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Michael J. AuBuchon

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CHOOSING HOW SAFE IS ENOUGH: INCREASED ANTITERRORIST FEDERAL ACTIVITY AND ITS EFFECT ON THE GENERAL PUBLIC AND THE AIRPORT/AIRLINE INDUSTRY

MICHAEL J. AUBUCHON*

"We must choose between freedom and fear—we cannot have both."

—Justice William O. Douglas, United States Supreme Court¹

I. INTRODUCTION

MANY AMERICANS fear the United States can never be completely safe from terrorism.² This apprehension is likely fueled by a recent wave of terrorist activity on American soil, such as the bombings of the World Trade Center and the Alfred P. Murrah Federal Building in Oklahoma City.³ The Oklahoma City bombing spurred federal action increasing security standards at federal buildings susceptible to a terrorist attack.⁴ The increased security measures include: control over

* J.D., Drake University Law School, Des Moines, Iowa; B.S., Aviation Sciences, with honors, Oklahoma State University, Stillwater, Oklahoma. The author would like to dedicate this Article to the 230 individuals who perished on TWA Flight 800 and their families. He would also like to thank Douglas W. Nelms, Associate Editor, *Air Transport World*, for his contribution to this Article.

¹ Nadine Strossen, *Check Your Luggage and Liberties at the Gate*, INTELLECTUAL CAPITAL (Aug. 7, 1997) <<http://www.intellectualcapital.com/issues/97/0807/icopinions1.asp>> (quoting *Scales v. United States*, 367 U.S. 203, 270 (1961) (Douglas, J. dissenting; ZECHARIAH CHAFEE, JR., *THE BLESSINGS OF LIBERTY* 156 (1956))).

² See CBS News Poll, July 29, 1996. Of those surveyed, 93% stated the United States would never be completely safe from terrorism, 5% declared it was possible for the United States to be completely safe from a terrorist attack, and 2% did not answer. See *id.*

³ The April 19, 1995 bombing in Oklahoma City killed 168 men, women, and children. See John M. Goshko & Scott Bowles, *New Security Measures Ordered by President; Federal Facilities to Get Stricter Controls*, WASH. POST, June 29, 1995, at A1.

⁴ See *id.*, at A18.

parking adjacent to government buildings, shatterproof glass for windows, closed-circuit television monitoring, enhanced employee and visitor identification, and reconsideration of where best to place day care centers for employees' children.⁵ The estimated cost of the increased security measures, assuming federal government buildings totally lack security features, is estimated at one billion dollars.⁶

As a reaction to domestic terrorism, Congress passed the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA),⁷ an attempt to alleviate terrorism concerns in the general public in the wake of the World Trade Center and Oklahoma City bombings. The AEDPA, signed by President Clinton a little more than a year after the Oklahoma City bombing,⁸ sought: "to deter terrorism," "to prevent persons within the United States . . . from providing material support or resources to foreign organizations that engage in terrorists activities," and to amend numerous acts to prevent and punish acts of terrorism.⁹ Some civil libertarians have attacked as constitutionally unsound the increased monitoring and control powers the AEDPA gives the federal government in regulating potential terrorist activities, largely because of alleged freedom of association issues surrounding a prohibition on contributions to "foreign terrorist organizations."¹⁰

⁵ See *id.*

⁶ See *id.*

⁷ Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (codified as amended in scattered sections of 8 U.S.C., 18 U.S.C., and 22 U.S.C.). This Article focuses on the area of the AEDPA that has raised the most constitutional concern: the establishment of procedures to prevent fundraising for the benefit of "foreign terrorist organizations." See 18 U.S.C. § 2339B (1996).

⁸ See David G. Savage, *Anti-Terrorism Legislation Wins Approval in House; Congress: The 293-113 Vote Sends Compromise Measure to Clinton, Who Is Expected to Sign it Despite Concerns By Civil Libertarians*, L.A. TIMES, Apr. 19, 1996, at A16. For a discussion of specific AEDPA provisions, see *infra* Part II.A.

⁹ Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 preamble and § 301, Stat. 1214, 1247 (codified as amended in scattered sections of 8 U.S.C., 18 U.S.C., and 22 U.S.C.).

¹⁰ See generally David B. Kopel & Joseph Olson, *Preventing A Reign of Terror: Civil Liberties Implications of Terrorism Legislation*, 21 OKLA. CITY U. L. REV. 247 (1996) (scrutinizing the constitutionality of the AEDPA and pre-AEDPA proposed legislation). See *infra* Part II.B.1. for further AEDPA constitutional criticisms. But see *Blown Away? The Bill of Rights After Oklahoma City*, 109 HARV. L. REV. 2074 (1996) [hereinafter *Blown Away?*] (defending the AEDPA's constitutional viability). See *infra* Part II.B.2. for further AEDPA constitutional justifications.

Americans' general fear of terrorism could be viewed to extend to air travel.¹¹ This anxiety received increased attention after the July 1996 midair explosion of Trans World Airlines (TWA) Flight 800 off the coast of Long Island.¹² Immediately after the TWA crash, President Clinton appointed Vice President Al Gore to form the White House Commission on Aviation Safety and Security (Gore Commission).¹³ Among other directives, including examination of the air traffic control system, the Gore Commission was created by President Clinton "to look at the changing security threat" in the aviation industry.¹⁴ While the Gore Commission admittedly was assigned to address many issues, the focus on aviation security, "[i]n the wake of concerns over the crash of Trans World Airlines Flight 800," was apparent through President Clinton's request for an initial report on aviation security within forty-five days of the commission's formation.¹⁵ The commission's final report recommended increased funding for innovative, bomb-detecting security systems in airports nationwide, with cost not being dispositive.¹⁶ Additionally, the Gore Commission recommended complementing the innovative security systems with a system of automated passenger pro-

¹¹ See CBS News Poll, July 21, 1996. Of those surveyed, 49% stated that hijacking and terrorism were the largest danger to air travelers, 44% declared airline accidents posed the largest threats, 5% said the threats were equal, and 3% did not answer. See *id.* Given the data compiled in this poll, one might believe Americans' alleged fear of terrorism would result in less opposition to increased federal activity in aviation security. However, the July 21, 1996, CBS poll was taken merely four days after the July 17th explosion of TWA Flight 800. Compare David Jackson, *FBI Head Says Finance Probe Has Expanded; Freeh Also Calls Terrorism Unlikely in TWA Crash*, DALLAS MORNING NEWS, May 5, 1997, at 1A, with CBS News Poll, July 21, 1996 (noting the date of the crash and the date of the poll). It is possible the public's fear of aviation terrorism stemmed from many news accounts pinpointing terrorism as the cause of the crash. See, e.g., Don Phillips, *FAA Advisory Panel Reviewing Aviation Security*, WASH. POST, July 23, 1996, at A9.

