

**NATIONAL CAPITOL REGION AIR
SPACE CONTROL: A REVIEW OF THE
ISSUES SURROUNDING THE JUNE 9,
2004 FLIGHT OF N24SP**

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BEFORE THE
SUBCOMMITTEE ON
AVIATION
OF THE
COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

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NATIONAL CAPITOL REGION AIR SPACE CONTROL: A REVIEW OF THE ISSUES SURROUNDING THE JUNE 9, 2004 FLIGHT OF N24SP

Thursday, July 8, 2004

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON AVIATION, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, WASHINGTON, D.C.

The subcommittee met, pursuant to call, at 10:05 a.m. in room 2167, Rayburn House Office Building, Hon. John L. Mica [chairman of the subcommittee] presiding.

Mr. MICA. Good morning. I would like to call this hearing of the House Aviation Subcommittee to order.

The subject of today's hearing is the National Capital Region's air space control, a review of issues surrounding the June 9, 2004 flight of "N24SP."

The order of business. We have one panel and we have two witnesses. We will hear from them after we have had opening statements by Members. I think we will begin today's hearing with opening statements. I have one. I think we will be joined by the Ranking Member and others. But we do want to proceed with today's business.

This morning's hearing will discuss some of the issues surrounding the June 9, 2004 flight of "N24SP." The hearing today of course will focus on our National Capital Region's air space control and the issues surrounding the specific incident that occurred on that date. We all know the flight "N24SP" was carrying our good friend, a former colleague, the Kentucky Governor Ernie Fletcher. It is important today that we examine what took place in this incident. We know our Nation's Capitol has been a target for terrorists in the past and may, in fact, be a target in the future. That is why it is critical that this congressional oversight take place.

While we are holding this hearing today, it is my understanding the Armed Services Committee is looking into how the Defense Department will respond to these types of emergencies. I think they are going to be doing that behind closed doors. But the purpose of this hearing today is not to cast any blame or point any fingers, but to find out what took place and what we need to do to correct the situation.

To help us understand some of the important issues, I have got a few slides that I have asked staff to put together. The map that we have got displayed on the overhead screen shows, first of all, the area that we are talking about, and that is the airspace over

the National Capital Region. This slide shows you how large a geographic area is subject to very restrictive procedures for general aviation pilots.

Slide 2, the second slide that we have got up there narrows down a little bit to this region and it shows a more detailed map of the District of Columbia, D.C. Aviation Defense Identification Zone, I guess it is called ADIZ, and the Flight Restricted Zone, FRZ, over and around the Nation's Capitol. That is the smaller area.

These airspace zones are unique to the National Capital Region and aviation operations in these areas are greatly restricted, obviously for security reasons.

The flight of "N24SP" into and through these zones was the cause of so much concern on that June afternoon.

Through a series of miscommunications, improper identification and tracking, lack of training, and also the failure to adhere to proper security procedures, a general aviation aircraft, again one in which the Governor was flying, flew into Ronald Reagan National Airport on a "waiver" and it was erroneously identified as a security threat. We will talk more about those waivers to fly into the zone as we proceed here.

The result was that the United States Capitol Police evacuated offices here on Capitol Hill and countless people were warned to run for their lives. The mistake was ultimately recognized, but not quickly enough to avoid this outcome.

While this was not a good day in air space control and security in our Nation's Capital, the situation in fact could have been much worse. Fortunately, no one was injured in the emergency evacuation and Governor Fletcher and those with him were not fatally intercepted. That is the good news.

It is both alarming and unacceptable that after some two and a half years since September 11th the Federal and local agencies involved in air space control and security still have not resolved some simple coordinations, communications, and training issues that were highlighted by this incident.

The implications are important not just to the National Capital Region, but also to the entire Nation.

Therefore, we have asked the Federal Aviation Administration and also the Transportation Security Administration to brief our Subcommittee today on what went wrong on June 9th, and specifically, and most importantly, what corrective actions have been taken.

These two agencies are central players in air space control responsibility for our airways and also for security. They both have representatives at the National Capital Region Coordination Center, NCRCC, and I am told that was, correct me if I am wrong, that was created for all the agencies to come together that deal with these issues and it is separate and apart from the FAA operations center at Herndon, and some of us have visited there before, but this is a new center set up for these agencies and they are supposed to work closely with Federal and local agencies involved in the National Capital Region's air space control and security.

Of particular concern to me are the apparent communication problems that still seem to exist between the various agencies. I think we need to look at that today.

I am also concerned about the coordination processes. Who is responsible for what? What procedures are in place should an aviation security threat be identified? And some of this gets a little complex. As I said, we have DoD also looking at this. We have certain responsibilities with TSA and also FAA. But we need to make certain that someone is in charge particularly on such critical issues.

Additionally, I am once again forced to ask by Ronald Reagan Airport is closed to most, but not all, general aviation pilots. This seems to add not one iota of security to the National Capital Region, yet it has cost the local economy millions of dollars, and, unfortunately, hundreds of hard working people have been put out of work. We tried to focus on the issues of restoring civil aviation to Ronald Reagan National Airport and, in fact, held a hearing recently there on this question.

There is no question that the National Capital Region and Reagan National Airport are unique and require special protection.

We have restored commercial passenger service at Ronald Reagan National Airport with special security rules that have allowed large aircraft that could pose a potential threat to fly into our Nation's capital, in this area that needs to be protected. However, general aviation industry has been heavily burdened with extra security requirements to enter the D.C. Aviation Defense Identification Zone.

I have a slide that shows activities within the National Capital Regional air space. I thought this was kind of interesting. If you look at the first column up here, it shows FAA reported violations of the zone. And actually we think this should be corrected, that about the time as 2003 rather than 2001, because they started I guess collecting the data about that time. In any event, since September 11, 2001 there have been 1,281 incidents that have in fact been reported. Now what is interesting is the second part of this slide. TSA has tracked improper incursions into this zone since, well, it is about a year and a half, and this includes identified and unidentified aircraft. So you do a little simple math and there is about 1,200 incursion into this zone of unidentified aircraft. That gives me great concern.

Thousands of flights properly enter this zone every day. But the number of reported violations and improper incursions that have occurred since the ADIZ was established surprises me. Again, we calculate that at about 1,200 operations improperly entering the zone and remaining unidentified. So, I have to ask, what benefit the zone designation provides to aviation security with this number of incursions that are unidentified.

Then there is the even more limited Flight Restricted Zone. The general aviation industry has proposed many security measures to allow them to fly into this zone and to land at the Ronald Reagan National Airport. They are willing to adopt even more stringent measures if it means they have access to our Nation's capital. The industry has yet to receive any indication whether their proposals are even being considered.

What has been established are 12 waiver categories. And I think we have the waiver categories up here in Slide 4. However, the TSA has given out hundreds of waivers, divided into the 12 cat-

egories you see listed on this slide. These waivers allow special dignitaries and other specified operators free access to this more limited zone and Ronald Reagan National Airport.

The TSA and FAA have issued 167 waivers since the program began in December 2001, including 79 waivers issued to elected officials that have allowed approximately 244 flights carrying elected officials, people such as House Members, and we have a list of all of those and I have expressed concern in the past about House Members, Senators, others members landing in this fashion, and also Governors. I think we have got that list up there. You can see, fortunately, only one Member of this Committee I think on that list although we have three pilots, at least three or four pilots on this Committee. Where is Mr. Boswell, I did not see him on the list, or Mr. Hayes, Mr. Pearce. I guess you guys just do not rate.

This slide shows the elected officials that are known to have flown into the Ronald Reagan National Airport under a domestic waiver.

Interestingly enough, the general aviation flight involved in the June 9th incident was flying pursuant to a long-term elected official waiver.

Aircraft that fly into this more limited zone under a domestic waiver do follow additional security procedures, but they do not have to have secure cockpit doors, require screening, or always carry air marshals.

I am concerned, quite frankly, not outraged, but concerned that VIPs, Members of Congress, and other elected officials continue to receive special treatment under this process while we shaft, basically, other folks in general aviation and those who should also have equal access to our Nation's primary airport. If we cannot make it fair for everyone and secure, I want TSA, Homeland Security, and FAA to stop granting waivers. If the private sector is going to suffer, then so should everyone else.

Today, again, we want to look for answers. We want to seek assurances from FAA and TSA that the communications, training, and coordination problems that we have seen through this incident have, in fact, been resolved. I am also seeking, once again, a sound security explanation for the closure of Ronald Reagan National Airport to most, unless you are privileged or on the list that we have published here, general aviation flights.

There is no good reason that protective security measures, adopted by TSA, and sound security procedures in fact approved by NSA and other agencies, cannot be put into place and reopen Ronald Reagan National Airport to most general aviation.

I believe that again with proper procedures, training, communication, and coordination we can outsmart the terrorists, we can restore jobs, we can restore economic activity, and we can bring back general aviation on a safe and secure manner to our Nation's most significant airport, and also across the Nation where we may also be at threat.

So with those comments of explanation and opening statement, I am pleased to yield to our first Member on the other side, Mr. Oberstar, the Ranking Member of the full Committee and an expert on all of these issues. Welcome, sir, and you are recognized.

Mr. OBERSTAR. Thank you, Mr. Chairman. I thought your opening remarks were very well prepared, well thought out, and an excellent presentation of the case, in which I concur, that National Airport ought to be open to general aviation under whatever security terms that are necessary to assure secure entry of aircraft and their passengers. There is no reason that it cannot be done except for the unwillingness of the Secret Service to open up National Airport.

I think your listing of the waivers is quite appropriate. There should not be two standards. After all, Members of Congress have to go through security at airports just as the less frequently traveling public does, and there should be no special treatment for Members of the House, Members of the Senate, Governors, even former Presidents, after all, they are now citizens again.

I see no justifiable case for excluding general aviation from National Airport. We can make the process secure, and we ought to—TSA ought to, FAA should, in working with TSA, to accomplish that objective.

It is most unfortunate that the event occurred which has precipitated this hearing. On the other hand, it is a good lesson for both FAA and TSA. But the core issue here in this matter is at the heart of the oldest issue in aviation security, and that is communication, sharing of information. This, Mr. Chairman, is an issue that we explored at great length in the course of the proceedings of the Pan Am 103 Commission, on which I served with our former colleague John Paul Hammerschmidt. Again and again what emerged from those hearings was a failure to communicate among agencies, intelligence agencies at the top level.

We found that the major problem with the Helsinki hoax that was called into the U.S. embassy in Helsinki warning that an American airplane would be the target of a bomb attack within two weeks, which just happened to be the two weeks within which the Pan Am 103 tragedy occurred. It would turn out to be a hoax—a frequent caller to embassies and to radio stations and to the police, the police in Helsinki knew this person. But the State Department put that information on their TWX, circulated it among all U.S. embassies, warned U.S. embassy personnel not to travel on U.S. airlines. But the State Department did not notify the CIA or the Defense Intelligence. State Department did not notify the FAA. And worst of all, it did not notify the airlines that there was this threat, even though it turned out to be a hoax.

That was the failure—failure of communication. We cited that in the report of the Pan Am 103 Commission. We said this has to be fixed, we showed how it could be fixed, and it has not been done. Well, maybe the September 11th Commission is going to have better success. But they found the same problem the communication failures associated with the run-up to, and the occurrence within, September 11.

Now it is interesting to track this, and I have had an excellent in-depth review with the FAA about the matter prior to this hearing. The pilot did the right thing: leaving Kentucky and leaving I think the Cincinnati TRACON that their transponder was inoperative. The FAA did the right thing: entered manually in the data block the identification of the aircraft, passed it from TRACON to

en route center, to Washington Center, to Potomac TRACON. They did all the right things. But the NCRCC, this air defense command parallel system which is supposed to be a liaison with TSA, Immigration, DoD, Secret Service, and the Capitol Police, they did not have that information. It was not transmitted to them. That is the communication failure. The data block never got into the NCRCC computer.

And then, the next thing we will learn, is when the aircraft got into the Potomac airspace, the security people said we have an unidentified aircraft in our airspace, told FAA about it and FAA says we do not have one. FAA had an identified aircraft on the same track. It did not occur to the controller to say, oh, wait a moment, where is this, question a little further, and say we are talking about the same aircraft. That could have been all resolved in a split second and we would not be here in this hearing. On the other hand, the problem that existed might not be fixed.

So while a great deal of excitement was generated—aircraft scrambled, Blackhawk helicopters, Citation jet, F-16s; people evacuated from the Capitol, we could have had a major accident there with people running out of the U.S. Capitol—it all need not have happened. And hopefully because of what FAA has done, it will not ever happen again. Thank you, Mr. Chairman.

Mr. MICA. Thank you. Former Chairman of the Subcommittee, Mr. Duncan.

Mr. DUNCAN. Well, thank you very much, Mr. Chairman, and thank you for calling this hearing on this important matter. It is certainly a worthwhile subject to look into. I will be very brief.

First of all, I want to join you and Ranking Member Oberstar in expressing my strong support for reopening Reagan National Airport to private flights. Certainly all of us realize that the horrible events of 9-11 were all done with commercial aircraft and, of course, commercial aircraft have flown back into Reagan National for quite some time now and done it very safely. So I think that general aviation should be allowed to do the same thing.

Looking at this timeline, as Ranking Member Oberstar said, certainly the pilot did the right things. It shows on the timeline that the pilot notified the Cincinnati departure controller that his transponder had just quit at 2:56 p.m. That was more than an hour and a half before the Capitol was evacuated, and all of us will long remember that, seeing people running at top speed out of the Capitol and having this very building evacuated along with other buildings. And then at 3:45 p.m., still some 45 minutes before the Capitol and the House and Senate office buildings and so forth were evacuated, the pilot notified the FAA at Washington Center that his aircraft had an intermittent transponder. All these precautions were taken.

I think though that we need to ask some questions here. We are told that the NCRCC FAA representative attempted to phone the tower but the phone was busy. Why do they not have something as simple as call waiting, which many people have in their homes? And I see that some corrective actions have been taken. But even the most simple corrective action would be to tell the key people, give them some telephone number that they can call if an event like this happens again. Some complicated corrective actions have

been taken, and I think those are good, but maybe some simple corrective actions have been overlooked.

