

After the tragic events of September 11th there was a deafening public outcry for aviation security.⁸¹ In haste, the TSA was established and given extremely broad powers over all aspects of airline security.⁸² To the onlooker, the TSA was seen as a new start, a clean slate after the failings of the FAA.⁸³ Yes, the FAA did have many problems, but due to the rush

73. Wilde, *supra* note 11, at 19.

74. *Id.*

75. Laurie M. McQuade, *Tragedy as a Catalyst for Reform: The American Way?*, 11 CONN. J. INT’L L. 325, 364-65 (1996).

76. See Rogers, *supra* note 5, at 506.

77. *Id.*

78. Krause, *supra* note 21, at 237-38.

79. Executive Order, *supra* note 8, at 32,629.

80. *Id.*

81. See Krause, *supra* note 21, at 243-44.

82. *Id.* at 244.

83. Wilde, *supra* note 11, at 19.

to get a new agency in place, the TSA has inherited many of the same troubling issues.⁸⁴ With that in mind, maybe the TSA can learn a few lessons from the mistakes of the past.

The FAA subsidized their spending by taxing passengers and airlines.⁸⁵ The newly formed TSA has done the same. Both agencies have seen the ramifications this policy has on our economy. Secondly, both agencies were given the opportunity to pursue research and development projects which could greatly increase the likelihood of preventing terrorist activity.⁸⁶ But, without a structured organization and without putting resources in the proper areas of development, the benefits of these technologies cannot be realized in the near future, and maybe not at all.⁸⁷ Finally, the rush in hiring thousands of TSA employees has created employee discontent the FAA knows all too much about. Turnover rates are high and employee morale is low.⁸⁸ Addressing these employee concerns is imperative to aviation security.⁸⁹

B. THE ENACTMENT OF THE TSA

In the pre-9/11 aviation world, passengers were mainly concerned with on-time flights, getting their baggage, and hoping their hotel reservations were correct.⁹⁰ After the attacks of 9/11 the mood in all areas of the aviation process was changed and passengers had new concerns with respect to flying.⁹¹ This “change in atmosphere” echoed the cries for the federal government to take a more active role in aviation security.⁹²

President George W. Bush signed the Aviation and Transportation Security Act (“ATSA”) into law on November 19, 2001.⁹³ Under this new Act, the Transportation Security Administration was established “within the Department of Transportation.”⁹⁴ The TSA was formed to secure passengers and “ensur[e] the freedom of movement for people.”⁹⁵

84. Murphy, *supra* note 1, at 924-25.

85. See GAO AVIATION SECURITY REPORT, *supra* note 7, at 5.

86. TSA to Improve R&D, *supra* note 16.

87. *Id.*

88. Wilde, *supra* note 11, at 19.

89. See Krause, *supra* note 21, at 247.

90. *Id.* at 243. Many airlines did not spend time searching the checked baggage. Passengers were allowed to pass through security with weapons and forged identification with relative ease. While on the plane passengers rarely questioned anyone who was sitting around them. *Id.*

91. *Id.* For an extended period after September 11th armed personnel with saturating airports. Everyone was scrutinized by passengers, guards, and the flight crews. *Id.*

92. *Id.* at 244.

93. TRANSPORTATION SECURITY ADMINISTRATION, HISTORY OF TSA, available at <http://www.ts-a.gov/public/display?theme=38> (last visited May 29, 2005). See also Aviation and Transportation Security Act § 114(a).

94. Aviation and Transportation Security Act § 114(a).

95. TRANSPORTATION SECURITY ADMINISTRATION, *supra* note 93.

The TSA was given broad powers to ensure aviation security.⁹⁶ The Under Secretary was responsible for all aspects of security personnel.⁹⁷ Additional duties and responsibilities include gathering intelligence information, accessing threats, consulting with other governmental agencies, and research and development.⁹⁸ Another area where the TSA is given powerful authority is in the event of a national emergency.⁹⁹ In the event of a national emergency the Under Secretary is to coordinate all aspects of transportation and provide notice to the other governmental agencies.¹⁰⁰

Why was the TSA given such huge duties and responsibilities? Why was the FAA practically stripped of all meaningful purpose? The answer is clear. The FAA was slow in putting security measures to work and the measures were ineffective when they were finally implemented.¹⁰¹ Avia-