¹² See Jackson, *supra* note 11, at 1A. The disaster killed all 230 people on board. See *id.*

¹³ See Douglas W. Nelms, *Shifting Targets: The Changing Face of Terrorism is Redefining How the U.S. Looks at Airport/Airline Protection*, AIR TRANSPORT WORLD, Feb. 1, 1997, at 29. See WHITE HOUSE COMMISSION ON AVIATION SAFETY AND SECURITY, FINAL REPORT (1997), <<http://www.aviationcommission.dot.gov212fin~1.html>> [hereinafter GORE COMMISSION].

¹⁴ GORE COMMISSION, *supra* note 13, at 3.

¹⁵ *Id.*

¹⁶ See WHITE HOUSE COMM'N ON AVIATION SAFETY AND SECURITY: A DEP'T OF TRANSP. STATUS REPORT PRESENTED TO THE VICE PRESIDENT, U.S. DEP'T OF TRANSP. NEWS RELEASE (July, 1997) at 7 available 1197 WL 399309 [hereinafter DOT NEWS RELEASE].

filing.¹⁷ Civil libertarians have criticized the Gore Commission's recommendations as violating various constitutional rights, while airports, airlines, and aviation scholars have attacked them as costly.¹⁸

This Article argues that Americans should choose to retain their freedoms associated with air travel in lieu of apprehensively regulating a safeguarded aviation security infrastructure. While increased federal antiterrorism measures, legislative or otherwise, are appropriate in some contexts, such measures lack legitimacy when they are earmarked for an industry adequately monitoring potential terrorist activity. While the AEDPA might be appropriate in the wake of the World Trade Center and Oklahoma City bombings to decrease the threat of terrorism to the unguarded general public, increased regulation of the airport/airline infrastructure is largely unneeded. This Article stresses that a similar need to regulate is not present because airports and airlines have security measures in place that protect against an extremely unlikely terrorist event; additionally, such security regulation of the aviation infrastructure is financially burdensome to the already heavily regulated airport/airline in-

¹⁷ See *id.* at 8. Passenger profiling screens passengers to pinpoint those who might present a terrorism threat. See Sonya Ross, *Panel Recommends Passenger Profiling to Reduce Terrorism Threat*, ASSOCIATED PRESS, Feb. 12, 1997, available in 1997 WL 2499750. Profiling involves the use of computers to scan criminal records of passengers as well as passengers' travel history. See *id.* A passenger's travel history, obtained from the airline's database, and various other computer-encrypted data, obtained from the FBI, CIA, and Bureau of Alcohol, Tobacco and Firearms, combine to produce the passenger profile. See Nelms, *supra* note 14, at 34.

¹⁸ For a civil liberties criticism, see Strossen, *supra* note 1, at 1. Nadine Strossen, ACLU President and law professor at New York Law School, voices the civil libertarian's concern that the government, through implementation of security measures recommended by the Gore Commission, has unconstitutionally usurped freedoms the flying public enjoys "in the name of the terrorism bogeyman." *Id.* "Our own government thus victimizes its own people precisely the way that the dreaded international terrorists would: by constricting our free American way of life." *Id.*; see *infra* Part III.B. for further discussion of the Gore Commission and civil liberties. For a cost criticism, see Nelms, *supra* note 14, at 33. Doug Nelms, an AIR TRANSPORT WORLD columnist, believes that the federal government should be directing more funds towards making aircraft safer mechanically rather than focusing on aviation security. See Telephone Interview with Douglas W. Nelms, Associate Editor, *Air Transport World* (Feb. 6, 1998) (on file with author). Nelms describes the government's effort to heighten security, via the Gore Commission's recommendations, as making the already "hard target"—aircraft on which bombs could be placed—into a "harder target." *Id.* See *infra* Part III.C. for further discussion of the Gore Commission and cost.

dustry.¹⁹ Choosing the right context in which to implement federal antiterrorist measures plays a central role in the freedom—freedom from both unreasonable constraints of liberties and burdensome economic constraints—that defines our American way of life.

Part II of this Article briefly discusses the AEDPA, with a particular emphasis on its alleged constitutional shortcomings regarding freedom of association issues surrounding the prohibition of “foreign terrorist organizations.” Part III, the focus of this Article, begins by addressing the increased governmental involvement in combating terrorism in the aviation infrastructure through bomb-screening devices, passenger profiling, and passenger-bag matching. The constitutional implications of that increased involvement will be examined where applicable. An analysis of the various costs imposed on the aviation infrastructure and the traveling public, through increased governmental involvement, concludes Part III. Part IV summarizes and concludes this Article.

II. FEDERAL ANTITERRORISM SCHEMES AIMED AT PROTECTING THE GENERAL PUBLIC

A. BACKGROUND OF AEDPA

After several series of modified versions, the AEDPA was signed into law by President Clinton on April 24, 1996, a year and five days after the Oklahoma City bombing.²⁰ Some commentators were worried that the rushed attempt to enact antiterrorism legislation would lead to a backlash against personal liberties, including severe consequences aimed at those making contributions to groups deemed “foreign terrorist organizations.”²¹ Primarily, the AEDPA expanded the federal government’s ability to monitor fundraising for foreign groups

¹⁹ “Even the [Gore] Commission recognizes that ‘[a]lthough the threat of terrorism is increasing, the danger of an individual becoming a victim of a terrorist attack—let alone an aircraft bombing—will doubtless remain very small.’” Robert W. Hahn, *The Cost of Airport Security Measures*, CONSUMERS’ RESEARCH MAGAZINE, July 1997, at 16 (citing GORE COMMISSION, *supra* note 13, at 13).

²⁰ See Alison Mitchell, *Clinton Signs Measure on Terrorism and Death Penalty Appeals*, N.Y. TIMES, Apr. 25, 1996, at A18; see also *Savage* *supra* note 8, at A16.

