U.S. CUSTOMS SERVICE PASSENGER INSPECTION OPERATIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

MAY 20, 1999

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U.S. CUSTOMS SERVICE PASSENGER INSPECTION OPERATIONS

THURSDAY, MAY 20, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON OVERSIGHT,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:03 a.m., in room 1100, Longworth House Office Building, Hon. Amo Houghton (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON OVERSIGHT

FOR IMMEDIATE RELEASE CONTACT: (202) 225–7601
May 11, 1999
No. OV–6

Houghton Announces Hearing on the U.S. Customs Service Passenger Inspection Operations

Congressman Amo Houghton (R–NY), Chairman, Subcommittee on Oversight of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on U.S. Customs Service passenger inspection operations. The hearing will take place on Thursday, May 20, 1999, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 9:00 a.m.

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. Witnesses will include the Honorable Raymond W. Kelly, Commissioner, U.S. Customs Service, individuals who have alleged discrimination in inspections, and experts who have studied Customs' passenger search and seizure practices. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

In 1998, Customs seized more than 1,880 pounds of heroin and 3,750 pounds of cocaine as part of its Commercial Air Passenger operations, according to Customs statistics. Customs officers may use strip searches, body cavity searches, and x-rays to detect smuggling by individuals who hide contraband such as illegal drugs inside their clothing or who may swallow packets of drugs. Of the 71.5 million international air passengers who passed through Customs last year, 50,892 were subjected to some level of body search, most of them simple pat-downs. Nationally, 43.3 percent of those subjected to body searches last year were Black or Hispanic.

Customs is now facing a number of lawsuits over body searches, including a class-action lawsuit by nearly 100 African American women alleging they were singled out because of their sex and race. Commissioner Kelly has responded to the allegations by appointing an independent commission to review the passenger inspection policies and procedures used by inspectors and requiring a report with recommendations by July 15, 1999.

In announcing the hearing, Chairman Houghton stated: "Serious allegations of racial profiling by Customs inspectors have been made by the public, and we absolutely have to get to the bottom of them. The views of the Customs Commissioner and individuals with direct experiences will provide a good first step."

FOCUS OF THE HEARING:

The hearing will focus on a review of Customs passenger inspection operations, and, in particular, on allegations of discriminatory racial profiling in passenger inspections and the agency's response to those allegations. The Subcommittee's hearing will provide a basis for evaluating a recently appointed independent review com-

mission's work and a record for consideration of reforms to Customs passenger inspection operations.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit six (6) single-spaced copies of their statement, along with an IBM compatible 3.5-inch diskette in WordPerfect 5.1 format, with their name, address, and hearing date noted on a label, by the *close of business*, Thursday, June 3, 1999, to A.L. Singleton, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Oversight office, room 1136 Longworth House Office Building, by close of business the day before the hearing.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be submitted on an IBM compatible 3.5-inch diskette in WordPerfect 5.1 format, typed in single space and may not exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers where the witness or the designated representative may be reached. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press, and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are available on the World Wide Web at 'HTTP://WWW.HOUSE.GOV/WAYS__MEANS/'.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202–225–1721 or 202–226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Chairman HOUGHTON The hearing will come to order.

Good morning everybody. Thank you for coming here today. Over the past few months, we have heard serious allegations that the Customs Service has unfairly targeted Black and Hispanic air passengers for personal searches based on their race. This practice is known as "racial profiling," and the purpose of today's hearing is

to review those allegations and to help determine what steps must be taken to protect the rights of passengers while at the same time enforcing the laws of the lands.

Customs inspectors have an important and difficult job. I can attest to this personally having spent a good part of yesterday with the Customs Service out at Dulles Airport. These men and women are literally the frontline of defense in preventing the illegal importation of narcotics into the United States. For example, last year alone, the Passenger Inspection operations processed 71.5 million international air passengers. Inspectors conducted more than 50,000 personal searches, including more than 2,000 positive searches. As a result, Customs seized more than 640 pounds of heroin and 470,000 pounds of cocaine from international air passengers.

All this being said, we cannot permit these inspectors to target passengers solely because they are Black or Hispanic or of any other ethnicity—not even in the fight to stamp out drugs. Personal searches involve physical contact, and they can be invasive. The Constitution grants rights to everyone to prevent such personal invasions. Unless there is reasonable suspicion that a person may be committing a crime, race, alone, cannot justify such a suspicion. The Constitution does not allow it, and we must work to prevent it.

I know that Commissioner Kelly has taken allegations of racial bias by the Customs Service seriously. He has investigated allegations of racial bias, made personnel changes when necessary, and ensured that strong measures are being taken to prevent future problems. The Commissioner has convened an independent commission to review these important matters, and I look forward to receiving the commission report, which I understand will be available in July.

Before introducing the Ranking Democrat, my friend, Mr. Coyne, I would like to thank Mr. John Lewis. Mr. John Lewis is one of my heroes, an extraordinary member of this body, and is the person who really instigated this whole hearing. So, I thank you very much, Mr. Lewis, for doing this, and I would like to yield to our Ranking Democrat, Mr. Coyne, for his remarks.

[The opening statement follows:]

Opening Statement of Chairman Amo Houghton, a Representative in Congress from the State of New York

Good morning. Over the past few months we have heard serious allegations that the Customs Service has unfairly targeted Black and Hispanic air passengers for personal searches based on their race. This practice is known as "racial profiling." The purpose of today's hearing is to review those allegations and to help determine what steps must be taken to protect the rights of passengers while at the same time enforcing our laws.

I understand that Customs inspectors have an important and most difficult job. They are literally the front line of defense in preventing the illegal importation of narcotics into the United States. Last year alone, the Passenger Inspection operations processed 71.5 million international air passengers. Inspectors conducted more than 50,000 personal searches, including more than 2,000 positive searches. As a result, Customs seized more than 640 pounds of heroin and 470 pounds of cocaine from international air passengers.

All this being said, we cannot permit these inspectors to target passengers solely because they are Black or Hispanic or of any other ethnicity—not even in the fight to stamp out drugs. Personal searches involve physical contact, and they can be invasive. The Constitution grants rights to people to prevent such personal inva-

sions, unless there is reasonable suspicion that a person may be committing a crime. Race, alone, cannot justify such a suspicion. The Constitution does not allow it, and we must work to prevent it.

I know that Commissioner Kelly has taken allegations of racial bias by the Customs Service seriously. He has investigated allegations of racial bias, made personnel changes when necessary, and ensured that adequate measures are being taken to prevent future problems.

The Commissioner has convened an independent commission to review this important matter. I look forward to receiving the commission's report in July.

I am pleased to yield to our ranking Democrat, Mr. Coyne.

Mr. COYNE. Thank you, Mr. Chairman.

During the 106th Congress, this Subcommittee plans to conduct a series of hearings on the U.S. Customs Service. It has been nearly 6 years since a comprehensive review of the Customs Service has been undertaken with several new Customs Commissioners having come and gone during that 6-year period.

The Subcommittee's first Customs oversight hearing this year will review allegations of racial profiling by U.S. Customs Service inspectors. I want to commend my colleague John Lewis for bringing this important issue to the Subcommittee's attention and for his life-long commitment to public service and racial equality.

I also want to thank Chairman Houghton and Customs Service Commissioner Kelly for recognizing the importance of this issue for all Americans and for the integrity of the Customs Service.

A significant number of U.S. citizens strongly believe that at some U.S. airports one or more Customs agents are selecting passengers for intrusive physical searches based on their race. Such profiling is unacceptable. The U.S. Customs Service must operate with the highest integrity and deal swiftly, honestly, and fairly with serious allegations of illegal practices.

It is my understanding that Commissioner Kelly created the independent Personal Search Review Commission in April 1999 to address such concerns. I am impressed not only with the scope of the Commission's review but also the fact that a report with recommendations will be made, as the Chairman said, in July 1999.

Today's hearing will provide the Subcommittee with an excellent framework for considering the Commission's findings and recommendations for reform. It is my hope that in the next few weeks we can reach a consensus on both the scope of the problem and what must be done to address it.

Thank you.

[The opening statement follows:]

Opening Statement of Hon. William J. Coyne, a Representative in Congress from the State of Pennsylvania

During the 106th Congress, the Ways and Means Subcommittee on Oversight plans to conduct a series of hearings on the U.S. Customs Service. It has been nearly six years since a comprehensive review of Customs has been undertaken, with several new Customs Commissioners having come and gone during that period of time.

At the request of Congressman John Lewis, the Subcommittee's first Customs oversight hearing this year will review allegations of racial profiling by Customs inspectors. I want to commend my colleague for bringing this important issue to the Subcommittee's attention, and for his life-long commitment to public service and racial equality.

I also want to thank Chairman Houghton and Customs Commissioner Kelly for recognizing the importance of this issue for all Americans and for the integrity of the Customs Service.

The issue of racial profiling is not new. Unfortunately, it is a continuing concern at all levels of law enforcement—whether they are local police departments, state inspection services, or federal agencies such as the U.S. Customs Service.

The issue of racial profiling is a difficult one. Rarely are the facts surrounding a given example as clear-cut as one might hope. As is typical with any illegal activity, the practice is not easily identifiable, nor is it usually documented or acknowledged by those who practice it. Rather, such abuses are hard to pinpoint, harder to punish, and even harder to prevent.

What is clear to all of us, however, is that a significant number of U.S. citizens strongly believe that at some U.S. airports, one or more Customs agents are selecting passengers for intrusive physical searches based on their race. What is also clear is that such profiling is unacceptable. And finally, it is clear that Customs must operate with the highest integrity and deal swiftly, honestly, and fairly with such serious allegations of illegal practices.

It is my understanding that Customs Commissioner Kelly created the independent "Personal Search Review Commission" in April 1999 to address such concerns. I am impressed not only with the scope of the Commission's review, but also with the fact that a report with recommendations will be made by July 15, 1999.

Today's hearing will provide the Subcommittee with an excellent framework for considering the Commission's findings and recommendations for reform. It is my hope that in the next few weeks we can reach a consensus on both the scope of the problem and what must be done to address it.

Chairman HOUGHTON. Thanks, Mr. Coyne.

Mr. Lewis, have you got an opening statement?

Mr. LEWIS. Yes, Mr. Chairman.

Thank you, Mr. Chairman and Mr. Coyne for holding this hearing. I am particularly grateful to my good friend from New York, Mr. Houghton, for recognizing the importance of our Subcommittee looking into this matter. Allegations of racial profiling by Customs Service raise very serious concerns regarding the treatment of international travelers, especially people of color.