96. See generally 49 U.S.C. § 114 (2001).

97. § 114(d). See also

(e) Screening operations.—The Under Secretary shall—

- (1) be responsible for day-to-day Federal security screening operations for passenger air transportation and intrastate air transportation under sections 44901 and 44935.
- (2) develop standards for the hiring and retention of security screening personnel;
- (3) train and test security personnel; and
- (4) be responsible for hiring and training personnel to provide security screening at all airports in the United States where screening is required under section 44901, in consultation with the Secretary of Transportation and the heads of other appropriate Federal agencies and departments.

§ 114(e).

98. § 114(f).

99. § 114(g).

100. § 114(g)(1)(C)

(g) National emergency responsibilities.—

- (1) In general.—Subject to the direction and control of the Secretary, the Under Secretary, during a national emergency, shall have the following responsibilities:
 - (A) To coordinate domestic transportation, including aviation, rail, and other surface transportation, and maritime transportation (including port security).
 - (B) To coordinate and oversee the transportation-related responsibilities of other departments and agencies of the Federal Government other than the Department of Defense and the military departments.
 - (C) To coordinate and provide notice to other departments and agencies of the Federal Government, and appropriate agencies of State and local governments, including departments and agencies for transportation, law enforcement, and border control, about threats to transportation.

§ 114(g)(1).

101. Dempsey, *supra* note 35, at 714.

The FAA had also missed congressionally-imposed deadlines for: installing explosive-detection equipment; certifying screening companies; promulgating regulatory requirements on standards for testing and training screeners; and implementing airport security technology. The FAA was criticized in various quarters as having a culture that was: “in a time warp”; “resistant to change, defensive and turf-conscious”; “secretive rather than open; self-interested rather than public spirited and highly resistant to change”; “characterized by dysfunctional management”; and “a self-perpetuating bureaucratic

tion security, again, had brought itself to the forefront, the FAA was viewed as more untrustworthy than ever, and drastic measures had to be taken.¹⁰²

C. BUDGETARY CONCERNS

In a perfect world the TSA would be able to provide increased security at a reasonable price. Our world of course is not a perfect one. For the past 40 years the FAA has been unable to provide adequate security within its budgetary constraints.¹⁰³ Now, the newly formed TSA is experiencing the same problems.¹⁰⁴ And, just like the FAA, the TSA is trying to subsidize the burden by taxing an already struggling airline industry.¹⁰⁵

The airline industry as a whole, in its entire history, has never turned a profit.¹⁰⁶ Logic would dictate that taxing the airlines more would not turn this unfortunate state of affairs around. The new aviation security administration is not concerned.¹⁰⁷ The TSA is already more “costly and intrusive” than the FAA ever was.¹⁰⁸ On top of that, the airlines and the airline consumer are being forced to pitch in to cover the shortage.¹⁰⁹ Aside from the failing airline industry, the TSA is being pushed by the public at large and elementary economic principles to “oversupply” security services.¹¹⁰ These factors are driving the airline industry further

morass of inaction and self-protection”. In sum, this important function of aviation security was being performed unprofessionally.

Id. at 721.

102. *See id.* at 714.

103. *See* GAO AVIATION SECURITY REPORT, *supra* note 7, at 5.

104. *Lack of TSA Cost Controls*, *supra* note 14.

105. *See generally* *Jet Blue*, *supra* note 17.

106. Taken from Professor Robert Hardaway, Transportation Law Class, University of Denver, Sturm College of Law (Jan. 24, 2005).

107. *See* Dempsey, *supra* note 35, at 722.

108. *Id.* The new requirements for federal security are expected to cost somewhere between \$2.5 billion and \$5 billion. From 2002 – 2006 the total federal cost, expected by the Congressional Budget Office is \$9.3 billion. *Id.* (citing Cletus C. Coughlin, Jeffrey P. Cohen, & Sarosh R. Khan, *Aviation Security and Terrorism: A Review of the Economic Issues*, FED. RES. BANK OF ST. LOUIS REV. 1, 20 (Sept./Oct. 2002), available at <http://research.stlouisfed.org/wp/2002/2002-009.pdf>).