²¹ See generally Kopel & Olson, *supra* note 10, at 248 (arguing that “bigger federal government and a narrower interpretation of the Constitution” often lead to a restriction of civil liberties after “sensational crimes” like the Oklahoma City bombing).

suspected by the government of furthering terrorism.²² Once the Secretary of Treasury, in conjunction with the Secretary of State, deems a foreign organization a "foreign terrorist organization," any contribution to that group is unlawful.²³ Dropped from the AEDPA were provisions which would have given the FBI and other federal law enforcement agents increased wire-tapping capabilities.²⁴ Because of these omissions, the final version of the Act was much less combative of terrorism than

²² See Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 303, 110 Stat. 1214, 1250 (codified at 18 U.S.C. § 2339B(a) (1996)). The principal aspect of the AEDPA is the fundraising provision in relevant part:

(a) Prohibited activities.—

(1) Unlawful conduct.—Whoever, within the United States or subject to the jurisdiction of the United States, knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 10 years, or both.

(2) Financial institutions.—Except as authorized by the Secretary, any financial institution that becomes aware that it has possession of, or control over, any funds in which a foreign terrorist organization, or its agent, has an interest, shall—

(A) retain possession of, or maintain control over, such funds; and

(B) report to the Secretary the existence of such funds in accordance with regulations issued by the Secretary.

(b) Civil penalty.—Any financial institution that knowingly fails to comply with subsection (a) (2) shall be subject to a civil penalty in an amount that is the greater of—

(A) \$50,000 per violation; or

(B) twice the amount of which the financial institution was required under subsection (a) (2) to retain possession or control. . . .

(g) Definitions. As used in this section— . . .

(5) the term "Secretary" means the Secretary of the Treasury; and

(6) the term "terrorist organization" means an organization designated as a terrorist organization under section 219 of the Immigration and Nationality Act [8 U.S.C. § 1189].

18 U.S.C. § 2339B(a), (g) (1996). Under 8 U.S.C. § 1189(a)(1), the Secretary of Treasury, in conjunction with the Secretary of State, may designate an organization as a "foreign terrorist organization" if "the Secretary finds that—(A) the organization is a foreign organization; (B) the organization engages in terrorist activity (as defined in section 1182(a)(3)(B) of this title); and (C) the terrorist activity of the organization threatens the security of United States nationals or the national security of the United States." 8 U.S.C. § 1189(a)(1)(A)-(C) (West, Supp. 1998). This Article, when discussing the AEDPA, focuses primarily on the foreign contributions aspect of the law and the deletion of increased law enforcement provisions from earlier versions.

²³ See 18 U.S.C. § 2339B(a).

²⁴ Compare H.R. 1710, 104th Cong. § 301(a)(3)(1995) and S. 735, 104th Cong. § 511 (a) (1995) with Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, tit. III, Stat. 1214.

President Clinton had hoped.²⁵ Consequently, after signing the AEDPA into law, President Clinton promised more stringent antiterrorism proposals in the future.²⁶

B. CONSTITUTIONAL IMPLICATIONS OF AEDPA

1. *Constitutional Criticisms*

David Kopel, Associate Policy Analyst at the Cato Institute in Washington, D.C., and Joseph Olson, Professor of Law at Hamline University, have argued that the AEDPA has constitutional infirmities, including its alleged infringement on the freedoms of speech and association.²⁷ These scholars argue that the government's ability to monitor fundraising for foreign groups suspected of terrorism invokes the protected freedom of association under the First Amendment.²⁸ Kopel and Olson are especially critical of the prohibition of support for lawful nonviolent activities by any group that the Secretary of Treasury, in conjunction with the Secretary of State, designates a "foreign terrorist organization."²⁹ For example, Kopel and Olson argue that, under the AEDPA's enforcement, a donor to an Irish Republican Army (IRA) orphanage would be a federal criminal because the IRA would be deemed a "foreign terrorist organization" by the Secretary of Treasury in conjunction with the Secretary of State.³⁰ To Kopel and Olson, "felonizing charitable donations to foreign humanitarian causes . . . will make America more dangerous, not safer[,] . . ." because "[r]eleasing

²⁵ See Roberta Smith, *America Tries to Come to Terms with Terrorism: The United States Antiterrorism and Effective Death Penalty Act of 1996 v. British Anti-Terrorism Law and International Response*, 5 CARDOZO J. INT'L & COMP. L. 249, 268 (1997).

²⁶ See *id.*

²⁷ See generally Kopel & Olson, *supra* note 10, at 278 (arguing that "[i]n the terrorism bill signed by the President, the statutory protection of First Amendment rights was eliminated").

²⁸ See *id.* at 278-82. "The Constitution mandates that if a person is to be punished for association with a group which has unlawful objectives, the government must prove that the individual *specifically* intended to further the unlawful objectives." *Id.* at 281 (citing *Healy v. James*, 408 U.S. 169 (1972)). A First Amendment attack has also surfaced from scholars who claim the provisions allowing for deportation of aliens based on their associations, speech, and donations pose constitutional problems. See Robert Plotkin, *First Amendment Challenges to the Membership and Advocacy Provisions of the Antiterrorism and Effective Death Penalty Act of 1996*, 10 GEO. IMMIGR. L.J. 623, 653 (1996).

²⁹ Kopel & Olson, *supra* note 10, at 278-79 (analyzing Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (codified as amended in scattered sections of 8 U.S.C., 18 U.S.C., and 22 U.S.C.)).

³⁰ *Id.* at 280.

the federal government from the strict Constitutional rule of law would, in the long run, facilitate state terrorism.”³¹

2. *Constitutional Justifications*

Despite its freedom of association criticism, the AEDPA has been supported for its constitutionality and viability.³² One source, in direct opposition to Kopel and Olson, states that “[i]n its haste to enact something by the one-year anniversary of the Oklahoma City bombing, Congress passed a weak shadow of the original bills, which responds too broadly to earlier charges of extremism and is likely to do little to stop terrorism.”³³ As to the prohibition on fundraising, this source, unlike Kopel and Olson, contends that speech of terrorist organizations and their supporters, while somewhat political in nature, is unprotected because of the element of violent incitement.³⁴ This source explains that the government’s interest in banning this type of speech is much greater than its ban on other types of politically motivated speech.³⁵ In this regard, supporters of the AEDPA’s constitutionality draw a distinction between financial support to terrorist organizations and financial contributions to political candidates or parties.³⁶ The proponents of the AEDPA also support increased law enforcement activity as a necessary measure to dilute the threat of terrorism.³⁷

III. FEDERAL ANTITERRORISM SCHEMES AIMED AT PROTECTING THE AVIATION INFRASTRUCTURE

A. BACKGROUND OF THE GORE COMMISSION RECOMMENDATIONS

The crash of TWA Flight 800 set in motion increased federal involvement to make the aviation infrastructure safer.³⁸ This

³¹ *Id.* at 346.