I first became interested in this issue when I saw an investigative report by Atlanta's WAGA Channel 5 that documented apparently discriminatory practices by Customs inspectors at Hartsfield International Airport. Shortly after WAGA aired this program, I was contacted by Customs inspectors at the airport who expressed their belief that Customs were engaged in a systematic, discriminatory treatment of passengers. Since that time, my office has been contacted by people throughout the country who have told of perceived mistreatment and allegations of racial discrimination.

As I have studied this problem, one of my greatest concerns has been the almost complete discretion that Customs inspectors have when deciding which traveler to stop and search. It appears the Customs criteria for stopping passengers is so broad that an inspector can justify stopping just about anybody. I fear that when given this discretion, an inspector's racial biases, either conscious or subconscious, influence who is stopped and searched.

Dr. Alan Zaslavsky, an associate professor at Harvard University, has analyzed data from Customs searches. His work provides some justification for my concern. His research concludes that Blacks and Hispanics are much more likely to be searched and intensively searched than are whites. By intensive search, I mean strip searches, x-rays, and body cavity searches. For example, a

Black woman traveler is 20 times more likely to be stopped and intensively searched than is a white woman. With the consent of the Chair, I ask that this analysis be submitted for the record.

In addition to the allegations of discrimination, I am deeply troubled by the authority Customs inspectors have over U.S. citizens. U.S. citizens can be held for days without being allowed to contact a lawyer or make a telephone call. Customs can detain any traveler without a magistrate or any other judicial official's permission to detain travelers. Customs inspectors can effectively force travelers to submit to x-rays and drink powerful laxatives. That the Government has such authority over its citizens is very troubling. That such authority may be exercised in a racially discriminatory manner is chilling and frightening.

There is no place in our Nation for discrimination. That is why I called for this hearing. For the past 2 months, people of color in Atlanta, people of color from across the country have come up to me and shared their stories with me. From what I have seen, from what I have heard, we have a problem, and we must do something about it.

I am pleased that Commissioner Kelly has responded promptly and responsibly to these allegations. In particular, I want to thank Commissioner Kelly for establishing an independent Personal Search Review Commission to examine allegations of passenger profiling by Customs inspectors. However, I believe that some congressional actions may be necessary to protect travelers' rights and reduce the likelihood that innocent people will be held incommunicado for days on end by their own government.

I am hopeful that this hearing will shed light on Customs' policies and practices, what the agency is doing to address passenger complaints, and whether Congress needs to become involved in this deeply troubling and very important matter.

Mr. Houghton, my friend, thank you for holding this hearing and for the opportunity to make an opening statement.

[The opening statement follows:]

Opening Statement of Hon. John Lewis, a Representative in Congress from the State of Georgia

Thank you Mr. Chairman, and Mr. Coyne, for holding this hearing. I am particularly grateful to my good friend from New York, Mr. Houghton, for recognizing the importance of our subcommittee looking into this matter. Allegations of racial profiling by Customs inspectors raise very serious concerns regarding the treatment of international travelers, especially people of color.

I first became interested in this issue when I saw an investigative report by Atlanta's WAGA Channel 5, which documented apparently discriminatory practices by Customs inspectors at Hartsfield International Airport. Shortly after WAGA aired its programs, I was contacted by Customs inspectors at the airport who expressed their belief that Customs was engaged in a systematic, discriminatory treatment of passengers. Since that time, my office has been contacted by people throughout the country who have told of perceived mistreatment and allegations of racial discrimination.

As I have studied this problem, one of my greatest concerns has been the almost complete discretion that Customs inspectors have when deciding which travelers to stop and search. It appears that Customs criteria for stopping passengers is so broad that an inspector can justify stopping just about anybody. I fear that, when given this discretion, an inspector's racial biases, either conscious or subconscious, influence who is stopped and searched.

Dr. Alan Zaslavsky, an Associate Professor of Harvard University, has analyzed data from Customs searches. His work provides some justification for my concerns. His research concludes that Blacks and Hispanics are much more likely to be

searched—and to be subjected to intensive searches—than are Whites. By intensive search, I mean strip searches, x-rays and body-cavity searches. For example, a black woman traveler is twenty times more likely to be stopped and intensively searched than is a white woman. With the consent of the chair, I ask that this analysis be submitted for the record.

In addition to the allegations of discrimination, I am deeply troubled by the authority Customs inspectors have over U.S. citizens. U.S. citizens can be held for days without being allowed to contact a lawyer or make a phone call. Customs can detain any traveler without a Magistrate's or any other judicial official's permission to detain travelers. Customs inspectors can effectively force travelers to submit to x-rays and drink powerful laxatives. That the government has such authority over its citizens is very troubling. That such authority may be exercised in a racially and discriminatory manner is chilling and frightening.

There is no place in our nation for discrimination. That is why I called for this hearing. For the past two months, people of color in Atlanta, people of color from across the country have come up to me and shared their stories with me. They have thanked me. From what I have seen, from what I have heard, we have a problem—and we must do something about it.

I am pleased that Commissioner Kelly has responded promptly and responsibly to these allegations. In particular, I want to thank Commissioner Kelly for establishing an independent Personal Search Review Commission to examine allegations of passenger profiling by Customs inspectors. However, I believe that some Congressional action may be necessary to protect travelers rights and reduce the likelihood that innocent people will be held incommunicado for days on end—by their own government. I am hopeful that this hearing will shed light on Customs' policies and practices, what the agency is doing to address passenger complaints, and whether Congress needs to become involved in this deeply troubling and very important matter.

Thank you, Mr. Chairman, for holding this hearing, and for the opportunity to make an opening statement.

Congressman John Lewis Calls on Congress to Address Charges of Racial Bias by U.S. Customs—Press Release

LEWIS TO INTRODUCE BILL TO PROTECT THE RIGHTS OF INTERNATIONAL TRAVELERS

WASHINGTON—Congressman John Lewis (D–GA), a Member of the Oversight Subcommittee of the House Committee on Ways and Means, announced that he will introduce legislation to address alleged abuses of civil rights by U.S. Customs Service inspectors. Congressman Lewis will discuss details of his proposed legislation at a press conference following an Oversight Subcommittee Hearing on allegations of racial bias in Custom Service procedures for stopping and searching travelers.

"It appears that the criteria for stopping and searching passengers by Customs Inspectors is so broad that an inspector can justify stopping just about anybody. I fear that, when given this discretion, an inspector's racial biases, whether conscious or subconscious, influence who is stopped and searched," said Congressman Lewis. According to testimony heard today by the Subcommittee, 43.3% of the 50,892 international passengers traveling in 1998 subjected to body searches were Black or Hispanic. Harvard Statistician Alan Zaslavsky determined that, based on customs personal search statistics, the chances that a black woman traveler would be intensively searched are about 20 times that for a white female traveler.

At the hearing, Janneral Denson, an African American woman, and Amanda Buritica, an Hispanic American woman, both testified about how they were subjected to extensive personal searches including X-rays, partial strip searches and body cavity searches. Ms. Buritica testified that after enduring a strip search at the San Francisco Airport, she was handcuffed and taken to the hospital. There, she was forced to take laxatives and held for more than 24-hours without being allowed to call relatives, an attorney, or anyone else.

Ms. Denson told the Subcommittee that she was stopped and searched while returning from abroad to her hometown of Ft. Lauderdale, Florida. At the time, Ms. Denson was seven months pregnant. According to Ms. Denson, she was handcuffed, taken to a hospital in Miami, and told she would not be released until she drank laxatives and had the results examined. She said that she was given little to eat and drink, made to clean her own bedpan, and physically restrained throughout the night. Less than two weeks later, doctors performed an emergency cesarean section

and Ms. Denson's son, Jordan, was born prematurely weighing just three pounds, four ounces.

Congressman Lewis said such credible accounts of injustice emphasize the need to ensure that such abuses cannot happen in the future. Congressman Lewis said, "There is no place in our nation for discrimination. That is why I called for this hearing." While applauding action taken by Customs Commissioner Raymond W. Kelly in appointing a Personal Search Review Commission, Congressman Lewis said that action by the Congress is necessary to ensure that the civil rights of international travelers are respected.

"Customs does not need a magistrate's or any judicial officer's permission to detain travelers. Customs does not permit detainees to have legal counsel and can effectively force travelers to submit to X-rays and drink potent laxatives. That the government has such authority over its own citizens is very troubling. That such authority may be exercised in a racially discriminatory manner is chilling," said Congressman Lewis.

Congressman Lewis will discuss the introduction of proposed legislation to ensure that all international travelers are treated fairly when searched or detained at a Customs processing center. To be introduced in this Congress, the "Civil Rights for International Travelers" will:

- Provide travelers access to an attorney within 24 hours of their detention by U.S. Customs.
- Require U.S. Customs to obtain approval of a judicial magistrate before it can detain a traveler beyond 12 hours.
- Require U.S. Customs to inform travelers of their rights and the process and procedures U.S. Customs will adhere to when stopping and searching passengers.
- Require U.S. Customs to compile annual data on the ethnicity and sex of passengers stopped and searched by inspectors, the type of search conducted, and the result of the search.
- Require periodic training and retraining of U.S. Customs inspectors, especially in the area of racial sensitivity.

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19 May 1999

The Honorable John Lewis
U.S. House of Representatives
343 Cannon House Office Building
Washington, DC 20515

Dear Congressman Lewis,

I am an Associate Professor of Statistics at Harvard Medical School. Among my areas of professional interest and activity are surveys and government statistics, in particular population statistics. My curriculum vitae, showing my qualifications and publications, is attached.

Last month, I was asked by NBC News, who had been referred to me by through the American Statistical Association, to comment on some data they had obtained concerning possible racial bias in selection by Customs Service agents of air passengers to be subjected to personal searches upon entry to the United States. I performed some simple analyses of data, with results that were sufficiently striking to be useful in the report that was prepared and aired on NBC's Dateline program on 27 April 1999.

My analysis was based on Customs statistics provided by NBC News concerning the number of passengers searched by race, the breakdown of these searches into more and less intrusive categories, and the number of searches with a positive outcome, i.e. finding illicit drugs. I also used statistics from the American Travel Survey conducted by the Bureau of Transportation Statistics, U.S. Department of Transportation, also provided to me by NBC News. These estimate the number of air trips with foreign destinations, by race/ethnicity and age, in 1995.

The main findings of my analyses are the following:

(1) The percentage of air passengers searched on entry is higher for males than females, much higher for Black or Latino males than for white males, and much higher for Black or Latina females than for white females.

(2) Among passengers that are searched, the percentage that are subjected to an intensive search ("strip search", including "partial strip", "X-ray", and

[body] "cavity") is by far the highest among Black females, about twice the rate for other groups.