109. 49 U.S.C. § 44940(2).

(2) Air carrier fees.—

Authority.—[O]nly to the extent that the Under Secretary estimates that such fee will be insufficient to pay for the costs of providing civil aviation security services. . . , the Under Secretary may impose a fee on air carriers and foreign air carriers engaged in air transportation and intrastate air transportation to pay for the difference between any such costs and the amount collected from such fee. . .

“Various fees and taxes now consume \$44 of a \$100 airline ticket.” Dempsey, *supra* note 35, at 722.

110. Coughlin, Cohen, & Khan, *supra* note 108, at 27-29. Considering the recent memories of September 11th the public will opt for too much security as opposed to too little. The TSA is operating in a monopolistic manner. It is argued that private firms could provide the same ser-

down.¹¹¹ Immediately after the September 11th attacks there were fewer passengers in the air.¹¹² In the past two years passengers have become relatively more comfortable with aviation and demand for flights is rising.¹¹³ This may sound like good news for airlines, but the fact is with more planes in the air, the more the airlines are taxed, and the more other areas of aviation go unattended.¹¹⁴

When you bear down on the airline industry and require them to shoulder a high tax burden, the consequences are seemingly endless.¹¹⁵ The airline industry is one of the hardest hit sectors.¹¹⁶ Smaller airports cannot continue to provide services under this tax scheme.¹¹⁷ The fact of the matter is that the aviation industry is one of the backbones to our nation's economy.¹¹⁸ When you put a hamper on airline travel: business-people, their businesses, consumers traveling for pleasure, and the services that are dependent upon them all suffer greatly.¹¹⁹ To continue this trend could have lasting, detrimental effects on all aspects of our nation's economy.

In February of 2002, Congress stripped the FAA of civil aviation security responsibility.¹²⁰ Once the TSA took over this task the wasteful overspending continued. In its first year the TSA was caught over spending the budget by over \$3 million.¹²¹ The shortfall is attributed to the lack of revenues from the airline and passenger taxes.¹²² To compensate for

vices at a much lower cost. The TSA is given just one assignment: security. Security will also be the measure stick for how good a job they are doing. Under this system, there is an incentive to incur unnecessary costs and expenses which can have detrimental effects on the airlines and consumers. *Id.*

111. See Dempsey, *supra* note 35, at 722.

112. See *Jet Blue*, *supra* note 17.

113. *Id.*

114. The aviation infrastructure is seeing no improvements. Air traffic control, runways, and airport slots are basically in the same condition as they were in the pre-9/11 era.

115. Press Release, Air Transportation Association, Groups Protest Budget Proposal to Double Aviation Security Taxes, \$1.5 Billion Budget Measure Threatens Airline Jobs and Local Air Service (Feb. 2005) [hereinafter ATA Press Release], available at <http://www.airlines.org/news/d.aspx?nid=8668>.

116. *Id.* For the year 2005, the ATA has predicted the industry will lose \$5 billion. The tax increase would raise this loss to \$6.5 billion. *Id.*

117. *Id.* "Regional airlines provide the only air service for 72 percent of U.S. cities. The propose tax increases will make it even harder to continue to fly to many of these small- and medium-sized communities." *Id.* (quoting Deborah McElroy, President of the Regional Airline Association).

118. See generally *id.*

119. *Id.* Industries that will be directly hit will be "hotels, attractions, resorts, car rental firms and other travel industry companies. . ." *Id.* (quoting Roger Dow, president and CEO of Travel Industry Association of America (TIA)).

120. Wilde, *supra* note 11, at 19.

121. *Lack of TSA Cost Controls*, *supra* note 14.

