

4

Immigration and Border Security Evolve, 1993 to 2001

4.1 The Intelligence Community

As we have seen in chapter 3, prior to September 11, 2001, the intelligence community did not organize to disrupt terrorist travel except when targeting individual terrorists. It also failed to fully use the one tool it supported to prevent terrorist entry—the terrorist watchlist.

Overall, intelligence community guidance about terrorist travel was limited. Recognizing the importance of freedom of movement to international terrorist groups, the Annual Strategic Intelligence Review for Counterterrorism, issued in October 1995, called for additional intelligence information on terrorist “travel procedures,” “surveillance/targeting capability regarding modes of transportation and facilities,” and “training.”¹ The same review released two and a half years later, in April 1998, pointed to the need for more information on terrorist “travel procedures” and “operational tactics and tradecraft capabilities.”²

Such calls for additional intelligence regarding terrorist travel in its broader context seem to have had no result. A likely explanation for this inaction is that in the context of the Lockerbie experience, “travel procedures” were interpreted to mean access to transportation and reservation systems. But the previous existence of the Redbook, whose purpose was to assist frontline border officials in disruption and law enforcement operations, suggests that the phrase might have been more broadly understood. In any case, as we noted earlier, there was certainly no lack of raw data concerning terrorist travel methods. During the 1990s, the FBI’s numerous terrorist law enforcement investigations provided a cache of information, obtained in part from raids and seized hard drives, on the travel tactics of terrorists as they moved around the globe—planning, surveilling targets, and carrying out attacks.³

This information apparently remained stovepiped at the FBI, drawn on only when needed for a particular law enforcement case. It was not shared with the CIA unit that published the Redbook. The CIA as a whole simply did not engage in analysis of terrorist travel information at this time.⁴ The closest it came to doing so was through a program called the Personal Identification Secure Comparison and Evaluation System, or PISCES, started by the CIA in 1997.⁵

PISCES initially assisted foreign countries in improving their watchlisting capabilities. It provided a mainframe computer system to facilitate immigration processing in half a dozen countries. Foreign authorities used the technology to watchlist and share information with the CIA about terrorists appearing at their borders. The CIA used the information to track and apprehend individual terrorists, not for wide-ranging analysis of terrorist travel methods.⁶

Thus, despite some intelligence community guidance and the availability of considerable information from investigations, as well as work done in producing the Redbook, no agency of the U.S. government undertook what was so desperately needed: a comprehensive analysis of how terrorists exploit weaknesses in travel documents and international travel channels to commit deadly attacks. In practical terms, this meant the United States denied itself the ability to disrupt terrorist operations and prevent undetected terrorist entries by disrupting operatives' ability to travel.

Meanwhile, as we have already noted, al Qaeda had established a passport office under the leadership of one of Usama Bin Ladin's deputies, Mohammed Atef. It also was training operatives in document forgery and expanding its links with a wide variety of travel facilitators, corrupt government officials, and document forgers to enhance its ability to travel throughout the world undetected.

4.2 The State Department

Beyond playing a critical role in maintaining the terrorist watchlist, the State Department also administered U.S. immigration laws abroad; it therefore handled applications for both immigrant and nonimmigrant visas.⁷ Nonimmigrant visas are issued to temporary visitors to the United States; immigrant visas are for those who intend to become permanent residents. For the State Department, visa policy was a powerful tool to achieve larger U.S. foreign policy goals.⁸

Background

U.S. national security interests depend not just on military and intelligence personnel overseas but also on diplomats. Most of them are members of the Foreign Service, serving at American overseas diplomatic and consular posts and at the Department of State in Washington. One of the duties these overseas diplomats perform with support from Washington is to adjudicate the issuance of visas to foreign citizens seeking to come to the United States.

Congress first charged consular officers with the responsibility of issuing visas to certain aliens in 1884.⁹ In 1917, all aliens seeking to enter the United States were required to obtain visas. This requirement has been continued since that time under successive immigration laws.¹⁰ With certain exceptions, therefore, aliens wanting to come to the United States before September 11, 2001, needed to obtain appropriate visas from U.S. consular officers stationed at one of the 230 visa-issuing diplomatic posts around the world.¹¹

From October 1, 2000, through September 31, 2001, the State Department adjudicated approximately 10 million nonimmigrant visa applications worldwide, approved 7.5 million. An integral part of this process was a "name check," which involved checking the name and other biographical identifiers of an applicant against existing records—including lists of known or suspected terrorists—to see if the he or she should be given

additional scrutiny or be denied a visa.

What Is a Visa and Who Needs One?

Because there are many common misunderstandings about the role of the State Department in border security, it is useful to review basic facts about visas.

A visa does not authorize entry to the United States.¹² It simply indicates that an application has been reviewed by a U.S. consular officer at an American embassy or consulate overseas, and that the officer determined the applicant's eligibility to travel to the United States for a specific purpose. Only a U.S. immigration officer has the authority to permit entry into the United States.¹³ That decision is made at the port of entry, when the immigration officer also decides how long any given stay can last.

Prior to September 11, 2001, a visa was not required of every one of the approximately 500 million people seeking to enter the United States each year. Indeed, most who crossed U.S. borders did not need a visa to present themselves at a U.S. port of entry. These "visa waiver" entrants included U.S. citizens and lawful permanent residents, citizens of Canada, and citizens of 27 other countries, most in Europe.

As might be obvious, U.S. citizens need not obtain visas to travel to the United States from abroad.¹⁴ In addition, U.S. citizens and legal permanent residents (LPRs) are not required to have a passport to enter or depart the United States when traveling between the United States and Canada, Mexico, or the Caribbean.¹⁵ These two groups—citizens and LPRs—constitute more than half the total number of people seeking to enter the United States.

Citizens of Canada also are not required to present a Canadian passport or a visa if they are visiting the United States from Canada.¹⁶ In fiscal year 2001, about 13 million Canadians presented themselves at U.S. ports of entry.

Similarly, citizens of the 27 countries participating in the Visa Waiver Program can simply board an aircraft or drive to a land border and ask permission to enter the United States without a visa.¹⁷ They are screened by an immigration inspector at a port of entry before admission. In 2000, about 17 million individuals entered the United States under the Visa Waiver Program, which applies only to temporary visitors traveling to the United States for business or pleasure who are staying 90 days or less.¹⁸ Persons traveling to the United States from these countries for other purposes—for example, to study or to work—must have a visa.

The remaining approximately 203 million people seeking entry to the United States in 2000 needed some form of a visa. Of these, approximately 117 million were Mexican citizens who used visa/border crossing cards (BCCs). These special visas in the form of cards include both a fingerprint and a photograph. Thus, out of the approximately 500 million people seeking entry in the year before 9/11, only approximately 86 million, or 17 percent, were required to have visas and were from countries other than Mexico.

As noted above, there are two types of visas: immigrant and nonimmigrant. The number of immigrant visas available each year to citizens of a particular country, and in particular categories, is strictly controlled by statute, and the number of prospective applicants for U.S. immigrant visas often exceed these caps. People applying from an oversubscribed country are registered on waiting lists. In 2000, the State Department issued about 400,000 immigrant visas worldwide.¹⁹

By contrast, the availability of nonimmigrant visas available is controlled not limited by a quota system rather by the qualifications of the individual applicant for the particular type of visa being sought. It is also influenced by the resources the State Department is able to allocate to visa processing. In 2000, about 1,000 State consular officers processed 10 million applications for nonimmigrant visas, issuing about 7 million.²⁰

There are several categories of nonimmigrant visa. Most common are B or business/tourist visas, 3.5 million of which were issued in 2000.²¹ Next, with 1.5 million issued that year, are the BCCs used by Mexicans seeking to cross the border temporarily (for example, to commute every day to the United States). Some 300,000 F visas were issued to foreign students, and 290,000 H visas to temporary workers or trainees.²²

All 19 of the 9/11 hijackers entered the United States on nonimmigrant visas. Eighteen entered on B visas, and one—Hani Hanjour—entered on an F visa.²³

Visas are governed by reciprocal agreements with other countries regarding their duration and cost. Prior to September 11, although it was not mandatory, nonimmigrant visas were issued “incorporating the most liberal provisions possible with respect to validity period and fees on the basis of reciprocity, that is, the treatment accorded by the applicant’s country to U.S. citizens.”²⁴ In other words, if a given country granted U.S. citizens seeking to travel there a visa valid for five years—as did Egypt, Mohamed Atta’s country—then the United States ordinarily reciprocated and provided its citizens a five-year visa.

A visa can be single entry, allowing its holder to enter the United States only once, or multiple entry. The length of time during which the visa holder could apply for entry to the United States was also determined by negotiation on a country-by-country basis. Before 9/11, Saudi citizens received multiple-entry B visas valid for two years; citizens of the United Arab Emirates, multiple-entry ten-year B visas; and citizens of Egypt and Lebanon, multiple-entry five-year B visas.

Obtaining a U.S. Visa

Prior to September 11, 2001, the basic process for applying for a U.S. visa was the same worldwide, but the precise guidelines followed at each visa-issuing embassy or consulate were often different. Though the law was uniform, the State Department gave individual visa-issuing posts broad latitude in establishing procedures for visa application and processing.²⁵

On matters of border security, the State Department derives its authority from the Immigration and Nationality Act of 1952 (INA), the primary body of law governing immigration and visa operations.²⁶ Among other functions, the INA defines the powers in this area given to the attorney general, the secretary of state, immigration officers, and consular officers.²⁷ It delineates categories of and qualifications for immigrant and nonimmigrant visas, and it provides a framework of operations through which foreign citizens are allowed to enter and immigrate to the United States. It defines the terms used in immigration law, including *alien*, which means “any person not a citizen or national of the United States.”²⁸ It also sets forth the grounds for refusing someone a visa.

Consistent with the INA, aliens began the visa process by presenting a valid passport and completed visa application, along with a photograph, to a State Department consular, or visa, section at an embassy or consulate abroad.²⁹ Visa applicants paid a nonrefundable application fee of \$65 and submitted their application either in person, indirectly (by mail or by drop box at the embassy where applicants could leave their completed applications), or through a third party such as a travel agent.

After the application and passport arrived at the consular section, it was reviewed by a consular officer who decided whether or not to issue a visa. Many of these adjudicators were in their first overseas tours as Foreign Service officers, and many moved on to other kinds of work within the State Department after fulfilling their consular rotation. The consular section reports to the ambassador in that country and to the Bureau of Consular Affairs within the State Department.³⁰ The consular officer’s decision to grant or deny the visa cannot be challenged or reviewed in court.³¹

Three aspects of this adjudication process are particularly noteworthy. First, there was a mandatory computerized name check done of every visa applicant. This requirement had been in place since 1995, when all visa-issuing posts worldwide gained access to a centralized, computerized name-check database.³² Specifically, the applicant’s essential information was checked against a large database called the Consular Lookout and Automated Support System (CLASS), which included a number of databases containing such derogatory information on individuals as prior visa refusals and federal arrest warrants, before the visa was physically issued. One of the databases in CLASS was a watchlist of known and suspected terrorists called TIPOFF. When a check of the CLASS database revealed derogatory information on the applicant, the consular officer could refuse the visa if there were sufficient legal grounds to do so.³³ A consular officer who received a response of “00” when querying CLASS—an indication of a potential, serious ineligibility, including terrorism—was required to request a security advisory opinion from the State Department before considering the case further.³⁴

Second, the law required all applicants for nonimmigrant visas to appear for a personal interview.³⁵ However, the law also provided for a waiver of this requirement if it was deemed to be in the “national interest.” Prior to September 11, 2001, State Department policy encouraged waiving the interview.³⁶ Understanding why personal appearances were so routinely waived in the pre-9/11 era is critical to understanding the State’s

Department's view of its role in border security; this issue will be discussed in greater depth below, particularly with regard to visa policy in Saudi Arabia at the time the hijackers received their visas.

The third point worth noting concerns the grounds for denying a visa. In the year 2000, there were more than 50 different grounds to refuse someone a nonimmigrant visa under the INA.³⁷ Three that are of particular importance to understanding the visa applications of the 9/11 hijackers and their co-conspirators are discussed below.

Section 214(b)—The Intending Immigrant Presumption. Under immigration law before 9/11, all foreigners applying for a nonimmigrant visa were presumed to be intending immigrants.³⁸ Section 214(b) of the Immigration and Naturalization Act provided that “Every alien . . . shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status[.]” Thus, the law placed the burden of proof squarely on the applicant to demonstrate that he or she had no desire to reside in the United States. A finding that the applicant had not met this burden under section 214(b) was “the basic and most frequent reason for an NIV [nonimmigrant visa] denial.”³⁹ In fiscal year 2001, these were the grounds on which about 2.2 million applicants were refused a nonimmigrant visa, totaling about 80 percent of all nonimmigrant visa denials.⁴⁰

Section 221(g)—Lack of Documentation. Under section 221(g) of the INA, consular officers were obligated to deny a visa if the alien failed to comply with the application requirements or was otherwise legally ineligible for a visa. This catchall provision, in effect before September 11, prohibits the issuance of a visa to an applicant if it appears from the application or its supporting documents that he or she is not entitled to a visa or if the consular officer “knows or has reason to know” the applicant is ineligible to receive a visa.⁴¹ For example, this section was used to deny a visa to hijacker Hani Hanjour in September 2000 when he failed to attach to his application documentation supporting his request for a student visa.

In fiscal year 2001, about 600,000, or about 20 percent of all nonimmigrant visa denials, fell under this provision. Thus, almost all visas that were denied before 9/11 were denied under either 214(b) or 221(g).⁴²

Denial on Grounds of Terrorism. The INA in effect before September 11 also allowed a consular officer to deny a visa to a foreigner who engaged in, or was deemed likely to engage in, terrorist activity after entry.⁴³ This included an individual acting alone or as a member of a group who committed an act of terrorism, or who provided material support to any individual, organization, or government conducting a terrorist action.⁴⁴ These provisions, explicitly providing for the exclusion of foreign visa applicants based on their involvement in terrorism, were added to the law in 1991.⁴⁵ Prior to that time, foreigners could be excluded if there was a more general conclusion that they might endanger the security of the United States.⁴⁶

Few aliens were ever denied a nonimmigrant visa on grounds of terrorism in the pre-9/11 era—only 83 in fiscal year 2001⁴⁷

Issuing the Visa

If the application was approved, then a visa—a piece of paper or “foil” with various security features on it, including a digitized photograph of the applicant—was printed out and affixed to the applicant’s passport. By the mid 1990s, this visa could be read by a machine at a U.S. port of entry (the so-called machine-readable visa), enabling the immigration inspector to input the visa data quickly into the immigration database.⁴⁸

If the application was refused, then the passport was returned to the applicant. The fact of and reasons for the refusal were noted in the State Department’s computerized CLASS database used by consular officers. If the person reapplied using the same or similar biographical information—name, date of birth, place of birth, passport number—the earlier refusal would automatically pop up as part of the name-check process. However, if the applicant’s visa was approved, the record of the prior approval would not automatically be brought to the attention of the consular officer. Similarly, as discussed earlier, consular officers had no access to the immigration records of a particular visa applicant when evaluating his or her case.

The Bureau of Consular Affairs

In order to understand how consular officers working for the State Department handled the visa applications of the 19 September 11 hijackers and their co-conspirators, it is necessary to understand how the branch of the department overseeing those officers—the Bureau of Consular Affairs—worked.⁴⁹ Assistant Secretary of State for Consular Affairs Mary Ryan has told the Commission that she always viewed Consular Affairs (CA) as the “outer ring of border security.”⁵⁰ Under Ryan’s leadership in the 1990s, CA increased its focus on border security by providing greater resources to the development of secure passport and visa technology, improving computer name-check capability, and creating a worldwide real-time consular communication system.⁵¹

Visas were not the only responsibility of Consular Affairs during the 1990s, but rather were a subset of one of its three primary strategic goals:

- protecting the safety and security of Americans who travel abroad, by means that included issuing travel warnings;
- meeting the demands of American travelers in a timely and professional manner, by means that included issuing passports to U.S. citizens; and
- facilitating travel to the United States by foreign visitors and immigrants, while enhancing border security to deter entry by those who abuse or threaten our system.⁵²

As discussed above, before the Department of Homeland Security was created, consular officials administered the immigration law abroad in partnership with the Immigration

and Naturalization Service (INS). Recall that INS inspectors made an independent determination at a port of entry regarding the admissibility of a person who presented a visa. If the visa holder was admitted, INS inspectors also decided the length of his or her stay.⁵³ Perhaps surprisingly, State officials overseas had very limited contact with the INS before 9/11, and most consular officials never spoke to an INS officer in the ordinary course of their duties.⁵⁴ In general, consular officials received little feedback from the INS about their visa-issuing decisions. The INS did not collect or disseminate information to consular officials about either the rejection rate of visa holders at ports of entry or the rates at which citizens from particular countries overstayed their time of admission granted by the INS. Thus, although consular officers made some efforts on their own to validate their visa decisions—for example, they called visa recipients to see whether they had returned from their trips and not remained in the United States—the lack of accurate data from the INS left them little to go on.⁵⁵

The State Department Budget in the 1990s

The State Department, like much of the federal government in the early 1990s, made do with fewer resources. As the department itself described the situation, “The years of the Clinton administration coincided with a decline in the Department of State’s resources, leading to cuts and streamlining throughout the agency.”⁵⁶ This seems an accurate assessment. Both the Clinton White House and the Congress—particularly after the Republican takeover in 1994—were determined to hold the line on the federal government’s growth.⁵⁷ The under secretary of state for management during this time, Richard Moose, recalled, “We were in a very tight bind in our operating accounts.”⁵⁸

Compounding these tough budget conditions were what Moose termed “some serious unfunded mandates” associated with the State Department’s decision—made in the administration of President George H. W. Bush—to build new embassies and consulates in the countries of the former Soviet Union without an additional revenue stream.⁵⁹ As part of a broad reevaluation of its overseas presence during this time, the State Department identified 42 diplomatic posts that could be closed. Many of these were small consulates, while many of the 40 new overseas posts were new embassies, including 14 embassies in the newly independent nations of the former Soviet Union, 4 in the new states of the former Yugoslavia, 2 in Southeast Asia, and 2 in Africa.⁶⁰ The net increased cost of these buildings was in the hundreds of millions of dollars.⁶¹