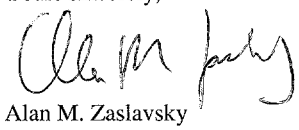
(3) Putting together these two results, the chances that a returning Black female passenger will be intensively searched is the highest of any of the major race/ethnicity-sex groups, about 20 times that for white female passengers and over twice that for Latina female passengers.

(4) Among women who are intensively searched, the percentage who are found to actually be carrying drugs is about equal for the three race/ethnicity groups; it appears slightly lower for Black women than for other groups, but this difference is not statistically significant.

Details of the calculations supporting these conclusions appear in the attachment, together with a statement of the limitations of these analyses. In short, there appear to be significant racial disparities in the rates at which searches in general, and "strip" searches in particular, are carried out. Because these data do not show the criteria for selecting passengers for search or for determining the level of the search, it is not possible from these statistics to determine whether there is an innocuous explanation for these differences in terms of legitimate reasons for selecting individual passengers to be searched. They also do not tell us which searches are more or less invasive within the broad category of "partial strip" searches. I would be very pleased if your efforts are able to shed more light on these questions.

Please feel free to contact me if you have questions about these analyses.

Yours sincerely,



Alan M. Zaslavsky

Associate Professor of Statistics

Analysis of statistics on Customs searches of air passengers

Alan M. Zaslavsky, Ph.D.
Associate Professor of Statistics, Harvard Medical School
May, 1999

Data: searches

The following data are summarized from pages titled "U.S. Customs Service Personal Searches of Air Passengers, Fiscal Year 1997" and "U.S. Customs Service Personal Searches of Air Passengers, Results: Positive and Negative, Fiscal Year 1997". The categories have been combined as follows: "frisk" and "patdown" are combined as "nonintensive" and "partial strip", "X-ray", and [body] "cavity" as "intensive". The vast majority of searches are "patdown" (almost 95%). The notes to these tables indicate that a "partial strip" search includes "any search of an individual's person which would require the disclosure of any underclothing or part of the body which would not normally be revealed publicly."

"Other" and "not identifiable" races are omitted here. About a third of the searches are listed as "other", far out of line with the fraction who call themselves Asian, Native American, and Other in surveys. This suggests a weakness in the recording of race for statistical purposes.

The first table shows the number of positive and negative searches by race/ethnicity and sex.

Table 1:

	White Male	White Female	Black Male	Black Female	Latin Male	Latin Female
Positive	766	171	289	156	379	166
Negative	8744	2607	3452	1943	11490	3202
Total	9510	2778	3741	2099	11869	3368

The second table further breaks this out by non-intensive and intensive searches.

Table 2:

	White Male	White Female	Black Male	Black Female	Latin Male	Latin Female
Non, positive	620	113	173	91	234	109
Non, negative	8303	2458	3297	1702	11129	3052
Intensive, positive	146	58	116	65	145	57
Intensive, negative	441	149	155	241	261	150

Data: air travel

The following data are summarized from the American Travel Survey, 1995, conducted by the Bureau of Transportation Statistics. Because the way that race/ethnicity is reported in the ATS is different from that in the search statistics, I have made some simplifying assumptions to report these numbers. I have translated White directly to White, Black directly to Black, and Hispanic directly to Latin. In fact, the Hispanics in the ATS are an ethnic category which also reports a race. Findings from studies of the new OMB racial classification system suggest that many Hispanics report themselves as Hispanic race and that the largest part of the remainder report themselves as White but some report themselves as Black. Consequently, the numbers of White and Black non-Hispanic travelers is somewhat overestimated here and consequently the rates of searches for these groups are somewhat underestimated. However, since Hispanics represent only 12% of the trips, this effect is not very large.

Table 3:

White Male	White Female	Black Male	Black Female	Latin Male	Latin Female
11714757	10022645	771507	729868	1544017	1343298

Rates of searches

The following show rates of searches per million trips, for six race/ethnicity-sex groups, based on the preceding numbers.

Table 4:

	White Male	White Female	Black Male	Black Female	Latin Male	Latin Female
ALL	812	277	4849	2876	7687	2507
Intensive	50	21	351	419	263	154
% Intensive	6.17	7.45	7.24	14.58	3.42	6.15

Percentage positive among intensive searches

The following shows the percentage of intensive searches in each group that have a positive finding.

Table 5:

White Male	White Female	Black Male	Black Female	Latin Male	Latin Female
24.87	28.02	42.8	21.24	35.71	27.54

Principal findings

(1) The percentage of air passengers searched on entry is higher for males than females, much higher for Black or Latino males than for white males, and much higher for Black or Latina females than for white females. (Table 4, line 1.)

Among passengers that are searched, the percentage that are subjected to an intensive search ("strip search", including "partial strip", "X-ray", and [body] "cavity") is by far the highest among Black females, about twice the rate for other groups. (Table 4, line 3.)

Putting together these two results, the chances that a returning Black female passenger will be intensively searched is the highest of any of the major race/ethnicity-sex groups, about 20 times that for white female passengers and over twice that for Latina female passengers. (Table 4, line 2.)

Among women who are intensively searched, the percentage who are found to actually be carrying drugs is about equal for the three race/ethnicity groups; it appears slightly lower for Black women than for other groups, but this difference is not statistically significant. (Table 5.)

Limitations

The following limitations and uncertainties should be kept in mind in interpretation of these results:

A. The different years for travel and search statistics potentially affect some of the results. However, there is no reason to think that racial patterns in amount of travel changed drastically over 2 years.

B. The difference between the population reached by the American Travel Survey and the total population of travelers passing through U.S. airports (including nonresidents) could affect some of the results. I would be surprised if the fraction of Blacks among nonresident travelers were higher than that for citizens, given that Africa is not a big travel source to the U.S. (Hence the rates of search for whites might be overestimated relative to those for Blacks, i.e. differences are even bigger than our estimates.) This might have more impact on the Latin figures, since there is a lot of nonresident travel back and forth for Latins. If there is a disproportionate amount of nonresident travel by Latins, this might cause us to overestimate search rates for that group.

C. I compared Latins in the search statistics to Hispanics in the survey. Some of these Hispanics also declared white or black race. Hence the rates for both whites and blacks could be lowered. I'm not sure what proportion of Latin travelers would declare themselves as black in a survey, but I suspect it is no more than the proportion in general population.

D. "Other" in the search statistics is probably completely incomparable to any category in the travel statistics, so it should not be considered in comparisons to travel numbers.

E. Some cases are missing race or sex. These have an unusually large rate of intensive searches (115/623=18%), and high positive rates for both all searches (34%) and intensive searches (60%). This seems to be an unusual group defined on the basis of some procedural characteristic that causes race to be missed, not on race itself. In the absence of any information on who they are, I am inclined to omit them from analysis. I also omit "Other" from travel comparisons since the definition of Other here is so different from that in the survey.

E. The statistics on searches do not distinguish the intensity of the category of "partial strip" searches. By the definitions given, these could vary from something fairly minor, like asking someone to lift a shirt off the belly, to something quite intensive.

F. The statistics on searches are based on Customs Service tabulations. I do not know to what extent these have been audited for completeness or validated.

Chairman HOUGHTON. Thanks, Mr. Lewis.

Mr. Hayworth, have you got an opening statement?

Mr. HAYWORTH. Mr. Chairman, I would just like to thank you for holding this hearing.

Undergirding our constitutional rights that our Founders had the incredible foresight and wisdom to provide for us in Philadelphia over two centuries ago, there is a basic notion of law and a question that emerges, and that is, what is reasonable? And I hope during the course of today's hearings to hear from Commissioner Kelly and to gain insight, and, as my colleague from Georgia said, if there are abuses, to act upon those abuses.

It is in that spirit that we conduct these hearings; not as Republicans or as Democrats, but as Americans determined to exercise our constitutional role of oversight, and, again, I thank the Commissioner, and I thank my colleagues and especially you, Mr. Chairman, for holding this hearing.

Chairman HOUGHTON. Thanks very much, Mr. Hayworth.

Now, I would like to call on Commissioner Kelly for his testimony.

STATEMENT OF RAYMOND W. KELLY, COMMISSIONER, U.S. CUSTOMS SERVICE

Mr. KELLY. Thank you. Mr. Chairman, Members of the Committee, thank you for giving me this opportunity to testify.

The Customs Service has the responsibility for intercepting contraband entering the United States; contraband that includes everything from child pornography, to nuclear materials, to illegal narcotics. Narcotics smuggling dominates all of this; it is where the money is. Most of us are all too familiar with the price extracted by the drug cartels to feed the country's appetite for drugs. The price is drug addiction, financial ruin, destroyed families, neighborhood deterioration, and debt. Drugs kill and maim their users and put everyone nearby at risk—innocent citizens, unborn children, and law enforcement officers who come up against the cartels.

As the leading drug interdiction agency, Customs has been granted unique search authorities to combat this threat. It is an important and indispensable tool in our efforts to stop a ruthless foe provided it is used fairly and judiciously. As committed as we are to the fight, I do not want to add civil liberties to the list of victims. We will not allow individual rights to become casualties in the war on drugs.

The complaints we have received about racial prejudice in selecting passengers for searches are very disturbing. It is certainly not the Customs Service's policy, and it will not be tolerated as a Customs Service practice anywhere.

When these complaints surfaced, I appointed, Mr. Chairman, an independent commission from outside the Customs Service to review our personal search practices. We are looking for an objective-handed assessment. The commission members are in the midst of their work now. I don't want to prejudice with my comments here what they may ultimately find. Nonetheless, the seriousness of the

charges were such that we have taken additional, immediate actions to improve and oversee the personal search process.

Where, in the recent past, any individual inspector could decide whether or not to make a personal search, a supervisor must now approve that decision. Now, only a port director, the highest ranking field manager on site, can make the decision to conduct an x-ray of a passenger.

In addition, we have made legal counsel available to inspectors at five of our Nation's busiest airports—Newark, JFK in New York, Boston, Atlanta, and Dulles in Washington. A Customs lawyer is now on call 24 hours a day to assist our inspectors at these locations in determining whether or not they have sufficient grounds to move from one stage of a personal search to the next. We will soon expand this program to the entire country.

We have instituted better recordkeeping procedures. Before, data collection on personal searches was weak and inconsistent. To remedy this, we have formed a national Passenger Data Analysis unit at headquarters that will maintain information on all personal searches. Field personnel are now required to file an inspecting officer information log that records all aspects, including race, of any search they conduct. This information will be transmitted to the new analysis unit, and will be used to monitor trends in our personal searches.

We have also formed an internal task force to review the criteria used by our field personnel to select travelers for personal searches. We want to be sure that the criteria used to determine if a personal search is warranted are not arbitrary and certainly not based on race. Our task force will also make sure that our criteria are recent and up to date. For example, in the past, Customs might have considered the purchase of an airline ticket just a few days in advance of a trip as suspect criteria. With the explosion of last-minute discount travel and the use of the Internet to purchase such tickets today, this indicator may no longer be valid.