122. *Id.*

these shortages, the TSA had to over rely on contractors.¹²³ With no stable infrastructure and a lack of control, the TSA had no way to monitor the \$8 billion worth of contracts that were spiraling out of control.¹²⁴ Once a proper infrastructure is established these contracts can be monitored and the TSA can begin to appreciate economies of scale in the consolidation of personnel and facilities.¹²⁵

The Department of Homeland Security, the overseer of the TSA, requested over \$40 billion for the fiscal year 2005.¹²⁶ This increase marks a 10% budget increase from 2004 and a substantial increase from the department's inception in 2003.¹²⁷ Under the "2006 budget proposal" the TSA itself could go through new hardships.¹²⁸ If the new cuts are implemented by the administration, the TSA could be left with nothing to do but supervise security screeners.¹²⁹ The Bush Administration is hoping to consolidate some of the programs and divisions of the TSA into a "Screening Coordination and Operations" office.¹³⁰ The question is whether these consolidations will really bring the needed organization or will it cause more problems than we started with. Serious concerns are being raised with respect to privacy.¹³¹ Concerned lobbyists and citizens alike have noted this type of database would create a "national surveillance system."¹³² These changes also bring back the old concern that the

123. *Id.*

124. *Id.* Department of Transportation Inspector General Kenneth M. Mead testified before the Senate Committee on Commerce, Science, and Transportation's Aviation Subcommittee. General Mead gave as an example that a "contract with an initial cost estimate of \$104 million" ballooned to about \$700 million due to improper oversight. *Id.*

125. *Id.* Mead further testified "that economies of scale could be realized through: (1) centralized administration services, (2) consolidation of airport space, and (3) conservative use of law enforcement personnel." Centralization would enable the TSA to provide cost controls and cut unnecessary staff. Most airports already have break rooms, offices, and other spaces used by INS and Customs which could be utilized for this purpose. *Id.*

126. Press Release, Department of Homeland Security, Department of Homeland Security Announces FY 2005 Budget in Brief (Feb. 2, 2004), available at <http://www.dhs.gov/dhspublic/display?content=3133>.

127. *Id.*

128. Sara Kehaulani Goo, *Proposed Budget Would Strip TSA of Its Biggest Program*, WASH. POST, Feb. 9, 2005, at A06, available at <http://www.washingtonpost.com/wp-dyn/articles/A9089-2005Feb8.html>.

129. *Id.*

130. *Id.* "The office would oversee records on millions of Americans and foreigners in vast databases that contain digital fingerprints and photographs, eye scans and personal information from travelers and transportation workers. The move is meant to prevent overlap among the various programs now scattered across the department and improve efficiency." *Id.*

131. *Id.*

132. *Id.* "This confirms our worst fears that DHS will become a one-stop shop for background checks on a wide variety of Americans, ranging from airline passengers to train travelers to workers in a variety of industries." (*Id.* (quoting Barry Steinhardt, Director of the Technology and Liberty Program at the American Civil Liberties Union)).

TSA will become diluted and eventually swallowed up by other divisions of the Department of Homeland Security ("DHS").¹³³

The TSA's financial plan can be described as a lose-lose situation. The TSA gets its funding from two places: Congress and airlines. As we have seen the airline industry is not turning a profit and being hit hard by economic forces.¹³⁴ At the rate we are going, security fees will make it too expensive for anyone to travel.¹³⁵ Depending on Congress is not a stable choice either.¹³⁶ With economic hard times like we were in, and which we will be in again, government programs get cut due to a decrease in tax revenues.¹³⁷

D. RESEARCH AND DEVELOPMENT

When the TSA was established it was given the authority to review, examine, and implement technologies that would better secure the aviation industry.¹³⁸ This new power included taking a hard look at existing procedures and the further research and development of new technologies.¹³⁹ The TSA was appropriated \$50 million, for 2002-2006, to carry out this venture.¹⁴⁰ Because of the new threats experienced by the attacks of September 11th, a variety of new technologies had to be considered to prevent these tragic events from happening again.¹⁴¹ Along with these, another \$20 million was given to the form of grants "in conjunction with the Defense Advanced Research Projects Agency."¹⁴² One area these

133. *Id.*

134. ATA Press Release, *supra* note 115.

135. Eric J. Miller, *The "Cost" of Securing Domestic Air Travel*, 21 J. MARSHALL J. COMPUTER & INFO L. 405, 435 (2003).

136. *Id.*

137. *Id.*

138. See Aviation and Transportation Security Act; 49 U.S.C. § 44903(j) Short-term assessment and deployment of emerging security technologies and procedures.

139. § 44903(j)(1).