Embassy security also received greater resources during this time. The bombings of three U.S. facilities in Beirut, Lebanon, in 1983 awakened the United States to the destructive power of explosive-laden trucks and car bombs. Following the attacks, Secretary of State George Shultz formed a commission—the Advisory Panel on Overseas Security—headed by retired admiral Bobby Inman.⁶² The Inman Commission recommended \$3.5 billion to meet security needs overseas, and Congress appropriated \$5 billion for security from fiscal year 1987 to fiscal year 1998.⁶³ However, progress in improving embassy security was slow. When al Qaeda bombed the U.S. embassies in Dar es Salaam, Tanzania, and Nairobi, Kenya, on August 7, 1998, neither embassy met Inman standards, and their threat levels were considered medium to low.⁶⁴

The Accountability Review Boards tasked with gathering lessons learned from the August 1998 embassy bombings—chaired by retired admiral William Crowe—recommended in January 1999 that \$1.4 billion be spent annually over the next ten years to improve embassy security.⁶⁵

In response to these renewed concerns about embassy security, Congress appropriated additional funds. In all, the United States spent about \$2.4 billion to upgrade security at our overseas posts before the attacks of September 11, 2001.⁶⁶ But these vast sums were not directed at increasing State's workforce, already strained by personnel cuts, nor were they used to upgrade the ability of consular officers to combat terrorism. In its proposed fiscal year 1995 budget, the State Department requested 366 fewer positions than in the previous year.⁶⁷ Position cuts were recommended under every heading in diplomatic and consular programs.⁶⁸ Downsizing proceeded in 1995 with the implementation of five buyout programs. Encouraged by delayed buyouts approved for 1996 and 1997, more than 600 employees voluntarily left the Department of State.⁶⁹ The number of Foreign Service personnel thus fell from 5,071 in 1993 to 4,061 in 1996. Civil service positions at State showed a similar decline.⁷⁰

These shrinking budgetary resources disproportionately affected the Bureau of Consular Affairs because of The State Department's organizational structure, employee hiring, and the deployment scheme in the 1990s. Traditionally, many Foreign Service officers spend their first overseas tour of duty performing consular work. With the State Department budget crunch, the Bureau of Consular Affairs could not hire replacements for officials lost to attrition; it was forced to extend the length of tours for consular officers and was unable to promote qualified personnel to more senior consular positions.⁷¹ The result was a high burnout rate for consular officials, and a flight of senior qualified personnel to other portions of the State Department or to the private sector. According to Assistant Secretary of State for CA Mary Ryan, "The slogan was to do more with less, to the point where we were doing everything with nothing."⁷²

The Visa Waiver Program

One recent innovation that initially helped CA adjust to its budget crunch during this period was the Visa Waiver Program. Its growth led to a drop in demand for nonimmigrant visas, because citizens of the participating countries were no longer required to obtain a U.S. visa for short-term visits.⁷³ Established in 1986, the Visa Waiver Program enabled citizens of participating countries to travel to the United States for tourism or business for 90 or fewer days without first obtaining a visa.⁷⁴ Criteria for inclusion in the program included a low nonimmigrant visa refusal rate (below 2 percent) for nationals of the country, a high volume of visa applications for nationals of the country, and the offer of reciprocal treatment for U.S. citizens.⁷⁵ The departments of State and Justice established processes intended to determine a country's eligibility for the program under the statutory criteria. They also evaluated the country's political and economic stability. By 9/11, about 17 million travelers per year were admitted to the United States under this program, which played a significant role in 1990s' border

security policymaking at the State Department. Most important, in participating countries it significantly reduced the workload (and thus the staffing needs) of consular personnel, who would otherwise have been tasked with processing visas.

The Visa Waiver Program

The Immigration Reform and Control Act of 1986 provided for the establishment of a nonimmigrant visa waiver pilot program for nationals of up to eight countries.⁷⁶ Its two main objectives were to save U.S. government resources for higher-priority activities and to encourage travel to the United States.⁷⁷ State was eager to implement the system in part because it wished to reallocate resources then devoted to visa processing in countries eligible for the program.⁷⁸

The statute required the secretary of state and the attorney general to certify that an automated data arrival and departure system was in place before the program was implemented.⁷⁹ State expressed concern that the INS could not meet this requirement since its inspectors lacked the necessary equipment to “allow for a real time electronic name check of all incoming passengers.”⁸⁰ State also noted that because the forms filled out by departing visitors to record their departures (the I-94) were still being collected by the airlines, not government officials, it was very difficult to collect accurate, automated exit data.⁸¹

Notwithstanding these initial worries, the program was certified by Attorney General Ed Meese in 1988 and commenced operation for passengers traveling from the United Kingdom over the July Fourth weekend.⁸² It was expanded to include Japan in December 1988; by July 30, 1989, Germany, Switzerland, France, Sweden, Italy, and the Netherlands were participating.⁸³ Justice Department concerns about entry to the United States by Mafia members, terrorists, and drug traffickers from the six additional countries were allayed when State provided to the INS (for use by their inspectors at ports of entry) “all information on nationals of participating countries found in the visa lookout system”⁸⁴ by sharing the TIPOFF terrorist watchlist.

The State Department realized an immediate benefit from the Visa Waiver Program. Instead of an expected 20–25 percent increase in applications at posts in countries that otherwise would have been subject to the visa requirement, there were reductions “of up to 80 percent.”⁸⁵ However, this reduced demand for nonimmigrant visas meant that a higher percentage of visas were being adjudicated and issued in posts where rates of fraud were higher.⁸⁶ In addition, these savings could not be fully realized—and CA resources reprogrammed—unless the pilot program were made permanent.⁸⁷

The State Department lost no time in urging that such action be taken.⁸⁸ On October 30, 2000, the Visa Waiver Permanent Program Act was signed into law (P.L. 106-396).

Consular Affairs—Technology and Watchlists

Although Consular Affairs saw itself and its administration of the visa function as the “outer ring of border security” during the 1990s, State’s technology in the early 1990s was anything but state-of-the-art.¹⁰²

Indeed, the State Department began the 1990s with a patchwork of information technology systems serving about 230 diplomatic posts worldwide.¹⁰³ The development in early 1990 of a machine-readable visa (MRV)—containing a laser-printed digital photograph of the visa applicant that could be read by a machine used by INS inspectors at ports of entry, thereby making possible an automatic download of visa information into the INS database—seemed to promise a brighter future.¹⁰⁴ But by the time of the World Trade Center attack three years later, the MRV system was not installed worldwide because it had not been funded.¹⁰⁵

In the early 1990s, State’s watchlisting efforts were similarly stymied by a lack of modern technology. In 1993, visa applicants were screened using one of three systems: a real-time interface with the State Department in Washington (where the TIPOFF watchlist was maintained—see text box), a check against the watchlist contained on a computer disk distributed to posts every two months or so, or a check against the watchlist on a microfiche distributed to posts approximately every six months. Almost half of all diplomatic posts received these updates by microfiche, which was cumbersome and time-consuming to use.¹⁰⁶

Fortunately, State’s main counterterrorism tool, the TIPOFF terrorist watchlist, did receive much-needed funds to improve its capabilities. Beginning in 1990, State received funding from the Technical Support Working Group (TSWG) to hire a computer consultant to design a robust computer architecture for TIPOFF.¹⁰⁷ However, TIPOFF, and State’s system of identifying ineligible visa applicants generally, was only as effective as the system used to access it, and the system in 1993 was antiquated.

In 1991, on the eve of the Gulf War, State was asked by the White House to use TIPOFF to help prevent the infiltration into the United States of Iraqi intelligence agents. This request provided the impetus to broaden access to the TIPOFF system to include immigration inspectors at U.S. ports of entry. The expansion made sense, since immigration inspectors determined the admissibility of all individuals seeking entry to the United States, including those who came from countries where no visa was required.

By design, the database of names available to inspectors at ports of entry was smaller than that available to consular officials. Because the INS needed to process travelers quickly, it used only that portion of the TIPOFF database containing specific information on a person, such as date of birth. The State Department, which had more time to evaluate a visa applicant’s papers submitted at an embassy or consulate, could call an applicant back in for an interview to clarify data needed for positive identification. Thus, the INS sought access to only about two-thirds of all TIPOFF entries at ports of entry.

By September 11, 2001, the consular database, CLASS, contained the TIPOFF terrorist watchlist, which then contained about 60,000 names. It also included some 10 million

records of individuals denied visas previously, individuals wanted by federal authorities, and individuals who for some other reason should not be issued a visa.

The Terrorist Watchlist

Before 1987, there was no automated terrorist watchlist systematically used by border security officials. Instead, hardbound books created and used by intelligence agencies contained names of known or suspected terrorists.

After a Palestinian terrorist acquired a U.S. visa in 1987, an enterprising State Department employee named John Arriza was asked by his supervisor to “do something” about terrorism. Arriza created TIPOFF, an interagency data-sharing program designed to prevent known or suspected terrorists from entering the United States. The State Department’s Bureau of Intelligence and Research (INR), where Arriza worked, would collect information on suspected terrorists from all sources, including other members of the intelligence community and the media, and enter it into a searchable database.¹⁰⁸

Arriza persuaded intelligence community agencies to allow the declassification of four data fields pulled from a classified document with terrorist identity information: the individual’s name, date of birth, country of birth, and passport number. This limited declassification enabled consular and immigration officials, who operated in an unclassified environment and who daily scrutinized travel documents containing applicants’ biographical information, to check applicants against a larger classified list of terrorists. On June 18, 1991, State signed a Memorandum of Understanding (MOU) with the INS and the U.S. Customs Service making the four unclassified data fields in TIPOFF available to them. The data would be entered into the National Automated Immigrant Lookout System (NAILS) maintained by the INS and available to officials working at ports of entry. The MOU also provided a mechanism for State/INR to pass classified information about an individual to an INS duty officer, using secure communications lines. The INS duty officer would then communicate an admissibility determination to the INS officer at the port of entry without divulging to that officer the classified information supporting it.

The MOU gave State/INR eight hours to provide information to be used by INS in making its decision to permit or deny an applicant admission to the United States. Under this first MOU, Customs officials used the INS as their point of access to TIPOFF.

In 1997, State signed an agreement to share the TIPOFF watchlist with Canada (TIPOFF U.S.-Canada, or TUSCAN). Like the MOU with U.S. immigration officials, the Canada MOU required State/INR to respond to Canadian inquiries within a set period of time—10 to 15 working days for a visa application hit, and one hour for a hit at a port of entry.¹⁰⁹

In March 1999, State signed a new MOU with the INS and U.S. Customs Service that broadened access to TIPOFF data by Customs and added a database that included individuals watchlisted because of their connection to organized crime syndicates.

The FBI and Watchlisting

Prior to September 11, 2001, the FBI did not provide written guidance to its employees on how to collect and disseminate information on terrorists' identities for inclusion in watchlists.

The FBI's focus was on investigating and prosecuting particular cases. It was not oriented toward producing finished intelligence products, or culling identifying information out of case files for inclusion in terrorist watchlists. Indeed, an FBI employee who was not working on a particular case—even a counterterrorism analyst at headquarters—would generally not have been able to gain access to data gathered in other investigations, though his or her purpose might be to collect information for inclusion in a watchlist.

While some employees working in the FBI's counterterrorism sections, such as the Usama Bin Ladin and Radical Fundamentalists units, did routinely submit names to the State Department for inclusion in the TIPOFF watchlist—and participated in State's efforts to clarify the nature of any derogatory information after a lookout hit—this cooperation was ad hoc, and not the result of written FBI policy. FBI watchlisting policy also reflected the pre-9/11 view of the division of labor between the FBI and CIA: terrorists out of the country were the CIA's problem, and there was no reason to watchlist any terrorists who were already in the country.

The statistics are telling. In 2001, the CIA provided 1,527 source documents to TIPOFF; the State Department, 2,013; the INS, 173. The FBI, during this same year, provided 63 documents to TIPOFF—fewer than were obtained from the public media, and about the same number as were provided by the Australian Intelligence Agency (52).

The Effect of the World Trade Center Bombing on the State Department

The bombing of the World Trade Center on February 26, 1993, was a tipping point for change at the State Department, particularly within Consular Affairs. Shortly after that attack, it was learned that a participant in the plot who was the spiritual leader of the group that carried it out—Sheikh Omar Abdel Rahman—had obtained a visa to enter the United States at the U.S. embassy in Khartoum, Sudan. As we discussed in the previous chapter, this blind cleric's application was successful even though he was a known Islamic extremist in Egypt whose name was on a watchlist—on microfiche—at the Khartoum embassy. A subsequent investigation revealed a series of problems, spanning several years, involving visas issued to Rahman. In the case of his last application, the State Department local employee tasked with checking the microfiche to see if Rahman's was watchlisted had not done so, because he believed that the aged cleric was unlikely to present a risk. He told the consular officer who issued the visa that he had performed the name check. The "Blind Sheikh episode"—notorious in the minds of State Department policymakers in the 1990s—led to a reexamination of visa-processing procedures.

One change in policy was the Visas Viper program, created in August 1993.¹¹⁰ The Viper program, managed by State, was designed to improve interagency communication about terrorists whose names should be on a watchlist. The State Department directed all diplomatic and consular posts to form committees, to meet quarterly, that included members from State, as well as representatives from law enforcement and intelligence agencies.¹¹¹ Agencies were asked to supply terrorist identity information directly to State personnel at the post or, if there were concerns about classified or sensitive information, to State INR from their respective headquarters. Yet the Viper program was hampered by a lack of cooperation from intelligence and law enforcement agencies, which were reluctant to provide sensitive information to consular officials for fear that doing so would compromise sources and methods of collection.¹¹² Thus, while Viper submissions accounted for a significant percentage of the records added to TIPOFF during the period from 1993 through 2001, not all the information on terrorists' identities made its way into TIPOFF, because not all was shared with the State Department.¹¹³

Another significant outcome of this reexamination was the passage of a bill enabling the State Department to retain funds received from the issuance of nonimmigrant machine-readable visas.¹¹⁴ Beginning in 1994, when MRV fees totaled less than \$10 million, the amount collected grew steadily; by 1999, it exceeded \$300 million annually. State used these funds to automate its consular visa-issuing systems, develop secure passport and visa technology, improve computer name-check capability, and create a worldwide real-time consular communications system. By April 1995, State had spent \$32 million dollars upgrading its computer systems.¹¹⁵

The results were impressive. Whereas in February 1993, 111 State visa-issuing posts relied on microfiche for their name checks, by the end of 1995 none did. Instead, all visa-issuing posts had direct telecommunications access to the Department's CLASS lookout system, with a backup name-check system available on CD-ROM in case the automated system went down. This meant that TIPOFF, which existed as a file within CLASS, was always available to consular officers performing name checks. State also implemented Congress's statutory requirement that no visa be issued unless the consular officer first performed the CLASS name check.

Furthermore, State developed language algorithms to improve CLASS's name-check capability. The first language algorithm State developed, for Arabic, was implemented in December 1998. This enabled the system would search its records for all variant spellings of, for example, the name "Mohammed." A second algorithm, for Russian/Slavic names, was added in December 2000.¹¹⁶

Another technological advance funded by MRV revenue was the creation of a worldwide, real-time database, known as the Consular Consolidated Database (CCD). The CCD for the first time allowed visa data entered in any embassy or consulate to be transferred automatically and immediately to a central location in the United States. For example, if an individual applied for a visa in Athens, Greece, a consular officer in Seoul, South Korea, could see the record of that application within minutes. The CCD also contained all aspects of the visa application, including the digitized photograph of the applicant.¹¹⁷

Nonimmigrant visa records were loaded into the CCD beginning in 1999 in Frankfurt, Germany.¹¹⁸ All other posts were phased in between February 1999 and January 2001. By January 2001, every visa-issuing post sent its data to the CCD in real time.¹¹⁹ On September 11, 2001, the State Department's CLASS contained the TIPOFF terrorist watchlist as well as 10 million records of individuals denied visas previously (with the grounds for their denial), individuals wanted by federal authorities, and individuals who for some other reason should not be given a visa.

Visa Policy Generally in the 1990s

While new technology helped prevent the issuance of visas to terrorists during the 1990s, aspects of State's approach to visa policy during the 1990s had a more mixed effect on its ability to counter terrorism.

During the period from 1993 to 2001, the State Department's visa operations focused primarily on screening applicants to determine whether they were intending immigrants: that is, intending to work or reside illegally in the United States.¹²⁰ Although visa and passport fraud have long been an integral part of terrorist travel practices, terrorists were not a major concern of consular officers. They were not trained in how to interview visa applicants to ascertain whether they had terrorist connections—or even criminal ones—nor were they supplied with the training or technology needed to detect an applicant's use of fraudulent travel document practices long associated with terrorism. In fact, consular officers were discouraged from using either section 214(b) or section 221(g) of INA to deny a visa to an applicant suspected of being a terrorist. Instead, to prevent terrorists from obtaining visas, consular officers were instructed to rely on the name-check function—including the TIPOFF terrorist watchlist check—and evaluation of potential terrorists' cases by officials in Washington.

The State Department's policy guidance to visa officers prior to September 11 concentrated on facilitating travel. This guidance consisted of the *Foreign Affairs Manual* (FAM), instruction telegrams sent to posts, informal communications such as email and oral history provided to officers arriving at posts, the *Consular Management Handbook*, and the *Consular Best Practices Handbook*.¹²¹

The FAM contained regulations, policies, and procedures for the department's operations and provided interpretive guidance to visa officers on the sections of the Immigration and Nationality Act and the Code of Federal Regulations related to the visa process. A confidential appendix to the FAM focused on security checks and individuals suspected of membership in terrorist groups.