We have also undertaken a series of comprehensive reforms in our inspection areas to improve the passenger environment. These changes focus on three areas: information, training, and technology. In the past, our communications with the traveling public was unclear and unfocused. Providing a coherent statement about Customs' mission was a very important first step; informing travelers about our practices and policies was another. We are achieving this by installing improved signage in our inspection areas, providing new comment cards for passengers, revising our declaration forms to cut down on confusion, and making new brochures available that explain why Customs performs inspections and searches. These include a document entitled, "Why Did This Happen to Me?", that explains the personal search for those who are referred for a secondary inspection.

A new Customer Service unit has been established at headquarters to underpin out inspection area reforms. They will be responsible for handling and tracking all passenger complaints. Training is a crucial area of reform. The personal search, even in the most impartial of circumstances, is a traumatic process. It is only compounded if accompanied by a callous disregard on the part

of our personnel for the emotional well-being of passengers who are searched. Clearly, this has occurred in several cases.

We are addressing this problem with a battery of training for all our inspection personnel. Regular instruction in interpersonal communications, cultural interactions, passenger enforcement selectivity, and confrontation management is already being delivered. This training will continue throughout our inspectors' careers.

To compliment the training our employees receive, we are revising the Customs Personal Search Handbook. Instructions will be clearer, tighter, and will require strict supervisory controls over the entire process.

Technology may also make the personal search less intrusive. We are deploying advanced technology wherever possible to minimize physical contact during the personal search. In certain airports, such as JFK in New York and Miami International, travelers selected for a personal search can elect to go through a body scan, an advanced form of x-ray. These devices, as well as regular x-ray equipment, will be deployed soon at other major airports around the country. We need more of this equipment, and we have asked for $9 million in the fiscal year 2000 budget to obtain it.

We need to be more sensitive to concerns about our personal searches—that is clear—yet we don't want this issue to be exploited by the drug cartels. We know from experience that the cartels will try to take advantage of a situation so they can smuggle more drugs into our community and that they will use anyone to do it. It is an extremely difficult problem for us.

Last year, we seized 2½ tons of illegal narcotics from air passengers; half a ton of this was concealed on or in passengers' bodies. Smugglers are men and women of all ethnic groups—young and old, rich and poor. Disabled people are even used in the hopes that Customs will be unsuspecting. Worse, the science of internal smuggling is advancing. The cartels have devised ways to make mules—as they call these body carriers—look less suspicious. Medications or laxatives often mask physical symptoms they would otherwise display.

Let me give you a sense of what we are up against. These pellets are made from the fingers of rubber gloves. They weight, each, about 18 grams. A smuggler would typically swallow about 60 of these or even more; that is roughly one kilogram or 2.2 pounds. Each of these pellets would be filled with heroin and worth about $1,800 on the streets of New York. A whole kilogram would be worth about a quarter of a million dollars, perhaps more.

While this is an example of what pellets of heroin look like, Mr. Chairman, this in my hands is the real thing. These pellets of heroin that are in evidence bags were seized this past weekend from a swallower who arrived at Dulles Airport from Ethiopia. It totals 558 grams. Inspectors became suspicious of the passenger after he exhibited extreme nervousness and was unable to produce tickets for the destinations he said he was traveling to in the United States. A pat down search of the passenger and a search of his baggage proved negative. The Customs inspector subsequently obtained permission from his supervisor to obtain an x-ray. The passenger willingly signed a consent form. After tests at the hospital and x-rays showed him positive for carrying drugs, he passed 25

pellets, what you see here before you. This is a total of 40 pellets that he was carrying in his body.

As lucrative as the payoff may be for the carriers, they are putting their own lives at great risk. Deaths from leakage of the pellets during transport is commmon. In 1998, alone, six carriers died in a 6-month period. Victims over recent years have included a pregnant mother who died after ingesting 157 pellets of cocaine. Her unborn child did not die but instead suffered severe brain damage. We get particularly upset when carriers are people like this as well as children. Just 2½ weeks ago, we stopped a 17-year old boy who was an internal carrier. Doctors were considering emergency surgery to prevent the drugs he was carrying from killing him. Fortunately, the boy survived after passing 30 pellets of cocaine.

Again, I want to repeat, it would be a grave mistake for the cartels to interpret our concern for the rights of the traveling public as a weakening of resolve. The Customs Service must get better at pulling the drug smugglers out of line and allowing the law-abiding traveler to proceed unobstructed. In no instance will we allow racial bias to be tolerated as a substitute for good law enforcement. It is my duty as Commissioner of Customs to ensure that the law enforcement policies and practices of our agency are carried out with fairness, civility, and impartiality. I expect no less. People who enter our country, all people, should expect no less.

We have initiated many changes at Customs to guarantee that the rights and dignities of travelers are protected in the process of what is one of our greatest challenges—stopping the inflow of drugs. And I certainly welcome any additional recommendations this Committee may have.

Thank you, Mr. Chairman.

[The prepared statement follows:]

Statement of Raymond W. Kelly, Commissioner, U.S. Customs Service

Mr. Chairman and Members of the Subcommittee, I want to thank you for the opportunity to present Customs plans to address the very disturbing allegations of racial bias that have been made by members of the traveling public about our personal search selection process.

I want to assure the Committee that this issue is a top priority for the Customs Service. Real or perceived, bias is not and will not be tolerated in any part of Customs operations.

The drug cartels employ any and all means to thwart our interdiction activities, including smuggling drugs on and in the bodies of travelers arriving in our ports of entry. During Fiscal Year 1998, Customs inspectors discovered over 1,100 pounds of heroin and cocaine smuggled by this means. Finding these drugs is not an easy task.

Over 71 million commercial air passengers arrive in the U.S. each year. Customs personnel must somehow sift the drug carriers among this vast number from the majority of law-abiding travelers. Smugglers, however, fit no single profile. They come in all shapes and sizes, social backgrounds, and ethnic groups. Drug cartels will not hesitate to exploit anyone they can, especially those who would seem the least suspicious.

We must strive to improve our personal search procedures to ensure that the rights of travelers are protected at all times, and that this very special authority is used effectively, judiciously, and with minimal intrusiveness.

Customs airport personnel work hard to carry out their jobs as best as they possibly can in a difficult environment. The personal search is one of their greatest challenges. In theory, it is a procedure that they undertake as a last resort and with the maximum of supervision. In practice, it is admittedly a procedure that we have found in recent years to have suffered from poor oversight, insufficient training, and

a lack of supervision. This may in large part contribute to the allegations of bias that surround Customs use of the personal search.

In addition, our treatment of passengers undergoing the personal search has, in some instances, been sorely deficient. Communication with travelers detained for a search was poor, information was lacking, and legitimate questions went unanswered. We need to do a much better job of utilizing the interpersonal skills required for this difficult and delicate task.

In response to these shortcomings, we've undertaken a variety of important measures. These include the formation of internal and external committees to review our search procedures; immediate reforms to certain steps in the personal search such as strengthening the role of supervisors; and far-reaching changes to our passenger processing environment that focus on improved information, training, and technology.

Prior to coming to Customs, as Undersecretary for Enforcement at the U.S. Treasury, I directed the Office of Professional Responsibility (OPR) to review Customs passenger selection practices and related training. OPR's draft final report is undergoing review by the Treasury Department at this time.

In addition, the General Accounting Office (GAO) has been reviewing Customs air passenger processing. We have been cooperating with the GAO by providing extensive access to records and field sites. The final report of the GAO is scheduled for completion in May 2000.

Lastly, Customs has formed two committees, one internal and one external, to review the procedures used in the personal search. Our internal task force, The Passenger Processing Selection Committee, is composed of senior field management from a cross section of the country as well as a representative from headquarters. The task force will look at the criteria we use to identify passengers for further inspection. It will analyze the search data to determine if we are correctly selecting the highest risk passengers. The review is focusing on Customs air passenger selection operations nationwide. Its work is well underway and will be delivered to my office shortly.

In response to recent allegations, we appointed an independent Commission from outside the Customs Service to review our personal search practices. The Commission is composed of prominent government leaders and is led by Constance Newman, Undersecretary of the Smithsonian Institution. In addition, we appointed an Independent Advisor, Sanford Cloud, President and Chief Executive Officer of the National Conference for Community and Justice.

The Customs Personal Search Commission will have unfettered access to Customs facility and personnel. Its work is already underway, and it will report in mid-July.

To address problems in the supervision of personal searches we are instituting a port-level self-inspection and certification process. Port directors will be required to certify, in writing, that they are in charge of the personal search process and that it is being carried out correctly at each port. The certification will be fielded in June.

We are revising our Personal Search Handbook to require additional levels of approval and oversight from supervisors and managers for any searches. It will include a clear statement of Customs personal search policy in language that is not open to misinterpretation. The revised handbook will be approved this month and be issued to all Customs officers, together with an eight-hour training course covering the new policy.

While management oversight is a key to resolving these problems, we also set out to review our entire passenger-processing environment. The review paid particular attention to the procedures that occur when passengers are selected for a secondary inspection. We contracted with Booz-Allen & Hamilton, Inc., to conduct a study called Interpersonal Communications: U.S. Customs Service and Air Travelers. The final report was issued in February. It included many good recommendations for improvement, recommendations we have already acted upon. Our changes are grouped into three categories: Information, Technology, and Training.

INFORMATION

New signs are being installed at major airports that will better inform passengers about Customs mission and how we conduct enforcement operations. The improved signage is part of a "new look" that air passengers will see in the coming months in our airport facilities.

We are reaching out to the traveling public, inviting passenger feedback through postage paid comment cards that will be prominently displayed at inspection area exits. We've already received many useful comments from passengers in the cards that have been sent in to date.

Any complaints that are received are being processed by a new Headquarters Customer Satisfaction Unit (CSU). All correspondence, including the Comment Cards, is now handled by the CSU. This centralization at Headquarters ensures that complaints are correctly addressed and that passengers receive appropriate feedback, including a personal phone call to address their concerns. The CSU is responsible for keeping senior Customs managers informed on the concerns of the traveling public and to identify any emerging trends regarding how we are delivering service.

To address passenger concerns in person, we are revitalizing the Passenger Service Representative (PSR) program. We are redefining the roles of these individuals, who are designated liaisons to the travelling public, to ensure that they spend more time on the floor and are more visible to passengers.

We are also taking steps to improve our passenger enforcement data collection and analysis. We are making sure we have accurate and informed data on all the personal searches our filed personnel conduct. This was not done well enough in the past. Immediate improvements have been initiated through policy changes (such as requiring inspectors to fill out a comprehensive entry on any searches they conduct), computer system updates, and the formation of a Headquarters unit dedicated to passenger search analysis.