(A) review the effectiveness of biometrics systems currently in use at several United States airports, including San Francisco International;

(B) review the effectiveness of increased surveillance at access points;

(C) review the effectiveness of card- or keypad-based access systems;

(D) review the effectiveness of airport emergency exit systems and determine whether those that lead to secure areas of the airport should be monitored or how breaches can be swiftly responded to; and

(E) specifically target the elimination of the "piggy-backing" phenomenon, where another person follows an authorized person through the access point.

140. Aviation and Transportation Security Act, Pub. L. No. 107-71, § 137(a)(1).

141. § 112(2) Review of Threats (b)(a):

(i) the destruction, commandeering, or diversion of civil aircraft or the use of civil aircraft as a weapon; and

(ii) the disruption of civil aviation service, including by cyber attack;

142. § 137(d).

grants can be used is biometrics.¹⁴³

Many experts are pushing hard for the use of new biometric technology.¹⁴⁴ Unique characteristics about an individual can be used to verify identity, for example voice patterns, retinas, and fingerprints.¹⁴⁵ Biometric technology can also store this information on databases which would be able to detect individuals on a watch list in seconds.¹⁴⁶ This technology could be utilized to permit the pilot in the cockpit, permit personnel in secure areas, and scan passengers for terrorists.¹⁴⁷

Although biometric technology can provide increased security at a reasonable cost to the consumer there are concerns that need addressing; the two major concerns over biometric technology are health concerns and privacy issues. Some passengers could be adversely affected by biometric technology because of the radiation the machines to emit.¹⁴⁸ Passengers may also feel some of the machines which employ biometrics are intrusive, which raise issues of a passenger's right of unreasonable searches.¹⁴⁹ Furthermore, if the biometric technology is found to be a legal search, passengers may be unhappy with their personal information now becoming public.¹⁵⁰ The greatest concern, at this stage of biometrics, is misidentification.¹⁵¹ For example, if the passenger is standing at an odd angle or the passenger is standing in bad lighting the biometric technology may misidentify the person.¹⁵²

Despite these valid concerns, biometrics can be a great step in aviation security.¹⁵³ The challenge facing the TSA will be to work further with biometrics technology and ensure the public of the accuracy and safety the technology will provide.¹⁵⁴

One specific program in which biometric technology could be used is the "trusted traveler" program.¹⁵⁵ Proper use of the trusted traveler card

143. § 137(d)(3).

144. Coughlin, Cohen, & Khan, *supra* note 108, at 12. ("Biometric technology uses unique biological data to identify and authenticate an individual almost instantaneously.")

145. *Id.*

146. *Id.*

147. Coughlin, Cohen, & Khan, *supra* note 108, at 12.

148. *Id.* Even if the machines were entirely safe, the impression of radiation issues could cause damaging economic ramifications on the airline industry.

149. *Id.*

150. *Id.* This again raises the argument of the impression of air travel and economic consequences.

151. Robin Feldman, *Considerations on the Emerging Implementation of Biometric Technology*, 25 HASTINGS COMM. & ENT. L. J. 653, 681 (2003).

152. *Id.* at 633.

153. *See id.* at 632.

154. *Id.* at 671-73.

155. John M. Moloney, *Known Travelers vs. Unknown Threats: Balancing Security With a Sound Aviation System*, 17-SUM AIR & SPACE LAW. 1, 23 (2002). Passenger who fly frequently can pay a fee and obtain a "trusted traveler" card. The passenger will then provide a background

could be verified through fingerprint or iris checks.¹⁵⁶ The first benefit of this program is fairly obvious. This type of security is less intrusive and more efficient at getting people boarded quickly.¹⁵⁷ By implementing the “trusted traveler” program the government is showing the traveling public that it is serious about safety and also serious about economic factors by not making one wait unnecessarily.¹⁵⁸ Another positive for this program is the fact that security personnel can focus their efforts on a smaller pool of individuals when hunting down wrong-doers.¹⁵⁹ In time, this program could encompass a large group of travelers, leaving only a select few who would need to be thoroughly checked.¹⁶⁰ This would cut down on the redundant checking and re-checking; and would cut down on the inefficient process of pulling half of the boarding passengers out of line for another security check.¹⁶¹