Before 9/11, the FAM encouraged consular officers to expedite visa processing as a means of promoting travel to the United States. In the section dealing with the most common type of visa—issued to temporary visitors for business and pleasure—the FAM stated that it was the U.S. government's policy to facilitate and promote travel and the free movement of people of all nationalities to the United States.¹²² The FAM called for consular officers to speed applications for the issuance of visitor visas, so long as the

consular officer was satisfied that the issuance was in accordance with U.S. immigration law and the applicant had overcome the presumption of intending immigration. For while the law placed the burden of proof on the applicants to establish that they are eligible to receive a visa, “it is the policy of the U.S. government to give the applicant every reasonable opportunity to establish eligibility.”¹²³

Although always a priority for reasons of commerce and foreign policy, the streamlining of the visa process increased steadily during this period. CA focused extensively on “reinventing consular functions” to make them “work better, cost less, and get meaningful results by putting customers first, cutting red tape, empowering employees, and cutting back to basics.”¹²⁴ Two additional factors helped drive this change. First, Consular Affairs became a “reinvention lab” in April 1993 as part of Vice President Gore’s initiative to reinvent government.¹²⁵ Second, while resources devoted to the consular function remained flat or decreased, as discussed above, visa demand was rising. The number of U.S. visa applications worldwide grew from about 7.7 million in fiscal year 1998 to 10.6 million in fiscal year 2001, an increase of 37 percent. Staffing did not keep pace with visa demand, leading to gaps in coverage at posts that lacked a consular officer to adjudicate visas, unusually long work hours for consular staff, and “staff burnout.”¹²⁶ Something had to give.

The result was the *Consular Best Practices Handbook*,¹²⁷ a collection of business process improvements gathered from a series of 49 cables sent to posts between 1997 and 2000 that were intended to help “improve customer satisfaction, improve decision-making, and increase efficiency.”¹²⁸ The *Handbook* urged improvement of processes to “support the three key goals that every consular manager should strive to achieve: high quality decision making, more efficient processes, and improved customer service.” By introducing new processes that improved efficiency, and outsourcing activities that “do not have to be performed by government employees,” the consular managers were directed by officials in Washington to “focus the majority of your . . . decision-making resources on the most difficult cases.”¹²⁹

Best Practices cable number 6 listed “the four top goals of the visa process as efficient processing, high quality decisions, people-friendly services and sharing of all pertinent information within the US Government.”¹³⁰ The cable acknowledged that the first two goals—efficient processing and high-quality decisions—“express a basic conflict in our traditional approach to visa processing. Quality decisions can make the process less efficient, and, in the context of declining staff, posts have often been forced to choose efficiency over quality.”¹³¹

This cable also provided an excellent synopsis of the rationale underlying the push to save resources in the late 1990s and the environment in which the hijackers received their visas, under the title “Reconciling Efficiency and Quality”:

For many years growing work and static personnel resources have led us to search for areas we can eliminate or place last in our scale of priorities. But, with a few minor exceptions,

everything we do in consular work is too important to cut, either because of its impact on the public or because of its impact on quality. For example, postponing or slowing down NIV (Non-Immigrant Visa) services is like squeezing a balloon—the demand pops up someplace else, either at another post, through the referral system or through pleas for exceptions. Similarly, cutting out anti-fraud work harms our entire effort and leads to poor decision-making. Giving inadequate information results in applicants arriving for an interview without necessary documentation.

The consequences of cutting out or slowing down any discrete function are unacceptable. But viable alternatives exist, namely to cut out the parts of all of our processes that contribute the least to good decision making and to outsource or automate the parts that don't need to be done by government employees. Several cables in this series have offered suggestions on how to replace certain functions with automated or contracted-out approaches. Where feasible, these approaches work and posts should adopt them.

Although much of our approach to visa work can be streamlined, the most pertinent example of a part of the process that can be cut back successfully is the nonimmigrant visa interview. This doesn't mean that interviews should be shorter; it means that interviews should be fewer.¹³²

Finally, because these practices were considered by CA to be “integral to effective consular operations,” implementing best practices was “a mandate, not an option.”¹³³

In chapter 5 we explore how this aggressive effort to cut back on resources devoted to screening individual visa applicants, a reduction in interviews, and a heavy reliance on a Washington-based watchlist system played out as the 9/11 hijackers began applying for their visas in April 1999. First, we examine the Immigration and Naturalization Service's activities before September 11.

4.3 The Immigration and Naturalization Service

Those who should get in, get in; those who should be kept out, are kept out; and those who should not be here will be required to leave.

—Barbara Jordan, chair, U.S. Commission on Immigration Reform,
February 24, 1995

The Immigration and Naturalization Service has the statutory responsibility under the Immigration and Nationality Act to determine who may enter, who may stay, and who must be removed from the United States.¹³⁴ Thus, U.S. border inspectors and Border Patrol agents remain the last physical barrier between terrorists and their entry into the United States. This section discusses INS functions and provides an analysis of how well the agency operated prior to September 11 in the context of counterterrorism.

Background

The Constitution gave Congress plenary power over immigration, and the first federal laws addressing immigration issues were passed in 1790.¹³⁵ Not until the 1880s, however, did Congress make the “supervision over the business of immigration to the United States” a federal responsibility.¹³⁶ In 1891, Congress created an immigration office in the Treasury Department and in 1895 assigned its most senior post the title of commissioner.¹³⁷ Part of the Bureau of Immigration’s purpose was to administer and create the rules necessary to facilitate land border inspections for “ordinary” travelers, including the classes of persons to be denied entry.¹³⁸

Although the nation’s growth depended on successive waves of immigrants, the Bureau of Immigration never seemed quite important enough to become its own department, with its own secretary reporting directly to the president of the United States. In fact, the bureau was something of an administrative orphan. Over the century its name and bureaucratic home changed repeatedly, and increasing numbers of confusing statutes created conflicting jurisdictions in both immigration services and enforcement.¹³⁹

In addition, the agency never received adequate support from its parent department, Justice, the Congress, the White House, or the intelligence community. It is therefore not surprising that the INS entered the 1990s as a badly organized agency with a poor self-image and a troubled public reputation. Despite its mandate to secure America’s borders, it was not held in high enough regard to be given an active role in counterterrorism efforts. Thus, a few creative INS employees struggled to keep our borders safe from terrorists while the rest of the agency, and the government in general, remained mostly oblivious to this mission. As we will see, the INS was a border security agency without a recognized role in counterterrorism and without the vision and resources to enforce its own laws.

The INS Structure

The INS was charged with welcoming U.S. citizens, immigrants, visitors, students, and others deemed beneficial to the nation while denying entry to those judged undesirable. Its employees performed three different functions. Immigration inspectors at land, air, and sea ports of entry processed applicants for admission to the United States, determining who should be admitted and who should not. The Border Patrol and special

agents enforced immigration law at the border and within the United States against those who violated it.¹⁴⁰ Immigration services officers adjudicated benefits for temporary visitors, immigrants, asylum seekers, and refugees. In 2000, all three of these functions reported to two separate chains of command, one for headquarters and one for the field.

The field was renowned for its independence from Washington and for the range of leadership skills found there. As one former employee told the Commission, “the mountains were high and the emperor far.”¹⁴¹ Indeed, the budget and policy planning offices were literally far away in Washington. Together, they were responsible for all INS budget decisions, including those supporting field operations, as well as a significant part of the policy that guided work in the field. But they reported to an executive office different from the regional field offices.¹⁴² As former deputy commissioner Mary Ann Wyrsh told the Commission, this structure helped ensure that people were confused about their job descriptions, operating without communication or direction and often duplicating efforts at more senior levels.¹⁴³ The result was low morale, unclear goals, inefficiency, and difficulty moving forward on the policies and programs needed.

Compounding the management problem, the INS commissioner reported to the deputy attorney general (DAG) in the Justice Department. The DAG managed the Criminal Division, the United States Attorneys, the FBI, the Drug Enforcement Agency, and the INS.¹⁴⁴ Although the INS was closely scrutinized on those issues important to the attorney general, which recently had included naturalization, the Southwest border, and Cuban migration, it was largely ignored on other issues such as interior immigration enforcement and systematic development of technology.¹⁴⁵ The INS commissioner also had to answer to Congress, in its oversight role, and the White House, which set policy. Thus, the commissioner spent much time dealing with institutional actors who often had different agendas and only in rare instances envisioned a role for the INS in counterterrorism.¹⁴⁶

The multiple demands, lack of oversight focused on counterterrorism from the Justice Department, growing demands to stem the tide of illegal immigration, an overburdened immigration benefits system, and growing number of visitors to the United States at ports of entry were weaknesses and pressures that left the INS wholly unprepared to fulfill its statutory obligations. It is therefore not surprising that when Doris Meissner, who had served in the INS from 1981 to 1986, returned as Commissioner in 1993, she found an agency in disarray.¹⁴⁷ Border Patrol agents were still using manual typewriters,¹⁴⁸ inspectors at ports of entry were using a paper watchlist, the asylum system did not detect or deter fraudulent applicants, and policy development was inadequate.¹⁴⁹ The explosive growth that followed congressional appropriations to upgrade INS technology and human resources to respond to illegal entries over the Southwest border—the agency grew 40 percent overall from 1997 to 1998, as Border Patrol and inspection resources increased 94 percent and the immigration services budget increased an astounding 150 percent between 1996 and 1998¹⁵⁰—represented a major new administrative challenge. Only a small group of forward-thinking midlevel employees quietly worked counterterrorism issues. These employees were scattered throughout the agency in investigations, the Joint

Terrorism Task Forces (JTTFs), intelligence, legal counsel, inspections, and budget; others worked on one of the many technology initiatives such as student tracking.¹⁵¹

The INS, clearly, was struggling.

The Many Facets of the INS Mission

The INS was responsible for enforcing the immigration and nationality law in three general areas: inspecting applicants and adjudicating admissions at the ports of entry; enforcing immigration law by patrolling the border to prevent and detect illegal entry and investigating, detaining, and removing illegal and criminal aliens already in the country; and adjudicating applications to change a person's immigration status. While each of these roles is critical, the immigration inspection and adjudication function and the adjudication of immigration benefits are most relevant to the 9/11 story.

Inspections at Ports of Entry. INS immigration inspectors are located at ports of entry along the land and sea borders and at international airports. They are responsible for determining who may legally enter the United States.¹⁵² They also set the conditions for temporary stays in the United States.

Indeed, the stated mission of immigration inspectors is to “control and guard the boundaries and border of the United States against the illegal entry of aliens.”¹⁵³ In practical terms, this means determining the admissibility and length of stay of aliens applying for admission into the United States at ports of entry. As discussed in the previous chapter, some of these aliens must have visas issued by State Department consular officers at U.S. embassies and consulates abroad. Tourists from countries that require a visa to enter the United States receive a mandatory six-month length of stay. All of the 19 September 11 hijackers presented visas (18 of 19 were tourist visas) in their 33 successful entries, as none was from a visa waiver country.¹⁵⁴

Those aliens from visa waiver countries who seek to visit for pleasure or business must only present a passport and a departure ticket to an immigration inspector upon their arrival in the United States.¹⁵⁵ These “visa waiver” passport holders are granted a mandatory three-month stay.

Screening at Airports. Prior to September 11, all persons seeking admission to the United States through any of the 354 international U.S. airports had to submit to an initial or “primary” screening by immigration inspectors.¹⁵⁶ Many airports required the screening to take place in an average of 45 seconds—30 seconds for U.S. citizens and one minute for foreign citizens—during which immigration inspectors had to sort the bona fide from the mala fide travelers. This brevity was forced on inspectors by a 1991 congressional mandate that each flight be processed within 45 minutes.¹⁵⁷

In primary immigration inspection the traveler was asked a series of questions in order to learn the identity, purpose, and duration of his or her visit and the validity of the visa. Travel documents—the passport and visa—were reviewed for potential fraud. When

visitors had machine-readable passports, like those issued by Saudi Arabia, the lookout checks were automatically performed as the document was optically scanned. For others, the inspector would enter the information manually. He or she would check the security features of the document, relying on fraud training and on specialized equipment, including ultraviolet lights and magnifying glasses. Arrival and customs forms were reviewed for completeness. A name check was conducted along with a passport number search to determine if the traveler was on a watchlist or if the passport had been reported lost or stolen.¹⁵⁸

A primary inspector was also trained to use behavioral cues to determine whether the traveler might be *mala fide*. In such instances, the inspector could ask to see travel itineraries, looking for a last-minute ticket purchase, a one-way ticket, or unusual routing. Such indicators, along with a visitor's limited English, insufficient funds for travel, or questionable behavior, could also be the basis for a referral to a secondary immigration inspector.

If documents, database checks, interviews, and demeanor raised no questions, the visitor was admitted into the United States. If the immigration inspector was suspicious about the visitor, he or she had the discretion to make a referral to a secondary immigration inspection for further scrutiny. Such suspicions led to the secondary referral of Mohamed Atta, Marwan al Shehhi, and Saeed al Ghamdi and to the removal of Mohamed al Kahtani.

When a primary inspector received a hit against the watchlist, the inspector was required to escort the visitor to a secondary immigration inspection area for an interview.¹⁵⁹ At that time, travel documents were again reviewed for potential fraud. "Pocket litter"¹⁶⁰ might be inspected. Unlike the case with the primary immigration inspection, the secondary inspection had no time constraints. Multiple investigative resources were available to the inspector, who might check one of a couple of dozen INS databases, call the FBI or a translator, review travel document fraud alerts and manuals produced by the INS Forensic Document Lab, and access a biometric system called IDENT, which contained digital fingerprints and photos. Only in Kahtani's case were any of these tools used.¹⁶¹

Only a single INS employee at INS headquarters was permitted to liaise with the State Department, which managed the TIPOFF terrorist watchlist, when there was a watchlist hit. This liaison officer would attempt to get the supporting documentation and then relay what unclassified information he or she could to the inspector determining admissibility.¹⁶² Denials required supervisory approval.¹⁶³ Before 9/11, local members of Joint Terrorism Task Forces, composed of individuals in federal, state, and local law enforcement, would occasionally assist in the interview of a suspect individual.

If an arriving traveler was sent back to his or her home country, then a photograph and fingerprints were taken and added to an electronic file opened on the individual. This file was part of a database called IDENT (Automated Biometric Identification System), which was initially implemented on the Southwest land border to try to reduce the recidivism of those violating immigration law.¹⁶⁴

Inspection Practices Specific to Counterterrorism. As the one successful exclusion of a potential September 11 hijacker, Kahtani, makes clear, the screening tools, training, and procedures available to immigration officials are critical to making admissions decisions. Generally the inspectors at the ports of entry were not asked and were not trained to look for terrorists. Indeed, most inspectors interviewed by the Commission were not even aware that the automated watchlist against which they checked the names of incoming passengers was a terrorist watchlist. Their ignorance was largely a function of a technological approach to terrorist screening that relied almost exclusively on a mechanical, computerized name check at the primary immigration inspection.¹⁶⁵

Behavior was also a substantial consideration in referring a traveler to secondary inspection. Yet no inspector interviewed by the Commission received any operational training in the types of behavior that might be exhibited by terrorists. Nor were they instructed on the types of travel documents known to be carried by terrorists. As noted in chapter 3, the CIA's Redbook, which contained information on terrorist travel documents, was discontinued in 1992; inspectors were thus left without specific information on terrorist travel practices. Few inspectors were aware of the existence of its successor, the Passport Examination Manual, which treated generic fraudulent documents and travel stamps.¹⁶⁶ Today, there is still an electronic version of such a manual.

At headquarters and in the field, the INS did organize a few scattered offices and programs to aid its inspectors in identifying suspect individuals, especially terrorists.

The INS Terrorist Watchlist. The National Automated Immigration Lookouts System contained the TIPOFF terrorist watchlist and was the most valuable tool for identifying terrorists that INS and Customs inspectors had until September 11, 2001.¹⁶⁷ TIPOFF first became available to the INS in 1991 by way of a Memorandum of Understanding between the State Department, Customs Service, and INS.¹⁶⁸ This name-based system provided key unclassified biographical information about aliens reasonably suspected to be involved or closely associated with terrorist activity. The database was checked by the inspector at the primary immigration inspection as he or she was determining admissibility.