We're revising the Customs Declaration Form to incorporate new information on the enforcement process, and to ensure it is in a better format and easier to understand for all travelers. The new form will be completed and available later this summer.

New brochures are being produced to better inform the public and to address frequently asked questions from passengers who have undergone an examination. The brochure is entitled "Why Did This Happen to Me?" More informational brochures are forthcoming, and informational advertisements are planned for in-flight magazines. Passenger surveys have demonstrated that this type of on-board information is often the best way to convey Customs policies to arriving travelers.

TECHNOLOGY

We are striving to make the environment in which we conduct personal searches less imposing and obtrusive. The use of privacy screening in baggage examination areas is one option being considered. In addition, we are changing the appearance of our search rooms to make them less clinical. Anything that we can do to alleviate the stress of travelers helps both those we process as well as Customs inspectors themselves.

To make the personal search less intrusive, we're deploying as much advanced technology as possible. Body scan imaging technology is currently in use at JFK airport in New York City and Miami International airport. This technology minimizes the need for physical contact in a personal search. These devices, which are only used at the consent of the selected traveler, permit inspectors to see if contraband is concealed under clothing. We plan to install more of this technology in other major airports across the country in the coming months.

Customs is also developing a latex breathalyser to detect if a passenger has swallowed drugs wrapped in rubber pellets. Such a test could help eliminate uncertainties about whether or not a passenger needed to be transported to a medical facility for an x-ray. In addition, our Customs FY 2000 budget includes a request for funding for mobile digital x-ray equipment. This technology would greatly reduce the time spent transporting passengers to off-airport medical facilities for an x-ray. It would also eliminate the need to use restraint devices, such as handcuffs, to safely transport passengers to outside medical facilities.

TRAINING

Better training for our personnel will help minimize the poor treatment some travelers have complained about. Customs inspectors are receiving extensive training on interpersonal communications, cultural interaction, confrontation management, personal search policy, and passenger enforcement selectivity. An initial set of training courses totaling forty hours will become part of an annual requirement that will also be given to all new inspectors at the Customs Academy.

Customs takes the issue of personal searches and the recent controversy that has surrounded this authority very seriously. We will continue to do whatever we can to improve this process, and to work with the Congress to ensure that the dignity and rights of all individuals are protected as we carry out our mission.

Chairman HOUGHTON. Thanks very much, Commissioner.

I am just going to ask one question, and then I am going to pass the questioning around to other members of the panel.

Can you break down a little bit this Personal Search Review Commission? Who is on it, and what do you expect to get out of it?

Mr. KELLY. The Commission is chaired by Ms. Constance Newman, certainly well known and very well respected in the Washington community. She is currently the Under Secretary for the Smithsonian Institute, former Director of the Office of Personnel Management. Also on that Committee is Ms. Robin Sanders who is an employee of the National Security Council. Ms. Sanders, traveling into the country with Congresswoman McKinney from Georgia, was stopped and claimed abusive treatment and has also stated that she has been stopped virtually every time she comes into the country. Ms. Anna Marie Salazar, who is the Deputy Assistant Secretary of the Department of Defense, is of Hispanic origin. Hubert Bell is a former Secret Service agent. He is the Inspector General of the Nuclear and Regulatory Commission. The outside government member is Mr. Sanford Cloud, recommended by Ms. Newman, who is the director of the National Council for Justice.

What we expect to get from the Commission is certainly a totally unfettered, objected examination of our processes. We would like to have their sense, their indications as to whether or not racism or racial bias is involved in the decisions made to select people for personal search, and we certainly are looking for their recommendations as to how we can improve the process in any way.

Chairman HOUGHTON. All right, thank you.

Now, Mr. Coyne.

Mr. COYNE. Thank you, Mr. Chairman.

Commissioner, you had mentioned that you had put in a request, or you are about to receive $9 million for x-ray equipment. How far is that going to go toward accomplishing what you want to do? In other words, how much of your need is going to be met by spending $9 million?

Mr. KELLY. It will address some of the concerns we have at major airports. It won't cover our 20 major airports, but it will cover the ones that have 75 percent of the volume.

What we are looking to do with technology is two things: first, we are looking to expand our body scanning equipment. This is the light x-ray machine that does not look through the body but does look through the clothing. This would be in lieu of a pat down. We are now giving passengers the option in Kennedy Airport and in Miami, rather than being patted down to go in front of this machine.

In addition, we are looking to put full-blown x-ray equipment at these sites. If in fact an x-ray is determined to be necessary now, we are actually transporting people off the airport. This can be a long trip; it is a traumatic experience for anyone that has to undergo this. We are attempting to construct, with adequate medical personnel, x-ray facilities right in our secondary areas, so there would be no transportation involved. We have also given people the option

in JFK to go right to an x-ray machine without any search at all. However, since this is a protracted process where you are actually traveling—well, in JFK you are staying on the airport grounds but you go into a clinic—it is probably impractical now, because people won't want to take another 2 hours or 3 hours to do that. So, we are looking to have the x-ray machinery right in the secondary location.

Mr. COYNE. Thank you.

Chairman HOUGHTON. Mr. Hayworth.

Mr. HAYWORTH. Thank you, Mr. Chairman, and, Commissioner Kelly, again, our thanks to you for coming to testify today, and obviously we have great concerns, because this is a classic case of one of the tensions inherent in our constitutional Republic. You have concerns for collective security and apprehend law-breakers and to cease the spread of contraband. On the other hand, we, as American citizens, have individual rights, constitutional rights which must be protected, and so it is that challenge of striking a balance that brings us here today and also the legitimate oversight concerns as eloquently expressed by my colleague from Georgia.

Commissioner Kelly, let us take the legal route, if we can for a second here. Where does Customs get its authority to conduct personal searches?

Mr. KELLY. The authority lies in title 19 of the U.S. Code. There are several particular sections that give Customs broad search authority, and, of course, through the years—Customs has been in existence since 1789—there have been several court cases—Supreme Court cases that have upheld that authority.

Mr. HAYWORTH. So, it is statutory authority, and based on the court cases—Supreme Court cases and other case law—have we drawn any limitations based on that body of case law?

Mr. KELLY. There are limitations, certainly, it depends on what circuit you are in. In certain instances, the ninth circuit, fifth circuit, and second circuit have all put in restrictions as to when you have to go to court to get an order to do further searches. I believe the ninth circuit is a 48-hour time limit; the other two circuits are 24 hours, maybe just more than 24 hours, but those time limits have been imposed.

Mr. HAYWORTH. So, there is a jurisdictional discrepancy, if you will, based on the geographic court circuits.

Mr. KELLY. Yes, sir.

Mr. HAYWORTH. OK, so would you welcome a congressional lead in this matter to make this uniform? Would that be helpful to your agency?

Mr. KELLY. I think it may be helpful. Yes, consistency in that area may be helpful.

Mr. HAYWORTH. Is Customs' authority to conduct personal searches different than what a city police officer might have, and how would you describe those differences if they exist?

Mr. KELLY. Yes, it is much broader. Just, inherently, being on the border gives Customs exceptions to fourth amendment restrictions that would be applicable to police officers on the street. For instance, in the police situation, you would need reasonable suspicion to pat down an individual. Customs has broader authority

than that even though we have imposed reasonable suspicion requirements ourselves to go further into the search process.

Mr. HAYWORTH. You mention reasonable suspicion. Could you help categorize for us or describe for us what level of suspicion a Customs officer or a Customs inspector must have before, let us say, for example, a pat down is conducted?

Mr. KELLY. Well, there are three levels of suspicion, as you may know, in the law. There is mere suspicion, which is very minimal; then, there is reasonable suspicion, which is something more than that but not probable cause. Probable cause is when you have enough to effect an arrest, to take someone into custody. Mere suspicion, as far as Customs is concerned, is a totality of indicators that would lead an inspector to believe that further investigation is needed.

We have a handbook, a list; it is not all-inclusive, but it is a list of indicators that are used, and it is being expanded on. These are indicators that have proven to be somewhat successful in the past. We look for those indicators to be specifically spelled out by the inspectors before going forward. It can be one or two or more of these indicators; we don't have a quantifiable restriction on it. It depends, really, on the totality of the circumstances, but it is one of those areas that, again, it is difficult to put a precise definition on, but we look at a whole variety of factors, and, particularly, as far as Customs is concerned, our indicators focus specifically on the issue at hand. In other words, it is somebody potentially smuggling some contraband in. It is the type of clothing. Are they in sunglasses or something that is adding—certainly not by itself, but we have experienced people who don't want eye contact or drug users themselves who may be wearing sunglasses, but you look at a series of these indicators before it rises to reasonable suspicion.

Mr. HAYWORTH. Thank you very much, Commissioner, and thank you, Mr. Chairman.

Chairman HOUGHTON. OK, thanks, Mr. Hayworth.

Mr. Lewis.

Mr. LEWIS. Thank you, Mr. Chairman, and thank you, Mr. Commissioner, for being here.

Along the same line that my friend and colleague from Arizona raised, would it be helpful for Congress to establish uniform rules to govern how long a passenger can be held without speaking to an attorney, and govern when a judicial magistrate must be involved?

Mr. KELLY. I think it may be helpful, yes, sir. I think there are some gray areas in the case law, and I think our inspectors would welcome more precise direction. We are certainly looking at that internally ourselves.

Mr. LEWIS. Mr. Commissioner, it is my understanding that white men are found to be carrying drugs more often than any other type of traveler. If that is the case, then why do Black and Hispanic travelers account for 43 percent of all passengers stopped and search?

Mr. KELLY. I didn't hear the first part of your question, but——

Mr. LEWIS. I think I tried to suggest or state that white men—white travelers who happen to be men—white men are found to carry drugs more often than any other type of travelers. If that is

the case, then why do Black and Hispanic travelers account for 43 percent of all the passengers stopped and searched?

Mr. KELLY. I think you have to factor in where the travelers are coming from. We have identified high risk countries, and we have identified what we consider to be high risk flights. Certain countries—which we use the NCSTR list, the State Department list identifying countries that are source countries or transit countries for drugs—may have a preponderance of certain ethnic groups on those flights, more so than other flights.

Mr. LEWIS. Are you telling me a flight coming in from Jamaica into Atlanta to Hartsfield Airport, there are going to be more Black passengers on that plane than Whites?

Mr. KELLY. No, but there may be a significant number of Black passengers, more so than flights coming from other places overseas; there may be Jamaican Nationals on that flight. So, I think before we say that the disproportionate number, I think we also have to look at source countries—countries that have been determined to be high risk—and take a look at the high risk flights and the passengers who are on those flights.