The Trusted Traveler program would provide an efficient way to reduce costs.¹⁶² The TSA needs to implement this program as soon as possible.¹⁶³ Once this program is established, many travelers can quickly proceed through security and the fees from the cards can be used to subsidize other aspects of security.¹⁶⁴ Furthermore, this subsidization of security will provide tax relief to the nation as a whole.¹⁶⁵

As the “trusted traveler program” continues in development, there appear to be two negative issues which need addressing. First, many passengers feel this program would be an unwelcome hindrance to travel and would keep a skeptical eye on how the information would be used.¹⁶⁶ Before widespread use of the program, tight security would have to be in place to ensure the safety of the information. Secondly, the fees collected for the cards would have to be reasonable and used reasonably.¹⁶⁷ With-

check and be entered into a government database. With the card the passenger would then be able to proceed through a “fast lane” screening before boarding the plane. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *See generally id.* at 23-24.

161. *Id.* at 23-24. “On an almost-daily basis we continue to hear of lawmakers, grandmothers, children, medal-of-honor recipients, and airline pilots being subjected to redundant hand searches at screening checkpoints and gates, confiscating every potential ‘weapon’ from disposable razors to nail files. Law enforcement is not going to find terrorists in this manner.” *Id.*

162. *Id.*

163. Joel M. Abels, *Wish Bush Would “Squish” Minetta – Not Add Air Taxes*, TRAVEL TRADE, available at <http://www.traveltrade.com/editorial.jsp?articleID=5961> (last visited May 29, 2005).

164. *Id.*

165. *See generally id.*

166. Daniel J. Steinbock, *National Identity Cards: Fourth and Fifth Amendment Issues*, 56 FLA. L. REV. 697, 708-09 (2004).

167. Moloney, *supra* note 155, at 23.

out reasonable use an elite group of travelers would form, hindering the travel of the “lower class.”¹⁶⁸

The TSA has access to numerous new technologies and a healthy research and development budget to work with. For the time being these new technologies are not going to get implemented because there is no strategic plan in place.¹⁶⁹

The TSA appears to be needlessly investing a lot of energy and money in to near term technologies.¹⁷⁰ A better strategy would include seriously funding basic level research.¹⁷¹ Another problem is the fact that the TSA has no real systems in place that will manage and monitor the funds appropriated.¹⁷² As the DHS and TSA work together for national security accurate, current, and accessible information must be available to monitor and manage research and development projects.¹⁷³ Finally, there needs to be clarification of roles between the Department of Transportation (“DOT”) and the DHS.¹⁷⁴ The ATSA gave the TSA this extremely broad task of security transportation, but did not extinguish the DOT’s responsibility of securing transportation as well.¹⁷⁵

E. TRAINING AND EMPLOYMENT ISSUES

The TSA was also given the very broad power of hiring and training all security personnel.¹⁷⁶ By May of 2002 the TSA was off and running appointing “its first federal security directors, to oversee TSA operations at several American airports.”¹⁷⁷ Due to the quickness in which the TSA was formed, there were several problems in training that presented themselves early on.¹⁷⁸ For example, the TSA was obliged to find help from “local law enforcement” and the National Guard to man security check-

168. *Id.*

169. *TSA to Improve R&D*, *supra* note 16. In 2003 and 2004 the TSA and The Department of Homeland Security (“DHS”) were funding over 200 research and development projects. In 2003 the TSA was allotted \$21 million for its R&D budget and \$126 million for 2004.

170. *Id.*

171. *Id.* The National Research Council finds that basic research “offers opportunities for significant improvements in capabilities.” See UNITED STATES GENERAL ACCOUNTING OFFICE, TRANSPORTATION SECURITY R&D: TSA AND DHS ARE RESEARCHING AND DEVELOPING TECHNOLOGIES, BUT NEED TO IMPROVE R&D MANAGEMENT GAO-04-890 (Sept. 2004), *available at* www.gao.gov/new.it-ems/d04890.pdf.

172. *TSA to Improve R&D*, *supra* note 16.