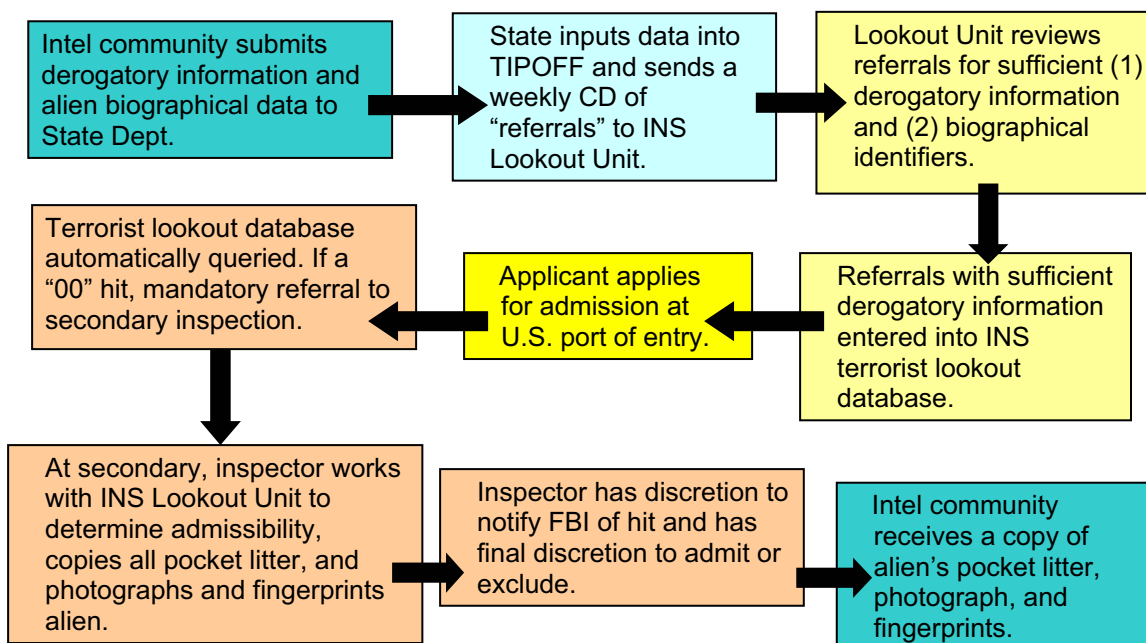
By September 11, TIPOFF contained about 80,000 records on terrorists and terrorism-related criminals. The State Department's criteria for creating a file in the database included reasonable suspicion that the alien engaged in or might engage in terrorism, otherwise known as "derogatory information" and sufficient biographical information for positive identification.¹⁶⁹ Because the INS had a slightly higher standard for including information in NAILS, not all State Department TIPOFF records made it into the INS database.¹⁷⁰ If the INS considered the State Department's supporting intelligence insufficient, the referral would be stricken from consideration, at least until further information was provided by State.¹⁷¹

Thus, the INS was wholly dependent on the State Department for both the referrals to TIPOFF and the supporting intelligence for the nomination. The INS did not seek

intelligence to support the referrals from elsewhere in the agency or from any outside intelligence agency.¹⁷²

In 1998, the INS excluded three people as a result of TIPOFF watchlist hits. The State Department claimed there were 97 such exclusions or arrests. This inconsistency was due to poor INS recordkeeping and the inclusion of arrest data in State Department but not INS statistics.¹⁷³ By 2003, the ports with the largest number of TIPOFF hits corresponded to the ports through which the hijackers entered: JFK in New York, Miami, Atlanta, Dulles near Washington, D.C., Orlando, Los Angeles, Newark, Tampa, and Cincinnati. The nationalities of those excluded also corresponded to the nationalities of the hijackers—Saudi, Emirati, Egyptian, and Lebanese—though they did not constitute the greatest number of those flagged by TIPOFF.¹⁷⁴

Terrorist Watchlisting at U.S. border ports of entry



The INS Lookout Unit. The INS tried to support primary and secondary immigration inspectors in their search for terrorists through its Lookout Unit. Initially created to liaise with the State Department in order to share terrorist information with those at ports of entry, it took on more duties, which included working with the airlines to detect improper travel documents.

The Carrier Consultant Program, initiated under 1996 changes to immigration law, trained foreign airlines to recognize fraudulent documents used by those seeking admission to the United States. The purpose of the program was to prevent aliens with improper documents from boarding airplanes in the first place.¹⁷⁵ If an airline failed to detect such mala fide travelers, it was subject to fines from the INS National Fines Office.¹⁷⁶

The Lookout Unit also tried to ease the burden on primary inspectors by reviewing the incoming passenger manifests every morning and notifying the port of entry if a suspected terrorist was scheduled to arrive there.¹⁷⁷ Although Customs had access to the airline carriers' reservation system, these manifests were not required to be submitted to INS by law; most airlines provided them voluntarily, however.

Forensic Document Lab. Immigration inspectors also relied on the considerable expertise of forensic document examiners at the INS to help them detect fraudulent travel documents. Indeed, beginning in the early 1980s, the use of such documents was a growing problem. The INS responded by creating the Forensic Document Laboratory. The lab supported officers in the field, primarily immigration inspectors and benefits adjudicators, with training and manuals on legitimate and illegitimate travel and identification documents.¹⁷⁸ The laboratory was the only federal crime lab dedicated almost entirely to the forensic examination of documents, and its archives contained more than 20 years' worth of identification and travel documents.¹⁷⁹ Its extensive scientific expertise and reference library enabled the lab to provide authoritative analysis of all types of identification and travel documents— counterfeit, altered, and impostor. The lab also supported the FBI and CIA.¹⁸⁰

But in the decade prior to September 11, the Forensic Document Laboratory did not focus on terrorists. Nor did it have access to terrorist travel intelligence. Therefore, although terrorist organizations dedicated significant resources to producing and acquiring passports, visas, cachets, and secondary identification, the lab was unaware of their efforts.¹⁸¹

Office of International Affairs. The Office of International Affairs considered itself an office of international law enforcement, “a critically important, cost-effective, and integral part of the Administration’s comprehensive strategy to deter illegal immigration.”¹⁸² The INS began placing officers overseas in the 1950s; their work focused on bringing those displaced by World War II to the United States from Europe and the Pacific. As immigration law changed in the 1960s, INS overseas officers shifted into U.S. consulates, mainly to process immigrant visa and refugee applications and to troubleshoot issues arising abroad concerning U.S. citizens and their relatives. This work was focused in the Near East, Mexico, and Europe, with management responsibilities in district offices in Rome, Beijing, Mexico City, and Ottawa. Asylum applications filed domestically also were housed in the Office of International Affairs. These functions continued through September 11, 2001.¹⁸³

By the 1990s, the emphasis turned to two areas of enforcement, deterring illegal entry and combating alien smuggling. In 1995, with fewer than 100 INS employees overseas, “Operation Global Reach” was coordinated with the State Department and the Justice Department’s Office of National Security to train nearly 12,000 host-country law enforcement officials, airline personnel, and foreign consular officers to detect fraudulent travel documents. The training was aimed at intercepting alien smugglers, and it succeeded beyond anyone’s expectations. Statistics provided by the INS indicate that

there was a 5,500 percent jump in fraudulent document intercepts by INS officers and their trainees from 1994 to 1995.¹⁸⁴ Regrettably, none of the document training was intended to catch terrorists. The International Affairs Office also never developed leads or investigated cases with foreign governments or U.S. Attorneys offices for the purpose of pursuing counterterrorism cases, although they did so for alien smuggling.

Although the Lookout Units, the Forensic Document Laboratory, and the International Affairs Office were doing important work, the INS initiated but failed to bring to completion two efforts that would have provided inspectors with information relevant to counterterrorism—a proposed system to track foreign student visa compliance and a program to establish a way of tracking travelers' entry to and exit from the United States. These programs would have been substantially helpful to inspectors in accurately determining the admissibility of travelers, including the September 11 terrorists.

A system to monitor foreign student compliance. As early as 1972, the INS was concerned that some foreign students could pose a threat to national security. They were particularly worried about student sympathizers to Yasir Arafat's Palestinian terrorist organization; in 1974, INS agents found 154 students associated with the organization were in the United States.¹⁸⁵ The issue of foreign students as security risks reemerged during the 1984 Libyan crisis when intelligence indicated that Libyan leader Muammar Qadhafi might have planted assassins in the United States under student cover. Thus began the first national foreign student registration program. Libyan students were registered and fingerprinted, and regulations were put in place to "immediately terminate the studies of Libyan nationals engaged in flight training and nuclear-related education."¹⁸⁶

The INS first established a comprehensive national system to keep track of students in the late 1980s—the Student/School System—but its information was routinely out of date or lacking.¹⁸⁷ In 1994, the Department of Justice, pointing out that a key conspirator in the first World Trade Center bombing had been a student who had overstayed his visa, asked Commissioner Meissner how the INS could better track students.¹⁸⁸ The following year, an interagency task force led by a former General Accounting Office investigator recommended that the INS start over with a new system built around a biometric student identification card that could be issued at the time of the visa application and used for the duration of his or her studies in the United States.¹⁸⁹ With real-time technologies and biometrics, the task force believed that the new systems would act as a true compliance mechanism for both students and schools.¹⁹⁰ FBI Director Louis Freeh's concerns about foreign students seeking U.S. studies not necessarily being in the national security interests of the United States were also not lost on the task force. Interest in tracking students "linked to student visas" was stated as a guiding principle of the task force.¹⁹¹

In 1996, Congress required the creation of a system to track students from countries designated as state sponsors of terrorism.¹⁹² Although the deadline for the system's implementation was just two years away, Congress did not appropriate specific funds for the program.¹⁹³ The INS scraped together \$10 million in seed money and launched a successful pilot program in June 1997.¹⁹⁴ The program enrolled 21 schools of different types and sizes (including Duke, Clemson, and Auburn), technical schools, two-year community colleges, and a flight school. It was the test case for the development of a

national student tracking system and included the latest biometric smart card and scanners available.¹⁹⁵ The project drew the interest of White House Counterterrorism Coordinator Richard Clarke, who held meetings with both the INS Commissioner and its project managers.¹⁹⁶ He successfully proposed including the completion of the project in a 1998 presidential directive.¹⁹⁷ There was congressional interest as well.¹⁹⁸ By August 1998, managers of the project deemed it ready for national development.¹⁹⁹ It was considered a success.²⁰⁰

These initial successes were achieved despite the orders the program manager received in early 1998 to stop work.²⁰¹ Providing education for foreign students is a multi-billion-dollar business, and the higher education community vigorously resisted the system. They argued that the program was unduly burdensome and costly.²⁰² The 1996 law was strictly interpreted by INS management to require educational institutions, not the government, to collect the government fee that was to fund the program.²⁰³ These groups then argued that this fee-based method of funding was unfair to the schools and would deter foreign students from U.S. study.²⁰⁴ In August 1998, a senior group of policy managers at the INS decided to defer the testing of the biometric student card. Within a year, they fired the project manager over concerns that he had gone outside of his chain of command in soliciting support for the project.²⁰⁵ A new manager, unfamiliar with the project, was brought in. Progress stalled.²⁰⁶

By 2000, powerful members of the Senate were pressuring the INS to stop the fee-based funding approach, thereby jeopardizing its existence.²⁰⁷ The Senate appropriations committee chairman apparently sought repeal of the law authorizing the program.²⁰⁸ Although the law stayed on the books, there was still no congressional funding for the student tracking program, and INS management was growing increasingly reluctant to continue internal funding.²⁰⁹ Although the program's supervisor found other money to keep minimal development alive, these efforts were insufficient to complete the system.²¹⁰

Thus, when the September 11 hijackers began entering the United States in 2000 to attend flight school, there was no student tracking system available. If there had been, immigration authorities might well have been alerted to the fact that Mohamed Atta, the plan's ringleader, had made false statements about his student status and therefore could have been denied entry into the United States.

An Entry-Exit System. The INS also was unable to enforce the rules regarding the terms of admission of visitors to the United States because there was no national tracking system designed to match a person's entry with that person's exit. Inspectors were similarly unaware of whether a visitor had overstayed a previous visit.

In 1996, expressing frustration at the apparent number of overstays in the United States and the inability of INS to enforce the law, Congress took action. It passed a law requiring the attorney general to develop an automated entry-exit program to collect records on every arriving and departing visitor.²¹¹ Congress provided about \$40 million over four years to fund the development of such a system.²¹² By contrast, Congress provided nearly \$1 billion to increase the Border Patrol's presence in the Southwest in order to stem the flow of illegal immigration from Mexico.²¹³ Countering terrorist entry was not a rationale for the system.

Leaders of border communities along the Canadian and Mexican borders, where more than a million people move back and forth daily, denounced the system. They argued that it would inhibit border trade.²¹⁴ Some members of Congress, along with senior INS managers, agreed and decided to automate only the entry process.²¹⁵ Prior to September 11, even these efforts were unsuccessful.²¹⁶ Thus, while the hijackers were preparing for the planes operation in the United States, immigration authorities had no way to determine whether any of them had overstayed their visas or traveled in and out of the country. The lack of an entry-exit system was especially significant for Satam al Suqami and Nawaf al Hazmi, as we saw in chapter 2.

The INS Intelligence Unit. Further hampering the ability of the INS to track terrorists was the unfortunate state of its intelligence unit.²¹⁷ The quality of its work was considered so poor by Commissioner Meissner that she never requested the daily intelligence brief common in other federal agencies.²¹⁸ In fact, only once in her eight-year tenure did she receive a briefing on the threat posed by radical fundamentalist terrorists.²¹⁹ In her interview with us, Meissner did not recall that 1995 briefing.²²⁰ She also told us she never heard of Usama Bin Ladin until August 2001, nearly 10 months after she left the INS.²²¹

In reality, the INS operated in a virtual intelligence vacuum. The intelligence unit was wholly dependent on the CIA, the National Security Agency, the FBI, and the State Department's Intelligence and Research section for terrorist information.²²² In stark contrast, its parent, the Justice Department, routinely received intelligence information on terrorism cases and surveillance intercepts, mostly from investigations conducted from the FBI.²²³ In 1996, there were only five analysts at INS headquarters and none in the field.²²⁴ By 1998, fewer than 100 part-time intelligence officers in the field were providing the bulk of information used by the unit, but the apparent increase in personnel is misleading. All of the part-time officers were special agents whose main responsibility was enforcement of immigration law; they would also write up "intelligence" reports to forward to headquarters, but doing so was optional. Neither they nor any of the 2,000 special agents, 4,500 inspectors, and 9,000 Border Patrol agents had a mandate to report information gathered in the field back to the intelligence unit in Washington.²²⁵ Instead, the unit was dependent on reporting voluntarily forwarded by supervisors in the field, where lookouts could be posted without the knowledge of the intelligence unit.²²⁶

Indeed, the unit was unable even to regularly gather information on terrorists from its own employees assigned to work as liaisons to other government agencies. A total of 24 intelligence unit employees were assigned to Interpol (the international law enforcement agency), the CIA's Counterterrorism Center, the FBI Counterterrorism Center, and the Joint Terrorism Task Forces throughout the country. All potentially had access to counterterrorism information. The intelligence unit was not interested, and chose instead to remain focused on its primary assignment from INS leadership: alien smuggling.²²⁷

However, some of these detailees did prove valuable. For example, the INS detailee to the CIA helped streamline the declassification process for the INS so that the intelligence unit could receive intelligence from the intelligence community and make it available to

the field more quickly. He also helped create the 1980s counterterrorism training film for border inspectors, “The Threat Is Real,” and designed and implemented CIA-based counterterrorism training classes for law enforcement personnel.²²⁸

Enforcement of Immigration Law within the United States

We know that in the terrorist plots of the 1990s, terrorists exploited the U.S. immigration system to enter and stay in the United States. The public prosecutions of the conspirators in the World Trade Center and Landmark cases in the early 1990s often brought to light violations of immigration law. The INS therefore had the potential to play a significant law enforcement role in counterterrorism. Under the Immigration and Nationality Act, immigration attorneys, special agents, immigration inspectors, and Border Patrol agents were all capable of enforcing the law. However, the INS and the government institutions that controlled much of its agenda—Congress, the Justice Department and the White House—acknowledged only a small role for the agency in counterterrorism. They failed to connect the facts of terrorist exploitation of immigration border and benefits policies and the need for the INS to act to prevent terrorist abuse of the immigration system. The prevailing view was that the INS was valuable in counterterrorism only insofar as it supported the FBI in its Joint Terrorism Task Force investigations.

Nevertheless, a few midlevel INS employees took counterterrorism seriously. They often had difficulty getting things done.

The Special Agents in the Field. The first problem encountered by those concerned about terrorists was an almost complete lack of enforcement resources. Neither the White House, the Congress, the Department of Justice, nor the INS leadership ever provided the support needed for INS enforcement agents to find, detain, and remove illegal aliens, including those with terrorist associations. Throughout the 1990s, about 2,000 immigration special agents were responsible for dealing with the millions of illegal aliens and related immigration crimes in the United States.²²⁹ Because of these resource constraints, they focused on aliens involved in criminal activity.

Enforcement of U.S. immigration law violations inside the country is referred to as “interior enforcement.” It is governed by a set of extraordinarily complex laws, rules, and regulations that are adjudicated in its own administrative court system. The law and procedures governing these courts were geared toward giving the benefit of doubt to the alien. Appearance bonds were low and often not required. Aliens were granted multiple hearings, often resulting in lengthy delays. This system was easy to exploit. Because the immigration attorneys representing the INS in cases against aliens worked solely from paper files, they were often unable to properly track cases or access the necessary files to present their cases efficiently and knowledgeably. For much of the 1990s, case backlogs were considerable. Terrorists knew they could beat the system—and, as we have seen, they often did.

Recognizing the deficiencies in the system, in April 1997 Congress directed the INS to devise an interior enforcement strategy. The plan was delivered nearly two years later and

only after much congressional prodding. Meanwhile, three national counterterrorism strategies had been produced—in 1986, 1995, and 1997. They called for the addition of more JTTF positions, the creation of a robust intelligence network within the intelligence community, and acceptance of a role for the INS and its immigration authority in counterterrorism efforts.²³⁰ These recommendations were not implemented by INS senior management.

The Creation of the National Security Unit. The INS did take one important step to enhance its counterterrorism enforcement capability. In 1997, it established a National Security Unit to oversee national security work in the field, including that of the JTTF representatives. In addition, the unit produced security alerts for ports of entry and worked with the Justice Department on national security issues; this collaboration included case referrals to the newly created Alien Terrorist Removal Court, discussed below.

Here as in much of the INS, key employees worked long hours with inadequate resources.²³¹ The unit's manager produced a comprehensive strategy, which called for increased interagency cooperation on watchlisting and a more active role for enforcement in counterterrorism cases.²³² The unit began to determine which immigration laws could be used as counterterrorism tools. For instance, it sought unsuccessfully to require that the CIA complete its security checks before naturalization benefit applications were adjudicated. According to the NSU manager, these efforts were not supported by INS senior management, who believed such checks would be prohibitively time-consuming and add to an already immense backlog of applications.²³³

For the reasons discussed above, the National Security Unit relied not on the in-house Intelligence Unit but on INS personnel at the FBI and the CIA for its understanding of the terrorist threat.²³⁴ However, when Usama Bin Ladin was indicted for the August 1998 bombings of the U.S. embassies in Tanzania and Kenya, the two INS units did cooperate. Drawing on information supplied by the Justice Department, they directed inspectors in the field to be on a heightened security alert. Inspectors were also instructed to give extra scrutiny to travelers born or residing in certain Middle Eastern countries, including Saudi Arabia, Egypt, Lebanon, and the United Arab Emirates.²³⁵ These national-security-related cases came to be known within the INS as “special interest” cases.²³⁶ All of the hijackers' countries of citizenship were named in this 1998 alert.