I notice from the timeline that the Blackhawks were not scrambled until almost the time that the plane landed. We need to look into this again and say what if this had been some real threat.

We need to also ask cannot more be done to correct this inability to communicate with the tower itself.

But I thank you very much for calling this hearing. I will look forward to hearing from the witnesses. Thank you very much.

Mr. MICA. Thank the gentleman. Mr. Lipinski.

Mr. LIPINSKI. Thank you, Mr. Chairman. Thank you for holding this hearing today on the National Capital Region's air space and the incident that happened last month. I also thank our witnesses for appearing before us this morning.

As you all know, less than three years ago on September 11th terrorists targeted sites in the National Capital Region with commercial aircraft. So, clearly, there are good reasons that since September 11th aviation operations in and around this region have been reduced, restricted, and closely monitored. For reasons of national security, it is particularly important that all National Capital Region air space zone requirements and restrictions be adhered to fully in every situation.

It is also necessary for there to be effective coordination between the National Capital Region Coordinating Center and the domestic events network. I find it extremely troubling that on June 9th of this year there was a break from the set requirements when flight "N24SP" was allowed to come into the Washington D.C. metropolitan area Air Defense Identification Zone, in the Flight Restricted Zone, with a nonworking transponder.

I look forward to hearing from the witnesses as to what has been done, and what will be done in the future to further prevent such incidents and ensure all procedures are fully and diligently followed.

Thank you. I yield back the balance of my time.

Mr. MICA. Thank you. Mr. Hayes.

Mr. HAYES. Thank you, Mr. Chairman. I, too, appreciate your holding this hearing. Until I read the headline in the Washington Post today, I had convinced myself that this hearing really was not necessary. I have talked to a number of you, Mr. Oberstar, Chairman Mica, about different things that I have learned from this process. I have really thought out my remarks well but I am to this point unable to organize them and put them into logical fashion.

This incident has been misreported so many times, in so many ways, one of the worst of which is this Washington Post headline today. This is wrong. This is incorrect. This does not have any business being reported as news. I have been, and I promised Mr. Oberstar I would sit down with him and I have not gotten there yet, but I have been to every facility that was involved in this process. All the different agencies have done a good job. It was not flawless. This incident, and if anybody wants to talk about it after the hearing, I will be glad to tell you what I have learned.

What we have done as Members of Congress is to tell all these different agencies that we want to put a net, and the net is the ADIZ that you have seen, around Washington. If any of you are

fishermen, think of the net in terms of how big is the mesh in that net going to be. What are we going to let go through that net? Unfortunately, as this process has gone forward, some folks in the media think that net ought to be a barricade. In other words, we are going to pull the net tight and you are going to try to pick it up, and if it is a barricade and there are no holes in it, nothing can drop through, you cannot pick it up because it is full of water and everything else. And that is sort of what we are asking the agencies to do.

So my observation at this point is to tell everybody involved do not take just one, but take at least two or three deep breaths and let us see what really went on here. You can find somebody, if you are in the blaming business, at every stage of this operation; to say, well, if he had not taken off with the transponder inoperative, as Mr. Lipinski said, absolutely correct; if they had not let him in—and on and on and on. But the aircraft was never about to be shot down, nor should it have been. The problems that were discovered because of the unique circumstance of President Reagan's funeral and everything else that went on, those problems have been corrected. And the people who miscommunicated are now beside one another, like Mr. Moran and I are, with the equipment they need to make sure that this does not happen again.

So, folks, let us look at it and let us decide how we are going to solve it, but let us not lose track of the fact that the FAA and the air traffic control system is tasked with providing separation and safety of aircraft 24 hours a day. Their danger is there and they are blending this in. But they have the ability and the equipment to cover the waterfront for the other agencies. But they need to be in charge doing what they do best. And then we here in Congress have got to decide are we going to be distracted by a particular mode of transportation and forget about buses, trucks, trains, boats, and everything else. We have just got to calm down, use some common sense and look at the thing as it really is. The FAA did a good job. TSA did the best they could do. All the different folks at the NCRCC, Vint Hill, Herndon have got that problem worked out.

So in closing, Mr. Chairman, thank you again. And for goodness sakes, everybody calm down.

Mr. MICA. Thank the gentleman. And I recognize another one of our pilots, Mr. Boswell.

Mr. BOSWELL. Mr. Chairman, should I yield to Mr. Moran? I think he was here first?

Mr. MICA. No. We are going to have to ask unanimous consent for Mr. Moran to participate.

Mr. BOSWELL. Then I ask unanimous consent.

Mr. MICA. Without objection, so ordered. But the courtesy would be that we would go through our members first and then have Mr. Moran last. We also have Mr. Burgess, who will get preference before Mr. Moran, who is not on our Subcommittee but is on our full Committee and does have that right under the rules of the Committee.

So, Mr. Boswell, you may proceed.

Mr. BOSWELL. I understand, and thank you. I want to associate myself, Mr. Chairman, with what you have said, Mr. Oberstar, and

in fact with everybody who has spoken. The question for all of us I think is communicate, communicate, communicate. It is becoming weary to me, I think I heard that from my fellow pilot, Mr. Hayes, just a moment ago. I guess I would just ask Mr. Hayes to dialogue with me a minute. Would you yield, Mr. Hayes?

Mr. HAYES. With pleasure.

Mr. BOSWELL. Well, I suppose I am yielding to you then. Would you respond?

Mr. HAYES. Certainly.

Mr. BOSWELL. When a transponder goes off, the identifier is not with it, the numbers and so on, but as you look at the scope in the air traffic control system, there is still a blip in there. Is that correct?

Mr. HAYES. That is correct.

Mr. BOSWELL. Yes. So we never lost that airplane. You said it very well. That is my point, we did not communicate.

I, for one, know that we can do this. I have no doubt that we can do this. And the impact on general aviation and the people, the lack of opportunity to get into Reagan National, is causing us a lot of grief and a lot of expense. We have the ability to do this. We can take the precautions. We know how to do it, it seems to me. And just continuing on and on after all this time I think is an unacceptable failure.

If you cannot do it or if you will not do it, then just tell us we are not going to do it. And I think that is kind of what you are telling us now. Mr. Chairman, I do not know, I am curious what you feel about it, but it seems like they are telling us they are not going to do it. Maybe we need to get somebody that can. I do not know. I am getting weary of this. I know I have a lot of constituency out there in general aviation that need this and it is pretty dang hard to explain to them why we cannot move forward. They are willing to accept whatever you want to do—background checks for the pilots, whatever. They are just to the point of why are you doing this to us. Now we all say, well, safety, security. But we can provide the safety and we can provide the security. You know it, I know it, we all know it. So, dang it, let us get moving and let us see some results.

I do not want to point the finger, I do not want to find fault. We do not have time for that. Let us turn the page, if that is what it takes, and let us move. Let us get something done. Let us show some positive approach to this. And let us give general aviation the response that they deserve and that they need, and the country needs it, too.

I just appreciate efforts you make, Mr. Chairman, and Mr. Oberstar said it well, Mr. Hayes, everybody said it well. It is time to do something. It is time—I could use an old country term but I guess I better not, it might not be acceptable here, my words might get taken down. But I am tired of this. I do not care what the excuses have been. It is time to move. And I would like to hear something positive. I would like to hear what the plan is, a timeline, and how we are going to do it and use resources we have got. If you do not have the resources, tell us what you need and see if we cannot come up with it. I think you have got it. If not, tell us. It

is time to do something. I am like a broken record—the time has come, let us do it. Thank you, Mr. Chairman.

Mr. MICA. Thank the gentleman. I have a request from Mr. Pearce, another one of our pilots.

Mr. PEARCE. Thank you, Mr. Chairman. I appreciate the hearing and appreciate our witnesses being here. Mr. Chairman, I started my flying in 1970 in New Mexico. We have got an ADIZ that is on our southern border and I have got almost my entire district, 70,000 square miles with a big carve out of White Sands Missile Range, that in 30 years of flying I have never been able to fly to. It is even more restricted than an ADIZ. You never get through a restricted zone. So I am just a little bit familiar with flying in these types of circumstances.

I look with interest, Mr. Chairman, in the packet of information there is a small discrepancy in this chart, this listing. If one actually reads the footnote, the last item in the footnote actually has a statement upside down saying that the target was incorrectly identified as a primary target. It indicates that whoever filled this out simply did not understand the primary versus transponder return. So there is a minor flaw in there.

But the real distressing thing, Mr. Chairman, is when I get to the solutions, the solution is we are going to put tighter requirements on the airmen. We are going to put a new note amount that tells the airmen that there will be no exceptions for transponders going in. Now this presupposes that, if given that the concern is people flying in to do damage here, it presupposes that we are actually going to have terrorists who read the notes and give a darn. So we are going to tighten this, like Mr. Hayes said, we are going to tighten this noose around the neck of the general aviation pilots to no real effect. We are just going to make a big stir.

Mr. Chairman, I think my greatest concern is that there is not even an understanding yet of what the problem is. I think that the problem is in the bureaucracy. FAA tracks and controls aircraft and they have for the thirty years that I have been flying. And I support those controllers tremendously. They are very professional. They have done extremely good work. But I cannot imagine that if someone penetrates the ADIZ on the Mexico-New Mexico border that there is an agency there that is watching that. I suspect that what happens is that the FAA picks up the phone and says, hey, we have got an ADIZ penetration down here, now it is your turn. But the circumstances in this, we had a complete separate bureaucracy designed to do all of the tracking. The FAA was completely comfortable. It was the trackers, the people who were not FAA trackers that misinterpreted the information. It was not the pilot who got a waiver who was acting with all due restraint. It was an agency that does not primarily follow aircraft. It was an agency that incorrectly identified and created the entire stir.

Now, bureaucracies are difficult enough. But when we create parallel bureaucracies and then we want ourselves to communicate faster and quicker and better and faster and quicker and better, something is wrong. And what is wrong is that we have taken away the responsibility from the FAA. They are just following a target, that is all they are supposed to do, and they know if it is there or if it is not there. I have flown many times across ADIZ

zones. I have flown with PPRs, prior permission required numbers. I have flown with waivers into areas that needed waivers. Those are not the problems. It is all of those unidentified incursions into the zone that the FAA could very well say I have got an unidentified incursion, now then you spring into action. But instead, we want the FAA only to track all the way to landing and have no responsibility because they are going to be on someone else's turf. I think that is where the real problem is, Mr. Chairman.

I would like to hear the comments as our presenters function here. Thank you very much.

Mr. MICA. Thank the gentleman. Ms. Tauscher.

Ms. TAUSCHER. Thank you, Mr. Chairman. I am not a pilot but I am a passenger and it takes me about 12 hours a week or so to go back and forth to California. I have two very vigorous general aviation airports in my district and I hear a lot from my general aviation pilots and customers who are deeply concerned about the fact that we cannot seem to quite open Ronald Reagan National Airport. And I think it does send a signal that we are not really back to a new normal in the post-September 11th environment.

I am looking at both of you sitting here and I know that both of you are very honorable, hard-working people and that you have operated under tremendous change over the last almost three years. I applaud your work and commend you and the people that work for you. But, frankly, we have got to get this right. This is a signal to not only the Washington, D.C. area, millions of people that live here that work in the Government and out that call Washington, D.C. not only the Nation's capital but their home and where they operate their businesses and raise their families, but they have to believe that we have returned to a place where we actually can live in a new normal. And that includes opening this airport to general aviation, unrestricted.

I do not have the same kind of experience that a lot of my colleagues do as pilots. But I will tell you that we cannot have the Capitol evacuated and our office buildings evacuated as we did just before the ceremony to honor Ronald Reagan and his family. People running through the streets, having security people yell at them to take off your shoes. Run. Run. Run. The plane will hit in two minutes. That is just unacceptable. We cannot operate that way.

That is not your responsibility. But, certainly, the ability for our police to make decisions and to inform us in how to operate this Capitol environment safely for not only the thousands of people that work here, but for the American people that are watching, we have got to get this right.

So I support my colleagues who are very interested in understanding how we get these systems, many of them put in place subsequent to September 11th, out of the bureaucracy, a kudzu-laden tangle that gets us to places where people do not communicate, to an operating system that not only is flawless in operation but flawless in the perception of the American people, especially the people in the Washington, D.C. area, that we can do this, that we can do this right, that we are confident, and that the little glitches of this transponder not working and so and so not having the phone answered is something that we are smart enough to go around and that we can achieve this.

So I applaud your hard work. I understand that these are very, very tough times. But I believe you can do it. I yield back, Mr. Chairman.

Mr. MICA. Thank you. Mr. Petri.

Mr. PETRI. Thank you, Mr. Chairman, and thank you for holding this hearing. I want to associate myself with the remarks of my colleagues. I think you have sensed the frustration that we feel but also the determination of the Members of this Committee, and I think we speak for our constituents and the Congress generally, to try to move forward and not just point fingers, but to actually figure out a system that provides legitimate security but also moves us forward and gives people access that they need to do their business here in the Nation's capital.

We understand that you may not in the Executive Branch feel that you want to take the full responsibility, because nothing will be perfect for making a decision of that sort. But we are eager to work with you, provide the resources, and, if necessary, make the decision in a responsible way, in consultation with you, to move this thing forward. It has been over, what, two years or so. And what we can do we certainly should be in a position to do and then move forward. I think we owe it to our country and the travelling public to do that. I thank my colleagues.

Mr. MICA. Thank you. Other Members of the Subcommittee seek recognition? Of the full Committee, Mr. Burgess? OK. No further opening statements from Members of the Subcommittee or full Committee. Mr. Moran, you sought to be recognized?

Mr. MORAN OF VIRGINIA. Thank you very much, Mr. Chairman. I am very grateful that you and Mr. Oberstar have chosen to have this hearing. As you know, the restricted area is almost entirely in my congressional district, and, of course, it is Northern Virginia that feels the brunt of closing down general aviation. This has gone on for too long, inexplicably, irrationally, illogically. I will have a number of questions in that regard but I am sure they are going to be questions consistent with those that other members of the panel are going to be asking.