173. *Id.* In commenting on the “coordination between TSA and DHS, GAO found it was ‘limited,’ and ‘does not provide assurance that R&D resources are being leveraged, research gaps are being identified and addressed, and duplication is being avoided.’” *Id.*

174. *Id.*

175. *Id.*

176. 49 U.S.C. § 114(e) (2001).

177. Wilde, *supra* note 11, at 20.

178. *Id.*

points while the agency was still getting their bearings.¹⁷⁹

One of the reasons it was difficult for the TSA to get off the ground was the lengthy process of hiring employees.¹⁸⁰ The pre-employment requirements included an extensive background check and drug/alcohol testing.¹⁸¹ Along with the strict requirements, it was estimated that thousands-upon-thousands of employees were going to be needed.¹⁸² If this mission were to be accomplished in less than a year it would be the largest "federal organizational buildup of its kind since World War II."¹⁸³ By 2003, some 100,000 employees had been hired, but around 40,000 were temporary contractors.¹⁸⁴ But the concerns over funding, training requirements, and unrealistic deadlines remained.¹⁸⁵

In the rush to get all these screeners in, one of the biggest employee problems emerged: low morale.¹⁸⁶ TSA employees nationwide have brought forth numerous instances of why the workplace is unsatisfactory including: inadequate training, inadequate equipment, scheduling problems, not getting paid, sexual harassment, and favoritism.¹⁸⁷ The TSA has been unable to adequately deal with these problems.¹⁸⁸ As a result the "screener turnover rate was between 30% and 35% at airports where TSA had assumed staffing responsibilities."¹⁸⁹

Another huge employment issue is the debate over collective bargaining. The TSA has published guidelines for a program called Screen-

179. *Id.*

180. 49 U.S.C. § 44936 (2001).

181. § 44936. Employment investigations and restrictions

(A) Employment investigation requirement.—(1)(A) The Under Secretary of Transportation for Security shall require by regulation that an employment investigation, including a criminal history record check and a review of available law enforcement data bases and records of other governmental and international agencies to the extent determined practicable by the Under Secretary of Transportation for Transportation Security, shall be conducted of each individual employed in, or applying for, a position as a security screener under section 44935(e) or a position in which the individual has unescorted access, or many permit other individuals to have unescorted access, to—

(i) aircraft of an air carrier or foreign air carrier; or

(ii) a secured area of an airport in the United States the Under Secretary designates that serves an air carrier or foreign air carrier.

§ 44936(a). *See also* Aviation and Transportation Security Act § 139.

182. Krause, *supra* note 21, at 248 (citing Carole Hedden, *TSA Launches Massive Workforce Buildup*, AVIATION WEEK & SPACE TECH., at 46 (July 15, 2002)).

183. *Id.*

184. *Id.* (citing David Hughes, *TSA Meets Goal With Casts of Thousands*, AVIATION WEEK & SPACE TECH., at 35 (Jan. 6, 2003)). Of the 105,000, 41,000 were temporary contractors, and 66,000 are new TSA employees.

185. *Id.*

186. Slater, *supra* note 17, at 343.

187. *Id.*

188. Slater, *supra* note 17, at 343.

189. *Id.*

ing Partnership Program (“SPP”).¹⁹⁰ The SPP “permit[s] commercial airports to opt out of federal screener services and instead use private passenger and baggage screeners.”¹⁹¹ The main purpose of this program is to provide greater flexibility in security services.¹⁹² The problems have arisen due to the fact that “federal screeners are prohibited from engaging in collective bargaining under the ATSA, [but] private contract employees may organize and engage in collective bargaining.”¹⁹³

Once there is organization in the TSA employees will work more efficiently.¹⁹⁴ Many employees complain that they don’t know what their job is or even what is going on.¹⁹⁵ Other complaints include being overworked and not being heard.¹⁹⁶ It is important to national security that the TSA listen and take serious the concerns of their employees.¹⁹⁷ When employees feel their being listened to, productivity and job performance increase.¹⁹⁸

The best way to solve all of the major issues concerning TSA employees is to listen to the employees and give them a voice in the process.¹⁹⁹ TSA spokesman Nico Melendez said it best “that the screener workforce is ‘probably our most important asset’ and that ‘it’s in TSA’s best interest to work with screeners.’”²⁰⁰ Because of the infancy of the TSA, no one would know better than the employees themselves what schedules work, what the safety/training issues are, and how the rules are being applied. By giving employees a voice in the security process, there are incentives for “employees to work with employers” and will improve the morale and quality of work.²⁰¹

190. *TSA Begins Airport Screening Re-Privatization*, 46 GOV’T CONTRACTOR 257 (June 30, 2004) [hereinafter *TSA Begins Screening*].