Mr. LEWIS. Mr. Commissioner, according to Customs, less than 1 percent of all drugs confiscated by the agency are discovered through personal searches. As you know, these searches are invasive and demeaning to the travelers, the vast majority of whom are innocent. In light of the small percentage of drugs found through personal searches and the burden these invasive searches place on innocent travelers, do you think such demeaning tactics are necessary in a free, civilized, democratic society?

Mr. KELLY. I certainly don't support demeaning tactics, and I think we have to do a much better job of being considerate to people who are subjected to this traumatic experience, and I think some of things I have laid out that we are doing will be very constructive and helpful in this regard.

I do think that it does provide a deterrent. If we don't do searches at all, I think we will see a significant increase particularly as far as heroin is concerned—internal smugglers bring it in their person or on their person into the country—but we clearly have to do a much more professional job of how we administer this. We would much prefer to do it through technology.

This is an unpleasant task, as you can imagine, for the inspectors. We know it is unpleasant; we know it is difficult and traumatic for the traveling public, anyone who is subjected to this, but this process of obtaining these pellets is also unpleasant for the inspectors. We hope that we have some answers in technology.

Mr. LEWIS. Mr. Commissioner, I think we all want to prohibit drugs from coming into the country. At the same time, we don't want to violate and abuse the civil rights and civil liberties of people, and I appreciate all of the changes that you are suggesting and recommending, but there may be a mindset in Customs, there may be a culture there that we need to deal with. How do you explain it? How do you plan to deal with it?

Mr. KELLY. It may be a mindset, and we have to ferret it out. We have to address it through training—again, we hope the Commission will be helpful in identifying that—and then we have to

address it through discipline. If these offenses, these type of practices are identified.

Mr. LEWIS. Thank you, Mr. Commissioner. Thank you, Mr. Chairman.

Chairman HOUGHTON. OK, fine. Mr. Hulshof.

Mr. HULSHOF. Thank you, Mr. Chairman.

Mr. Commissioner, before being honored by Missouri's Ninth District constituents to serve them here in Washington, I spent the entirety of my professional career in the criminal justice system—3 years as a court-appointed public defender and then 10 years as a prosecutor. Part of my role, also, was to help train Missouri law enforcement officials especially in the areas of search and seizure, laws of arrest, matters of trial advocacy and the like, and of course one of the challenges that I had as an instructor teaching new police officers was this ever-shifting sand, if you will, regarding search and seizure law, because I do believe—and I think even the gentleman who just questioned you believes—that there is a compelling public interest in stemming the flow of drugs and contraband coming into this country. Yet, courts constantly wrangle with that public interest in balancing an individual's right of privacy, as the gentleman from Arizona talked about earlier. And, often, court decisions take these individual cases and have to weigh these interests and the intrusiveness of the search and the like.

My question to you, sir, is what sort of legal training is given to a Customs agent, and, more importantly, what continuing legal education is given to a Customs official? Because, as you know—and you mentioned it in your testimony—these court decisions aren't static. I mean, each case that comes before the Ninth Circuit, the Fifth Circuit, the Second Circuit is based on precedent, and yet the reason that they have taken the case to judge is because it presents a new wrinkle of law. So, what legal training is given to Customs officials to try to stay on top of this shifting case law?

Mr. KELLY. Congressman, I think it is fair to say that up until the recent past there has been inadequate training. There hasn't been adequate training for inspectors involved in this very sensitive, very delicate area. We have embarked in a major training initiative in which our counsel, our lawyers, go out and train inspectors. We have cultural awareness training, managing conflict training.

We are bringing on board, starting June 1, a training director for the entire agency that will enable us to monitor, to develop these types of training programs. We haven't had one in the agency. So, training is extremely important in this area, and we are focusing on it to a great extent. But I think it is fair to say that it is an area that has needed a lot more attention than in the past.

Mr. HULSHOF. And I certainly appreciate Customs—in your testimony, that resources are necessary for the equipment and on-site x-ray machines and the like, but, of course, before even subjecting a traveler to even that minimal intrusiveness, there has to be the legal basis to do it, and so I really would encourage you in that regard, and I understand that the Ninth Circuit and the Fifth Circuit may provide in a similar factual situation different conclusions that they finally find their way to the U.S. Supreme Court.

But with the legal authority, legal training, I would really encourage your organization, your group to—especially because those agents on the frontlines are having to deal with an individual situation—you mentioned just a few of the factors. It may be that someone is wearing sunglasses; it may be that in the mind of a Customs agents that that passenger is somewhat furtive or suspicious, and yet trying to come up with an objective standard, which is what we want. I think from the earlier questions, the idea that we, in Congress, can pass a law, and we want to eliminate—I think in your testimony—the gray areas, and yet even if we were to pass a law, that law would be challenged given the facts of some stop that is made by a Customs agent, and that would go through the court system, as well.

Now, one final question: How are your inspectors—because courts—I think you would agree with me—take a very dim view of racial profiling—and so how are the Customs agents—especially reading the testimony of the witnesses we are going to have here later today—how are Customs agents trained to avoid racial profiling?

Mr. KELLY. Well, it is specifically stated in our handbooks that you cannot—there is prohibition against doing that, and it is in the training factors, but it has to be reinforced. We need constant in-service training in this area. I mean, we are, on paper, saying that this shouldn't happen. We have to continue to reinforce that.

Mr. HULSHOF. My time has expired. Thank you, Commissioner. Thank you, Mr. Chairman.

Chairman HOUGHTON. Thank you.

Mr. Neal.

Mr. NEAL. Thank you, Mr. Chairman.

Mr. Kelly, how much information are Customs inspectors supposed to give passengers about why they were stopped?

Mr. KELLY. They are supposed to give them information in a general way. They are not supposed to tip off criminal type information that comes in, and we do get that information. We get our own computer system; they have look-outs from other agencies, that sort of thing. But, for instance, they would tell someone that, generally speaking, another agency has given us information or something general, but I think in the past what has happened is that there has been very little communication, and this has upset people; people want to know.

You know 10 years ago, 15 years ago, Customs used to stop everybody and talk to them and look in their luggage. Now, because of the huge volume of traffic, this practice has stopped, so we have become selective, and people understandably want to know, "Why me? Nobody else is being stopped, and I am being stopped," and we haven't done an adequate job in my judgment, and we are starting to tell people why they are being detained. And we also now have publications. We have this pamphlet that I spoke about, Why Did this Happen to Me?, those sorts of things to better inform people as to why they are stopped.

Mr. NEAL. As opposed to the silence that was once common?

Mr. KELLY. Yes, and silence was just a practice that people picked up, the inspectors picked up. It wasn't a policy, but I think

it is just easier dealing with people who are understandably concerned and upset that they just didn't say anything.

Mr. NEAL. And how do they regard questions that are asked of them when they do detain or stop a passenger?

Mr. KELLY. It is hard to generalize. Most people with authority, generally speaking, might resent, somewhat, questions being asked back at them, but I don't have any specific instances of that. But as a general practice, we want to put out more information; tell people more specifically why they are being detained.

Mr. NEAL. Is there any directive from your agency to the inspectors that would suggest that they be evasive, for example, when they are questioned by a passenger?

Mr. KELLY. No, not that I am aware of.

Mr. NEAL. Not that you are aware of? OK, Thank you, Mr. Chairman.

Chairman HOUGHTON. Thank you, Mr. Neal.

Mr. McInnis. Oh, not here.

Oh, I am sorry, Mr. Weller.

Mr. WELLER. Thank you, Mr. Chairman and Commissioner, and good morning.

Mr. KELLY. Good morning, sir.

Mr. WELLER. I appreciate your testimony. I know you take your job very seriously, and I have enjoyed the opportunity to work with your staff on some issues as we find ways for drug interdiction. You are on the frontline of defense trying to keep drugs out of our country, and I appreciate the serious approach that you take with the job. I also want to thank you and your staff for the partnership we have as we work to provide Federal protections for Federal law enforcement canines that play such an important role for your agency and others from drug-sniffing and other areas, and I want to thank you for that, and, hopefully, we will move that legislation later this year.

I am trying to get a greater understanding of your individual agents at our area airports, and, of course, I represent the Chicago area, O'Hare has been one of the airports that has been singled out. They take their job seriously, and, of course, under their responsibilities, they are given a lot of discretion and responsibility in identifying individuals that they feel deserve greater scrutiny, and I am trying to get a better understanding of the profile that your individual agents are trained to look for. Can you just give us a detailed description of the basic profile of a suspicious character that agents are trained to identify and look for as they come through the Customs areas at the airport?

Mr. KELLY. We don't use profiles. The courts have said that Customs doesn't use profiles. A profile is something that, from my understanding—and you are right, courts don't like profiles—that is not directly related to the offense that is being looked for; that it is more of a stereotype, if you will. We use indicators that are something more specific, more aimed at smuggling, for instance, and it is very difficult to draw a picture of a smuggler, because—as I said in my testimony—children, older people; we have had pregnant women; we have had disabled people in wheelchairs; we have had drugs in the wheelchairs. It is very, very difficult to give

a snapshot as to what a smuggler, someone bringing drugs in, looks like.

I am told that that wasn't the case 10 or 15 years ago. It was much easier to stop people who may be smuggling drugs in or on their person. The cartels have gotten much more sophisticated. They have people who—for instance, one recent internal carrier in Newark Airport postured himself as an automobile manufacturer and had all papers from this particular company. He was an internal carrier. So, it is very difficult to do, and inspectors over time buildup certain expertise, but our concern is that the success rate for inspectors is decreasing, and we want to do a more effective job of identifying people and then doing it with civility and fairness. So, I can't give you a picture of what a smuggler looks like; it runs the cross-section of society.

Mr. WELLER. It is my understanding, though, that in Customs that you have a passenger handbook that agents have, and it is my understanding that there are 43 different indicators that are given to your inspectors that suggest that they then ask for more questions. What are some of those 43 indicators?

Mr. KELLY. Again, we are redoing the handbook, and those indicators will be moved out into a lesson plan, but essentially, as I mentioned before, someone who purchases a ticket just before they get on a flight; purchasing a ticket for cash; wearing, perhaps, bagging clothing on a warm day; wearing long-sleeved shirts, sunglasses in some instances, but any one indicator is generally enough to give us reasonable suspicion.

Mr. WELLER. Commissioner, I have been to Jamaica a few times for vacation. I fly in and out of O'Hare every week, and there has been a few times the last couple years where my briefcase has been one of those that has been swabbed, and so I know the inconvenience of that, but you accept it, because you want airline travel to be safe, and your folks are doing their jobs as well as others assigned for security. But is it that your inspectors are given as an indicator which would trigger a personal search? What is it that triggers the need to do a personal search of a passenger?