I want to raise another issue though. I think we have a tragedy just waiting to happen. As Ms. Tauscher and others have said, it is unacceptable to have the kind of scare that occurred on June 9th, not only for all the reasons that are obvious, plus the fact that we are lucky that nothing tragic did happen just in the process of evacuation, but the fact that the next time when it may be real people are going to question whether it is real.

I have a letter from the person that operates an airfield in Clinton, Maryland, and this is the airfield that provides for the traffic reporters that we hear on the radio stations. Now, just a year ago, on June 10th, he had a plane that was headed out of the area, headed west over I-66 in Manassas preparing to land apparently. It was operating under the Transportation Security waiver. It was in radio contact with the controllers at Dulles as well as the airfield. In other words, it was exactly where it was supposed to be, doing exactly what it was supposed to be doing. And yet, some unnamed security official decided that this airplane was a threat and dispatched a military jet from Andrews Air Force base to intercept it. The jet did not contact the controllers. It was in a very

heavily congested air space, over an interstate highway, travelling as much as 560 knots. And had a controller not been able to contact it and call it off, apparently the controller was able to find some military personnel to say that this plane was doing what it was supposed to be doing and had the waiver, but had they not been, apparently the jet was fully prepared to shoot down this plane.

Now it gets worse. Because the person that owned the plane obviously wanted to make sure it does not happen again. They found from the FAA that the FAA was simply spectators, bystanders, had nothing to do with this. They really did not do anything inappropriate. In fact, they saved it by taking the initiative to call. Obviously, of course, there was a great expense involved, as there was an enormous expense in the evacuation that happened on June 10th. But he was given a local number to call, he was then referred to a military installation in Florida, he kept being handed off from one person to another, they all said they would have somebody call back to sort things out, but nobody did. And in the end, he was not able to find anyone who was willing to take responsibility for it. He says what was doubly frustrating was the number of military officials to whom he spoke along the way who did not see a problem with any of this.

We now find that the air traffic controller involved in the incident talk about the Capitol has been dismissed, I do not think that is the problem. The problem is a lack of communication, apparently a lack of accountability, and a gross lack of common sense.

Again, let me come back to where I started. I am very glad that you have had this hearing. But we are going to have to do something if we do not have a serious tragedy on our hands that could have been avoided. But the way we are going now, I think it is inevitable unless we intervene and do something. So I thank you again for the hearing and I am glad to have the witnesses, although I am not sure the witnesses are the ones we need to solve this problem. I think the problem may be someplace else. Thank you, Mr. Chairman.

Mr. MICA. Thank the gentleman.

We will now turn to our panel of two witnesses. We have with us today Ms. Linda Schuessler, Vice President of the System Operations Services, Air Traffic Organization of the FAA; and Mr. Jonathan Fleming, Chief Operating Officer of the Transportation Security Administration. If either of you have lengthy statements or material which you would like to be made part of the official record of these proceedings, at your request that will be admitted to the record through the Chair.

With that, we will hear first from Ms. Schuessler, Vice President of System Operations Services of the Air Traffic Organization of FAA. Welcome, and you are recognized.

TESTIMONY OF LINDA SCHUESSLER, VICE PRESIDENT, SYSTEM OPERATIONS SERVICES, AIR TRAFFIC ORGANIZATION, FEDERAL AVIATION ADMINISTRATION; AND JONATHAN FLEMING, CHIEF OPERATING OFFICER, TRANSPORTATION SECURITY ADMINISTRATION

Ms. SCHUESSLER. Chairman Mica, Congressman DeFazio, Members of the Subcommittee, good morning. My name is Linda Schuessler. I am the Vice President for System Operations Services of the FAA's Air Traffic Organization. I am here today to discuss, from the FAA's perspective, the events of June 9, 2004 that led to the decision by the Capitol Police to evacuate the U.S. Capitol.

In short, the aircraft carrying the Governor of Kentucky and his party from Cincinnati, Ohio, to Reagan National Airport here in Washington did not have a functioning transponder. The combination of the faulty transponder and the failure of the controllers to consistently communicate this information correctly as the aircraft travelled toward Washington contributed to a misunderstanding among the agencies monitoring the airspace that day. My written statement contains the specifics of what happened, so I thought I would use my allotted time this morning to summarize and supplement my written statement with some visuals that might assist you as you review this event.

The first graphic shows you the actual path the aircraft flew from start to end. Shortly after the aircraft departed from Cincinnati, the departure controller requested the pilot to verify that his transponder was on. Although the pilot reported that the transponder had just quit, it was working for a very short period of time—approximately four seconds. This resulted in the system automatically assigning the aircraft a data tag for tracking and information purposes. When the aircraft was handed off to Indianapolis Center, the controller again requested the pilot to reset the transponder. The pilot repeated that the transponder was not working. Indianapolis Center informed Washington Center of the situation and Washington Center informed the Domestic Events Network, DEN, which is an open telephone line to a number of pertinent agencies that can monitor potentially significant events that are occurring anywhere throughout the country. The second graphic shows the make-up of the DEN.

At various points during the flight, different controllers referred to the aircraft and the functionality of its equipment differently. The aircraft should have been correctly identified as a "primary only" target, meaning that it did not have a functioning transponder. Unfortunately, at times the aircraft was inaccurately referred to as "transponder only," a term that could be understood to mean that the transponder, or some part of the transponder, was functional. When Washington Center contacted the DEN, it inaccurately reported that the aircraft had a functioning transponder with no Mode C. This would have been understood to mean that the aircraft's identity and tracking information would be displayed on radar, but that its altitude information would not. Had the information provided to the DEN characterized the aircraft as primary only, it is unlikely that the subsequent evacuation of the Capitol would have occurred.

In addition to the DEN, which monitors events nationally, the National Capital Regional Coordination Center, NCRCC, focuses on the Washington, D.C. area. This graphic shows the two airspace restrictions that are currently in place around Washington. The outer circle is at least thirty miles around Washington and is referred to as the Air Defense Identification Zone, or ADIZ. The inner circle is approximately fifteen miles around Washington and is referred to as the flight restricted zone, or FRZ. How flights headed toward or entering these zones are handled varies depending on the existing threat level.

As this aircraft approached the Washington, D.C. area and was handed off to the Potomac TRACON, the data tag that was automatically assigned at the beginning of the flight when the transponder briefly worked, did not automatically transfer to the Potomac TRACON's radar. Because Washington Center had informed the Potomac TRACON about the aircraft's identity, the Potomac controller manually input the flight information to generate a new data tag that was visible on FAA's radar screens. Because the personnel from other agencies did not have the same radar display that FAA was using at that time, the data tag manually assigned by the Potomac TRACON was not visible to the NCRCC. To be specific, this graphic illustrates what the individuals monitoring the NCRCC radar saw versus what the FAA controllers and specialists were seeing.

Consequently, when the Immigration and Customs Enforcement, or ICE, contacted the Potomac TRACON specialist to inquire about an "unidentified primary" target approaching the ADIZ, the specialist did not see an unidentified primary target on the radar display because there was a data tag attached to the target in question. But FAA controllers and specialists should have recognized that the data tag being displayed on their screens was not that of an aircraft with a functioning transponder. This difference should have prompted them to make connection between the aircraft being asked about and the Governor's aircraft. The chances for this type of misunderstanding occurring in the future have been reduced with the recent installation of the FAA's radar display on the NCRCC's radar so that all pertinent entities will be looking at the same radar display information.

Finally, the last graphic I want to show you is the last two minutes of the radar tracks of the aircraft's flight. To the controllers working this type of aircraft approaching Ronald Reagan National Airport for landing, nothing about the way in which this aircraft was operating would have caused concern. The aircraft was lining up for a standard approach to Runway 15 for landing. It did not appear that the aircraft was deviating inappropriately toward the Capitol or the White House. It is understandable that other agencies without benefit of FAA's radar displays and radio contact with the aircraft would have drawn different conclusions.

In addition to the new radar display provided to the NCRCC, FAA has developed a six-point plan currently being executed that focuses on the training and retraining of FAA personnel, controllers and managers, and pilots flying into the Washington ADIZ to make the coordination of information more effective and less confusing. Also, we have already mandated that any aircraft entering the

Washington ADIZ must have an operable transponder and that this requirement will no longer be waived.

Mr. Chairman, on behalf of the FAA, I regret that our agency contributed to the events that led to the unnecessary evacuation of the U.S. Capitol. We will continue to work with our employees, other agencies, and the aviation community to make the airspace more safe and secure for our citizens and this country.

That concludes my statement. I would be happy to answer any questions you or Members of the Committee may have.

Mr. MICA. Thank you. I appreciate your testimony. We will hear next from Mr. Jonathan Fleming, Chief Operating Office of TSA, and then we will get to questions.

Mr. Fleming, you are recognized.

Mr. FLEMING. Good morning, Chairman Mica, Representative DeFazio, and other distinguished Members of the Subcommittee. Thank you for inviting me to testify regarding the Department of Homeland Security's aviation security policies for the National Capital Region and specifically the events surrounding June 9, 2004, flight of tail number November 24 Sierra Papa (N24SP). I am pleased to appear before you, along with my colleague from the FAA, to testify on these important matters.

The National Capital Region Coordination Center is an integral component of the layered airspace security system that has been established to protect and monitor the National Capital Region. There are six agencies that provide daily representation to the NCRCC, including: the FAA, the U.S. Secret Service, U.S. Capitol Police, U.S. Immigration and Customs Enforcement, or ICE, the Department of Defense, as well as the TSA.

The NCRCC is responsible for coordinating the operations of all participating agencies to ensure airspace security within the defined limits of the ADIZ. TSA, as the executive agent for the NCRCC, is responsible for deconflicting information, disseminating relevant transportation security intelligence, documenting the activities of the NCRCC, and providing the physical infrastructure to accommodate NCRCC operations, to ensure that the participating agencies are responsive to and balanced with the emerging requirements of the threat.

Although TSA is the executive agent, each participating agency maintains its own organic capabilities and reserves complete command and control over operational and tactical matters that fall within that agency's respective statutory authorities.

When an unidentified aircraft approaches the Washington, D.C. ADIZ, radar operators at one or all of the monitoring agencies, including the ICE, DoD, and the FAA, begin to actively track it and announce the aircraft's presence on the Domestic Events Network, or the DEN, an interagency open line of communications that is continually available. The aircraft's position course, speed, and, if known, transponder "squawk" code and altitude are broadcast on the DEN in this initial report.

The TSA representative to the NCRCC has a specific role to play when an unidentified aircraft approaches the ADIZ. He or she is responsible for notifying the Transportation Security Operations Center's command duty officer of the situation, who in turn decides whether additional notifications are necessary. The TSA NCRCC

representative is also responsible for recording a timeline of the events that take place, in addition to monitoring the DoD and ICE radar feeds to assess the threat. Finally, the TSA representative will also monitor the DEN to answer questions from other agencies, to enhance interagency situational awareness, and to gather information for documenting the event.

I would now like to turn to events that occurred on June 9, 2004. An aircraft with tail number November 24 Sierra Papa entered the Washington, D.C. ADIZ. This flight was on a proper flight plan and had requested and received a waiver to fly into DCA. However, the aircraft's transponder was not squawking, rendering the aircraft unidentified to the NCRCC. This was announced on the DEN at 4:24 p.m. by ICE radar and the flight was subsequently continuously monitored by the NCRCC. Pursuant to protocol and procedures, ICE subsequently launched a Blackhawk helicopter to intercept the unidentified aircraft, if necessary. As we know, the unidentified aircraft turned out to be flight N24SP. The entry of N24SP into the Restricted Airspace over the National Capital Region resulted in precautionary security measures being taken on the ground and in the air. I am confident in saying that based upon all available information, the NCRCC coordinated properly and provided timely information that led Capitol Police to order the evacuation of the Capitol.

Lastly, I would like to provide to you an update on the issue of general aviation and charter flight operations in and out of Reagan National Airport.

As you know, a process has been implemented whereby some general aviation and commuter aircraft are granted a waiver to operate in and out of Reagan National Airport. The waiver program is an interagency process in which TSA and FAA work closely together to ensure that the National Capital Region airspace remains secure while at the same time allowing a limited number of GA flights to use Reagan National Airport. These waivers are issued on a very limited basis for very specific purposes and only when very stringent security procedures have been implemented.

For GA planes that operate in or out of Reagan National Airport, the waiver process is initiated with a request to TSA. TSA determines whether the applicant satisfies one of the three possible categories that would make an applicant eligible for a waiver. Those categories include special or classified operations, government operations, and elected officials. If the applicant is eligible for a waiver, the pilot and crew are vetted through the FBI National Crime Information Center, and the No-Fly and Selectee lists to ensure that known or potential threats do not receive waivers. In addition, passengers are checked against the No-Fly and Selectee lists.

If these checks are clear, an approval number is assigned to the flight and a waiver request form is drafted for delivery to the FAA. If the FAA approves and issues a waiver, the TSA inputs the waiver into the master list and then notifies the FAA, the NCRCC, and Potomac TRACON of the waiver authorization. The flight is allowed to proceed provided that it adheres to all necessary security measures.

Chairman Mica, Representative DeFazio, and other distinguished Members of the Subcommittee, this concludes my prepared statement. I would be pleased to answer any questions at this time.

Mr. MICA. Thank you. We will get right into questions. I will start and then will yield to other Members.

First of all, you saw the chart that we prepared showing the incursions into the ADIZ and the FRZ which showed approximately 1,200 unidentified incursion into these areas. Are you aware of that, both of you?

Ms. SCHUESSLER. The violations that you speak of, the 1,281 number is the number of pilot deviations that have been filed. Those are pilots or aircraft that we can identify.

Mr. MICA. Those are ones that were identified. But there are another approximately 1,200 unidentified incursions. You are aware of those?