³² *See generally Blown Away?*, *supra* note 10, at 2075-76 (arguing “that most of the initial legislative [pre-AEDPA] proposals were reasonable and constitutional responses to the threat of terrorism” and “that subsequent amendments may have removed too much of the initial substance for the law to be effective in combating terrorism”).

³³ *Id.* at 2091.

³⁴ *See id.* at 2081 (discussing *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982); *Carey v. Brown*, 447 U.S. 455, 467 (1980)).

³⁵ *See id.* at 2081.

³⁶ *See id.*

³⁷ *See id.* at 2089-90.

³⁸ *See* Faye Bowers, *Winnowing Down the Theories*, *CHRISTIAN SCI. MONITOR*, July 16, 1997, at 3.

federal involvement was likely prompted by a rash of media reports alluding to terrorism as the cause of the accident.³⁹ FBI Director Louis Freeh, members of the National Transportation Safety Board (NTSB), and Justice Department officials now believe a massive mechanical failure is the most likely cause of the crash.⁴⁰ In an FBI briefing to the media, Assistant FBI Director James Kallstrom stated, "We must now report that no evidence has been found which would indicate that a criminal act was the cause of the tragedy of TWA Flight 800."⁴¹

Although the cause of the crash is officially unknown, the NTSB theorizes that a spark from some source ignited the highly explosive "Jet A" fuel vapor contained in the center-wing fuel tank of the Boeing 747.⁴² While a decision on a probable cause was expected by the end of 1998, NTSB Chairman James E. Hall, during the December 1997 TWA Flight 800 NTSB Hearings, stated that no trace evidence of a bomb or missile was found on the wreckage.⁴³ With the investigation leaning towards a mechanical failure theory, questions regarding the Gore Commission's legitimacy and the need for increased airport/airline security are being raised.⁴⁴

The Gore Commission was formed immediately following the crash of TWA Flight 800⁴⁵ by Executive Order 13015 and was assigned the task of setting forth recommendations "to enhance and ensure the continued safety and security of [the] air transportation system."⁴⁶ The Gore Commission's final report re-

³⁹ See Don Phillips, *FAA Advisory Panel Reviewing Aviation Security*, WASH. POST, July 23, 1996, at A9; Carrie Dowling & Paul Leavitt, *Explosion Brings Fears of Terrorism*, USA TODAY, July 18, 1996, at 3A.

⁴⁰ See Jackson, *supra* note 11, at 1A.

⁴¹ *FBI Report on Crash of TWA Flight #800* (C-SPAN television broadcast, Nov. 18, 1997) (videotape on file with the author).

⁴² See Frank J. Murray, *Kin 'May Never Know' Cause of TWA 800 Crash; NTSB Chief Takes Solace in Safety Gains*, WASH. TIMES, Dec. 13, 1997, at A1.

⁴³ See *id.*

⁴⁴ The Gore Commission's legitimacy is being questioned because it was formed to respond to an *assumed* cause of the TWA Flight 800 disaster. That assumption has been refuted. See *supra* note 42. Even though the FAA and NTSB have determined that the cause was mechanical, the recommendations are currently being imposed on the flying public. See Hahn, *supra* note 20, at 15; Gil Klein, *Quietly, Antiterrorist Systems Starting Up*, TAMPA TRIB., Aug. 24, 1997, at 7; Dave Knibb & Karen Walker, *Blood, Sweat, and Gore: Workability of Gore Commission Recommendations Probed*, AIRLINE BUS., April 1, 1997, at 40.

⁴⁵ See Nelms, *supra* note 14, at 29.

⁴⁶ GORE COMMISSION, *supra* note 13, at 1; see also DOT NEWS RELEASE, *supra* note 17, at 7. The Gore Commission's fifty-seven final recommendations included:

vealed that the impetus behind its formation was the crash of

1.5. Cost alone should not become dispositive in deciding aviation safety and security rulemaking issues. . . .

3.1. The federal government should consider aviation security as a national security issue, and provide substantial funding for capital improvements. . .

3.2. The FAA should establish federally mandated standards for security enhancements. . . .

3.5. The FAA should implement a comprehensive plan to address the threat of explosives and other threat objects in cargo and work with industry to develop new initiatives in this area. . .

3.6. The FAA should establish a security system that will provide a high level of protection for all aviation information systems. . .

3.7. The FAA should work with airlines and airport consortia to ensure that all passengers are positively identified and subjected to security procedures before they board aircraft. . . .

3.9. Assess the possible use of chemical and biological weapons as tools of terrorism. . .

3.10. The FAA should work with industry to develop a national program to increase the professionalism of the aviation security workforce, including screening personnel. . .

3.11. Access to airport controlled areas must be secured and the physical security of aircraft must be ensured. . .

3.12. Establish consortia at all commercial airports to implement enhancements to aviation safety and security. . .

3.13. Conduct airport vulnerability assessments and develop action plans. . .

3.14. Require criminal background checks and FBI fingerprint checks for all screeners, and all airport and airline employees with access to secure areas. . .

3.15. Deploy existing technology. . .

3.16. Establish a joint government-industry research and development program. . .

3.17. Establish an interagency task force to assess the potential use of surface-to-air missiles against commercial aircraft. . .

3.18. Significantly expand the use of bomb-sniffing dogs. . .

3.19. Complement technology with automated passenger profiling. . .

3.20. Certify screening companies and improve screener performance. . .

3.21. Aggressively test existing security systems. . .

3.22. Use the Customs Service to enhance security. . .

3.23. Give properly cleared airline and airport security personnel access to the classified information they need to know. . .

3.24. Begin implementation of full bag-passenger match. . .

3.26. Improve passenger manifests. . . .

GORE COMMISSION, *supra* note 13, at 6-25. This Article focuses on four of the stated recommendations: 3.1., 3.15., 3.19., and 3.24.