In 2001, the National Security Unit had four staffers at headquarters, and three at the FBI, as well as about 50 INS special agent detailees at the JTTFs.²³⁷ It generally did not receive information on the heightened threat in the summer of 2001 from the INS intelligence unit, the intelligence community in general, or from the JTTFs. However, two staffers were sent to the White House on July 5 for a briefing by the CIA at the request of the Richard Clarke, but both felt that it was “over their heads.” One staffer wrote a memo noting the main points raised at the meeting, but the other apparently took no action, returning to his job as the manager of the JTTF detailees. The acting INS Commissioner never learned of the meeting or the threat.²³⁸

INS Detailees to the Joint Terrorism Task Forces. In the absence of other efforts, the Joint Terrorism Task Forces became the focus of INS counterterrorism enforcement activity. Interest in bringing INS agents into the JTTFs grew as the FBI, with INS agents' help, began investigating the conspirators in the 1993 World Trade Center bombing and revealing that they were aliens who had used travel document fraud to enter the United States and immigration benefit fraud to stay here. When a criminal case on terrorism grounds could not be brought, a charge relating to visas or admission might be available. Therefore, the FBI soon learned how important the INS could be in developing a case. An alien terrorist's immigration violation was easily proved, while the evidence relating to terrorist acts was often classified or arguably insufficient.²³⁹

The INS did not initially embrace a role in these counterterrorism investigations.²⁴⁰ In 1993, its Investigations Division asked for five positions in the newly created Joint Terrorism Task Forces. The INS did not approve this modest budget request. The highest-ranking official for field operations argued that he was "unable to concur" that INS would "benefit" from participation in the JTTFs.²⁴¹ Four years later, Investigations tried again, this time asking for 29 positions in the JTTFs. Commissioner Meissner wrote in support to the Department of Justice, citing the value of INS agents to the World Trade Center prosecutions and the agency's commitment to the JTTFs.²⁴² The Justice Department did not approve Meissner's request. Congress split the difference and added 18 positions.²⁴³

New Legal Tools against Terrorism. In 1996, the Antiterrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Act also provided new immigration enforcement tools relevant to counterterrorism. One of them was expedited removal. For the first time, border authorities were permitted to deny entry, without a hearing, to those failing to qualify for admission.²⁴⁴ This provision could be used to deny suspected terrorists the opportunity to enter the United States and stay.²⁴⁵ In the first months of 1997, 1,200 travelers a week were subject to expedited removal, mostly over the Southwest border.²⁴⁶ Despite this success, the INS never expanded expedited removal to include persons attempting to enter illegally across the expansive physical borders between ports of entry.²⁴⁷ As a result, it was not used against Gazi Ibrahim Abu Mezer, who was able to stay in the United States despite being apprehended three times for illegal entries along the Canadian border. He later became known as the "Brooklyn Bomber" for his plan to blow up the Atlantic Avenue subway in Brooklyn.²⁴⁸ The INS never did seek to expand expedited removal to illegal entries along U.S. borders.²⁴⁹

The 1996 Antiterrorism Act also created the Alien Terrorist Removal Court, expressly designed to remove alien terrorists by using classified evidence to support a terrorist allegation and by staffed by counsel possessing the security clearances necessary to review classified evidence. Although the Justice Department considered the creation of the court one of its top counterterrorism legislative priorities in the mid-1990s, the court still has never been used.²⁵⁰ Judges were appointed and rules made,²⁵¹ but by 1998, Justice attorneys in the Terrorism and Violent Crime Section had led a department review

of 50 cases for possible application to the ATRC, but they were all rejected.²⁵² Over the following two years, another 50 cases were rejected.²⁵³

A major reason for the lack of use of the ATRC was that new immigration laws permitted the use of classified evidence in traditional deportation hearings, making recourse to a special court unnecessary.²⁵⁴ Moreover, many “special interest” cases became stalled by internal Justice Department deliberations regarding sharing of information, alien rights, and sufficiency of evidence.²⁵⁵ At times, differences of opinions arose between INS Commissioner Meissner, who wanted to proceed with these cases, and the Attorney General, who resisted.²⁵⁶ Conflicts also arose between the INS, which had the expertise and legal authority to bring the cases, and the FBI, which possessed the classified information but did not always make it available to the INS. Thus cases stagnated or, in some cases, were never brought at all.²⁵⁷

A National Security Law Division was established in the INS to try to handle the procedural complexities that soon overwhelmed these terrorist cases. By 1998, a handful of the aliens affiliated with terrorist activity that were known to the INS and the Justice Department were successfully removed by the INS using both traditional immigration law and classified evidence.²⁵⁸ None was known to be affiliated with al Qaeda.

Immigration Benefits

Terrorists in the 1990s, as well as the September 11 hijackers, needed to find a way to stay in or embed themselves in the United States if their operational plans were to come to fruition. As already discussed, this could be accomplished legally by marrying an American citizen, achieving temporary worker status, or applying for asylum after entering. In many cases, the act of filing for an immigration benefit sufficed to permit the alien to remain in the country until the petition was adjudicated. Terrorists were free to conduct surveillance, coordinate operations, obtain and receive funding, go to school and learn English, make contacts in the United States, acquire necessary materials, and execute an attack.

We thus come to the third significant function of the INS relevant to the September 11 story: immigration benefits. They are a vast system of laws and regulations that control the status both of aliens within the United States and of those outside the United States who wish to come and stay in the country. Every immigration benefit has its own set of rules, regulations, and procedures. Many are complex and time-consuming to adjudicate. Some are so difficult to process that specialists must handle them. The Immigration and Nationality Act, which is in fact a miscellaneous collection of federal laws, is the controlling authority concerning aliens and the benefits available to them.

Before 9/11, immigration benefits allowed tourists, for example, to extend their length of stay or to change their immigration status from tourist to student after arriving in the United States. Visitors who married Americans could petition for legal permanent residency status. Other classes of persons who could ask for a benefit from the INS were aliens seeking permanent legal residency, immigrants wishing to be naturalized, asylum

seekers (“asylees”), and refugees.²⁵⁹ A number of terrorists discussed in chapter 3 abused the asylum system. Commissioner Meissner spent much of her time in the 1990s honing it, creating what was considered a model program that balanced humanitarian and security interests.

But the benefits process overall was vulnerable to fraud and poorly managed. Each of the five immigration benefit service centers had its own computer system. It was therefore not uncommon for one alien to have multiple benefits files, sometimes as a result of a fraudulent attempt to win approval from one office after an application was denied by another. As early as 1991, terrorists exploited this deficiency. Mir Amal Kanshi, who in 1993 fatally shot two CIA employees and wounded three others, had already legally entered the United States when he applied for legalization as an illegal alien as part of a class action lawsuit; he falsely claimed that he had entered the United States through Mexico in 1981.²⁶⁰ Mohamed and Mahmud Abouhalima, conspirators in the 1993 World Trade Center bombing, were granted green cards (i.e., legal permanent resident status) under the Special Agricultural Program (SAW) program.²⁶¹ SAW was an amnesty program created under the Immigration Reform and Control Act of 1986.²⁶² In 1999, the INS general counsel, Paul Virtue, testified before the House Judiciary Subcommittee on Immigration that amnesty programs were “subject to widespread abuse.”²⁶³

In fact, INS benefits adjudicators did not have a recognized counterterrorism role. As the INS struggled, its inability to adjudicate applications quickly or with adequate security checks made it easier for terrorists to wrongfully enter and remain in the United States throughout the 1990s.

The Border Patrol and Illegal Entry into the United States

The INS Border Patrol monitors the 9,500 miles of shared borders with Canada and Mexico that exist between ports of entry.²⁶⁴ Throughout the 1990s, the priority was to control the vast illegal immigration from Mexico along the Southwest border.²⁶⁵ About 1.6 million illegal aliens a year were being apprehended from Texas to California.²⁶⁶ In San Diego alone, there were 2,000–3,000 arrests daily. The Border Patrol clearly lacked the resources to stem the tide. In the early 1990s, they were still using manual typewriters.²⁶⁷

Nevertheless, the Border Patrol received the most attention from Congress and Attorney General Reno of any INS section.²⁶⁸ Congressionally approved budget requests between 1994 and 1998 doubled the number of agents on the Southwest, from 4,000 to 8,000. By 2000, there were 9,000 Border Patrol agents.²⁶⁹

Even after the arrests in Washington state of Abu Mezer (who was plotting to blow up the Brooklyn subway) in August 1997 and Ahmed Ressaam (the “millennium bomber”) in December 1999, the patrol’s attention remained on the Southwest border. Neither the Border Patrol, the Commissioner, nor the Justice Department considered revising its strategy to include counterterrorism initiatives. Only the White House, through Richard

Clarke, seemed interested in pursuing a more aggressive strategy on the Northwest border after Ressam's attempted entry.

While Congress and the Clinton administration required the Border Patrol's coverage along the border with Mexico to double to one agent every quarter mile by 1999, the Canadian border had only one agent for every 13.25 miles.²⁷⁰ Despite examples of terrorists' entering from Canada, awareness of terrorist activity in Canada and its more lenient immigration laws, and an Inspector General's report recommending that the Border Patrol develop a northern border strategy, the only positive step was that the number of Border Patrol agents was not cut any further.²⁷¹

The failure of the Border Patrol to make any significant efforts in counterterrorism was predictable. Because the INS's relationship with the intelligence community was minimal, any valuable information these agencies might have gleaned on migrant flows or alien smuggling did not routinely reach Border Patrol agents. They also lacked access to the terrorist watchlist databases, TIPOFF and NAILS. And lookouts with terrorist watchlist information available at border stations were not routinely used or checked by the patrol.²⁷²

Another factor hampering any unified counterterrorism effort by the Border Patrol was that it lacked a direct chain of command from its chief, based in Washington, to the field. The chief therefore had no control over the field, as well as limited input on policy and budget within the INS. As agents were rotated and the Border Patrol reacted to the ever-changing locations at which aliens attempted to enter the United States illegally, regional directors were in constant competition with each other for human and technical assistance.²⁷³

State and Local Law Enforcement Support

Both administration regulations and criminal statutes apply to immigration enforcement. The majority of alien offenders are handled through the immigration administrative court system, which consists of judges, attorneys, and immigration detention facilities.²⁷⁴ Criminal violations are handled by the U.S. Attorney's office and the federal court system.²⁷⁵ In most cases, an alien committing an administrative violation is at the same time violating federal law. The federal government deports most immigration violators from the United States rather than prosecuting them as criminal defendants.

Many state and local law enforcement agencies worked closely with federal immigration authorities before 9/11. They contacted INS when they arrested aliens on criminal charges and assisted in the investigation, arrest, and detention of illegal aliens. In return, INS special agents, with their specialized training and resources, assisted other law enforcement agencies fighting violent crime and drug trafficking.²⁷⁶ Their cooperation—and their knowledge of aliens' languages, cultures, and religions—was particularly valuable in ethnic communities. However, these state and local enforcement agencies never had access to terrorist watchlists.

Friction also existed in these relationships. It mainly arose from the INS's inability to respond to all requests for assistance, ambiguity regarding the role of state and local law officers in enforcing immigration regulations, and the discomfort many various immigrant advocacy groups had with local enforcement of immigration law. Despite these difficulties, many police officers continued officially and sometimes unofficially to work with the INS by identifying criminal aliens and turning them over to the INS. Many county officials sought to prevent criminal aliens from returning to the streets, and frequently pressured their congressional representatives to force local INS offices to deport them.

Still, the problem of getting in contact with INS enforcement persisted. While the understaffed INS investigations offices kept bankers' hours, the police operated around the clock and often needed assistance when the INS offices were closed.²⁷⁷ Many INS investigations offices did not even have a computer link to their state's Criminal Justice Information System, making it was difficult for the police simply to communicate with them.

Recognizing the problem Congress attempted to get the INS to address it. The Law Enforcement Support Center (LESC) evolved out of the 1988 antidrug law that required the INS to maintain a 24/7 hotline to identify individuals arrested as aggravated felons.²⁷⁸ The initial objective was to assist state and local law enforcement in identifying criminal aliens, to locate and prosecute criminal aliens who had been deported after being convicted of felonies, and to act as a control point for INS arrest warrants. The LESG was not established until 1994.

The center was available to all state and local law enforcement officials who encountered a suspected alien during routine police work.²⁷⁹ The LESG provided timely information regarding the status and identities of aliens suspected of, arrested for, or convicted of criminal activity, but it offered no specific information on aliens associated with terrorism.²⁸⁰

In 1996, a new law enabled the INS to enter into agreements with state and local law enforcement agencies through which the INS would provide training and the local agencies would exercise immigration enforcement authority.²⁸¹ Terrorist watchlists would not be made available to them. Such agreements were voluntary, and only Salt Lake City—unsuccessfully—attempted to take advantage of the law. Moreover, in prior years mayors of cities with large immigrant populations sometimes imposed limits on city employee cooperation with federal immigration agents.²⁸²

. . .

Prior to September 11, immigration inspectors were focused on facilitating the entry of travelers to the United States. Special agents were focused on criminal aliens and alien smuggling, and those handling immigration benefits were inundated with millions of applications. Thus, on the eve of the 9/11 attacks, the INS found itself in a state of disarray. Although a few offices were attempting to carry out counterterrorism initiatives,

their efforts were severely limited by a lack of recognition, both national and local, of the connection between border security and national security. As we will see in chapter 5, the failure to link available information with government action unwittingly facilitated the entry of the September 11 hijackers.

¹ Annual Strategic Intelligence Review for Counterterrorism, Oct. 1995, p8. Terrorist surveillance capabilities were directly linked to their ability to travel unimpeded around the world, which is why training in document forgery was a part of al Qaeda's terrorist instruction.

² Annual Strategic Intelligence Review for Counterterrorism, Apr. 1998, p. 13.

³ For example, in June 1998 a joint USG-Albanian operation acted on information that a forgery operation was producing passports, visas and other documents to support the travel of al Qaeda operatives. A raid turned up visa stamps, blank Egyptian birth certificates, and a forged passport; CIA took exemplars of all stamps. FBI CART Report, Aug. 14, 1998. In another case, the arrest of a suspected operative turned up a photo-substituted Italian passport and a British passport previously reported stolen and various other passports, photographs and identity cards, FBI CART Report, July 16, 2002.

⁴ The Terrorist Mobility Unit was created in October 2001.

⁵ Memorandum for the Record, Keith M.

⁶ Ibid.

⁷ DOS report, 1990 Report of the Visa Office, released Oct. 1991. The INS shared with State the authority for administering immigrant visa and refugee applications, inspecting all travelers arriving at ports of entry, adjudicating applications for change of status, and (through its Border Patrol component) interdicting aliens attempting to enter without inspection. INS Special Agents were responsible for enforcement of immigration laws in the interior of the United States. On an average day, INS inspectors at ports of entry collectively handled the admission to the United States of over one million individuals, 85 percent of whom entered through the land borders with Canada and Mexico. Agencies playing a lesser role in the immigration system were the Federal Bureau of Investigation (FBI), which participated in the screening of visa applicants for certain domestic national security-related concerns; the CIA and other intelligence agencies, which participated in screening visa applicants for counter-intelligence and counterterrorism concerns and which participated in overseas anti-smuggling efforts, and the Coast Guard, which addressed significant episodes of migration by sea.

⁸ U.S. House of Representatives Committee on Government Reform transcript, "Telephone Interview of Consular Officer 1," Aug. 1, 2002 (Consular officer in Saudi Arabia discussing visa policy as supportive of other U.S. policy goals in the country).

⁹ DOS report, Bureau of Consular Affairs, "1990 Report of the Visa Office," Oct. 1991.

¹⁰ Ibid.

¹¹ Ibid.

¹² INA § 221(h), "Nothing in this Act shall be construed to entitle any alien, to whom a visa or other documentation has been issued, to be admitted [to] the United States, if, upon arrival at a port of entry in the United States, he is found to be inadmissible under this Act, or any other provision of law."

¹³ Immigration officers today work within the Department of Homeland Security.

¹⁴ In fiscal year 2001, approximately 175 million U.S. citizens were inspected at U.S. ports of entry.

¹⁵ 22 C.F.R. § 53.2(b). According to the Department of Homeland Security, Bureau of Customs and Border Protection, a U.S. citizen entering from Canada "may use" a certified copy of their birth certificate to reenter the United States under this regulation. However, the regulation itself contains no such requirement.

¹⁶ 22 C.F.R. § 41.2(a).

¹⁷ The Immigration Reform and Control Act of 1986 (P.L. 99-603) created the Visa Waiver Program as a pilot. It became a permanent program in 2000 under the Visa Waiver Permanent Program Act (P.L. 106-396, Oct. 30, 2000). The countries in the program at the time of the September 11 attacks were: Andorra, Austria, Australia, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan,

Liechtenstein, Luxembourg, Monaco, The Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, United Kingdom, and Uruguay.

¹⁸ GAO report, “Implications of Eliminating the Visa Waiver Program,” GAO-03-38, Nov. 2002.

¹⁹ DOS report, Bureau of Consular Affairs, “2000 Report of the Visa Office,” June 2002.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ In addition, Zacarias Moussaoui, an al Qaeda operative suspected of being primed as a possible pilot in the 9/11 plot, entered the United States February 23, 2001, from London England using a French, “visa waiver” passport. He overstayed his term of admission under that program, and was arrested by the INS for this immigration violation on August 16, 2001.

²⁴ DOS report, Bureau of Consular Affairs, “2000 Report of the Visa Office,” June 2002.

²⁵ Mary Ryan interview (Sept. 29, 2003).

²⁶ The 1952 Immigration and Nationality Act (P.L. 82-414; 8 U.S.C. Sec. 1101 et seq.) has been amended several times since 1952, more recently by the Immigration Act of 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), the USA PATRIOT Act of 2001 (P.L. 107-56), the Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173), and the Homeland Security Act of 2002 (P.L. 107-296).