Ms. SCHUESSLER. I am not aware of the specific number, but yes, sir, I am aware that we do have some unidentified targets that we have not identified and pilot deviations have not been filed.

Mr. MICA. The reason I am asking this is it is my understanding that right now there can be civil penalties on pilots that come into these areas and do so without permission or identification. There is only a civil penalty that can be imposed. I have been made aware that FAA is now considering a rule that would make this a criminal act and are going to propose a rule that would institute a criminal penalty. Is that correct?

Ms. SCHUESSLER. Yes, sir, that is correct. Currently, the Department of Justice could pursue criminal sanctions against the pilot. However, that has not been done to date. We in the FAA believe the permanency of the ADIZ would help facilitate the government if it became necessary to pursue criminal penalty.

Mr. MICA. Now there is some 1,200, approximate, incursions into the larger area. But I am told that the smaller area, the FRZ, the very secure area, that there have also been incursions into that area. Have all of those been identified to your knowledge? Both of you.

Ms. SCHUESSLER. That, I am not sure.

Mr. MICA. Can you let the Subcommittee know?

[The information received follows:]

A review of our air traffic logs indicates that there have been 17 incursions into the Flight Restricted Zone since it was established on January 28, 2002. Three of those incursions were "unknowns." Of those three, two were probable aircraft that, due to radar coverage, were lost prior to destination. The third event was categorized as a weather anomaly. In the past, if the FAA was not able to keep a continuous radar track on a given target, we would be able to identify the aircraft.

Today, with the support of several other government agencies and the Department of Defense, we have several improved surveillance systems in use to assist in the identification of aircraft. Additionally, those individuals who "monitor" the airspace are now in a far better position to distinguish between aircraft and other types of "anomalies" (such as birds, weather, "ghost or radar shadows", etc.) that could be mistakenly identified as aircraft.

Mr. MICA. Do you know, Mr. Fleming?

Mr. FLEMING. Each of those are investigated and actions are taken by the agencies represented at the NCRCC to identify those. I am unaware of flights into the FRZ that were unidentified. But we will certainly research that and get back to you.

Mr. MICA. OK. Now part of the reason for this hearing is to find out that we have taken corrective action so this cannot happen again. First of all, I have a great many questions about this whole waiver process. I have got members of the panel here who are pilots who cannot get into the Capital, and we have got a long list of Members and other elected officials who fly in on these waivers. But there are no more waivers to waivers as far as coming in with a transponder or criteria that you said you must meet to be granted a waiver. Is that correct, Mr. Fleming?

Mr. FLEMING. That is correct.

Mr. MICA. Ms. Schuessler, is that correct?

Ms. SCHUESSLER. That is correct.

Mr. MICA. OK. Now I do know that there are some people on the list who do not meet the criteria that you set forth today before this Subcommittee, some political figures who were on that list. Now are they going to be denied access to the air space?

Mr. FLEMING. I am not aware of——

Mr. MICA. We will tell you later. But you are telling me that, in fact, you are going to not allow waivers to the waivers or to the criteria which you cited for being granted a waiver before this Subcommittee today. Everyone is going to have to meet that criteria.

Mr. FLEMING. Everyone will have to meet those criteria.

Mr. MICA. OK. That is what I wanted to know. All right. Now the next problem we have is, as I understand it, you had FAA technical information, you had the ICE technical information, and TSA had their technical information. And one computer or one technical base was not comparable to another. And a part of that is equipment that I was told that was installed in the National Capital Regional Coordination Center, whatever we call it, was older equipment. I guess it was put together kind of quickly. But I am told now that that technical capability and equipment has been upgraded. Is that correct? Do you know, for FAA?

Ms. SCHUESSLER. That is correct. I am not sure I would categorize it as older equipment.

Mr. MICA. Well, it was not compatible with—you showed the screens here. You had one screen that showed one thing and another screen that showed something else. Do we now have the technical capability of getting a match?

Ms. SCHUESSLER. We have the same radar display available at the NCRCC that Potomac controllers are seeing.

Mr. MICA. It has been changed out there?

Ms. SCHUESSLER. Yes, sir.

Mr. MICA. OK. All right. OK. So we have got equipment resolved. The next question is the DEN, Domestic Event Network. We had problems with this open line and communications. Where are we on that? Are those problems resolved? This cannot happen again?

Ms. SCHUESSLER. Yes, sir. We believe those problems are solved. We do have the availability——

Mr. MICA. Are you in charge of the DEN line?

Ms. SCHUESSLER. Yes, sir, I am.

Mr. MICA. FAA, right.

Ms. SCHUESSLER. For the FAA.

Mr. MICA. OK. And Mr. Fleming, what about resolving the communication problem. You have the larger picture, TSA, right?

Mr. FLEMING. Yes, sir.

Mr. MICA. You heard people saying nobody answered the phone or it did not have call waiting or whatever. Again in this system, are those communication problems as far as your participation in the DEN and any other communication links to TSA, are they resolved?

Mr. FLEMING. Yes, sir. I would like to point out that the agencies that are represented at the NCRCC, including the representative from the FAA, on the date in question were all aware of the information at hand. There was a miscommunication within or between the FAA representative at the NCRCC and the FAA control at Potomac TRACON on a clarification on what they were looking at. I want to point out that the communication between the FAA representative there at the NCRCC as well as the other representatives there at the NCRCC was clear and was consistent. There was some earlier comment that there was some miscommunication amongst the NCRCC and I wanted to dispel that. There was clear communication amongst the representatives there at the NCRCC.

The DEN was being utilized during this event. However, at the same time the DEN is being utilized, there are a number of other modes of communication simultaneous to some of the DEN announcements. As was referred to, that telephone call to the tower was made at the same time communications were occurring on the DEN.

Mr. MICA. OK. One last question. Who is in charge? Ms. Schuessler?

Ms. SCHUESSLER. Regarding who is "in charge," the security of the national airspace system is a shared responsibility. The FAA Administrator is responsible for the regulatory system and structure that we put in place to manage the national airspace system.

Mr. MICA. But who is in charge of these crises situations? Is there somebody really in charge, or is it again sort of a circular everybody has a little piece of responsibility?

Ms. SCHUESSLER. Everybody has a piece of the responsibility. From an FAA perspective, not only do we put the regulatory system in place to ensure the safety and efficiency of the NAS, we also support the national security of the air space system. So once that structure is in place, TSA is the authority that identifies the threat, makes that assessment, and the Department of Defense is the agency that actually physically defends the country.

Mr. MICA. So TSA has a higher responsibility than FAA. Is TSA in charge, Mr. Fleming?

Mr. BOSWELL. Mr. Chairman, would you yield for just a moment?

Mr. MICA. Yes, sir.

Mr. BOSWELL. I think you hit the nail on the head. I can imagine you trying to run this Committee and all of us deciding what parts we are going to run for you.

Mr. MICA. Oh, well, we do that sometimes.

[Laughter.]

Mr. BOSWELL. I did not mean to be facetious. This is a terribly serious matter.

Mr. MICA. No. And again, our whole purpose here is—I mean, they are all doing their jobs.

Mr. BOSWELL. I am proud of them. But where is the central control?

Mr. MICA. Exactly. Who is in charge. And, again, it is multi-jurisdictional. You have got DoD involved, you have got TSA involved, we have got FAA, and other agencies.

Mr. BOSWELL. In fact, I do not think we are treating them right, Mr. Chairman.

Mr. MICA. Well, there is another question here. I was told that the Secret Service had this information and I am told also, I do not know if this is true, that the White House was not evacuated. If you look at the charts here, the White House could have been as much a target as the Capitol. So somewhere this is not all quite coming together and I am not sure if TSA needs to assume that responsibility. Mr. Fleming, do you think that is TSA's role?

Mr. FLEMING. TSA's role is in clarifying a picture of what is happening. TSA's role as the executive agent for the NCRCC is to help clarify the information that is being received from various sources and to be able to provide a clear picture to DoD on when interdiction is necessary. So TSA as the executive agent of the NCRCC will take information from various sources, including the FAA, and help unclutter that picture so that DoD has more clarity in what they need to do.

Mr. MICA. Well, something went wrong. And that is why we are here. The other thing, and I cannot get into it, I have been too generous with my own time here, but is to make certain that we have backup fail safe systems. Again, I think we are going to have to look a little bit more closely at who is in charge, and then the backup systems. I have extended beyond my time.

Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. Thank you for holding the hearing. I regret I was delayed in coming. But at this point, I would like to yield my time, if he wishes, first to Mr. Oberstar, since I came in late, and give him the courtesy.

Mr. OBERSTAR. I thank the gentleman for his courtesy. The central question here is that of coordination. Here is TSA and FAA doing the right things, setting up the National Capital Regional Coordination Committee. FAA, Secret Service, U.S. Capitol Police, Customs and Immigration, DoD, TSA, and you cited, Mr. Fleming, FBI and others are key participants and you are supposed to have daily representation. That means daily there is some communication going on. Somewhere along the way there was this sort of oversight, people just let something drop. They did not imagine a situation in which an aircraft with an inoperative transponder, Mode C transponder would enter that airspace and then what to do about it. That should have been a part of a very thorough planning system. Setting up this coordination committee, this is the very kind of event that you should be thinking about.

Why do I say that? This is not hindsight. That is what happened on September 11th. The Al Qaeda terrorists, the first thing they did when they got into the cockpit and took over the aircraft was to turn off the transponder. It disappeared from radar screens. So I would have thought in the ordinary course of planning it would have occurred to someone that what is the first thing we ought to

think about. Oh. At least fight the last war in order to think about the next one.

I think that was a clear failure of this coordinating committee. And once that part of the puzzle failed, then a cascade of events occurred after it, which resulted in 2,000 people being ushered out of the Capitol and the House Office Buildings, although, interestingly, not the White House.

I would like to know, Ms. Schuessler, is it an FAA requirement for pilots to thoroughly check their Mode C transponder before take-off?

Ms. SCHUESSLER. Yes, sir, it is.

Mr. OBERSTAR. What does the check involve?

Ms. SCHUESSLER. Well, the check would involve whether the equipment was operating and——

Mr. OBERSTAR. Turning it on.

Ms. SCHUESSLER. Turning it on, validating that it is working. And in this particular case, it became very obvious upon departure that the Mode C was not working that day.

Mr. OBERSTAR. Do you know whether the pilot in fact did that pre-flight check?

Ms. SCHUESSLER. No, sir, I do not.

Mr. OBERSTAR. Can you find out?

Ms. SCHUESSLER. I can attempt to find out, yes, sir.

Mr. HAYES. Would the gentleman yield?

Mr. OBERSTAR. Yes.

Mr. HAYES. Just a point of clarification. If you get in the airplane and turn on the transponder, some of them have a light that lights up. But until that transponder sends a signal to some radar and the radar either does or does not receive it, without electronic testing gear you cannot confirm that it is working.

Mr. OBERSTAR. That is exactly where I am leading, is that is the next thing that has to happen. In the course of a check on an aircraft that is headed into sensitive airspace, it would seem to me that not only you turn it on, not only you verify that it is operative, but that it is actually sending the signal and for some period of time. That, too, is not hindsight. That is something that should have been evident in the aftermath of September 11.

You know, some years ago this Committee, in the aftermath of the terrible mid-air collision at Cerritos, California, held hearings, following up on previously held hearings, on traffic collision avoidance systems which FAA had been delaying as a result of pressure from airlines not to require TCAS on commercial aircraft. But we had testimony in the aftermath of that tragedy that showed clearly that a traffic collision avoidance system would have in all likelihood prevented that crash. So we then legislated the requirement of a traffic collision avoidance system on all aircraft and required upgrades to be installed as improved technology came along so that we would not have the perfect always preventing the implementation of the good.

Well, here again it has been a long-standing FAA requirement that if you are going to operate in the TCA of a commercial airport general aviation aircraft must have Mode C transponders. We got a lot of push-back from general aviation at the time that this issue was raised. But this Subcommittee, over many chairmanships and

on a bipartisan basis, has insisted on that requirement. So it is ingrained in the culture of FAA but it is apparently not in the culture of TSA. Is that right, Ms. Schuessler?

Ms. SCHUESSLER. I could not answer for TSA. But certainly with the FAA, Mode C is an equipment function that the controllers typically do pay due attention to. And on this particular day, I would also like to point out that the controllers had very good intentions. They had a pilot who knew the transponder was not working, and, although we classified it and characterized it incorrectly, we were trying to ensure that the Governor of Kentucky came into a State funeral, that the pilot had followed all air traffic control instructions, had not veered off course, and controllers, again, had good intentions to try and expedite that flight for landing into Reagan National.

Mr. OBERSTAR. In fact, according to the information you provided earlier, the Kentucky aviation service, whatever you are calling it, applied in February for a waiver for the Governor to come to National and land at National, and that waiver was granted in February of this year. Correct?

Ms. SCHUESSLER. That is correct.

Mr. OBERSTAR. So the Governor's office did all the right things. The pilot did the right thing when he found that the transponder was inoperative after take-off. The controllers at Indianapolis Center did the right thing by creating their data block. Maybe the data block was entered just for that brief moment that the transponder was operative, is that right?

Ms. SCHUESSLER. That is correct. And it was automatically displayed on the radar scope.

Mr. OBERSTAR. But then it had to be manually entered at Washington Center?

Ms. SCHUESSLER. Yes, sir.

Mr. OBERSTAR. It had to be manually entered by the controllers at Washington Center. They did the right thing. It had to be manually entered by the Potomac TRACON, is that right?

Ms. SCHUESSLER. That is correct. Manually inputted only by Potomac TRACON.

Mr. OBERSTAR. Right. But then over here is this separate independently operating computer of the NCRCC, National Capital Region Coordination Center. They do not have the same technology. They do not have, or at this time, they did not have a connect with the FAA computers so that the same data that is on the FAA screens appears on their screen. Is that correct?

Ms. SCHUESSLER. That is correct.

Mr. OBERSTAR. And now you do have that interconnect?

Ms. SCHUESSLER. Yes, sir.