TWA Flight 800.⁴⁷ These recommendations are now being implemented by the FAA nationwide.⁴⁸

B. CONSTITUTIONAL AND GENERAL IMPLICATIONS OF THE GORE COMMISSION RECOMMENDATIONS

Attacks on the Gore Commission's recommendations have come from several fronts.⁴⁹ One such front includes scholars concerned about constitutional problems associated with the use of state-of-the-art bomb-screening technology.⁵⁰ Invasion of privacy issues have surfaced because some of the bomb-screeners enable the operator to see through a person's clothing to his or her naked body.⁵¹

The Gore Commission's recommended use of passenger profiling⁵² perhaps gives rise to the most heated constitutional debate stemming from the Commission's final report.⁵³ Other privacy interests could be violated through passenger profiling, such as the right not to have a criminal record exposed to nongovernment aviation personnel.⁵⁴ Moreover, the use of profiles can potentially single out an individual in a discriminatory manner; for example, a profile would be discriminatory if it unfoundedly singled out Arab or Muslim Americans as a group

⁴⁷ See *id.* at 3. The report stated:

In the wake of concerns over the crash of Trans World Airlines Flight 800, President Clinton asked the Commission to focus its attention first on the issue of security. He asked for an initial report . . . including an action plan to deploy new high-technology machines to detect the most sophisticated explosives.

Id.

⁴⁸ See Klein, *supra* note 45, at 7.

⁴⁹ See James A. Hooper, *ACLU May Challenge Passenger Profiles*, FLA. TODAY, Mar. 9, 1997, at 10A; Nelms, *supra* note 14 at 30; Donna Rosato, *U.S. Airlines to Start Profiling, Bag Matching*, USA TODAY, July 10, 1997, at 1A.

⁵⁰ See Strossen, *supra* note 1, at 1-2. Strossen states that the remote chance of a terrorist attack supports her argument. See *id.* at 2. She points out that, "the chance that any passenger will die en route for any reason is only 1 in 8 million, making flying 100 times safer than driving." *Id.*

⁵¹ See Nelms, *supra* note 14, at 30. See *infra* Part III.B.1. for further discussion of bomb-screening equipment and its privacy implications.

⁵² See Ross, *supra* note 18, at 5; Nelms, *supra* note 14, at 34.

⁵³ See Tiffany Danitz, *Snooping on Passengers Under FAA's Watchful Eye*, INSIGHT MAG., Mar. 31, 1997, available in 1997 WL 9711043. But see *Gore Commission Proposals Are A Mixed Bag*, AVIATION WK. & SPACE TECH., Feb. 24, 1997, at 82 (arguing that the Gore Commission offered many guidelines to ensure that civil liberties are not violated).

⁵⁴ See Ross, *supra* note 18, at 5.

more likely to pose a terrorist threat.⁵⁵ Like passenger profiling criticisms from civil libertarians, the Gore Commission's suggested use of passenger-bag matching technology has also been criticized by airport and airline officials as impractical and likely to cause significant delays in the aviation infrastructure.⁵⁶

1. Bomb-Screening Equipment

Gore Commission Recommendation 3.15 urges that state-of-the-art bomb-screening technology be employed to minimize potential terrorist threats.⁵⁷ The recommendation states that "[n]ew developments such as computerized systems with high resolution digital displays, innovative use of color to highlight threat objects, and ability to accommodate technologies such as threat image projection to maintain screener performance, can provide enhanced security."⁵⁸

Unlike the constitutional issues raised in passenger profiling, the civil liberties concerns involving the use of heightened bomb-screening technology were not addressed by the Gore Commission.⁵⁹ Some experts have described the new state-of-the-art bomb-screening equipment proposed in the Gore Commission as subjecting individuals to a "virtual strip search," thus raising potential invasion of privacy issues.⁶⁰ The Gore Commission's final report has been criticized by those who believe there is absolutely no limit on the type of bomb-screening equipment that may be used.⁶¹ One such device is manufactured by Ameri-

⁵⁵ See Donna Abu-Nasr, *Arab and Muslim Americans Say Profiling Discriminates Against Them*, ASSOCIATED PRESS, July 17, 1997, available in 1997 WL 4875401. See *infra* Part III.B.2. for further discussion of passenger profiling and its privacy and civil liberties implications.

⁵⁶ See Nelms, *supra* note 14, at 33.

⁵⁷ GORE COMMISSION, *supra* note 13, at 17.

⁵⁸ *Id.*

⁵⁹ See *id.* at 17, 19.

⁶⁰ Strossen, *supra* note 1, at 2. Strossen argues:

As a frequent flyer and civil libertarian, I already suffer embarrassment and outrage when an airport security official scrutinizes—in full view of other passengers—the TV monitor with the projected image of the contents of my carry-on baggage. I can hardly imagine enduring a comparable scrutiny of the projected image of my body. And my concerns are heightened by a [feature on one bomb-screening device] of which its producers are particularly proud: a joystick-driven ZOOM option, which allows the operator to enlarge selected portions of the image. I am a privacy buff. Therefore I do not want to travel—in effect—in the buff.

Id. at 2.

⁶¹ See *id.* at 1-2.

can Science and Engineering Company and is actually in use at one foreign airport.⁶² The machine can produce images of an individual's private bodily areas, as well as reveal private conditions, ranging from mastectomies to catheter tubes.⁶³ Use of this type of bomb-screening technology could expose airports and airlines to invasion of privacy litigation and might pose significant public relations problems for them as well.⁶⁴

2. *Passenger Profiling System*

Gore Commission Recommendation 3.19 suggests that passenger profiling systems be used to identify potential terrorists.⁶⁵ The Commission recommended three steps be implemented

[t]o improve and promote passenger profiling[:] First, FBI, CIA, and BATF [Bureau of Alcohol, Tobacco, and Firearms] should evaluate and expand the research into known terrorists, hijackers, and bombers needed to develop the best possible profiling system. They should keep in mind that such a profile would be most useful to the airlines if it could be matched against automated passenger information which the airlines maintain. Second, the FBI and CIA should develop a system that would allow important intelligence information on known or suspected terrorists to be used in passenger profiling without compromising the integrity of the intelligence or its sources. Third, the Commission will establish an advisory board on civil liberties questions that arise from the development and use of profiling systems.⁶⁶

Perhaps the greatest drawbacks regarding passenger profiling are the civil liberties and discrimination issues the Gore Commission clearly recognized.⁶⁷ Despite this governmental recog-

⁶² See *id.* ("American Science and Engineering Company is now promoting its 'BodySearch' Contraband Detection System, which can reveal such personally private areas and information as breasts and penises, and their relative dimensions.").