191. *Id.*

192. *Id.*

The SPP is designed, as outlined in the guidelines, (1) to meet ATA standards; (2) to ensure security; (3) to seek to establish a strong public/private partnership; (4) to provide significant opportunity for innovation, efficiency, and cost saving to the taxpayer; (5) to provide decentralized management; (6) to incorporate best practices and lessons learned from recent studies of the Pilot program, and to continue to evaluate and learn on an on-going basis; (7) to be performance based; (8) to respect federal and private sector workforces; and (9) not to restrict airport participation.

193. *Id.*

194. Krause, *supra* note 21, at 244.

195. Slater, *supra* note 17, at 343.

196. *Id.*

197. *Id.* at 343-44.

198. *Id.*

199. *Id.* at 344.

200. Slater, *supra* note 17, at 344.

201. *Id.*

IV. CONCLUSION

As this paper has shown, the FAA and TSA have faced the same issues with regard to aviation security.²⁰² The paper has addressed how neither agency has been able to provide adequate aviation security within budgetary constraints or provide a suitable work environment for their employees.²⁰³ At the same time neither agency has found a way to effectively and efficiently provide an organized, cost efficient program of security. Many solutions were raised in the FAA era but could never take root because there was no organization within the FAA.²⁰⁴ So to improve the TSA we must start with its efficiency.²⁰⁵

A realistic and unbiased review of the TSA is imperative to finding excess spending and realizing inefficiencies.²⁰⁶ If you travel through any of our nation's airports you are constantly reminded of the chaotic and unsupervised "circus" that is aviation security.²⁰⁷ No one seems to be in control, most employees are indifferent (at best) about their duties, and the selection of passengers for inspection is ridiculous and intrusive.²⁰⁸ A complete and total review of all aspects of the TSA could provide useful insight into how to better structure aviation security.²⁰⁹ Instead of dumping more money on the problem, the Bush administration should invest in an unbiased review of a failing agency.²¹⁰

An essential ingredient in this review would have to be input from the security screeners themselves. By analyzing the security issues with those who perform the task day in and day out, the TSA would find what problems exist at security checkpoints and would show appreciation for employees.²¹¹ By including employees in this vital review process employees would begin to have a sense of pride in their work and aviation security as a whole would benefit.²¹²

Aviation security is of national concern and should be paid for as such.²¹³ Transportation is the backbone of our economy.²¹⁴ When transportation is in trouble, we are all in trouble. The same is true in the realm

202. Murphy, *supra* note 1, at 924-25.

203. See Slater, *supra* note 17, at 343.

204. Poole, *supra* note 10.

205. *TSA Begins Screening*, *supra* note 190.

206. Abels, *supra* note 163.

207. *Id.*

208. *Id.*

209. Abels, *supra* note 163.

210. *Id.*

211. See Tom Ramstack, *Defiant Airport Screeners Join Union, Begin Challenge to Ban on Bargaining*, WASH. TIMES, Mar. 4, 2003, at A1.

212. Slater, *supra* note 17, at 244.

213. Ables, *supra* note 163.

214. ATA Press Release, *supra* note 115.

of terrorism and national security. Taxing airlines leads to decrease in travel, increased shipping costs and other areas of transportation go unattended.²¹⁵

As we look ahead to the budget of 2006, the Bush Administration has seriously considered putting the TSA on the chopping block.²¹⁶ Before any drastic decisions are made the administration should consider how long we have waited for an efficient and organized program of aviation administration.²¹⁷ Once a review of the TSA is done, it will show ways to cut costs.²¹⁸ Then we as a nation can support a lean and efficient program of aviation security.²¹⁹

215. *Jet Blue*, *supra* note 17.

216. *Goo*, *supra* note 128.

217. *Id.*

218. *Ables*, *supra* note 163.

219. *Id.*