Mr. KELLY. There is a continuum, a series of questions that are asked that individuals give conflicting answers or confusing answers or don't—for instance, this individual who was stopped from Ethiopia said he was going to a location in Atlanta; he had no ticket to Atlanta; had no address in Atlanta. Those sorts of—and, again, it is difficult to pinpoint, but it is a compilation of information indicators that lead inspectors to go forward. And now we have our highest ranking person at an airport facility make that decision to go further with more intrusive search.

Mr. WELLER. Thank you, Commissioner.

I see my time has expired. Thank you, Mr. Chairman.

Chairman HOUGHTON. Thank you very much.

Mr. Portman.

Mr. PORTMAN. Thank you, Mr. Chairman, and, Commissioner, thank you for being here today and talking about some difficult issues. Your agents who are out in the field and your inspectors have a very difficult job, and they are doing a good job in terms of curbing the drug flow into the country. I think we need to do a better job on the demand side to help them so that there is less

of a magnet here in this country. But you seized a record 1.35 million pounds of illegal drugs last year, and a lot of that came in by airplane—looking at some of your statistics—2½ tons of illegal drugs were seized from air passengers last year, alone. And, importantly, to me, is the amount of money you are seizing from people going back South, and I think you seized, in two border stations, alone, along the Mexican border since October, $1.7 million. That will begin to hit the drug cartels where it hurts and to the extent you can continually do that on the southbound track, I think that is going to make a major impact too. So, I want to thank what your people—you and your people for what you are doing to try to keep drugs off our streets, out of our schools, our neighborhoods, and, again, we need to do more all through the system to stop the demand so that your people aren't put at risk and so you don't have to do so much.

But, in the meantime, you are going to have to use some kind of technique to get at this. You talk in your testimony about the lengths to which people to go to hide these drugs and how difficult it is to find these drugs. I don't think anyone in your area in the Customs Service wants to abuse people's civil rights; I certainly hope not. I hope nobody on this panel would want to do that, but I think privacy issues are always going to be there to the extent you have to take these kinds of measures to find these drugs that are so cleverly concealed.

And I guess my question to you is, can't we come up with more technology so that we have less intrusive methods to do that? I think to say it is not going to be an issue is naive. People's privacy rights are going to be at stake here, and you talked a little in your testimony about the body scanners, and although that is also an issue for some people, I imagine because it is much less intrusive than a cavity search, a body cavity search, or other strip searches, and so on, that that would be a logical way to go.

What have you asked for in terms of your appropriations for fiscal year 2000 for additional technology, and it is adequate to be able to implement at the important airports, in particular, this kind of technology?

Mr. KELLY. We have asked for $9 million, essentially, for x-ray technology, but I think in this area we should be looking at some research and development initiatives. Some of the things we are looking at are latex breathalyzers, for instance, the ability to detect an internal carrier, although this particular carrier was using electrical tape, but we need to look at the whole area of technology, and I think it is just a matter of time when we will have it, but we don't have it now, and that is why we are forced to be involved in this unpleasant business.

Mr. PORTMAN. Commissioner, is it a matter of time or is it a matter of time and focus? In other words, is $9 million adequate? We are all looking for ways to keep our funding level under control this year with the cap and so on, but this is one area where I think there is a need to step up the technology and, in the end, have fewer drugs coming in; have less risk for your agents, and have fewer privacy concerns out there. Is this something where you think $9 million—I think you indicated in your testimony that $9 million would be adequate to service maybe 75 percent of the air-

ports with the kinds of x-ray technology you are looking for, but is that adequate?

Mr. KELLY. Well, of course, there is a negotiating process, and that is how we arrived at the $9 million——

Mr. PORTMAN. I am aware of that.

Mr. KELLY [continuing]. Through OMB.

Mr. PORTMAN. What was your request to OMB?

Mr. KELLY. I don't remember specifically in the technology area.

Mr. PORTMAN. But it is fair to say it was in excess of $9 million.

Mr. KELLY. Yes, it is fair to say.

Mr. PORTMAN. I guess it would be helpful to this Subcommittee and Chairman Houghton and others, Mr. Lewis, who are looking at these issues if you could give us—if it is not on the record, off the record—what you think your needs are, and maybe this is a more constructive way to approach some of these problems is to try to get the technology out there so that your people can have it, because it is a matter of time but also a matter of focus and money and commitment to it.

One other quick question, if I have time, Mr. Chairman? There was a Booze-Allen study done—let us see if I have this question—Booze-Allen study done at your request that I read about in one of the earlier questions and prepared a report for you in February 1999. What did the firm recommend with regard to conducting a survey of air passengers and Customs inspectors, and what has been your response?

Mr. KELLY. The firm essentially recommended better communication with the traveling public telling them what Customs is all about; what the Customs mission; what can happen to them in the search procedure. That is what we asked them to pretty much focus on. They did a survey of people who had gone through the secondary area but were not personally searched. So, it was of value, and we have adopted much of those recommendations to better communicate. We have signs in the rear of this room that we have now at airports; we have exit comment cards that you can comment on the conduct of the Customs inspectors and the process. Essentially, the Booze-Allen report was focused on communication and recommending that we better communicate to the traveling public what we do.

Mr. PORTMAN. And you have implemented most of those recommendations?

Mr. KELLY. Yes, sir.

Mr. PORTMAN. Thank you, Mr. Chairman. Thank you, Commissioner.

Chairman HOUGHTON. Yes, Mr. Lewis.

Mr. LEWIS. Let me just ask Commissioner Kelly, in responding to one of my colleagues, he suggested that one reason for stopping someone or detaining someone may be that the person is wearing sunglasses or they may be wearing baggy clothes. But, you know, in America these days, many of our young people, young men in particular—if you go into the City of Atlanta or walk the streets of Washington or New York, almost any major city in America or go into almost any major high school, you will see young men wearing baggy clothes. So, if we go around detaining people because of

wearing baggy clothes or maybe wearing sunglasses, I think we are going to be in serious trouble in America.

Mr. KELLY. That would not be the only indicators. However, I did mention in my opening comments that we have a task force that we have brought together to look at these indicators to see if they are relevant; to see—these indicators, most of them, were developed several years ago.

Mr. LEWIS. But I think many of these young people are trying to make a statement—maybe it is style; maybe it is a cultural statement.

Mr. KELLY. But it certainly wouldn't be the only reason nor would we accept that as a reason for stopping someone and engaging them in this process. But I think the point is that we have to take a look at all of these indicators to see if they are relevant to 1999 and the next century.

Mr. LEWIS. Thank you, Mr. Chairman.

Chairman HOUGHTON. All right. Mr. Commissioner, we are going to let you go in just a second.

I just have an overall question. You know, in a democracy we have this sense of freedom, and yet people take advantage of our openness. If you looked—I mean, you have only been in this job 9 months—if you look out, let us say, 5 or 10 years, are we going to be able to do the job that is necessary in terms of your standards, yet avoid the pitfalls which Mr. Lewis and others have pointed out?

Mr. KELLY. I hope so, Mr. Chairman. I think we are putting a lot of hopes on technology, both as far as the issue of people coming into the country and cargo coming into the country as far as drugs being transported, and we estimate that there are at least 300 metric tons of drugs that come into the United States every year. We examine between 2 and 3 percent of all cargo that comes into the country. We have to rely on better technology in the future as we see this explosion of trade all around us. We need more effective systems to cope with it.

So, I am hopeful—we have seen what has happened in the last 10 to 15 years as far as technology development—I am hopeful in the next 10 or 15 years that we will have the technology to help us better protect our borders and also protect the civil rights of everyone coming into our country.

Chairman HOUGHTON. Well, technology is sort of a broad word, and there is a lot of technology out there. Do you have surveillance teams? Do you have somebody who is taking a look at what other Customs Services are doing around the world? Do you have people combing over what is being developed in Silicon Valley or in Austin, Texas, or the Research Triangle? How do you get at that technology?

Mr. KELLY. We work with the Department of Defense; we work with other governmental agencies. We got a very generous supplemental budget in October 1998 for flight technology along the—mostly along the southern border, the border between United States and Mexico, and we are in the process of deploying that technology, and that won't be fully deployed until at least 2002.

Technology is constantly developing. One of the problems with technology, even as we are deploying it, is the through-put rate. As far as vehicles are concerned, for instance, it takes us maybe 20

minutes, 30 minutes to do a truck now, even with the most modern technology, but we hope in the future that it will be developed to the point where we can do it in a much faster way or do it where the vehicle, itself, doesn't go through the x-ray; that the x-ray goes over the vehicle.

So, we are looking at the entire area. As I said, we are looking at things such as latex breathalyzer tests; we are looking at any way that we can to do these less intrusive searches, but it is an area—of course, now we are talking about searches of persons, but it also concerns us as far as cargo coming into the country. We will have by 2005, in essence, doubled the amount of trade that is coming into the country in 1999. So, we need resources, and that is why I say technology, but it looks like we are not going to get a lot more people, and we need people, though, to run the technology, but I think the answer to this one lies in technological development.

Chairman HOUGHTON. Well, I don't know if the other members of the panel feel this way, but I think it is your personal responsibility to make sure there is no racial profiling going on. It is our responsibility to work with you, and to make sure you have the proper equipment. I hope you will tell us if we need to do other things to help you in your overall task.

Are there any other questions? If not, I would like to excuse the Commissioner. Commissioner Kelly, thank you so much for your testimony.

Mr. KELLY. Thank you.

Chairman HOUGHTON. Now, I would like to call the other panel if they could come up here—Amanda Buritica, who was a passenger at Port Chester, New York; Janneral Denson, a passenger at Ft. Lauderdale, Florida; Mr. Ed Fox, who is an attorney of Ed Fox & Associates in Chicago, Illinois; Sheri Lynn Johnson, from the Cornell University School of Law in Ithaca, New York; and, also Mr. Robert Tobias, president of the National Treasury Employees Union.

Well, ladies and gentleman, thank you very much for being with us today. Ms. Buritica, would you please begin the testimony.

STATEMENT OF AMANDA BURITICA, PORT CHESTER, NEW YORK, PASSENGER FROM HONG KONG TO SAN FRANCISCO

Ms. BURITICA. Good morning.

Chairman HOUGHTON. Good morning, and if you could pull that microphone down so that we could hear you. Thank you very much.

Ms. BURITICA. Thank you very much for inviting me here today.

My name is Amanda Buritica, and I live in Port Chester, New York. I have a part-time job as a crossing guard, and I had a very, very bad experience when I went on a trip around the world, and I came back and made the last stop in San Francisco, and as I got down from the airplane and went to pick up my luggage, one inspector asked me for my passport. I gave him my passport; he looked up on the first page where my name is and my place of birth. Then he pointed to another person in U.S. Customs, and he said, "Go to that person."