Mr. OBERSTAR. You have created that? This cannot happen again? This same incident cannot happen again?

Ms. SCHUESSLER. We do not believe it can happen again, no, sir.

Mr. OBERSTAR. All right. Well, end of hearing. But it just shows that coordination is so important. Communication is so critically important. I cited in my opening remarks the problem and the tragedy of Pan Am 103 is that there was not communication along the line. People were not talking to each other. That is a tragedy

that could have been prevented. And there are many others that could be prevented.

I suppose now that this has occurred, I am just speculating, the Secret Service is totally spooked by this incident and will not release its iron, icy grip on National Airport for general aviation aircraft so poor Mr. Hayes will not be able to fly in here, or Mr. Pearce, or any of the other Members of Congress who are pilots who would like to use this airport, and, frankly, should use this airport.

Mr. FLEMING, I think it is incumbent upon TSA and the Secret Service to get together and understand that security, the relative absence of risk, is a responsibility that you have to carry out and that simply blocking out this airport is not security. The determined terrorist will be able to fly something into this air space and defeat all the other rules, and then you will eventually have to scramble aircraft and shoot it down. But why make life miserable for the law-abiding citizens who want to use the air space and are willing to do whatever you prescribe. Can you answer that?

Mr. FLEMING. Sir, I agree that it is the responsibility of the Department of Homeland Security as well as the TSA to develop a plan to allow general aviation aircraft to fly into National. We have worked on that. We have developed an initial proposal which is currently under review at the Department that, from a TSA perspective, at least initially, looks as though we can mitigate some of the risk associated with general aviation landing at DCA. That is in the review process at the Department as we speak.

Mr. OBERSTAR. So it is under review? There is a plan being reviewed?

Mr. FLEMING. Yes, sir. We have submitted our initial proposal to the Department and it is under review.

Mr. OBERSTAR. Well, maybe we ought to join hands and pray together about this and see if we can get it working. Thank you very much.

Mr. MICA. Thank you.

Before I recognize Mr. Hayes, Mr. DeFazio moves that the record be left open for a period of two weeks. Without objection, so ordered.

Also, Ms. Kelly from New York had to leave early and asked unanimous consent that her questions be submitted to the panelist and be made part of the record. Without objection, so ordered.

Thank you, Mr. Hayes, you are recognized.

Mr. HAYES. Thank you, sir. Either Ms. Schuessler or Mr. Fleming, what are we missing so far as you respond to our questions? We missed the fact that the Capitol Police were involved in that scenario as well, making it even more confusing. But where do we need to be following up right now? What question do you need to ask us? While you think about that, again let me say that I have reviewed the procedures as best I can with some experience and I am well satisfied that even though it was not flawless, the mistakes that were made in hindsight were predictable and the proper steps have been taken to correct the situation. Now, what are we missing?

Mr. FLEMING. For the NCRCC, after review of the incident, in coordination with the agencies involved, as has been mentioned be-

fore, the installation of the additional radar picture at the NCRCC we hope will alleviate the possibility of a similar incident occurring again. I would like to point out that the installation of that radar picture is not as a result of this incident but had been scheduled and was in process prior to this incident occurring. So it was something that was recognized as a capability that was necessary and was in the process of being installed when this unfortunate incident occurred. We will continue to increase our working group meetings made up of the agencies that are involved in the NCRCC, which meets on a weekly basis, we will continue to work——

Mr. HAYES. You are explaining. I do not need you to explain that. Ask me what you want us to talk about now that will help clarify this. I have got my own ideas, but I want to give you all a chance at this point to help, based on what you have heard so far, direct this questioning so it is as effective as possible. It is not about Mr. Pearce and I being pilots either.

Ms. SCHUESSLER. I think we just need to acknowledge this is a very complex issue. I am not sure, I have heard several people say someone must be in charge, and I think it is a shared responsibility. We do know that the Department of Defense has the final authority to make the determination about what actions they are going to take. I think we need to acknowledge and recognize that. I think we need to continue to work together.

From an FAA perspective, I know there are some in this room that have indicated this morning that perhaps the FAA needs to take more ownership of some of these aspects. Presently, the FAA's mission is the safety of and providing separation for aircraft. That is our primary focus at this point. So as maybe policies change or shift, we would have a lot of work ahead of us.

Mr. HAYES. Good point. Again, just as we try to clarify for those who are here who have not seen all the different facilities, it is a little bit of a challenge. But just imagine a large room with a horseshoe-shape console. Now under the new procedures, very logical, the FAA person sits besides the ICE person, like Mr. Moran and I, the equipment that corrects the problem is right there between them, so that has clearly eliminated that. You go right around the table, Capitol Police, Secret Service, military, all that is extremely logical. There does not have to be a phone call to Vint Hill, a trip across the room. You have fixed that, very clearly.

I think the point is not ownership by the FAA, but when something happens, when action is required, I agree with I think it was the Chairman who said the FAA needs to take command of the situation. Everybody has to make their contribution. But as soon as the military or the Capitol Police or someone else orders a fighter or a helicopter into the air, there is immediately a huge risk because of the unusual nature of the situation that you can run this F-16 into an airliner that is not even involved unless the FAA does what it does best—take control, not ownership, of the situation to make sure that the right calls are made and that the ultimate outcome is what we wanted and not some unintended really bad consequences.

Again, let me emphasize that having toured and talked and visited and listened to the professionals who were manning the positions and had oversight, even though it was not flawless, I am ex-

tremely pleased, not satisfied because it is not a perfect process, but extremely pleased with the way that it was handled. Unfortunately that it came up like it did. But the response under the circumstances and the remedial action has been exemplary. Thank you, Mr. Chairman.

Mr. MICA. Thank the gentleman. Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. Now I know we are in open session here, but we have talked about a lot of things and I am just curious. What is the perceived threat of general aviation, small planes? You think of what people use as a weapon—an oil tank truck, there are a lot of things out there. A small plane, what is the threat? What are we defending ourselves against here? Either one of you.

Mr. FLEMING. We believe that aircraft of many different sizes can pose a threat for many different reasons. I would be glad to talk to you about that in more of a closed session.

Mr. DEFAZIO. OK. So you are saying then that a determined terrorist might use a general aviation aircraft. Is that correct?

Mr. FLEMING. Yes, sir.

Mr. DEFAZIO. OK. Is this true, is this really accurate that we send up unarmed civilian jets to do intercepts and then we send up Blackhawk helicopters with guys with automatic shoulder-fired weapons, basically like an AK-47 or something, and that is our line of defense here, that is our principal line of defense? Do you think this is going to work against a determined terrorist? It is pretty certain to work against some innocent general aviation pilot, but against a determined terrorist who is attempting to evade using cloud cover or whatever else, this is adequate? If we think there is a threat, I do not think fifteen miles, which is seven and a half miles when you divide it in half, which can be transected, how quickly can a twin engine plane at maximum velocity exceeding manufacturer's specifications transit seven and a half miles? I think it would take less than three minutes.

Mr. FLEMING. Sir, I do not have that——

Mr. DEFAZIO. Yes, well, probably three minutes, three and a half minutes. And so we are sending up the Blackhawk helicopter with the guy who is trained to shoot the AK-47—I guess we would not use those, we are Americans, I do not know what we use, it would not be an M-16, I think the rounds are too small. I am just really puzzled here. If we think there is a real threat of determined terrorists using general aviation, then the steps are clearly inadequate. If we want to continue to harass general aviation, then the steps are great. There is somewhere in between here. And of course, this article in the Post goes on to say this is because of political compromises. Well the compromises mean we are providing the illusion of security, which will defend ourselves against innocent intrusions but not against actual determined terrorist intrusions. I think we have really got to make up our mind here. Is there a threat, is there not a threat. And if there is a threat, are these measures adequate. Do you think so?

Mr. FLEMING. Sir, the protocols within the Department identify different agencies' responsibility for different actions when there is a penetration of the ADIZ. In this particular case, the launch of ICE aircraft, which you have referenced, was the——

Mr. DEFAZIO. That was the unarmed jet. What is the unarmed jet going to do? Are they trained as suicide pilots to crash into the aircraft if it will not turn? What are they going to do? Cause a wake vortex in front of it? What is their role?

Mr. FLEMING. No, sir. Typically, the ICE aircraft are used in an interdiction capability to identify the aircraft that we are dealing with.

Mr. DEFAZIO. OK. So they are going to identify it. OK. And then the Blackhawk helicopter with the guy with the automatic weapon, that is the defense of the United States of America, the U.S. Capitol, the White House?

Mr. FLEMING. No, sir. The Department of Defense provides the

Mr. DEFAZIO. Right. As we know, as it says in the article and in open sources, they are not on constant patrol and it takes fifteen minutes to scramble. It takes a lot less than fifteen minutes to transact this area. So, that is not too good, huh?

I guess I just really want to know. We cannot get answers about general aviation at National. We keep hearing that there is going to be a plan and we are going to allow general aviation in, and we are going to have them take these steps, and these would be reasonable steps, and we hear this in closed and open hearings, and then somehow it never goes anywhere. It is like the stupid rule that everybody has to be strapped into their seat for half an hour until you have flown past two or three other airports, which have aircraft going up and down all the time where the people are not strapped in, out of National Airport. We are not making a lot of sense here, are we? It is kind of like we are doing things that provide the illusion by harassing innocent people that we are doing something about really bad people, and we are not. I do not think it is going to deter them too much.

So my general comment here is I think that the steps that were taken regarding this incident seem to have resolved those particular bureaucratic glitches. But there are still questions that underlie the whole system that I do not believe are being addressed here. Perhaps they cannot be addressed in public. But even when we get you in private, you cannot address them and then you never do anything about them. So I remain frustrated and bemused by this whole thing. Thank you.

Mr. HAYES [ASSUMING CHAIR]. Before I call on Mr. Moran, we have a vote on the floor. Mr. Moran will have time to finish. I would assume we are coming back, but we will be gone from here for probably twenty-five minutes.

Mr. Moran, you are recognized.

Mr. MORAN OF KANSAS. Mr. Chairman, thank you for speaking in your fast North Carolina drawl and allowing me as much time as possible, which I have now taken disadvantage of.

Thank you very much for your testimony. What transpired that then resulted—in the scenario that you described back in June—what transpired that then resulted in the evacuation of the Capitol? Who makes that decision? And why was the decision made to evacuate the Capitol but not the White House?

Mr. FLEMING. The agencies that comprise the NCRCC each maintain their own organic operational capabilities. Capitol Police

is represented on the NCRCC and based on the information they were receiving at the NCRCC, they were in communication with their line of command, their line of command went through their procedures and they determined that it was necessary to evacuate the Capitol. So that decision was made by the U.S. Capitol Police.

Mr. MORAN OF KANSAS. And was it a similar thought process by others? The folks who are responsible, I assume the Secret Service, for the safety of the White House, they are involved in this process too but reached a different conclusion?

Mr. FLEMING. Yes, sir.

Mr. MORAN OF KANSAS. And is that portion of the process being reviewed? You have described what steps have now been taken to improve the communication. Is there now an additional review of the steps beyond what we have talked about this morning?

Mr. FLEMING. I cannot attest to what each individual agency is doing. I know there has been a significant amount of discussion about this event, deconstruction of it, where we could improve. I would assume the other agencies have done the same.

Mr. MORAN OF KANSAS. It is true that there is a number of participants in this process and you are only two of them. We do not have the full array of folks who make decisions about security that follows the events that occurred back in June with us today, is that right? A lot of people are not here who have involvement in this process.

Mr. FLEMING. Yes, sir, there are other agencies that are not represented. Although I am speaking for the NCRCC.

Mr. MORAN OF KANSAS. Of which those other agencies are members but they are making independent decisions not a collective decision?

Mr. FLEMING. Yes, sir.

Mr. MORAN OF KANSAS. Have any of the violations of the ADIZ that we have talked about, have any of them been determined to be connected to terrorist activity?

Mr. FLEMING. No, sir.

Mr. MORAN OF KANSAS. And has anybody violated the ADIZ space intentionally, or has every instance that we know of been an unintentional occurrence?

Mr. FLEMING. I would like to refer that question to my colleague in the FAA who typically handles the investigations of those.

Mr. MORAN OF KANSAS. Mr. Fleming, I happen to be looking at you but I am happy to have either of you answer the question.

Ms. SCHUESSLER. The majority of the ADIZ violators are certainly unintentional. There has been I believe at least one incident where the incursion was intentional and our Flight Standards Division has sanctioned that particular pilot. I am not sure if there are any others however.

Mr. MORAN OF KANSAS. Do you confirm what Mr. Fleming told me, that even though there was one intentional, it was not terrorist related?

Ms. SCHUESSLER. Yes, sir, that is correct.

Mr. MORAN OF KANSAS. Was the ADIZ intentionally to be temporary when it was created? And if so, is there ever thought that it is going to go away?

Ms. SCHUESSLER. Initially when it was established, it was established as a temporary flight restriction. It remains a temporary flight restriction to this day. And this is a topic, as Mr. Fleming has said, that is reviewed on a constant basis by all the agencies involved and we refine our procedures and air space as necessary.

Mr. MORAN OF KANSAS. My guess is it is like general aviation at Washington National—all things are temporary but they never seem to go away. I guess I do not expect a response to that.

In regard to general aviation, Mr. Oberstar, in response to his question, you indicated, Mr. Fleming, the possibility of general aviation access to Washington National is being reviewed by your Department, a departmental review process. Is that true?

Mr. FLEMING. That is correct.

Mr. MORAN OF KANSAS. Can you give us any suggestion as to what kind of timeframe you are on, when there might be an answer, and does this buck get passed one more time? When it is reviewed by your Department, is that the final decision? Or will we once again hear that everything is fine except the Secret Service will not let us? So is it like one more hoop we go through and it is your Department and if you say yes or changes are made, that is the final answer? Or is this just one more step in a long process that never ends?

Mr. FLEMING. Sir, I can speak to the fact that we have developed a mitigation plan at the TSA, have forwarded that to the Department of Homeland Security who is currently reviewing that. I am sure that the other agencies within the Department of Homeland Security will be a portion of that review.