⁶³ See *id.*

⁶⁴ See Nelms, *supra* note 14, at 30.

⁶⁵ GORE COMMISSION, *supra* note 13, at 18.

⁶⁶ *Id.* at 19.

⁶⁷ See *Profile System Still Being Developed, but Limits Urged*, ASSOCIATED PRESS, Feb. 12, 1997, available in 1997 WL 4856039; Stephen Franklin, *Fitting the Terrorist Profile: Which One Would You Stop and Search?*, CHI. TRIB., Apr. 13, 1997, at 1. The Commission, by ensuring Department of Justice monitoring of passenger profiling, "clearly recognized" the potential that a profiling system *could* have the effect of selecting individuals based on national origin, racial, ethnic, religious, or gender characteristics. See GORE COMMISSION, *supra* note 13, at 19. Moreover, by stating that "[s]earches arising from the use of an automated profiling system

nitition, a prototype of the profiling system, known as the Computer-Assisted Passenger Screening (CAPS) program, was developed by Northwest Airlines with a grant from the FAA.⁶⁸ On December 31, 1997, the FAA officially offered CAPS to all major airlines with hopes that the airlines would eventually voluntarily adopt the system.⁶⁹ Little is known about the specific criteria CAPS draws upon in its profiling analysis because the information contained in the profile is largely confidential to prevent circumvention by terrorists; however, critics claim the profiles will contain information regarding "each passenger's travel history, identification information, whether the ticket was purchased with cash or credit and with whom the passenger is traveling."⁷⁰ The Gore Commission has called such screening "positive profiling," as it seeks out those who meet beneficial criteria in order to single out the terrorist.⁷¹

The Gore Commission's Final Report provides that "[n]o profile should contain or be based on material of a constitutionally suspect nature—e.g., race, religion, national origin of U.S. citizens."⁷² However, profiling systems have come under heavy criticism by Arab and Muslim Americans, who claim that passenger

should be no more intrusive than search procedures that could be applied to all passengers," the Gore Commission must have known that privacy issues *could* be raised. *Id.*

⁶⁸ See Michael Higgins, *Looking the Part: With Criminal Profiles Being Used More Widely to Spot Possible Terrorists and Drug Couriers, Claims of Bias Also on the Rise*, 83 A.B.A. J. 48, 52 (1997).

⁶⁹ See *id.* While airline adoption of CAPS might not occur immediately, the Air Transport Association (ATA), a representative organization for the major airlines, defends CAPS as an important security component. See *id.*

⁷⁰ Danitz, *supra* note 55, at 22.

⁷¹ *Id.* It is difficult to view the Gore Commission's asserted "positive profiling" as anything but a wolf in sheep's clothing. I argue that singling out the potential terrorist by removing those with beneficial criteria from suspect consideration is tantamount to "negative profiling." In other words, a person will likely be chosen as suspect due to some "negative" quality in his or her profile. See, e.g., Higgins, *supra* note 70, at 52.

⁷² GORE COMMISSION, *supra* note 13, at 19. The report further states:

Factors to be considered for elements of the profile should be based on measurable, verifiable data indicating that the factors chosen are reasonable predictors of risk, not stereotypes or generalizations. A relationship must be demonstrated between the factors chosen and the risk of illegal activity . . . Procedures for searching the person or luggage of, or for questioning, a person who is selected by the automated profiling system should be premised on insuring respectful, non-stigmatizing, and efficient treatment of all passengers.

Id.

profiling discriminates against them by unfairly targeting them for increased security scrutiny.⁷³ The American-Arab Anti-Discrimination Committee and the Council on American-Islamic Relations declared in separate statements that the profiling system "has turned the Arab community into scapegoats."⁷⁴ Houeida Saad, Director of the American-Arab Anti-Discrimination Committee, claims her organization has received confidential documents from security manuals of various airlines, containing discriminatory questions: "Are there stamps from Arab countries in the passport?," "Does your customer have a passport from a Middle East or Arab country?," and "Does your customer have an Arab sounding name and were they born in the Middle East or in an Arab country?"⁷⁵ Such questions, civil libertarians believe, reflect stereotypes that tend to single out individuals who pose no real threat.⁷⁶ According to the DOT, no airline has been fined for discriminating in its screening of passengers.⁷⁷ However, the DOT's Aviation Consumer Protection Division (ACPD) only began tracking complaints of biased passenger searches in early 1997.⁷⁸ Since that time, the ACPD has fielded forty-six complaints.⁷⁹

Lawsuits are beginning to be filed around the country by Arab and Muslim Americans who claim their constitutional rights were infringed upon due to these profiling systems.⁸⁰ For example, Hassan and Julia Abbass, Cleveland, Ohio physicians, have filed a four million dollar civil rights suit against U.S. Airways, Inc. (USAir), claiming the airline wrongfully isolated them for terrorist scrutiny because Hassan Abbass, a U.S. citizen born in Syria, is an Arab-American.⁸¹ On May 24, 1997, USAir officials singled out the Abbasses from approximately 200 St. Martin-bound passengers for special scrutiny.⁸² The Abbasses claim the

⁷³ See Abu-Nasr, *supra* note 57, at 7.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See Strossen, *supra* note 1, at 1. CAPS is partially intended as a solution to these types of discriminatory questions because it only allows airline computers, not airline officials, to evaluate passenger data. See Higgins, *supra* note 69, at 52. FAA spokeswoman Rebecca Trexler stated, "With this new system, [ticket agents] would just look at their screen and see a red or a green—a stop or a go So that automates the whole process. It takes the human element out." *Id.*

⁷⁷ See Higgins, *supra* note 70, at 52.

⁷⁸ See *id.*

⁷⁹ See *id.*

⁸⁰ See Abu-Nasr, *supra* note 57, at 7.

⁸¹ See Higgins, *supra* note 70, at 48.