²⁷ Before 9/11, neither the Office of the Secretary of Homeland Security nor the Department of Homeland Security existed. Under the Homeland Security Act, the INS was transferred to the Department of Homeland Security (Section 402), and control over the policy governing the issuance and denial of visas to enter the United States was also transferred to DHS (Section 403).

²⁸ INA section 101(a)(3).

²⁹ See Immigration and Nationality Act of 1952, as Amended; Title 8 Code of Federal Regulations—Aliens and Nationality; Title 22 Code of Federal Regulations—State Department (Parts 40-53). 22 CFR Sections 41.103 (Filing an Application and Form OF-156), 41.104 (Passport requirements), 41.105 (Supporting documents and fingerprinting).

³⁰ The assistant secretary for consular affairs reports to the under secretary of state for management, who, in turn, reports to the deputy secretary of state. Richard Moose interview (Jan. 14, 2004).

³¹ See, e.g., *Centeno v. Schultz*, 817 F.2d 1212 (5th Cir. 1987), *cert. denied*, 484 U.S. 1005 (1988).

³² Before this time, a name check was mandatory but it was performed with a number of systems, including scanning microfiche for the names of potential terrorists. This weakness in the name-check system was laid bare in the Blind Sheik episode, referred to in chapter 3, and was corrected by the mid-1990s.

³³ 22 C.F.R. §41.121(a)–(c).

³⁴ 22 CFR § 41.121(d).

³⁵ INA § 222e, 22 CFR § 41.102.

³⁶ This aspect of State Department policy is described in the next chapter.

³⁷ DOS report, Bureau of Consular Affairs, “2000 Report of the Visa Office,” June 2002.

³⁸ 8 U.S.C. § 1184 (2002).

³⁹ DOS Office of Inspector General report, “Review of Nonimmigrant Visa Issuance Policy and Procedures,” Dec. 2002.

⁴⁰ DOS report, Bureau of Consular Affairs, “2000 Report of the Visa Office,” June 2002.

⁴¹ The statutory language reads: “No visa or other documentation shall be issued to an alien if (1) it appears to the consular officer, from statements in the application, or in the papers submitted therewith, that such alien is ineligible to receive a visa or such other documentation under section 212, or any other provision of law, (2) the application fails to comply with the provisions of this Act, or the regulations issued thereunder, or (3) the consular officer knows or has reason to believe that such alien is ineligible to receive a visa or such other documentation under section 212, or any other provision of law.”

⁴² A denial under 221(g) was considered a “soft” refusal because the applicant could overcome the denial and obtain a visa fairly easily by reapplying with the necessary documentation. Hanjour did this and acquired his student visa on September 25, 2000. By contrast, a 214(b) refusal was considered a “hard” refusal: it was much more difficult to overcome and had far more lasting consequences. In the pre-9/11 era, many posts used section 221(g) as a workload-processing tool. They would deny a visa application using 221(g) by sending a letter to the applicant and without interviewing the applicant. If the applicant persisted

and was unable to overcome this initial denial—after a personal interview—then they would deny the applicant under 214(b).

⁴³ *Terrorist activity* means any of the following acts if illegal where committed or unlawful in the United States: (1) the hijacking or sabotage of any conveyance (regardless of type); (2) the seizing or detaining, and the threat to kill, injure, or continue to detain, any person in order to compel an action by a third party as a condition for releasing the detained individual; (3) a violent attack on an internationally protected person or on his or her liberty; (4) an assassination; (5) the use of any biological or chemical agent, nuclear weapon or device, or explosive or firearm (other than for mere personal monetary gain) to endanger the safety of another individual or to cause substantial property damage; or (6) a threat, attempt, or conspiracy to commit any of the above actions. INA § 212(a)(3)(B); 9 FAM 40.32 (note N2.1).

⁴⁴ Under the INA, such acts include (1) preparing or planning a terrorist activity, (2) gathering information on potential targets for terrorist activity, (3) providing any type of material support to any individual or entity that the alien knows or has reason to believe has committed or plans to commit a terrorist act, (4) soliciting funds or other things of value for terrorist activity or for any terrorist organization, and (5) recruiting any individual to engage in terrorist activity for membership in any terrorist organization or government. INA § 212(a)(3)(B); 9 FAM § 40.32 (Note N2.2).

⁴⁵ Section 601 of the Immigration Act of 1990 (P.L. 101-649). This Section amended and renumbered the grounds for immigrant and non-immigrant visa refusal under section 212(a) of the INA, effective June 1, 1991.

⁴⁶ INA § 212(a)(27).

⁴⁷ Below are the number of aliens found ineligible for a non-immigrant visa on grounds of terrorism for the fiscal years 1992, when the grounds for denial explicitly included terrorism, through 2001.

<u>Year</u>	<u># Ineligible on Terrorism Grounds</u>	<u>Year</u>	<u># Ineligible on Terrorism Grounds</u>
1992	28	1997	35
1993	73	1998	63
1994	38	1999	101
1995	79	2000	99
1996	41	2001	83

⁴⁸ DOS memo, “Machine Readable Visa Program,” Mar. 9, 1990. Although the machine-readable visa (MRV) took State officials an additional one minute and 48 seconds to process, the MRV program helped State to resolve problems stemming from internal control weaknesses in the visa issuance process and the physical weakness of the then-current U.S. visa. *Ibid.* These weaknesses included inaccurate counting of visas issued by the old Burroughs visa-issuing machines, relative ease of counterfeiting the old visa, and a lack of biographical data included in the old visa. *Ibid.*

⁴⁹ Other bureaus who work closely with CA in fulfilling its mission are the Bureau of Diplomatic Security, the Bureau of Intelligence and Research (INR), and the various regional bureaus within whose regions consular officers work.

⁵⁰ Mary Ryan interview (Oct. 9, 2003).

⁵¹ DOS record, “History of the Department of State During the Clinton Presidency (1993-2001),” Chapter 9, The Consular Function, www.state.gov/r/pa/ho/pubs.

⁵² DOS Congressional Presentation Document, Fiscal Year 2003, Bureau of Consular Affairs “Strategic Goals,” Oct. 31, 2000, p. 369.

⁵³ INA § 222 (h) states, “**Nonadmission upon arrival.** Nothing in this Act shall be construed to entitle any alien, to whom a visa or other documentation has been issued, to be admitted [to] the United States, if, upon arrival at a port of entry in the United States, he is found to be inadmissible under this Act, or any other provision of law. The substance of this subsection shall appear upon every visa application.”

⁵⁴ By July 2001, INS officials were posted at approximately 40 of the 230 visa-issuing posts.

⁵⁵ As discussed later, State and INS did cooperate on the creation and operation of the terrorist watch list. Beginning in 1991, State provided the INS with a subset of the information in its TIPOFF watch list which the INS used to scan visitors at ports of entry. This was a subset because TIPOFF included information on potential terrorists that was not specific enough to use when screening passengers quickly at a port of entry. For example, TIPOFF might include a data file on an Egyptian terrorist named “Ahmad” reported to have participated in a meeting of other terrorists at a certain date and time. This information, while important to

keep and build upon, almost certainly would not be sufficient to justify an INS decision to stop all Egyptians using the name “Ahmad” attempting to enter the United States upon suspicion of involvement in terrorism unless extraordinary circumstances warranted.

⁵⁶ DOS record, “History of the Department of State During the Clinton Presidency (1993-2001),” Chapter 17, Personnel and Professional Development, www.state.gov/r/pa/ho/pubs.

⁵⁷ Richard Moose interview (Jan. 14, 2004).

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ DOS record, “Program Performance Report FY 2001,” at www.state.gov/m/rm/rls/perfpt/2001/pdf.

⁶¹ Richard Moose interview (Jan. 14, 2004).

⁶² The Inman Commission’s recommendations in June 1985 continue to be the standards for the State Department’s overseas security measures to this date. Congressional Research Service Report for Congress, “Embassy Security: Background, Funding and the Budget,” updated Oct. 4, 2001.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ It recommended spending in three basic categories: (1) enhancement of work place security, (2) improvement of crisis management systems and procedure, and (3) improvement of intelligence and information sharing and assessment. “Embassy Security: Background, Funding and the Budget,” Congressional Research Service Report for Congress, updated October 4, 2001. State’s Bureau of Diplomatic Security proposed a Global Security Enhancement Strategy to improve security at all U.S. embassies, especially those formerly considered “low risk.” DOS record, “History of the Department of State During the Clinton Presidency (1993-2001),” Chapter 3, Security Policies, www.state.gov/r/pa/ho/pubs.

⁶⁶ During this same time period, State also increased funding from machine-readable visa (MRV) fees to the Diplomatic Security (DS) section for increased personnel, antiterrorism and crime programs, and visa fraud investigations. “Embassy Security: Background, Funding and the Budget,” Congressional Research Service Report for Congress, updated October 4, 2001. MRV funding of DS increased from \$13.3 million in FY 1997 to \$18.5 million in FY 2001.

⁶⁷ DOS record, “History of the Department of State During the Clinton Presidency (1993-2001),” Chapter 17, Personnel and Professional Development, www.state.gov/r/pa/ho/pubs.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ It was not until fiscal year 2001, that State began to hire above the attrition rate. See DOS record, “Program Performance Report FY 2001,” at www.state.gov/m/rm/rls/perfpt/2001/pdf (“After years of downsizing, we began to hire above attrition in FY [Fiscal Year] ‘01”).

⁷² It was not until fiscal year 2001, that State began to hire above the attrition rate. Mary Ryan interview (Sept. 29, 2003).

⁷³ Because of the Visa Waiver Program, nonimmigrant visa demand shrank from a high of 8,769,709 visas issued in 1988 to a low of 5,359,620 visas issued in 1993. After 1993, nonimmigrant visa demand rose again through the 9/11 terrorist attacks. In FY 2001, State issued 10,569,194 nonimmigrant visas.

⁷⁴ The Immigration Reform and Control Act of 1986 (P.L. 99-603) created the Visa Waiver Program as a pilot in 1986. It became a permanent program in 2000 under the Visa Waiver Permanent Program Act (P.L. 106-396, October 30, 2000). Persons traveling to the United States for other purposes, for example to study or work, are required to have a visa.

⁷⁵ The Departments of State and Justice also evaluate the country’s political and economic stability. DOS memo, “Creating a Permanent Visa Waiver Program,” Mar. 15, 1990, listing the four criteria for inclusion as 1) average visa refusal rate of 2% or less in the previous two fiscal years, 2) visa refusal rate of no more than 2.5% in each of those years, 3) reciprocal waiver of visa requirements for U.S. citizens, 4) no detriment to U.S. national security, and 5) a program to develop a machine-readable passport. Based on the first two of these criteria, Saudi Arabia, Kuwait, the United Arab Emirates, Bahrain, and Qatar all qualified for inclusion in the visa waiver program. DOS letter, Eagleburger to Thornburgh, Jan. 28, 1991, with attachment stating “Countries meeting the statistical criterion whose inclusion in the VWPP is not recommended: Saudi Arabia,” and stating as the reason: “The government does not extend reciprocal visa

waiver privileges to American nationals. We do not believe it would be useful to again approach them on this matter.”

⁷⁶ 8 U.S.C. § 217(c)(1) (1986).

⁷⁷ DOS memo, “Continuation of a Nonimmigrant Visa Waiver Program,” Jan. 11, 1990; DOS memo, “Creating a Permanent Visa Waiver Program,” Mar. 15, 1990.

⁷⁸ DOS memo, “NIV Waiver Pilot Program,” Jan. 20, 1988. However, State believed there would be very few permanent position savings. Rather, the savings would come from not having to hire employees in the future to handle projected increases in demand for nonimmigrant visas from the affected countries. Initially, the Justice Department, at the urging of the INS -- and based on security concerns -- sought to require any potential participating country to “consent to the presence of an INS pre-inspection operation at that country’s principal international airport,” DOS memo, “Implementation of the NIV Waiver Pilot Program,” Dec. 11, 1987. However, this desire was quelled by the substantial objections of the State Department, which feared such an expansion of U.S. personnel abroad would result in demand for increased resources, raise host country sovereignty concerns, and prove infeasible because of “airport facility constraints.” Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ DOJ memo for William Bradford Reynolds, Aug. 8, 1987.

⁸² DOS memo, “The nonimmigrant Visa Waiver Pilot Program, July 28, 1988.

⁸³ DOS memo, “Continuation of a Nonimmigrant Visa Waiver Program, Jan. 11, 1990.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Because of the Visa Waiver Program, nonimmigrant visa demand shrank from a high of 8,769,709 visas issued in 1988 to a low of 5,359,620 visas issued in 1993. After 1993, nonimmigrant visa demand rose again through the 9/11 terrorist attacks. In FY 2001, State issued 10,569,194 nonimmigrant visas. DOS congressional presentation document, Bureau of Consular Affairs “Strategic Goals,” Oct. 31, 2000 (“Most visas now issued at high visa risk posts.”)

⁸⁷ Ibid.

⁸⁸ DOS memo, “Creating a Permanent Visa Waiver Program,” Mar. 15, 1990; DOS memo, “Draft Report to Congress on the Visa Waiver Pilot Program,” Apr. 6, 1990.

¹⁰² Mary Ryan interview (Oct. 9, 2003).

¹⁰³ Not all U.S. diplomatic posts issue visas.

¹⁰⁴ DOS record, Presentation to the Consular Systems Information Resources Management Program Board, Apr. 25, 1995. The MRV was mandated by the Anti-Drug Abuse Act of September 1988, and installation began in September 1989 in Santo Domingo, Dominican Republic. Although the MRV took an additional one minute and 48 seconds to process, the MRV program helped State to resolve problems stemming from internal control weaknesses in the visa issuance process and the physical weakness of the then-current U.S. visa. These weaknesses included inaccurate counting of visas issued by the old Burroughs visa-issuing machines, relative ease of counterfeiting the old visa, and a lack of biographical data included in the old visa. Ibid. State also developed a Machine Readable Passport at the same time, pursuant to the same Act. DOS memo, “Machine Readable Visa Program,” Mar. 9, 1990.

¹⁰⁵ GAO report, “Passports and Visa: Status of Efforts to Reduce Fraud,” GAO/NSIAD-96-99, May 1996.

¹⁰⁶ DOS record, Presentation to the Consular Systems Information Resources Management Program Board, Apr. 25, 1995. By February 1993—when the World Trade Center was bombed—104 posts were on the real-time network, 17 used the distributed name check system, and 111 posts were still relying on microfiche to perform name checks. In general, posts in the so-called “first world” were more automated, while posts in remote and undeveloped locations tended to be the ones using the more archaic technology.

¹⁰⁷ Chaired by State and funded by the Defense Department.

¹⁰⁸ The TIPOFF database was searchable using a sophisticated language algorithm that allowed a searcher to identify multiple variations on a name, for example, transliterated from Arabic to English. For example, the Blind Sheik, Sheik Omar Ali Abdal Rahman would produce 486 “hits” in State’s name check system. DOS record, Presentation to the Consular Systems Information Resources Management Program Board, Apr. 25, 1995.

¹⁰⁹ The agreement with Canada, while signed by the State Department, required a separate memorandum of agreement among the intelligence community members in which they agreed to supply their TIPOFF data with Canada.

¹¹⁰ DOS record, TIPOFF power point presentation, “History of the Visas Viper Program,” Nov. 1, 2003.

¹¹¹ The criteria for inclusion were that there was reasonable suspicion that the subject has or might engage in terrorism, and that there was sufficient biographic data for positive identification of the individual. Ibid.

¹¹² GAO report, “Passports and Visa: Status of Efforts to Reduce Fraud,” GAO/NSIAD-96-99, May 1996.

¹¹³ Following the 9/11 attacks, CA Assistant Secretary Mary Ryan met with CIA Director George Tenet, and expressed her frustration with the CIA’s failure to provide State with the names of two 9/11 hijackers: Khalid al Mihdhar and Nawaf al Hazmi, whose names were in the possession of the CIA as early as January 2000. In the wake of the 9/11 attacks and this meeting between Ryan and Tenet, Visas Viper experienced a “dramatic” increase in submissions. Mary Ryan interview (Sept. 29, 2003).

¹¹⁴ On April 30, 1994, President Clinton signed the Foreign Relations Authorization Act, which authorized the Secretary of State to charge and retain a fee for processing MRVs. P.L. 103-236 (1994).

¹¹⁵ History of the Department of State during the Clinton Presidency (1993-2001), Chapter 9, The Consular Function.

¹¹⁶ DOS record, Supplementary Information provided in connection with interview of Travis Farris, Nov. 26, 2003. A Hispanic algorithm was implemented beginning in September 2002. Ibid.

¹¹⁷ Travis Farris interview (Sept. 29, 2003).

¹¹⁸ DOS record, Supplementary Information provided in connection with interview of Travis Farris, Nov. 26, 2003.

¹¹⁹ Ibid.

¹²⁰ GAO report, “Border Security: Visa Process Should be Strengthened as an Antiterrorism Tool,” GAO-03-132NI, Oct. 2002.

¹²¹ Mary Ryan interview (Sept. 29, 2003). According to the State Department, each post received a single hard copy of the *Best Practices Handbook* (an edition dated February 19980, which included a series of 14 cables. Over time, additional cables were added to the *Handbook* by posting them to the Consular Affairs Web site. The last cable (No. 49) was dated April 1999. DOS record, Consular Best Practices Handbook, 2000 edition.

¹²² General Accounting Office, “Border Security: Visa Process Should be Strengthened as an Antiterrorism Tool,” GAO-03-132NI, Oct. 2002.

¹²³ Ibid.

¹²⁴ DOS record, “History of the Department of State During the Clinton Presidency (1993-2001),” Chapter 9, The Consular Function.

¹²⁵ Ibid.

¹²⁶ GAO report, “Border Security: Visa Process Should be Strengthened as an Antiterrorism Tool,” GAO-03-132NI, Oct. 2002; Mary Ryan interview (Sept. 29, 2003)(“They were telling us they were burned out.”)

¹²⁷ See DOS record, Consular Best Practices Handbook, 2000 edition, Section 1.1 Overview which states “One reason best practices have been developed in consular work is to help those sections with growing workloads and static resources to ‘get the job done.’”