Mr. MORAN OF KANSAS. Who has the final decision on whether or not general aviation can operate out of National? Department of Homeland Security?

Mr. FLEMING. Sir, I believe the Secretary would make a determination on whether or not TSA's proposal was adequate. However, I am not aware if there are other approvals necessary that the Secretary of Department of Homeland Security may have to inquire.

Mr. MORAN OF KANSAS. So at this point, we do not know can answer the question of whether Washington National can be opened to general aviation? Just the Department is making a decision and then we are not certain what happens next. Is that accurate?

Mr. HAYES. If you would allow me, Mr. Moran, if you will hold that thought, we have got six minutes to go on the vote.

We will take a short recess. We appreciate your being here and we will be right back.

Mr. MORAN OF KANSAS. I am happy to hold my thought. I was only hoping to get the answer to the question.

[Recess.]

Mr. HAYES. The Committee will come to order.

I anticipated that everything would calm down while we were gone. But judging the crowd of people, that did not happen yet.

Mr. Fleming, as you are resuming your seat, I am going to take you back to Mr. Moran's question. I am sure you have had time to get that answer put together. Do you remember the question?

Mr. FLEMING. Yes, sir.

Mr. HAYES. OK. Proceed. Thank you for your patience.

Mr. FLEMING. The Secretary of Department of Homeland Defense is responsible for approving the plan. However, that would have to be coordinated with the White House, the Department of Defense, and others that are associated with the protection of the homeland.

Mr. HAYES. A complicated issue. I am sure we will continue to massage that and hopefully come up with a successful outcome that does not penalize the wrong people.

Mr. Norton.

Ms. NORTON. Thank you, Mr. Chairman. Since 9–11 controllers have been operating a system that has had not only immense pressure on it but great increase in actual work. They have not had a lot of practice in dealing with general aviation at this airport, however. In fact, one might even say, given the clear controller error here and mischaracterization, that they are out of practice altogether.

I note that in December 2003 President Bush signed into law the following language: “The Secretary of Homeland Security shall develop and implement a security plan to permit general aviation aircraft to land and take off at Reagan National Airport.” It seems pretty unequivocal to me. Mr. Fleming, in your testimony, the following couple of sentences appear: “We are currently not aware of any specific information regarding terrorist plans to use GA aircraft to strike targets in the National Capital Region. Nonetheless, we have maintained the restrictions on GA flights because the vast majority of GA operations do not meet the same security measures being applied to air carriers operating large aircraft.” Of course they do not, because they cannot until you do for general aviation what you have done for commercial aviation. By what authority has the Administration failed to abide by Section 823, which requires not the opening, but the development of a security plan in order to allow take-offs and landings to occur, under what authority and under whose say-so are you continuing to fail to submit a plan to this Committee?

Mr. FLEMING. Ma’am, the Transportation Security Administration has worked out an initial plan to mitigate risk of general aviation landing at National Airport. That plan has been submitted to the Department. The Department is currently reviewing that plan.

Ms. NORTON. Chairman Mica had an extraordinary hearing several months ago at general aviation itself in Virginia. The Ranking Member, the Chairman, indeed, every Member of this Committee was very clear, but the Chairman said he was going to ride this pony until this law was implemented. So I therefore must ask you, when do you expect to submit that plan to this Committee in accordance with Section 823?

Mr. FLEMING. Ma’am, I do not have a timeline to give you today. As I have stated, the plan is at the Department and is being coordinated amongst the agencies within the Department currently.

Ms. NORTON. I am going to ask you to go back to the Department to ask the Department to submit that plan, even if it has to be a secret plan at the time, to the Chairman of this Committee within the next thirty days. Do you agree to go back and give that information to the Department?

Mr. FLEMING. Yes, ma’am, I will provide that message back.

Ms. NORTON. There has been some talk about extending the restricted flight zones. Is there any plan to extend the present restricted flight zones around the District of Columbia?

Mr. FLEMING. I am not aware of any such plan.

Ms. NORTON. If there were extensions of the restricted flight zones, would that not require the closing of some airports?

Mr. FLEMING. I am not aware of a plan to extend those zones and, as such, I could not comment on what those plans would affect.

Ms. NORTON. Do you believe that it is necessary, in your professional judgment, to extend the restricted fly zones?

Mr. FLEMING. TSA consistently works with our fellow agencies to look at security requirements for the zone and will continue to modify those as necessary. I am unaware of any movement at the current time to revise those.

Ms. NORTON. Mr. Fleming, I am going to take that as a no. If the Chairman will allow me one final question. One of the most disturbing things we heard here was essentially nobody was in charge because everybody has a piece of the elephant. I am a Member of the Homeland Security Committee and the Congress went through a great big brouhaha to make sure somebody was in charge, which is why we have a Homeland Security Department, with great bipartisan fanfare. Since we are unable to designate at the moment who is in charge, who is the overall coordinator, and I would ask you to go back to the Department to raise the issue of should not somebody be in charge of looking at all the pieces of this system, but since that is not the case, let me ask if there have been any drills since this system was put together with its various component parts of the kind, for example, that we do in cities and States to assure that in the event of an untold event this is the way we would behave. Do you know of any drills that have taken place among the actors in the present system?

Mr. FLEMING. Yes. Yes, ma'am, I do. There have been drills.

Ms. NORTON. Did those drills in any way prepare you for the mischaracterization by the controller which was clearly controller error, or prepare you to understand that the difference in radar equipment could result in what happened in June here?

Mr. FLEMING. Yes. I think the drills as well as the working group of those agencies that meets on a weekly basis identified the fact that that additional radar picture would be helpful, and that radar picture was scheduled and was in process of being installed on the event in question.

Mr. HAYES. The gentlelady's time has expired. Just for clarification. From my perspective, Admiral Stone, pursuant to the meeting that you attended, did present a plan to Homeland Security. Homeland Security reviewed that plan, had a couple of questions, I do not know exactly what the questions were, and they took those questions, sent them back to TSA to review these questions and resolve them. So there has been some action there. I do not know what Mr. Fleming might be able to add to that later on. But the initial contact between Admiral Stone and Homeland Security was made, they were asked to review some issues, and that is where we are right now.

Mr. Pearce, thank you for your patience.

Mr. PEARCE. Thank you very much. Mr. Fleming, how many events will your controller handle everyday? You have your FAA sitting over here controlling a certain number of aircraft, and then the parallel scope setting in your \$20 million facility. How many events will the controller that is on the job handle during the same time that this controller works his time period, eight hours or whatever they do? How many TOI events do you handle in a day?

Mr. FLEMING. I would like to refer that question to the FAA.

Mr. PEARCE. Sure. Just approximate.

Mr. FLEMING. The FAA is the responsible controller at the NCRCC.

Mr. PEARCE. No, no. You showed the two screens with the parallel progression. The controller knew exactly what was going on but the person in the NCRCC is the one that pulled the trigger. I am wanting to know the person in the NCRCC, how many events do they have a day? How many TOIs do they coordinate with the FAA?

Mr. FLEMING. I will turn it over to the FAA. I just wanted to clarify that the individual at the NCRCC is an FAA individual at the NCRCC.

Mr. PEARCE. OK.

Ms. SCHUESSLER. For instance, yesterday we had two violators of the ADIZ. But on a very pretty weekend, it is VFR, we may have numerous pilots out there. So it varies. So I would imagine three or four a day.

Mr. PEARCE. OK. Three or four a day. And how many plans are your air traffic controllers controlling a day? I suspect they land every thirty seconds at Reagan.

Ms. SCHUESSLER. I would imagine each controller handles several hundred a day.

Mr. PEARCE. OK. So you have got several hundred versus two or three in the decision-making scheme.

Mr. Fleming, you said that the person there that is handling the TOIs has FAA background, is actually an FAA experienced controller?

Mr. FLEMING. He is an FAA employee. That is correct.

Mr. PEARCE. He is an FAA experienced controller.

Mr. FLEMING. I would refer to the FAA to speak to the qualifications of their employees.

Ms. SCHUESSLER. Yes. The FAA representative at NCRCC is an air traffic controller.

Mr. PEARCE. And it did not occur to this person at the NCRCC to ask, "Hey, you have got this plane on the radio and DME off of the Washington VOR. Do you have a target there? Are you looking at him?" It did not occur to that guy with the background to ask that question?

Ms. SCHUESSLER. No, sir, it did not. But it did occur to the individual to call another facility, Dulles Tower, to see whether they had a visual sighting so we could identify the aircraft.

Mr. PEARCE. OK. But we alerted an entire city and bailed a bunch of people out when the air traffic controller was actually very knowledgeable about what was going on. And, yes, he used the wrong terminology. But, again, I get back to my point. You

have got your FAA controllers handling hundreds of aircraft a day—and did I understand that we fired this guy, the controller?

Ms. SCHUESSLER. No, sir. What we have are controllers that are actually talking to——

Mr. PEARCE. No, no, no. Did we terminate this controller?

Ms. SCHUESSLER. This is actually an ADIZ monitor specialist. It is not an——

Mr. PEARCE. But we terminated the person that reported that the aircraft was a IFF, that he had an IFF, not a “primary target?”

Ms. SCHUESSLER. This individual is a retired FAA controller and has been removed from performing those duties.

Mr. PEARCE. OK. And then we sent all the other controllers for training. And so we think that more training is going to stop those hundreds of activities a day, hundreds and hundreds, day after day after day, the steady dripping of pressure on these controllers, and we are going to train them more. It is not that, it is just the sheer workload. I have been up there talking to these guys and they will get a little confused and I will say, “Hey, this is me.” “Oh. Oh, yeah. OK.” And those give and takes are what are needed.

What we have instead is we have got a separate system, a \$20 million facility. I think we could have instead sent a TSA employee over to sit in the radar shack and simply watch over the shoulder and say, wow, I better alert my people. But we have got separate systems, one guy sitting over here handling three events a day, maybe four, let us give him ten, it does not even come close, and we are going to put all the pressure on the private pilots and we are going to put all the pressure on the FAA controllers. I think it is upside-down. I am sorry, I do not think you are ever going to squeeze down to absolute zero. But what you have is a system that was created because you have a bureaucracy that demands its turf and demands its stuff.

Did I understand that you said you handled the ADIZ violations? You reported in answer to a question that you monitor the ADIZ violations.

Ms. SCHUESSLER. The FAA facilities as well as the other——

Mr. PEARCE. OK. But you investigate them?

Ms. SCHUESSLER. Yes, sir.

Mr. PEARCE. OK. So you track the aircraft up to ADIZ, somebody else has to declare it a security problem, if it is not a security problem, it comes back to you. Do you see that gap. If you all just could call. You are the ones in charge of—and I am not blaming the FAA and I am not blaming you. I am just saying that we have a bureaucracy that has set itself up and the bureaucracy demands that it be right here in the middle, that it is going to alert everybody about the problem.

It is the very same thing I talked to you about in our meeting in the office, Mr. Fleming. I think your people are more knowledgeable about law enforcement and less knowledgeable about flying. Yet you are making decisions to alert security and create the problems Mr. Moran talked about and you are not very familiar with movement of aircraft. And so you have got these decisions that come from the FAA to you all, go back to the FAA if it is a violation that does not reach a certain level, and it is this interconnecting responsibility that just seems—Mr. DeFazio I think characterized

it best. I would second all his comments. Thank you, Mr. Chairman.

Mr. HAYES. Mr. Moran.

Mr. MORAN OF VIRGINIA. Thank you, Mr. Chairman. In the Washington Post front page article today it starts out by saying that the top general at the North American Aerospace Defense Command was on the telephone prepared to order an F-16 fighter jet to down the plane carrying the Governor of Kentucky. Is that accurate? I ask either one of you.

Ms. SCHUESSLER. I do not have knowledge of that.

Mr. MORAN OF VIRGINIA. You do not have any knowledge of that. Did you read the article?

Ms. SCHUESSLER. I have read the article but I do not know whether that is accurate or not.

Mr. MORAN OF VIRGINIA. OK. Mr. Fleming?

Mr. FLEMING. No, sir. I do not know the accuracy of that. I do not know the DoD internal policies and what they accomplished on that particular day.

Mr. MORAN OF VIRGINIA. It would seem to have some relevance though to your area of jurisdiction. So I do not think it is unreasonable to ask that we get an answer to that. That is up to you, Ranking Chairman, Mr. Hayes. I think it might be interesting to know what was going on and how close we came to shooting Governor Fletcher out of the sky. I think that might have put a damper on an already somber day.

I would like to pursue this issue with regard to the plane that was carrying the traffic reporter. You heard me describe what was described by the owner of that airfield and the owner of that fleet of planes. Is that accurate? Did that happen? Was there a military jet dispatched to take down a little Cessna that was reporting on the traffic in the area? Do you know, either of you?

Ms. SCHUESSLER. I would have to go back and do some research to get more information on that particular incident.

Mr. MORAN OF VIRGINIA. Mr. Fleming?

Mr. FLEMING. I concur. I would have to investigate that and be able to report back to you.

Mr. HAYES. If the gentleman would yield.

Mr. MORAN OF VIRGINIA. Yes. Sure.

Mr. HAYES. They have a permanent waiver in place for traffic observation folks and they call in. It is a pretty good system on that.

We will track down the DoD information. There seem to be a few folks in the audience that are really interested in that, too. So we will get an answer on that.

Mr. MORAN OF VIRGINIA. Thank you. I think that would be important to know. Because, at least what we are told, the plane was doing what it does every day, and with the TSA waiver that it was granted, and it was exactly where it was supposed to be. So, again, it is the kind of thing we need to find out. I can imagine what would happen, talk about the stuff hitting the fan, if the plane that was reporting on traffic conditions to the metropolitan area was shot down by a military jet when it was flying away from the Capitol. It was flying west over I-66. And the idea that a military jet would be flying as fast as 560 knots very low over a congested interstate highway, over a congested residential area is a little

scary. Again, I repeat the fact that I think we have got a tragedy waiting to happen if we do not check into these things.