⁸² See *id.*

airline staff escorted them through metal detectors, searched their luggage, and tagged their bags with fluorescent labels reading, "Positive I.D."⁸³ While the Abbases did pass inspection, they assert the other passengers looked at them cautiously; in fact, some passengers rearranged their seating on the airplane to avoid sitting next to the Abbases.⁸⁴ According to the couple's attorney, USAir officials, when asked by Hassan Abbass why the inspection was occurring, told him, "Well, there are these guidelines and you meet the guidelines."⁸⁵

3. *Passenger-Bag Matching System*

A security system related to the passenger profiling system involves matching passengers with their bags to deter would-be terrorists from purchasing an airline ticket only to check a piece of luggage containing a bomb.⁸⁶ The Gore Commission's Recommendation 3.24 states that "[n]o unaccompanied bag should be transported on a passenger aircraft unless (1) it has been screened by a screening method that meets the FAA standard, or (2) it belongs to a passenger who at the time of check in was neither randomly selected for security review nor selected by the profile for further review."⁸⁷ Passenger-bag matching became standard procedure for international flights after the explosion of Pan Am Flight 103 over Lockerbie, Scotland—an explosion caused by a plastic explosive device contained in a bag checked without the passenger actually boarding the plane.⁸⁸

The new passenger-bag match procedures have come under attack by two leading aviation lobbying groups, the Air Transport Association (ATA) and Airport Council International—North America (ACI-NA).⁸⁹ While the groups claim that bag matching is generally a good idea, they also state that requiring full bag-matching without procedures and equipment in place would effectively shut down the aviation system.⁹⁰

⁸³ *Id.*

⁸⁴ *See id.*

⁸⁵ *Id.*

⁸⁶ *See* James Ott, *Profiling to Boost Security, But Funding Still an Issue*, AVIATION WK. & SPACE TECH., April 28, 1997, at 42.

⁸⁷ GORE COMMISSION, *supra* note 13, at 22.

⁸⁸ *See id.*

⁸⁹ *See* Nelms, *supra* note 14, at 33. The ATA is a lobbying group for commercial airlines, while the ACI-NA lobbies for airports in North America.

⁹⁰ *See id.*; *See infra* Part III.C.2. for a discussion of flight delays associated with passenger-bag matching. The ATA and ACI-NA effectively argue that any delay

C. COST IMPLICATIONS OF THE GORE COMMISSION
RECOMMENDATIONS

1. *Cost in Dollars*

Gore Commission Recommendation 3.1 advises that approximately one hundred million dollars be devoted annually to ensure adequate aviation safety and hinted that more might be needed.⁹¹ Among the funding options discussed by the Gore Commission is a provision recommending an "aviation user security surcharge," which would impose a security tax on each airline passenger.⁹² This security tax would coexist with other federal funding obtained from other sources.⁹³

The Gore Commission's recommendations raise serious questions regarding the availability of funding to carry out the plan.⁹⁴ While the Gore Commission recommendations put the majority of the burden of payment for the system on the federal government, the feeling in Washington is that airports and airlines will have to pay a major portion of the bill.⁹⁵ This feeling is supported by Anthony Broderick, the former chief of safety at the FAA, who testified before the Senate Aviation Subcommittee, addressing the Gore Commission's Recommendations.⁹⁶ Broderick testified that the FAA does not have adequate resources to bring aviation security into the future.⁹⁷ An airline consultant, addressing the cost issues to air carriers of the Gore Commission's recommendations, stated:

Inaccurate comments combined with knee-jerk action for the sake of action, resulting in the grounding and possible demise of an air carrier, and quick fix procedures without consideration of benefit relative to cost, is detrimental and expensive The loss of any air carrier under these circumstances is unacceptable.

resulting from passenger-bag matching compliance will hinder the profitability of their constituents, the airlines, and North American airports.

⁹¹ GORE COMMISSION, *supra* note 13, at 14.

⁹² *Id.*

⁹³ *See id.*

⁹⁴ *See Ott, supra* note 88, at 42.

⁹⁵ *See Nelms, supra* note 14, at 29; *see also* Asra Q. Nomani & Andy Pasztor, *White House Backs Plan for Air Safety, but Calls for no Big Increases for FAA*, WALL ST. J., Feb. 13, 1997, at A20.

⁹⁶ *See FAA Funding Inadequate to Meet Requirements, Experts Say*, AIR SAFETY WK., Mar. 10, 1997, at 1.

⁹⁷ *See id.*

The possible utilisation [sic] of \$1.1 billion tax dollars on a one in 8 million probability of incidence is at best questionable.⁹⁸

The ATA has held the position that, since it is the country that is targeted in a terrorist attack, the country should be prepared to pay to defend itself.⁹⁹ ATA spokesperson David Fuscus stated that “[w]e’ve long claimed that attacks on U.S. airlines are attacks against the government, made for political reasons. The airline is just a surrogate.”¹⁰⁰

2. *Cost in Delays*

Time and flight delays are inevitable drawbacks to the new Gore Commission recommendations.¹⁰¹ Even though the burden is likely to be significant due to security delays associated with the new recommendations, this cost has not been explicitly considered in any of the proposals endorsed by the Gore Commission.¹⁰² The burden of increased delays is evidenced by significant flight delays in countries that have rigorous aviation security procedures in place.¹⁰³ For example, while Israel has the most advanced security system in the world, passengers traveling in Israel often spend three hours in the airport getting their baggage and themselves inspected.¹⁰⁴ A large number of complaints have originated from the airlines, which complain that passenger-bag matching will significantly delay boarding procedures and therefore cause flight delays.¹⁰⁵ David Fuscus, spokesperson for the ATA, stated that, during peak times at Chicago’s O’Hare International Airport, twenty planes dock every fifteen minutes.¹⁰⁶ Thousands of passengers rush to connecting flights that leave, on the average, twenty-five minutes later.¹⁰⁷ Tracking every bag, instead of containers of bags, Fuscus says, would be “impossible.”¹⁰⁸ According to a recent FAA study, de-

⁹⁸ Knibb & Walker, *supra* note 46, at 40. (quoting Stephen McArdle, an airline consultant employed by AvSolutions in Virginia, who believes that the Gore Commission recommendations could force some airlines into bankruptcy courts).

⁹⁹ See Nelms, *supra* note 14, at 33.

¹⁰⁰ *Id.*

¹⁰¹ See Hahn, *supra* note 20, at 17.

¹⁰² See *id.*

¹⁰³ See *id.* at 16-17.

¹⁰⁴ See *id.* at 16.

¹⁰⁵ See Mark Fischetti, *Defusing Airline Terrorism*, TECH. REV., Apr. 1997, at 38, 43; see also *Gore Commission Proposals Are A Mixed Bag*, *supra* note 55, at 82.