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ DOS record, Consular Best Practices Handbook, 2000 edition, Cable No. 6: The Context for Best Practices, Oct. 1997.

¹³¹ Ibid.

¹³² Cable No. 6: The Context for Best Practices, State 185823, October 1997; RDOS03004151.

¹³³ Id. at p.2, Letter of Assistant Secretary Mary Ryan introducing the *Handbook* addressed “Dear Consular Colleagues.”

¹³⁴ As of March 1, 2003, the Immigration and Naturalization Service (INS) was reorganized, renamed and removed from the Justice Department and housed in the Department of Homeland Security.

¹³⁵ The Naturalization Act of 1790 was the first immigration law passed that set federal standards for naturalization, permitting citizenship within two years of residency. Article 1, section 8, clause 3 of the Constitution gives Congress the power to “regulate commerce with foreign nations, and among the several states and with the Indian tribes.”

¹³⁶ By Acts passed Aug. 3, 1882, 47 Cong. Chap. 376, §§ 2, 3; 22 Stat. 214, and Feb. 23, 1887, 49 Cong. Chap. 220, 24 Stat. 415, charging the Secretary of the Treasury with “supervision over the business of immigration to the United States.” States were required to process, deny entry, and care for passengers arriving within their state from abroad.

¹³⁷ By Acts passed March 3, 1891, 51 Cong. chap. 551, § 7 and March 2, 1895, 53 Cong. Chap. 177.

¹³⁸ By Act passed March 3, 1891. This act set out some of the basic parameters of federal immigration authority, including the list of persons to be excluded from entry, see § 1; the discretion of border inspectors to determine admissibility; the requirement that incoming vessels provide lists of incoming passengers including the “name, nationality, last residence, and destination of every such alien, before any of them have landed” and for pre-landing inspections by U.S. border officials; the authority to remove “unlawful” aliens and create rules to facilitate travel over the land borders, see § 8.

¹³⁹ In 1895, the Bureau of Immigration was created and placed under the Secretary of the Treasury. In 1903, the bureau moved to the newly created Department of Commerce and Labor, taking the name the Bureau of Immigration and Naturalization in 1906. When the Department of Labor was created in 1913, the bureau moved with it. In 1933, these functions were consolidated to form the Immigration and Naturalization Service under a commissioner. In 1940, the Service was transferred to the Department of Justice where it remained until March 2003. See “History of Immigration and Naturalization Agencies,” 8 U.S.C. § 1551. In addition, there are at least 150 statutes providing the legislative history of immigration.

¹⁴⁰ An example of the interdependence of the enforcement and services sectors of INS is a 1984 memo addressing the priorities of INS interior enforcement: “More broadly, interior enforcement capabilities were to have a significant effect on the deterrence of illegal immigration through the prosecution of fraud facilitators, removal of criminal aliens, reduction of employment opportunities for illegal aliens and prevention of alien access to entitlement benefits.” INS memo, “Control of Nonimmigrant Students” Dec. 13, 1984.

¹⁴¹ George Regan interview (Oct. 21, 2003), former Assistant Commissioner for Intelligence (1989–Nov. 1996) and subsequently Acting Associate Commissioner for Enforcement through Aug. 1997.

¹⁴² INS records, INS organizational charts signed by Attorney General Reno, 1998 and 2000.

¹⁴³ Mary Ann Wyrsh interview (Oct. 10, 2003), Deputy Commissioner, March 1998–October 2000 and Acting Commissioner, November 2000–March 2001.

¹⁴⁴ Jamie Gorelick interview (Jan. 13, 2004); Eric Holder interview (Jan. 28, 2004). Budget and national security issues pertaining to the INS were handled out of separate offices at main Justice, including the Terrorism and Violent Crime Section, the Office of Immigration Litigation, and the Justice Management Division.

¹⁴⁵ When James Ziglar became INS Commissioner on Aug. 4, 2001, he found an agency he described as severely lacking enforcement agents- he estimated that to address the illegal population in the United States, INS would need 46,000 agents as opposed to the 2,000 of the previous decade, see Ziglar power point to Attorney General Ashcroft, Nov. 2001. In addition, Ziglar also noted that technology development had been ad hoc, and there were no systems interconnecting INS. Development of a technology platform became a priority. James Ziglar interview, Nov. 14, 2003.

¹⁴⁶ Doris Meissner interview (Nov. 25, 2003); DOJ records, INS Weekly agendas 1997–1998; Janet Reno interview (Dec. 16, 2003); Jamie Gorelick interview (Jan. 13, 2004); Eric Holder interview (Jan. 28, 2004). For example, when the White House Counterterrorism Security Group sought INS information on special interest cases and student tracking, or when FBI director Louis Freeh sought help from Deputy Attorney General Gorelick on the same subject.

¹⁴⁷ She had previously served as an Acting INS Commissioner.

¹⁴⁸ Gustavo de la Vina interview (Nov. 19, 2003).

¹⁴⁹ Doris Meissner interview (Nov. 25, 2003).

¹⁵⁰ House Appropriations Committee Report 105-636 (1999) and Congressional Appropriations Conference Reports (1996–1998).

¹⁵¹ See Dan Cadman interview (Oct. 7, 2003), of the INS National Security Unit; Bill West interview (Oct. 3, 2003), INS supervisory special agent in South Florida; Harvey Adler interview (Apr. 16, 2004), INS detailee to the CIA; George Regan interview (Oct. 21, 2004), of the INS Intelligence Unit; Laura Baxter interview (Feb. 26, 2004), of the INS National Security Law Unit; Sarah Kendall (Mar. 15, 2004), of the INS National Security Law Unit; Tim Goyer interview (Oct. 1, 2003), of the INS Lookout Unit, which also discusses the TIPOFF liaison, Bob Neighbors of the INS Lookout Unit; Greg Bednarz interview (Oct. 9,

2003), an Acting Assistant Commissioner for INS investigations policy and budget); Morrie Berez interview (Oct. 2, 2003), of the INS Student Tracking Task Force and its first coordinator.

¹⁵² The 9/11 hijackers only used international airports to gain entry to the United States.

¹⁵³ Customs and Border Protection (CBP) power point record, Sept. 12, 2003, stating the legacy INS mission.

¹⁵⁴ Zacarias Moussaoui, an al Qaeda operative suspected of being primed as a possible pilot in the 9/11 operation, used a French, “visa waiver” passport to come into the United States and attend flight school.

¹⁵⁵ Although visitors from a Visa Waiver country could only stay in the United States for 90 days, they were not required to show a return airplane ticket out of the United States valid within those 90 days. Rather, the ticket could be valid for up to one year.

¹⁵⁶ At the international airports the immigration inspectors worked the immigration lines, determining aliens’ admissibility, prior to a selective review of the luggage and currency accompanying those same aliens by the Customs Service. At many land border ports of entry INS and Customs officials worked in tandem processing U.S. citizens and aliens. On the northern border, this included 86 land ports of entry and 124 crossings, which were smaller stations with limited working hours. On the southern border it included 24 land border ports of entry and 43 crossings.

¹⁵⁷ INA § 286. INS News, October, 1997, *Service Reaching 45-Minute Flight Inspection Goal*, “The Service is close to reaching the 45-minute flight-inspection time mandated by Congress in Section 286 of the INA on most flights...” See also 8 USCS § 1752, which altered the law, requiring adequate staffing so as not “compromise the safety and security of the United States.” To put the atmosphere in which the inspectors worked in context, in 2001, 90 percent of aliens entering the United States were visitors for pleasure (tourists). Total nonimmigrant visitors in 2000 were over 30 million, nearly a doubling in entries from the 17 million in 1995, see *Annual INS Statistical Report*, 2001.

¹⁵⁸ Many of the inspectors interviewed by the Commission complained these lights were often broken. Inspectors had the option of conducting an “Accelerated Citizen Examination” of U.S. citizens, called “ACE,” consisting only of a document check but not a watchlist name check. The watchlist also contained information on lost or stolen passports. The INS was wholly dependent for this information on the State Department and the intelligence community. Prior to 2004, the real-time Interpol database of lost and stolen passport numbers was not available to immigration inspectors. On details of how travelers are processed at airports of entry, see JFK International briefing (July 28, 2003); Dulles International site visit (Feb. 27, 2004). See also Commission work product, *Results of interviews of border inspectors with 9/11 hijacker contacts: Answers regarding Primary Inspections prior to 9/11*, May 20, 2004.

¹⁵⁹ If the traveler was a hit on any of the watchlists, specific instructions appeared on the computer monitor visible only to the inspector. Instructions varied depending on the type of record. An outstanding arrest warrant could result in an immediate arrest. On the other hand, the inspector could be told to admit the individual for operational reasons, such as to gather intelligence on the individual’s contacts and activities while in the United States.

¹⁶⁰ “Pocket litter” consists of paper, documents, receipts, photos, etc. carried on the person or in the baggage of the traveler.

¹⁶¹ A translator and IDENT were used to screen Kahtani. The photographing and fingerprinting of Kahtani on August 4, 2001, at Orlando International Airport would later help federal authorities identify him as the same individual captured in Afghanistan subsequent to September 11.

¹⁶² The State Department was consistently responsive to TIPOFF hits at ports of entry, according to the INS Lookout Unit manager.

¹⁶³ Prior to September 11, the FBI-led Joint Terrorism Task Forces, which usually had INS detailees, would be called in occasionally on watchlist hits. On these occasions, sometimes the JTTFs would show up at the port for more information or to interview the individual.

¹⁶⁴ Danny Chu interview (May 28, 2003).

¹⁶⁵ INS Commissioner Meissner responded to the 1993 World Trade Center bombing by providing funds to the State Department’s Consular Affairs bureau to automate its paper terrorist watchlist, known as TIPOFF, for use by consular and border inspectors. (Meissner MFR)

¹⁶⁶ Commission work product, *Results of interviews of border inspectors with 9/11 hijacker contacts: Answers regarding Primary Inspections prior to 9/11*, May 20, 2004.

¹⁶⁷ Only one inspector out of 26 interviewed had heard of TIPOFF prior to September 11.

¹⁶⁸ This agreement gave only the INS, not Customs, the authority to deny entry to visitors reasonably suspected of terrorist activity.

¹⁶⁹ The standard of “reasonable suspicion” was taken from a confidential task force report written in the early 1980s. The report suggested a border watchlist be created to improve national security. The task force suggested that the watchlist database hold names of those who may seek admission for criminal purposes. The reasoning was that since the database only compiled names of those who may seek admission, the higher standard of excludability need not be met.

¹⁷⁰ According to the INS Lookout Unit manager, beginning in 1997, the INS would receive new TIPOFF referrals for entry into the INS database in weekly batches on a compact disc, along with supporting intelligence. The six person staff of the INS Lookout Unit would then review the materials for entry into the lookout database, NAILS, which was available to primary inspectors at ports of entry.

¹⁷¹ Tim Goyer interview (Oct. 2, 2003).

¹⁷² Ibid.

¹⁷³ The initial hits totaled 327 at all U.S. ports of entry out of a total 40,000 records, but many of these were mismatches or lacking sufficient information to deny entry. These numbers do not contain terrorist exclusions that were based on reasons other than terrorism, such as Kahtani, who, as we shall see, was excluded for suspicious behavior. DOS report, DOS power point presentation, 1998.

¹⁷⁴ Ibid. Total TIPOFF exclusions included 36 Saudis, 53 Egyptians, 125 Lebanese, and 1 Emirati. The largest number of exclusions came from the United Kingdom, a visa waiver country, with 328.

¹⁷⁵ The program operated out of Rome, Italy; Jakarta, Indonesia; Thailand, and countries in Europe. The INS Forensic Document Lab provided expert advice in training carriers on the most common types of fraudulent travel documents. Taxes applied to airline tickets helped pay for the program. Airlines selected for the program were those who tended to bring a higher quantity of improperly documented, and thus inadmissible, aliens to the United States. Tim Goyer interview (Oct.2, 2003).

¹⁷⁶ In 2000 Saudia, the Saudi airline, requested training due to its concern about improperly documented non-Saudis traveling on their airline. Saudi Arabia was a popular transit point for travel in the Middle East. Neither the State Department, nor INS, nor Saudia expressed concern about Saudi nationals themselves or the possibility that they might carry fraudulent documents. Only one 9/11 hijacker used Saudia airlines on a return flight through JFK International Airport on July 4, 2001. Tim Goyer interview (Oct. 2, 2003).

¹⁷⁷ Passenger Analytic Units (PAUs) used inspector expertise at large airports of entry to replicate the work of the Lookout Unit, which also conducted checks on selected flights prior to their arrival at ports of entry. The purpose of the PAUs was to prepare for travelers identified through lookouts that were arriving on an incoming flight. This included information gathering, paperwork, and escorting the traveler directly from the plane to the secondary inspection area.

¹⁷⁸ What started out as a handful of experts grew to approximately 20 experts by September 11, including five fingerprint specialists, twelve document examiners, and a half dozen intelligence analysts producing fraud alerts for the field. Forensic Document Lab briefing (July 18, 2003).

¹⁷⁹ Forensic Document Laboratory briefing (July 18, 2003). DHS document, “Tripwire,” Dec.2003.

¹⁸⁰ Forensic Document Laboratory briefing (July 18, 2003).

¹⁸¹ When the Forensic Document Laboratory was asked to analyze the surviving hijacker travel documents, they did not note the fraudulent stamps now associated with al Qaeda. See INS reports, Forensic Document Lab analyses of passports of Satam al Suqami and Abdul Aziz al Omari, Nov. 2, 2001 and Sept. 19, 2001.

¹⁸² Testimony of Phyllis Coven, INS Director, Office of International Affairs, before the House Appropriations Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies, May 1, 1996.

¹⁸³ Dan Cadman interview (Nov. 21, 2003).

¹⁸⁴ Testimony of Phyllis Coven, INS Director, Office of International Affairs, before the House Appropriations Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies, May 1, 1996.

¹⁸⁵ INS memo, Investigations Assistant Commissioner to Deputy Commissioner, “Discontinuance of Arab Nonimmigrant Overstay Program,” May 21, 1974.

¹⁸⁶ INS memo, Enforcement Associate Commissioner to Regional Commissioners, Sept. 26, 1994; INS memo, Deputy Commissioner Chris Sales to Special Assistant to the Deputy Attorney General Amy Jeffress, “Policy Instructions regarding Locating and Processing Certain Libyan Students in the United States,” July 11, 1983.

¹⁸⁷ On the quality of this student/school compliance database, see Morrie Berez interview (Oct. 2, 2003).

¹⁸⁸ Memorandum from FBI Director Louis Freeh to Deputy Attorney General Jamie Gorelick, "Improving DOJ's law enforcement capabilities re: aliens entry and departures from the U.S.," ("Status Report on Foreign Student Controls Task Force," (September 26, 1995) see also DOJ memo, Meissner to Gorelick, "Immigration Controls on Foreign Students," May 11 1995, stating that a "top-down review of the current process of scrutinizing, admitting, and monitoring foreign students in the United States, and assessing risks and vulnerabilities relative to issues of security." The memo notes that the FBI, U.S. Information Agency, and the State Department will be part of the review team.

¹⁸⁹ INS report, *INS Final report by the Task Force on Foreign Student Controls: Controls Governing Foreign Students and Schools that Admit Them*, Dec. 22, 1995.

¹⁹⁰ Ibid.

¹⁹¹ Ibid. *INS Final report by the Task Force on Foreign Student Controls: Controls Governing Foreign Students and Schools that Admit Them*, Dec. 22, 1995. The Introduction states: "Americans have a fundamental, basic expectation that their Government is effectively monitoring and controlling foreign students. While the extent of any individual student being involved in a terrorist or major criminal activity is unknown, history tells us it does occur. Because there have been high profile instances where terrorists and criminal aliens have been linked to student visas, there is a growing degree of public concern about this issue. The American people need to have some basic level of comfort in the knowledge that its government is guarding against this danger. Americans deserve and expect it. Although there is no quantitative way to measure the intangible benefits gained through Americans having confidence and trust in their Government, it is fundamental to the mission and role of government. Without it, our nation's stability can be adversely impacted. This guiding principle was fundamental to the Task Force's effort." The reference to terrorist use of student visas here is a reference to Eyad Ismoil, the Jordanian who had driven the truckload of explosives into the parking garage at the World Trade Center on February 26, 1993. Ismoil had entered the United States in 1989 on a student visa, attending Wichita State University in Kansas for three semesters. He then dropped out of school and continued living in the United States illegally. See also, DOS letter, Frank Moss to Nancy Sambaiew, "Systems Priorities-Coordinated Interagency Partnership Regulating International Students," Feb. 5, 1999, stating at p. 3, "Development of a fully deployed CIPRIS is considered to be an important and valuable tool for countering both fraud and terrorism."

¹⁹² P.L. 104-208 § 641 (1996). The legislation states that the first foreign students to come into the new tracking system should be those from state sponsors of terror.

¹⁹³ Congressional appropriation conference reports for the INS (1996-2000).

¹⁹⁴ Morrie Berez interview (Oct. 2, 2003). The INS received \$800 million in technology monies between 1995 and 1997, but examiners were generally critical of its technology efforts, see GAO Report 01-046, Information Technology: INS Needs to Strengthen its Investment Management Capability, Dec. 2000. DOJ OIG Audit Report 99-19, Follow Up Review Immigration and Naturalization Service Management of Automation Program, July 1999.

¹⁹⁵ See INS report, CIPRIS Information Packet, 1998. The success of the biometric student card was acknowledged by senior management at an INS Policy Council meeting in August 1998. The minutes read: "The CIPRIS pilot is in operation and appears to be working well. Current plans for the pilot call for the introduction of a new card that would replace the [paper forms now required of schools and students]. Advantages of proceeding to introduce the card as planned include the desire of the stakeholders, especially the participating schools. The card would replace some of the workload on schools with respect to entries and exits. It would also be more durable and more counterfeit-resistant than the current paper documents carried by students. Concerns about the card include the fact that it is... not a travel document. The Policy Council decided that issuance of the student cards should be deferred to allow time to explore other options." INS record, INS Policy Council Meeting minutes, Aug. 28, 1998. The Commission also spoke to John Smith, a former IBM vice president who helped develop the project. He stated the "biometrics were feasible at the time," see electronic communication to Commission staff, Oct. 21, 2003. The biometric scanners were linked between the Atlanta airport, the Texas Service Center and the United States Information Agency.