Am I correct in my assumption that the Secret Service has blocked the Transportation Security Administration from any further discussion of opening up general aviation at National?

Mr. FLEMING. Sir, I am not aware of that.

Mr. MORAN OF VIRGINIA. You are not aware of that. Then who has blocked it?

Mr. FLEMING. I am not aware of a blocking of it, sir. I do know that we have submitted a plan——

Mr. MORAN OF VIRGINIA. It has just taken three years to think about it and pass papers around?

Mr. FLEMING. Yes, sir. It has been an ongoing process and we have developed a plan and forwarded it to the Department for review.

Mr. MORAN OF VIRGINIA. Even though it is the only general aviation airport that is still closed. Has there been an incident where fighter jets were scrambled to intercept a commercial flight since September 11th. Do you know, Mr. Fleming?

Mr. FLEMING. I do know of instances where DoD was involved with commercial aircraft. I could probably give you a better briefing in a closed session on what their capabilities were and what their activities were.

Mr. MORAN OF VIRGINIA. OK. Was there any incident that actually represented any kind of a threat?

Mr. FLEMING. After investigation and appropriate response, I am not aware of any incident that was determined to have been a true threat at the time.

Mr. MORAN OF VIRGINIA. OK. So I understand there have been times when military jets have been scrambled to intercept commercial jets, all of which turned out to be a false alarm. Again, that information I think is consistent with the purpose of this hearing.

To go back to general aviation, do you have any reason to believe that the people on board a corporate general aviation plane would pose a greater threat than the passengers of a commercial jet who are allowed to use this space of course, given the fact that people on a general aviation jet have been pre-screened, as you know? Is there any reason to believe that they would represent a greater threat?

Mr. FLEMING. I believe the threat is specific to the lack of some of the security mechanisms that surround commercial aviation. So, not specifically to those individuals on the corporate jet, but differences in the security program and security postures.

Mr. MORAN OF VIRGINIA. All right. Well, I know Secretary Ridge has indicated that we need to wait until after the election to decide the issue of general aviation at National Airport. But when you look at the waiver requirements that the Transportation Security Administration uses, I do not know why we cannot apply those same requirements to all general aviation and open it up at least to those flights that meet those requirements. But you still think it would be a threat to do so?

Mr. FLEMING. Sir, we do approve waivers for those flights that meet our waiver requirements.

Mr. MORAN OF VIRGINIA. It creates the situation that Mr. Mica was talking about where if somebody looks into it, they find a long list and most on the list are Members of Congress or the Senate or elected officials of members of the Administration. It does not look good and I think there is a reason it does not look good. It is not good policy. But I do not want to lecture you. But I really do think that it appears that it is only going to be pressure from the Congress that finally gets the Administration to do the right thing on this.

I would appreciate your finding out the accuracy of this report about the plane that was carrying the traffic reporter and why it was almost shot down. The people that pursued this were not able to get an answer. They were bumped down to some military installation in Florida and bumped around, and after talking to any number of people, no one would take responsibility for it but no one thought it was a problem. I think it is a problem. I think it reflects a certain lack of common sense why you would not pick up the phone to ask the controller do you know why this plane is here, and so the controller would simply say, well, yes, it is there every day at the same time, five or six times a day. So I would appreciate an answer to that both for the Committee and then I trust the Committee will share that with us.

And again, I will conclude where I started, I think we have got a tragedy just waiting to happen if we do not change some of these rules and get better communication coordination. Thank you, Mr. Chairman.

Mr. HAYES. We need to be out of here by 1:00 p.m. Do you have one more question, Mr. Pearce?

Mr. PEARCE. Just a short question. A question came from Ms. Norton as to did you have any plan to extend the ADIZ and the FRZ out, and you said no. Is there any plan to make the temporary ADIZ and the FRZ permanent, make that temporary radius permanent?

Mr. FLEMING. There are current discussions to that effect. I would turn it over to the FAA to talk more specifically about that.

Ms. SCHUESSLER. Yes. We have had conversations with other agencies. And as the FAA is the regulatory authority in matters such as this, we are getting ready to in the next several weeks put out a Notice of Proposed Rule-Making to make the ADIZ permanent. There will be an opportunity to provide comments. Once those comments have been received by the FAA, we will work with the other agencies to look and review whether, indeed, we would establish that as a permanent airspace, or whether it would remain temporary, or not at all.

Mr. PEARCE. Could I make a formal request that you might take Mr. DeFazio's comments from this and read them into the statements.

Ms. SCHUESSLER. Yes, sir.

Mr. PEARCE. Because I think he is right on track. We tell ourselves that we have cured the problem when we actually have not done a thing to cure the problem. The problem is not going to be cured with a fifteen mile ADIZ zone. What you are going to do is you are going to put these people out of business for no effect.

Mr. Chairman, if I could get a copy of the answer to Mr. Moran's question. And also, Mr. Fleming, you had mentioned that you had some mitigation report or something out, I did not get all the parameters, I just wrote down that you have a mitigation report. Whatever that was, I noted at the time that I would like to get a copy of that report too.

Mr. Chairman, I thank you for the time and your patience in indulging my questions. And I thank the witnesses for their indulgence. Thank you, Mr. Chairman.

Mr. HAYES. Would you all like to add any comments, questions of the Committee in the time left at this point before we adjourn the hearing?

Ms. SCHUESSLER. No, sir, I do not.

Mr. FLEMING. No, sir.

Mr. HAYES. OK. It is not my impression, based on the several people and agencies that I have talked to, that the Governor's aircraft was close to being shot down. I think we need to leave here with that impression. The question is also out there, and DoD will be asked and information will come to you back through the Committee, as to exactly what that is. But again, I think there is a great danger in overstating that case.

If there are no further questions, no further comments. We appreciate your being here today fielding the questions. We appreciate what the professionals that we have charged with the responsibility of providing security are trying to do. We look forward to working with you to make all of us more effective in the various roles that we have to play. Thank you very much.

The meeting is adjourned.

[Whereupon, at 12:58 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

**TESTIMONY OF JONATHAN FLEMING
CHIEF OPERATING OFFICER
FOR THE TRANSPORTATION SECURITY ADMINISTRATION
DEPARTMENT OF HOMELAND SECURITY
BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON AVIATION
U.S. HOUSE OF REPRESENTATIVES
JULY 8, 2004**

Good morning Chairman Mica, Representative DeFazio, and other distinguished Members of the Subcommittee. Thank you for inviting me to testify regarding the Department of Homeland Security's aviation security policies for the National Capital Region and specifically the events surrounding the June 9, 2004, flight of a Kentucky State aircraft in the National Capital Region that led to the evacuation of the Capitol building. I am pleased to appear before you, along with my colleague from the Federal Aviation Administration (FAA), to testify on these important matters.

I want to begin by saying that we have come a long way since September 11th toward improving aviation security in the National Capital Region. To protect and monitor the National Capital Region, a layered airspace security system has been established. This system addresses the threat environment in the National Capital Region. In February 2003, an approximately 30-mile outer airspace ring, known as the Air Defense Identification Zone (ADIZ), was established around Washington. The footprint of the ADIZ mirrors the Baltimore-Washington Class B airspace. In order to operate within the ADIZ, operators must file a flight plan, transmit a discrete beacon code, and maintain 2-way radio communication with air traffic control. The Federal Aviation Administration (FAA), which is the lead agency for establishing the ADIZ, is working closely with TSA, DHS, and stakeholders to refine procedures for entering and operating within the ADIZ. TSA strongly supports continuing the ADIZ and is assisting FAA with compiling a report describing the necessity for the ADIZ, as required by Section 602 of Vision 100. There is also an inner ring of airspace, known as the Flight Restricted Zone (FRZ), which has a radius of approximately 15 nautical miles centered on the Reagan National Airport navigational beacon.

The National Capital Region Coordination Center (NCRCC) is an integral component of the layered aviation security system for the National Capital region. The NCRCC is an interagency group comprised of a number of agencies whose unified actions create a layered enforcement structure to enhance airspace security for the NCR. There are six (6) agencies that provide daily representation in the NCRCC including: the FAA, the U.S. Secret Service, the U.S. Capitol Police, U.S. Immigration and Customs Enforcement, the Department of Defense, and TSA. Other agencies, such as the FBI, are key participants during major events or surge operations.

The NCRCC is responsible for coordinating the operations of all participating agencies to ensure airspace security within the defined limits of the ADIZ. The NCRCC was

established by the Homeland Security Council Policy Coordinating Committee (the "PCC") and the PCC continuously assesses airspace protection issues surrounding the Washington, D.C. and other areas of the U.S. Each agency that participates within the NCRCC maintains its own organic capabilities and reserves complete command and control over operational and tactical matters that fall within that agency's respective statutory authorities. The NCRCC does not infringe upon an agency's operational or tactical employment of its assets, nor does it have command and control over them. TSA, as the Executive Agent for the NCRCC, is responsible for deconflicting information, disseminating relevant transportation security intelligence, documenting the activities of the NCRCC, and providing the physical infrastructure to accommodate NCRCC operations, to ensure that the participating agencies are responsive to and balanced with the emerging requirements of the threat.

When an unidentified aircraft approaches the Washington, D.C. ADIZ, radar operators at one or all of the monitoring agencies, including the U.S. Immigration and Customs Enforcement (ICE) Air and Marine Operations Center in Riverside, CA, DoD's Northeast Air Defense Sector headquarters in Rome, NY, and the FAA, begin to actively track it. As it enters the ADIZ, one of the monitoring organizations announces the aircraft's presence on the Domestic Events Net (DEN), an interagency open line of communications that is continually available. The aircraft's position course, speed, and—if known—transponder "squawk" code and altitude, are broadcast on the DEN in this initial report. Immediately after the initial report, the FAA's Washington Operations Center will acknowledge the report and assign a Track of Interest (TOI) number. The TOI number simply establishes a common identifier to be used in interagency communications regarding the track. Once a TOI has been identified and numbered, the agency representatives in the NCRCC each perform their respective duties.

The TSA representative to the NCRCC has a specific role to play when an unidentified aircraft approaches the ADIZ. He or she is responsible for notifying the Transportation Security Operations Center (TSOC) Command Duty Officer (CDO) of the situation, who in turn decides whether additional notifications are necessary. If necessary, the CDO may choose to notify senior TSA and DHS officials. The TSA NCRCC representative also has the responsibility to record a timeline of the events that take place, in addition to monitoring the DoD and ICE radar feeds to assess the threat. Finally, the TSA representative will also monitor the DEN to answer questions from other agencies, to enhance interagency situational awareness, and to gather information for documenting the incident. The NCRCC has brought additional capabilities in monitoring non-commercial aviation aircraft, e.g. general aviation, corporate/business aviation in the Washington, D.C. area, as such aircraft were not (previously) required to maintain radio and altitude reporting requirements with the FAA. Commercial-aviation aircraft are required to file flight plans and maintain continuous contact with FAA controllers.

I would like to turn now to the specifics of the event that occurred on June 9, 2004. On June 9th, the National Capitol Region was in an increased security posture due to the events leading up to and including the State Funeral for President Reagan. An aircraft with tail number "N24SP" entered the Washington, D.C. Air Defense Identification

Zone. N24SP was on a proper flight plan and had requested and received a waiver to fly into Reagan National Airport. The flight was monitored by the FAA's Potomac TRACON. However, the aircraft's transponder was not squawking. The "primary only" target, meaning radar display of an aircraft with no identification, was announced on the DEN at 4:24 p.m. (Eastern Daylight Savings Time) by ICE Radar and the flight was subsequently continuously monitored by the NCRCC. Pursuant to protocol and procedures, the U.S. Immigration and Customs Enforcement subsequently launched a Blackhawk helicopter to be ready to intercept the unidentified aircraft. As we know, the unidentified aircraft turned out to be flight N24SP. The entry of N24SP into the Restricted Airspace over the National Capital Region resulted in precautionary security measures being taken on the ground and in the air.

This incident emphasizes the importance of the NCRCC to our layered airspace security defenses and the need for constant reassessment of intra and interagency operational methods and procedures. TSA is fully committed to ensure the highest standards of airspace security are met both for the nation and for our citizens.

Lastly, I would like to provide you with an update on the issue of general aviation and charter flight operations in and out of Reagan National Airport. Given the criticality of assets in the Washington, D.C. area, the seriousness of the threat, and the magnitude of the impact of any terrorist action in the region, it is DHS's view that any plan developed in response to the Vision 100 requirement must include measures sufficient to ensure the security of the National Capital Region.

We must carefully balance the desire to reopen Reagan National Airport to GA with the need to protect our Nation's capital against those who wish to do us harm. The National Capital Region remains a target for terrorists. As the home to the Federal government, as well as foreign embassies, multinational institutions, and national monuments, the region offers a plethora of high value, symbolic targets for those who seek to harm us. The protection of these assets, as well as the lives of travelers and those who live in this region, is not only our priority, but also our duty.

We are currently not aware of any specific information regarding terrorist plans to use GA aircraft to strike targets in the National Capital Region. Nonetheless, we have maintained the restrictions on GA flights because the vast majority of GA operations do not meet the same security measures being applied to air carriers operating large aircraft. However, TSA recognizes that certain exceptions must be made. Accordingly, a process has been implemented whereby some general aviation and commuter aircraft are permitted access into Reagan National Airport on a case-by-case basis. The waiver program is an inter-agency process in which TSA and FAA work closely together to ensure that the National Capital Region airspace remains secure while at the same time allowing a limited number of GA flights to operate within the FRZ or into Reagan National Airport. These waivers are issued on a very limited basis for very specific purposes and only when very stringent security procedures have been implemented.

For GA planes that operate in or out of DCA, a waiver request must be filed with TSA. Once a submission is received, TSA determines whether the applicant satisfies one of the three possible categories that would make an applicant eligible for a waiver, based upon the requested purpose and need for a waiver. Those categories include special/classified operations, government operations, and elected officials. If an applicant does not fit into one of these three categories, he or she is not eligible for a waiver and TSA does not forward the waiver request to the FAA. However, if the applicant is eligible, the pilot and crew are vetted through the FBI National Crime Information Center (NCIC), terrorist databases, and the No-Fly and Selectee lists to ensure that known or potential threats are not given waivers. Passengers are also checked against the No-Fly and Selectee lists.