¹⁰⁶ See Fischetti, *supra* note 107, at 43.

¹⁰⁷ See *id.*

¹⁰⁸ *Id.*

lays incurred from bag matching might cost the airlines more than two billion dollars a year in lost revenues.¹⁰⁹ Some commentators, however, believe the cost will be even more than two billion dollars annually.¹¹⁰

3. *Cost in Lives*

Some authorities have stated the Gore Commission's recommendations could cost the lives of several Americans.¹¹¹ As airline ticket prices rise, which the Gore Commission concedes is likely to occur as a result of its recommendations, the number of persons traveling by air will correspondingly drop.¹¹² Those persons displaced by the high cost of air travel usually travel by automobile; because the fatality rate is significantly higher on American highways than in American airspace, the Gore Commission could indirectly cause more deaths than would have otherwise occurred but for its recommendations.¹¹³ For example, one recent study has hypothesized the effects of delays caused by passenger-bag matching on the driving public.¹¹⁴ The study conducted by Robert W. Hahn theorized that a one-hour airline delay increase could lead to more than one hundred additional road fatalities per year as annoyed and time-pressed flyers drive instead of fly.¹¹⁵

4. *Cost in Wasted Effort*

The extravagant cost of the implementation and the delays that will inevitably be caused by the Gore Commission's recommendations have caused some commentators to ask how safe is safe enough.¹¹⁶ An argument exists that air travel will always in-

¹⁰⁹ See *id.*

¹¹⁰ See Hahn, *supra* note 20, at 17. Hahn states that "[t]hese delay-cost estimates do not include the costs of hiring and training additional personnel, or acquiring, installing, operating, and maintaining new equipment to comply with the new mandates." *Id.*

¹¹¹ See Nelms, *supra* note 14, at 34; Hahn, *supra* note 20, at 17-18.

¹¹² See Nelms, *supra* note 14, at 34.

¹¹³ See *id.* "The higher fatality rate of automobile travel will consequently lead to an increase in overall fatalities." Hahn, *supra* note 20, at 18.

¹¹⁴ See Robert W. Hahn, *Security Measures: A Cure Worse Than the Disease?*, AVIATION WK. & SPACE TECH., Feb. 3, 1997, at 74.

¹¹⁵ See *id.* "This increase in road fatalities is likely to greatly exceed the number of lives saved by instituting antiterrorist measures, thus resulting in a net increase in overall fatalities." *Id.*

¹¹⁶ See Hahn, *supra* note 20, at 15; see also, Alexandra Marks, *Air Safety: How Much Is Enough?*, CHRISTIAN SCI. MONITOR, Dec. 1, 1997, at 1; Knibb & Walker, *supra* note 46, at 40.

volve risks, and unless we ban air travel altogether, the risks will be ever present.¹¹⁷ In fact, some research tends to indicate that air travel is safer than ever, despite heavy media coverage of airline disasters like TWA Flight 800.¹¹⁸ The Gore Commission even recognizes the excellent safety record maintained by the aviation industry:

Commercial aviation is the safest mode of transportation. That record has been established not just through government regulation, but through the work of everyone involved in aviation—manufacturers, airlines, airport operators, and a highly-skilled and dedicated workforce. Their combined efforts have produced a fatal accident rate of 0.3 per million departures in the United States.¹¹⁹

Despite this assimilation, the Gore Commission seems to indicate, by using language such as “[c]ost alone should not become dispositive in deciding aviation safety and security rulemaking issues,”¹²⁰ that a cost-benefit analysis is immaterial in setting forth aviation safety and security standards.¹²¹ The cost to the passenger, however, might be determinative of whether that passenger flies at all.¹²² According to ATA figures, for every one percent increase in airline ticket prices, passenger traffic drops by one percent.¹²³

IV. CONCLUSION

The choice between freedom or fear is contextual in our daily lives. For the general public outside of the aviation setting, perhaps antiterrorist regulation is appropriate to answer the fears caused by the recent waive of domestic terrorism. The bombings of the World Trade Center and the Alfred P. Murrah Federal Building in Oklahoma City raised this fear, and the AEDPA

¹¹⁷ See Hahn, *supra* note 20, at 15.

¹¹⁸ See *id.*

¹¹⁹ GORE COMMISSION, *supra* note 13, at 5.

¹²⁰ *Id.* at 8.

¹²¹ See Hahn, *supra* note 20, at 15-16. Cost-benefit analyses, while never popular, must be studied for the public good. See generally *id.* at 15 (stating that “[o]ne of the most disturbing aspects of the [Gore Commission’s] report is the lack of a serious discussion of the costs and benefits of the recommendations”). If the general public outside of the aviation infrastructure is more susceptible to a terrorist attack, as I argue, our resources should be directed at preventing such an attack. Similarly, if the greatest danger arising from air travel relates to mechanical failure, then more funds should be directed towards minimizing *that* risk.

¹²² See Nelms, *supra* note 14, at 34.

¹²³ See *id.*

attempts to address it. While arguments exist as to the unconstitutionality of the law, the legislation was likely appropriate. Considering the vulnerability of the general public to a terrorist attack, choosing to regulate, over choosing fear, seems to be the more apropos solution.

The choice of fear over freedom, however, is unacceptable in the mostly secure aviation infrastructure. Air travel was the safest form of transportation before July 17, 1996, when 230 passengers on TWA Flight 800 perished over Long Island. Nothing has changed. Air travel continues to be, and always will be, the safest form of transportation. The death of 230 individuals gave birth to antiterrorist governmental activity, embodied in the Gore Commission, which has done absolutely nothing to combat the real cause of those deaths: mechanical failure. The Gore Commission's irrational goal was to make the safest mode of travel even safer, despite the many costs involved.

At some point, Americans must answer the question: "How safe is enough?" As a society, we have an integral choice to make. We can choose to succumb to fear and live in a country where we are treated as prisoners when we choose to fly. Conversely, we can choose to enjoy our freedoms when we travel by air. We can be free to maintain our dignity, self-respect, and privacy by not being subjected to a "virtual strip search" by state-of-the-art bomb-screening equipment. We can be free to not be singled out and embarrassed by our government personnel and government-empowered personnel by not falling victim to a discriminatory passenger profile. Moreover, we can be free to not have our precious personal and governmental resources allocated to an already adequate system by rejecting the costly Gore Commission proposals. The choice is ours to make. The choice is clear.