¹⁹⁶ Doris Meissner interview (Nov. 25, 2003); Mary Ann Wyrsh interview (Oct. 20, 2003), Dan Cadman interview (Oct. 7, 2003); Tom Cook interview (Jan. 14, 2004); Morrie Berez interview (Oct. 2, 2003). See also Daniel Benjamin and Steven Simon, "A Problem of Distance" in *The Age of Sacred Terror* (Random House, 2002), pp. 307-311.

¹⁹⁷ See Presidential Decision Directive 62, 1998.

¹⁹⁸ INS letter, Rep. Chuck Schumer to Attorney General Reno, "Student Visas and the implementation of CIPRIS," Feb. 19, 1998; INS letter, Senators Jon Kyl and Rick Santorum to Commissioner Meissner, "Implementation of CIPRIS," Mar. 31, 1998.

¹⁹⁹ Testimony of Tom Fischer before the House Judiciary Subcommittee on Immigration, Border Security, and Claims re *Immigration Student Tracking: Implementation and Proposed Modifications*, (Sept. 18, 2002).

²⁰⁰ INS record, INS Senior Leadership Policy Council meeting, Aug. 26, 1998.

²⁰¹ INS electronic communications, "CIPRIS Stop Work, Task 402," Feb. 4-9, 1998.

²⁰² The National Association of International Educators supported an amendment that would have repealed the 1996 legislation mandating the program. Website of NAFSA: Association of International Educators, "NAFSA Endorses CIPRIS Repeal Legislation, Issues Action Alert," 2000.

²⁰³ Mary Ann Wyrsh interview (Oct. 20, 2003) and Tom Cook interview (Jan. 14, 2003).

²⁰⁴ Tom Cook interview (Jan. 14, 2003). See also Doug Pasternak, "American Colleges are Weapons U. for Iraq," *U.S. News and World Report*, Mar. 9, 1998; American Council of Education (ACE) letter to its members, "CIPRIS Foreign Student Fee Collection System Issue Summary," Jan. 10, 2000; ACE letter, Terry Hartle, Senior Vice President to Kevin Rooney, Acting INS Commissioner, April 4, 2001, "Implementation of the Student and Exchange Visa Program/Coordinated Interagency Partnership Regulating International Students (SEVP/CIPRIS);" and Bob Bach interview (May 14, 2004), Executive Associate Commissioner for Policy and Planning, 1994-2000.

²⁰⁵ INS record, INS Senior Leadership Policy Council meeting, Aug. 26, 1998.

²⁰⁶ Tom Cook interview (Jan. 14, 2003). See also Bob Bach interview (May 14, 2004). Mary Ann Wyrsh, however, states she removed the project manager because he did not have a "good technology plan." Mary Ann Wyrsh interview (Oct. 20, 2003). John Smith, the technology consultant on the program, states he never did brief Wyrsh, but did brief the research group that reported to her. Smith to Commission staff email, Oct. 21, 2003.

²⁰⁷ INS letter, Senator Spencer Abraham and 20 other senators to Meissner, "INS Student Tracking," Feb. 22, 2000.

²⁰⁸ American Camping Association website, "CIPRIS," Nov. 1, 2000, states: "Appropriation language introduced by Senator Judd Gregg, Chairman of the Commerce, Justice, State Appropriations Subcommittee, would essentially eliminate CIPRIS altogether."

²⁰⁹ Mary Ann Wyrsh interview (Oct. 20, 2003)

²¹⁰ Tom Cook interview (Jan. 14, 2003).

²¹¹ Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) § 110, 1996.

²¹² Congressional appropriations conference reports, 1996-2000.

²¹³ *Ibid.*

²¹⁴ Doris Meissner interview (Jan. 12, 2004). See also INS record, contemporaneous notes on conversations between Meissner, Bach, and the Canadian government regarding the implementation of (IIRIRA) § 110, June 1999. See Canadian/American Border Trade Alliance record, notes on a presentation from Commissioner Meissner: "[Commissioner Meissner] thanked CAN/AM BTA for its pivotal role in educating Congress on the realities and needs of the northern Border and especially in its involvement in convincing Congress to delay the implementation of Section 110;" INS electronic communication, Jackie Bednarz to senior management, stating that Governor Howard Dean of Vermont said that entry-exit would be a "disaster" for Vermont, 1998.

²¹⁵ See Congressional bill, S. 1217 § 102: "Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2000 (Placed on Calendar in Senate)," at. It reads, "Section 110 of Public Law 104-208 is repealed." See also Doris Meissner interview (Jan. 12, 2004).

²¹⁶ *Ibid.*

²¹⁷ The INS website at the time stated that the intelligence unit "collects, evaluates, analyzes, and disseminates information relating to all INS mission, both enforcement and examination. Intelligence also directs the Headquarters Command Center, which maintains communications with other offices and agencies 24 hours a day."

²¹⁸ Doris Meissner interview (Nov. 25, 2003).

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- ²¹⁹ That briefing was by the CIA in 1995 with the goal of pulling INS detailees to the CIA. INS email, Bednarz to Meissner, "CIA Briefing of INS Top Management—current Threat Assessment of Islamic Fundamentalist groups and Impact upon INS" (Oct. 16, 1995).
- ²²⁰ Doris Meissner interview (Nov. 25, 2003); Gregory Bednarz statement (Oct. 9, 2003).
- ²²¹ Doris Meissner interview (Nov. 25, 2003).
- ²²² Cliff Landsman interview (Oct. 27, 2003). Landsman ran the intelligence unit from 1998-2003, when the INS was abolished. See also George Regan interview (Oct. 21, 2003).
- ²²³ Janet Reno interview (Dec. 16, 2003).
- ²²⁴ Cliff Landsman interview (Oct. 27, 2003).
- ²²⁵ See Majority Staff Report, Hearing on "Foreign Terrorists in America: Five Years after the World Trade Center," Feb. 24, 1998, p. 138-139. On the 2,000 special agents, see Gregory Bednarz statement, (Oct. 9, 2003). On the 4,500 inspectors, see Immigration and Naturalization News Release, "INS to Hire More Than 800 Immigration Inspectors Nationwide," Jan. 12, 2001: "The new inspectors will join the ranks of a current staff of more than 4,500 who perform more than 500 million inspections of people entering the United States each year." See also, INS Communique, Vol. 23. No. 1, "INS Commissioner Doris Meissner Announces Departure," Jan. 2001: "The Service is significantly bigger, with a workforce of 18,000 to now 32,000 employees. The Border Patrol alone has doubled in size, from 4,036 to 9,100 in the past seven years."
- ²²⁶ Majority Staff Report, Hearing on "Foreign Terrorists in America: Five Years after the World Trade Center," Feb. 24, 1998, p. 152.
- ²²⁷ Cliff Landsman interview (Oct. 27, 2003).
- ²²⁸ Harvey Adler interview (Apr. 16, 2004) and Cliff Landsman interview (Oct. 27, 2003).
- ²²⁹ INS records, INS enforcement personnel statistics, 1990-2000.
- ²³⁰ On the 1986 plan, see INS report, Investigations Division, "Alien Terrorists and Undesirables: A Contingency Plan," May 1986; Daniel Cadman interview (Oct. 17, 2003). On the 1995 plan, see INS memo, Bramhall to Bednarz and Hurst, "Draft Counter-Terrorism Strategy Outline," Aug. 11, 1995. On the 1997 plan, see INS email from Cadman, "EAC briefing document," Dec. 5, 1997, with attachment entitled "Counterterrorism/national Security Strategy and Casework Oversight".
- ²³¹ Doris Meissner interview (Nov. 25, 2003) and Dan Cadman (Oct. 17, 2003). The manager of the unit put together a report for the INS investigations division in 1986 titled, "Alien Terrorists and Undesirables: A Contingency Plan," which recognized the INS as "the agency charged with manning those borders and screening potential entrants to ensure that they are not entering with the intent to commit acts of terror either against our own government and people, or those of any other nation."
- ²³² INS report, "National Security Unit Strategy proposal," 1997.
- ²³³ Dan Cadman interview (Oct. 17, 2003).
- ²³⁴ Ibid.
- ²³⁵ INS memo, Ken Elwood to the field, "Advisement to all offices and employees of the indictment of Usama bin Laden, international terrorist, and direct heightened security measures," (Nov. 4, 1998).
- ²³⁶ Dan Cadman interview (Oct. 17, 2003) and Laura Baxter interview (Feb. 26, 2004).
- ²³⁷ Rocky Concepcion interview (June 15, 2001).
- ²³⁸ Veronica Cates interview (May 25), Rocky Concepcion interview (June 15, 2004), DHS email, Cadman to Commission staff and subsequent phone conversation (June 14 and 16, 2004), and Kevin Rooney interview (Jan. 8, 2004). See also, INS report, Cates to Cadman, "White House briefing," July 5, 2001.
- ²³⁹ Doris Meissner interview (Nov. 25, 2003).
- ²⁴⁰ A supervisory special agent in Florida wrote memos to headquarters beginning before the first World Trade Center bombing in 1993 urging the INS and the Department of Justice to take on counterterrorism investigations under its broad immigration authority. He also suggested using classified evidence to help remove terrorist aliens. The memos never received a response. See INS memos, Bill West to Bill Yates and headquarters, 1993-1995.
- ²⁴¹ INS Memo, William Slattery, INS Field Operations Executive Associate Commissioner, to Alexander Alienikoff, Program Executive Associate Commissioner, "INS Task Force Report," Oct. 29, 1996.
- ²⁴² INS Memo, Meissner to John Keeney, DOJ Acting Assistant Attorney General, Feb. 7, 1997.
- ²⁴³ Ibid. It took until 1999 for the Justice Department, White House and Congress to establish a baseline for INS commitment to supporting JTTFs and until 1999, after the African embassy bombings, for Congress to specifically fund INS "participation in joint task forces on terrorism, to assist in the identification and

apprehension of alien terrorists.” By 2000, Congress allotted more than 900 new positions to interior enforcement, for a total of 3,024 available positions, and INS detailees were considered integral to the Joint Terrorism Task Forces. See Congressional Conference Committee Report 105-825, 1999.

²⁴⁴ Individuals still could claim political asylum and receive a hearing to determine if the fear of persecution was credible. Resolution of such a claim could delay the expedited removal charge. See Antiterrorism and Effective Death Penalty Act §§ 422, 403; IIRIRA § 302.

²⁴⁵ Ibid.

²⁴⁶ INS Fact Sheet, “Update on Expedited Removals,” July 9, 1997.

²⁴⁷ INS record, INS Policy Council Meeting Minutes, June 4, 1997 and Laura Baxter interview (Feb. 26, 2004).

²⁴⁸ INS record, Immigration “A” (Alien) file of Abu Mezer.

²⁴⁹ INS record, INS Policy Council Meeting Minutes, June 4, 1997 and Laura Baxter interview (Feb. 26, 2004).

²⁵⁰ Testimony of Seth Waxman before the Senate Judiciary Committee during consideration of the proposed Omnibus Counterterrorism Act of 1995, quoted in Senate Judiciary Committee Hearing record 105-703, p. 149.

²⁵¹ See Rules for the Alien Terrorist Removal Court of the United States, May 28, 1997.

²⁵² Majority Staff Report, Hearing on “Foreign Terrorists in America: Five Years after the World Trade Center,” Feb. 24, 1998, p. 152.

²⁵³ James Reynolds interview (Mar. 31, 2004).

²⁵⁴ 8 U.S.C. section 1534 (e)(1)(A), INA § 504.

²⁵⁵ Doris Meissner interview (Nov. 25, 2003); Dan Cadman interview (Oct. 7, 2003); Laura Baxter interview (Feb. 26, 2003); and James Castello (Nov. 7, 2003). See also, DOJ memo, Laura Baxter memo, “The Use of Classified Evidence in Immigration Proceedings: Background Information and Legislation,” Feb. 16, 2001. One example of the difficulties in pursuing a suspected terrorist through immigration violations is the case of Sami al Arian, which was initiated in 1994 and was repeatedly reviewed by the Justice Department for possible prosecution or initiation of removal proceedings prior to September 11. See Bill West interview (Oct. 3, 2003) and testimony of Steven Emerson before the Senate Judiciary Subcommittee on Technology, Terrorism and Government Information, Feb. 24, 1998, p. 101. The Justice Department brought charges after September 11.

²⁵⁶ Doris Meissner interview (Nov. 25, 2003).

²⁵⁷ James Castello interview (Nov. 7, 2003) and Laura Baxter interview (Feb. 26, 2003).

²⁵⁸ Dan Cadman interview (Oct. 17, 2003) and Rocky Concepcion interview (June 15, 2004).

²⁵⁹ Those in the latter two groups sought U.S. residency on the basis of fear of persecution in their home country: asylees made their claim after entering the United States or at the border, and refugees made it from abroad.

²⁶⁰ INS record, “A” file of Aimal Kansi.

²⁶¹ INS record, “A” files of Mohamed and Mahmud Abouhalima.

²⁶² The SAW applicants had to provide evidence that they had worked on perishable crops for at least “90 days” between May 1, 1985, and May 1, 1986; their residence did not have to be “continuous” or “unlawful.” Nearly 1 million illegal aliens had received legal permanent residence under SAW, twice the number of foreigners normally employed in agriculture.

²⁶³ Testimony of Paul Virtue before the House Judiciary Subcommittee on Immigration, 1999.

²⁶⁴ The Patrol’s official mission statement read as follows: “To detect and prevent the illegal entry of aliens into the United States. The Border Patrol helps maintain borders that work- facilitating the flow of legal immigration and goods- while preventing the illegal trafficking of people and contraband.” See CBP power point record, Sept. 12, 2003.

²⁶⁵ Gus de la Vina interview (Nov. 19, 2003), a 31-year Border Patrol veteran and its Chief, 1999- 2003.

²⁶⁶ The primary entry points were San Diego, California followed by El Paso, Texas.

²⁶⁷ Gus de la Vina interview (Nov. 19, 2003)

²⁶⁸ Where the Patrol did receive outside federal help and support was from the Defense Department in three areas: (1) military personnel who, until the mid 1990s, worked at listening posts as “eyes and ears” on land and water; (2) National Guard units constructed such things as fences, gates, and towers; and (3) technological “leftovers” such as binoculars, infrared glasses, and sensors. The Defense Department no longer supplied military personnel at listening posts after a mistaken shooting of a civilian by military

personnel. Known as the Redford incident, its ramifications were to be felt in the aftermath of September 11, as the Patrol's request to DOD for military personnel help at listening posts was denied, and the Patrol received instead technology and intelligence analysts.

²⁶⁹ INS newsletter, "INS Commissioner Meissner Announces Departure," Jan. 2001.

²⁷⁰ Numbers derived from statistics set forth in DOJ OIG report, *Border Patrol Efforts Along the Northern Border*, Apr.2000.

²⁷¹ For numbers of agents on the Canadian border, the Canadian situation generally, and the Inspector General's recommendations, see DOJ OIG *Follow-up Review of the Border Patrol Efforts Along the Northern Border*, Apr.2000. On terrorists entering the U.S. via Canada, see e.g. INS report, *Record of Deportable Alien Abu Mezer*, June 24, 1996. Mezer was able to stay in the United States despite three apprehensions for illegal entries along the northern border. In regard to the detailing of northern border patrol agents to the southern border, Doris Meissner stated in a memo to Mary Demory, Assistant Inspector General for Inspections at DOJ, that the INS would stop detailing border patrol agents to the southern border, p. 5 of above-mentioned report.

²⁷² Gus de la Vina interview (Nov. 19, 2003).

²⁷³ Gus de la Vina interview (Nov. 19, 2003).

²⁷⁴ DOJ, Executive Office for Immigration Review, Statistical Year Book 2000, p. D-1, 214; 982 immigration hearings were held for deportation, exclusion and removal.

²⁷⁵ BJA, Compendium of Federal Justice Statistics, 2000, p. 1. Immigration offenses for FY 2000 totaled 16,495.

²⁷⁶ INS has assigned special agents to the Organized Crime Drug Enforcement Task Forces since 1987.

²⁷⁷ There was also the problem that the paper "Alien" files that were located throughout the U.S. were not available for review after hours.

²⁷⁸ The term "aggravated felon" refers to aliens who have been convicted of serious felony crimes such as illicit trafficking in drugs or firearms, money laundering, and alien smuggling. 8 USC § 1101(a)(43).

²⁷⁹ Access to the center was available through an existing dedicated law enforcement telecommunication system, the National Law Enforcement Telecommunications System (NLETS). The first state to have access to the LESC was Arizona. To obtain immigration information on a possible criminal alien suspect, a simple query screen on the NLETS system was completed. Basic biographical information was required with optional fields available to better define the search. The query screen was available to all law enforcement agencies in the state. The INS attempted to answer all queries and returned any information within 20 minutes. The LESC conducted extensive training to officers in the state on immigration law and the new system.

²⁸⁰ The LESC was also used to locate criminal aliens who were detained in county jails for criminal activity. The Maricopa County Jail in Phoenix was the first detention facility to program an automated interface with the LESC so that all foreign-born inmates who were booked into the jail on criminal charges were checked for immigration status.

²⁸¹ 8 U.S.C. § 1357 (1996).

²⁸² This "sanctuary" policy was first published by Mayor Edward Koch on August 7, 1989, and directed city "line workers" who had contact with the public to not transmit information respecting any alien to federal immigration authorities. However, it exempted the police and the Department of Corrections and directed them to continue to work with federal authorities "in investigating and apprehending aliens suspected of criminal activity." Koch, executive order, Aug. 7, 1989.