If these checks come back without derogatory information, an approval number is assigned to the flight and a waiver request form is drafted for delivery to the FAA. If the FAA approves and issues a waiver, the TSA Office of Airspace Security inputs the waiver into the "Master List" and then notifies the FAA, NCRCC, and Potomac TRACON of the waiver authorization.

All waivers are issued with strict compliance instructions for the pilot. Specifically, no later than one hour prior to flight, the pilot of a scheduled waived flight is required to contact both the NCRCC and Potomac TRACON in order to inform both entities of the intended flight plan. The waiver also outlines other communications requirements related to operations in the area. When a flight with a waiver is operating within or approaching the ADIZ or FRZ, the NCRCC, based at TSA's TSOC, can track the flight and determine the identity of the aircraft based upon the information provided before the flight and if the aircraft's transponder is squawking. Additional security protections exist in that all general aviation flights that operate into and out of Reagan National Airport must have armed law enforcement officer on board.

Chairman Mica, Representative DeFazio, and other distinguished Members of the Subcommittee, this concludes my prepared statement. I would be pleased to answer any questions at this time.

STATEMENT OF LINDA SCHUESSLER,
VICE PRESIDENT FOR SYSTEM OPERATIONS SERVICES,
AIR TRAFFIC ORGANIZATION, FEDERAL AVIATION ADMINISTRATION
BEFORE THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON AVIATION, HEARING ON THE JUNE 9, 2004
EVACUATION OF THE CAPITOL
JULY 8, 2004

Chairman Mica, Congressman DeFazio, Members of the Subcommittee:

Good morning. I'm pleased to appear before you today, along with my colleague from the Transportation Security Administration, to discuss the Federal Aviation Administration's (FAA) role in the incident that occurred on June 9, 2004, that resulted in the evacuation of the U.S. Capitol. As you all know, the Governor of Kentucky was aboard a state owned aircraft that had received a waiver to land at Ronald Reagan National Airport (DCA) in order for the Governor to attend President Reagan's state funeral. As I will describe in greater detail, the transponder on the aircraft was not functioning properly, and the FAA's response resulted in misunderstanding and concern about the identity and intent of the aircraft by other agencies monitoring the airspace. Given the heightened security surrounding President Reagan's funeral, and the incomplete information about the aircraft heading toward Washington, D.C., the Capitol Police made the decision to evacuate the U.S. Capitol. I would like to outline for you how this event unfolded and what mistakes and miscommunications were made, and, most importantly, how these mistakes will be avoided in the future.

On the afternoon of June 9th, the state owned aircraft carrying the Governor of Kentucky and his party left Cincinnati with a valid waiver from the FAA to land at DCA. General aviation operations that are granted waivers to land there are required to be in continuous

two-way communication with air traffic control and to have an operable transponder with automatic altitude reporting capability. The required transponder provides two pieces of information to individuals monitoring the radar. The first is aircraft identification and tracking information through the computerized assignment of a data tag – referred to as Mode 3/A. The second is aircraft altitude information, referred to as Mode C.

After the aircraft departed Cincinnati, the departure controller requested the pilot to verify that his transponder was on because information was not being received. The pilot reported that it “should be on,” and subsequently stated that the transponder “just quit.” Shortly thereafter the transponder was working sufficiently for a data tag – the identifying and tracking information – to be automatically assigned to the aircraft. Afterward, the transponder failed completely.

When Indianapolis Air Route Traffic Control Center (ARTCC) accepted the handoff of the aircraft from the Cincinnati TRACON, the controller asked the pilot to reset the transponder. The pilot informed the Center that the transponder broke on departure and asked if this would be a problem for landing at DCA. At this time, the computer assigned data tag was still attached to the radar display of the aircraft identifying the aircraft. The aircraft was permitted to proceed.

With the flight proceeding to Washington, the aircraft was handed off to different sectors within the Indianapolis Center. At one point, the characterization of the aircraft was described by the controller making the hand off as “transponder only,” a term that could

be understood to mean that the transponder was functional. This characterization of the aircraft's equipment did not properly describe the correct status of the aircraft. In fact, the aircraft was a "primary only" target, meaning that it did not have a functional transponder. The "transponder only" description was passed between and among a number of controllers involved with the flight. Unfortunately, none of them questioned the description despite the fact that the radar display indicated a primary target.

When Indianapolis Center handed the aircraft off to Washington Center, the aircraft was correctly described as "primary associated with a data block." Data block and data tag are used interchangeably to refer to the information depicted on the controller's radar display that is associated with each aircraft target. Because of the absence of Mode C information associated with the aircraft, the operations manager at Washington Center appropriately informed the Domestic Events Network (DEN) about the aircraft. The DEN, established in the aftermath of September 11th, is an open telephone line to a number of pertinent agencies to monitor potentially significant events that are occurring anywhere throughout the country. Unfortunately, the FAA inaccurately reported to the DEN that, while the aircraft in question had no Mode C readout, it otherwise had a functioning transponder. If the report to the DEN had correctly identified the aircraft as primary only, it is unlikely the subsequent evacuation of the Capitol would have occurred.

Understandably, security around the nation's capital is very tight. Since September 11th, there are two airspace zones established around the National Capital Region.

Approximately thirty miles around the Capital is the air defense identification zone (ADIZ). Fifteen miles around the Capital is the flight restricted zone (FRZ). How flights are handled heading toward or entering these zones varies depending on the existing threat level. In this situation, as the aircraft approached the ADIZ, it was handed off to the Potomac Terminal Radar Approach Control (TRACON), the consolidated terminal facility serving Washington, D.C. area airports. When the aircraft was handed off from Washington Center, the data tag containing identification and tracking information did not automatically transfer to the TRACON's radar. Washington Center informed the Potomac TRACON of the identity of the aircraft, at which point the TRACON controller manually input the flight information to generate a new data tag associated with the aircraft, so the controllers at the TRACON could see appropriate aircraft information.

Unfortunately, the National Capital Region Coordination Center (NCRCC) had not yet received the type of radar display used by the air traffic controllers at the Potomac TRACON. Therefore, the data tag that the Potomac TRACON assigned to the aircraft to identify the flight information for the Kentucky Governor's plane was not displayed on the radar displays available to the NCRCC on that day, nor was it displayed on the radars of our counterpart agencies. Consequently, when Immigration and Customs Enforcement (ICE) contacted the Potomac TRACON to see if they were tracking an unidentified target moving toward Washington, the TRACON ADIZ monitor specialist did not see an unidentified target because our radar display did not show an unidentified target. The target that ICE saw as "unidentified" was the same target that appeared on the TRACON display with a data tag identifying it as the aircraft carrying the Kentucky Governor. The

subsequent effort to identify the aircraft by conforming FAA's radar information with that of ICE and the NCRCC, and to communicate that information on the DEN took longer than it should have.

Although only a few minutes elapsed before the information was reconciled and the target was understood not to be a threat, this realization did not occur in time to prevent the North East Air Defense Sector (NEADS) from committing fighter aircraft to act and ICE from launching its aviation assets in defense of the Capital. Further, the reconciliation of information did not occur in time to prevent the Capitol Police from evacuating the U.S. Capitol.

In our review of this incident, we determined that there were several things FAA personnel should have done differently. FAA facilities consistently failed to communicate the type of equipment failure onboard the aircraft correctly as it progressed toward Washington. Our ADIZ monitor specialist working the DEN failed to understand that the information being discussed about the location of the unidentified aircraft correlated exactly with an aircraft that was known by FAA controllers not to be a security risk. The Potomac TRACON controller failed to ensure that supervisory personnel were aware that the target being tracked was primary only and that the transponder was completely inoperative.

Since this incident occurred, the FAA has provided the NCRCC with a radar display with a feed from our Potomac TRACON that has identical capability to the FAA's radar

display. This will effectively reduce the possibility of a similar misunderstanding in the future. NCRCC received the new radar display on June 25 and it is now fully operational. In addition, we have developed a six point action plan currently being executed that focuses on the training and retraining of FAA personnel and pilots flying into the Washington ADIZ to make the coordination and communication of information more effective and less confusing. Finally, the FAA policy that required an aircraft to have an operable transponder with automatic altitude reporting capability in order for it to enter the Washington ADIZ is mandatory and can no longer be waived, even if the FAA is satisfied that the operator poses no threat to security. As with many procedures and policies in the post September 11th world, the FAA will continue to modify and refine its airspace requirements and procedures as new information is obtained, and do so in consultation with other agencies.

On behalf of the FAA, I regret that our agency contributed to the events that led to the unnecessary evacuation of the U.S. Capitol, especially at a time when the eyes of the country and the world were focused on President Reagan's funeral. In response to this event, in addition to the measures outlined above, we have reiterated to our workforce the need to follow established procedures and protocols without exception, even when there seems little doubt that a risk exists. We will continue to work with our employees, other agencies and the aviation community to make the airspace more safe and secure for our citizens and this country.

This concludes my prepared statement. I will be happy to answer your questions at this time.

The National Air Traffic Controllers Association is pleased to provide the following statement for the record to the House Transportation and Infrastructure Subcommittee on Aviation with respect to the July 8, 2004, hearing on National Capitol Region Air Space Control: A Review of the Issues Surrounding the June 9, 2004 Flight of "N24SP."

NATCA is the exclusive representative of over 15,000 air traffic controllers serving the FAA, Department of Defense and private sector. In addition, NATCA represents approximately 1,200 FAA engineers, over 600 traffic management coordinators, automation specialists, regional personnel from FAA's logistics, budget, finance and computer specialist divisions, and agency occupational health specialists, nurses and medical program specialists.

On June 9, 2004, the aircraft carrying the Governor of Kentucky was handled by five different air traffic control facilities – Cincinnati Airport, Indianapolis Center, Washington Center, Potomac TRACON, and Washington National Airport. Immediately after take off, the transponder on the aircraft malfunctioned. The air traffic controllers were aware of the situation, were in contact with the Governor's aircraft, and knew the identity of that aircraft at all times. Whether automatically or manually entered, the data tag identifying that aircraft was visible on all applicable radar displays. The air traffic controllers followed proper training and procedures, and FAA supervisory personnel were notified.

At the hearing, Linda Schuessler, Vice President for System Operations testified on behalf of the Federal Aviation Administration. NATCA is submitting this statement for the record to rebut and clarify parts of the FAA's testimony.

First, the FAA testified that the failure of the air traffic controllers to consistently communicate information correctly contributed to the misunderstanding between the agencies involved. This is not true.

According to the FAA, the air traffic controllers at Indianapolis Center mischaracterized the aircraft as "transponder only." While possible, this mischaracterization only occurred between and among the controllers at Indianapolis Center. The FAA acknowledged in their testimony that the aircraft was properly identified as "primary associated with a data block" when transferred to Washington Center. And, while the controller(s) at Indianapolis Center may have been using improper phraseology, they were aware of the situation. These controllers, as well as any certified professional controller, could tell from the data block on their scope that the aircraft was a "primary only" target."

In addition, it was the operations manager, not the air traffic controllers, from Washington Center that contacted the Domestic Events Network (DEN) and inaccurately reported that the aircraft had a functioning transponder with no mode C. The fact that a possible mischaracterization occurred at Indianapolis Center among controllers is irrelevant because the aircraft was properly identified when transferred to Washington Center.

Second, the FAA testified that the controllers should have recognized that the data tag to the aircraft indicated the transponder was not functioning and should have made the connection with the inquiry from Immigration and Customs Enforcement. This is inaccurate and extremely misleading.

As stated above, all air traffic controllers involved with the Governor's aircraft were aware of the situation. In fact, any certified controller could tell by looking at the data tag on the scope that the transponder was not functioning.

The FAA stated that when the aircraft was handed off from Washington Center to the Potomac TRACON the data block did not automatically transfer so it was entered manually. However, this was not visible to the National Capitol Region Coordination Center because they did not have the same radar display. Thus, the scope at the Potomac TRACON showed a target with a data tag whereas the NCRCC and other agencies only saw an unidentified target. So, when the Immigration and Customs Enforcement contacted the ADIZ monitor specialist at the Potomac TRACON inquiring about an unidentified target, the ADIZ specialist stated that he did not have an unidentified target.

What the FAA has failed to state is that the ADIZ monitor specialist is NOT a certified professional controller. This position was occupied by a contract employee. Clearly this is a perfect example of how privatizing parts of the federal air traffic control system can create a serious safety situation. A certified professional controller looking at the scope would have known from the data block that the aircraft's transponder was not functioning. We find it inconceivable that the FAA would blame the air traffic controllers for not making the connection with the inquiry from ICE, when the agency was aware that the individual involved was not a controller and not even a federal employee - but a contract employee.

The FAA testified that it is unlikely another such incident will occur because the NCRCC now has new radar displays. However, if the agency continues to place unqualified individuals that cannot properly interpret technical data in sensitive positions such as the ADIZ monitor desk the problem still exists.

Third, the FAA testified that the controller at Potomac TRACON failed to ensure that supervisory personnel were aware of the situation and properly notified. While it is possible that the controller mischaracterized the aircraft, any supervisor, like all certified professional controllers, should have been able to decipher the situation by looking at the data on the scope.

NATCA applauds the Committee for investigating this incident and we support the FAA's decision to prohibit any aircraft without an operable transponder from entering the Washington ADIZ. The primary mission of the FAA and air traffic controllers is providing separation of aircraft. However, with implementation of the ADIZ and other security responsibilities, the air traffic control system is being required to perform a function for which it is not designed and for which it lacks capacity. Proper resources have not been allocated to provide equipment and procedures to meet the objective. This

is a problem that needs to be addressed now. Therefore, we encourage the Committee to investigate the impact of the Washington ADIZ on operations and resources at the Potomac TRACON.