I went to that person. That person also opened my passport to the page where my name is and my place of birth, and she says

to me, "Who are you traveling with?" And I said, "Nobody." Then she said, "Where were you born? You were born in Columbia?" And I said, "Yes." So, then she gave me back my passport, and she pointed to another U.S. Customs, and said "Go to that person."

And I went to that person, and she asked me to open my luggage, and she started taking out all my belongings, piece by piece, out of the suitcase. When she got to the bottom of the suitcase, she pulled up the lining of the suitcase, and she was feeling the bottom of the suitcase everywhere and sniffing her fingers, and the luggage was tore apart completely.

Then she asked me to follow her. Behind her was a door; she opened the door, and she said, "Follow me here." I followed her into the room. She then said to me, "I have to do a pat search." I said, "Why?" And she said, "I just have to do a pat search." And I said, "No, I don't need for you to do a pat search on me." And then she said, "If you have nothing to hide, everything is going to be OK, and you are going to be on your way." I know I didn't have anything to hide, so she did the pat search.

Then she went out, and she came back, and she says, "You have to do a strip search." I said, "No, no, no way, no. I don't want you to do a strip search." And she said, "Well, if you have nothing to hide, everything is going to be OK, and you are going to be on your way."

Another inspector came in, and they both ordered me to take my clothes off. I was so scared. I was so scared and so embarrassed. It was the most humiliating, degrading thing that I ever had to go through. They made me take off all my clothes, and one of the inspectors said to me, "Bend over." As I was bent over, she then was kicking my legs saying, "More, more, more," and she kept kicking my legs, "More, more, more" until I was on four legs. She did a cavity search. It was horrible; it was very, very humiliating. Then she told me to face her. She told me to lift up my breasts; she looked. Then she told me to lift up my hair; she looked; she inspected me everywhere.

Then she went out, and she came back again in the room and says to me, "You have to follow me to a—we have to take you to a clinic. It is in the airport, and we have to take x-rays of you." I said, "No, I don't need x-rays. I don't want to go anywhere. I just want to go home." And she said, "You are not going anywhere. You have to go to the clinic to have the x-rays taken." I said, "No, I don't want to go; I don't want to go." And she says, "Well, then if you are not going with us to the clinic, then we will put you in jail." I said, "No, I just want to go home." And she says, "Well, if you have nothing to hide, everything is going to be OK, and you are going to be on your way." I had nothing to hide. I agreed to follow her to the clinic to have the x-rays taken, and the x-rays—the man who had the x-rays said that there were some spots there. I said, "It is the food, the lunch that I had on the plane."

So, I followed them again to the same little room from the beginning and then a man came in, a very tall man came in with cuffs and said they were going to handcuff me and take me to the hospital. I said, "No, I am not going to any hospital. I am not sick. I want to go home." And he said, "No, you have to go with us to the hospital." I said I didn't want to go, and he says, "We will put

you in jail, then." I didn't want to go to jail. I have never done anything wrong in my life, never. I was so scared; I was shaking; I was crying, and then, finally, I agreed to allow them to take me to the hospital.

As I got to the hospital, they gave me a—a nurse came in carrying this big jug of some clear liquid and she says to me, "This is for you to drink it all." And I says, "No, I don't want to drink that. I am not thirsty. I don't want—what is it?" And then she said, "It is something to make you go to the bathroom." But I had already gone to the bathroom twice in the hospital. And the inspector checked the bowel movement both times and both times said "Negative, negative."

Then it was a horrible night. I spent the whole night in the hospital and the whole day. I was there 25 hours in that hospital with nurses and doctors. When I told the nurse that I didn't want to drink the liquid, the nurse said, "Well, if you don't want to drink it, we are going to put tubes through your nose, and you are going to have it anyway."

And a doctor came, a man wearing a white coat came, and he said he was going to put a needle in my arm, and I said, "No, I don't want any needles in my arm." He grabbed my arm and he pulled it close to him, and I said, "No, I don't want needles in my arm." I pulled it away. Then, he grabbed my arm again, and he—it was awful; it was awful. Whether I wanted it or not, they wanted to do whatever they wanted to do to me.

So, finally, he was determined that he was going to do it anyway, so he did it; he put the needle in my arm. I was so sick—I got so sick through the whole night, they had to transfer me to the intensive care unit. I was very dehydrated; I got fever; I was very, very sick. They made me very sick.

I spent the whole night there. In the morning, a doctor came in; he ordered x-rays, and those x-rays—nobody came to tell me the results of those x-rays until about—I would say about 1 p.m. I heard a doctor talking on the telephone saying, "I have this Columbian-born woman here. I looked at him, because I heard what he was saying, and he looked at me; he turned around the other way so I could not hear what he was saying, and then he said, "The x-rays are clean."

As soon as he said that, the inspectors who were with me all the time since the night before, they ran out of the room so fast, I never saw them again, and no one came to tell me that they were talking about my x-rays, and they were clean. About 5 p.m., a nurse came and told me that I should try and get up and get dressed, because I had to go back to the airport. Someone helped me put my clothes on.

I was very sick, very dizzy, and then two inspectors came and took me back to the airport. At the airport, they told me to gather all my belongings; they were there in the same place where they were the night before, all messed up. I was so sick; those people made me sick. I gathered all my belongings, and then they said, "OK, you can go now." I didn't know where to go.

No one explained anything to me, and that is just a little part of the whole story. It is a very long story, but I know my time is very limited.

[The prepared statement follows:]

Statement of Amanda Buritica, Port Chester, New York, Passenger from Hong Kong to San Francisco

Good Morning, Chairman Houghton, Ranking Member Coyne and other Members of the Committee. Thank you for inviting me here to testify before you today.

My name is Amanda Buritica and I live in Port Chester, New York, where I work part time as a crossing guard. I am here because of my experience with the U.S. Customs Service. Because of this experience, I sued the Customs Service and won a civil judgement of $450,000.

On September 22, 1994, I was traveling from Hong Kong to San Francisco. When I arrived at the San Francisco airport, a man from the U.S. Customs Service asked me for my passport, took a look at it, and told me to go to another Customs employee, a woman. She took my passport, opened it up, and asked me who I was traveling with. I said, nobody.

She gave me back my passport and sent me to another Customs employee, a woman seated at a table. This woman asked me to open my luggage and I did. She then picked up everything in the luggage, piece by piece, feeling them and smelling them. When she got to the bottom, she ripped off the lining and again felt and sniffed it. The luggage was ripped apart completely.

She then told me to follow her behind a little door, and told me she had to pat search me. I asked her why. I asked her what she was looking for. I didn't get an answer. I was in this tiny little room and scared to death. I started shaking and sweating. When I protested, she said "If you have nothing to hide, everything will be all right. You will be on your way."

I had nothing to hide, so I let her do the search. She went out again and then came back. She said she had to do a strip search. I said, "Oh, God, why are you doing this to me?" I got more scared. She again said "If you have nothing to hide, you will be on your way."

She made me take off all my clothes. Then she told me to bend down, and she kept kicking my legs, telling me "more, more." And as she said "more, more," she would kick my legs, until I was on all four. She told me to get up and lift up my breasts. She told me to lift up my hair. She searched everywhere.

She again went out and came back. She told me I had to go to a clinic in the airport to have x-rays taken. When I protested, she said, "You have to have the x-rays." Again she said, "If you have nothing to hide, you will be on your way." I agreed to go to the clinic.

The man who read the x-rays said there were some black spots in there and nothing else could be done at the clinic. I had to be taken to a hospital. A big man came with handcuffs and said he was going to handcuff me because they had to transport me to a hospital. He said "It is either go to the hospital or go to jail."

They took me to a hospital. When we arrived, a nurse gave me a huge plastic jug with some clear liquid in it, and said "this is for you to drink." I said "no, I am not thirsty." She said I had to drink it. She said "If you don't drink it, we will put tubes in your nose and you will drink it anyway." It tasted awful.

I started going to the bathroom and having big stomach cramps. I got so sick they had to transfer me to the intensive care unit. I was so dehydrated they had to give me an IV. This lasted the whole night. The Customs people were with me the whole time, even when I went to the bathroom.

The next day, they took four more x-rays. At one o'clock in the afternoon, I heard the doctor say "the x-rays are clean." I heard the Customs inspectors leave, and I never saw them again. About five o'clock, a nurse told me I had to try to get up and get dressed because I was going back to the airport.

When I got back to the airport, they then told me I had to sign some papers. My luggage was still there in a mess. I was so sick, I could not lift the luggage. I signed the papers and they told me I could go. Nobody ever apologized to me. I left.

For twenty-five hours, I could not talk to the outside world. I could not make a phone call. I could not speak to an attorney. I was held captive.

Mr. Chairman, Members of the Subcommittee, nobody should have to go through what I went through. Thank you for the time and the opportunity to testify.

Chairman HOUGHTON. Thank you very much, and maybe we will have some questions for you a little later.

Ms. Denson, would you like to testify?

STATEMENT OF JANNERAL DENSON, PALM BEACH COUNTY, FLORIDA, PASSENGER FROM JAMAICA TO FORT LAUDERDALE

Ms. DENSON. Good morning.

Chairman HOUGHTON. Good morning.

Ms. DENSON. My name is Janneral Denson. I am here on behalf of myself and my son, Jordan, to tell you what happened to me and my son in the hands of the U.S. Customs Service and the agents at Jackson Memorial Hospital on February 14, 1997 to February 16, 1997.

I am a U.S. citizen. I was born, raised, and live in Palm Beach County, Florida. What I am here to tell you is not reasonable.

On February 14, 1997, about 2 p.m., my flight from Jamaica had arrived in Ft. Lauderdale. My flight to Miami that morning had been canceled by the airline. We were attempting to get a visa for my husband to come to the United States, and we had been reviewing various immigration documents and notes. I had made notes of information that we would need to know at our meeting with Immigration. I had these documents with me when I returned to the United States. At that time, I was approximately 6½ months pregnant.

After getting off the plane at Ft. Lauderdale Airport, I walked through the Customs area. The Customs agent stamped my passport and let me pass. As I walking to the exit door, another agent stopped me and asked to search my luggage. After she searched my luggage and found nothing, she asked why was I in Jamaica. I told her the details of my visit with my husband. I also showed her immigration documents, marriage certificate, notes, wedding pictures, my birth certificate, my husband's birth certificate, and pictures of my two children, Darrick and Breanna.

After showing her these documents, she tore a piece a paper from my notepad and ordered me to write my full name, my address, where I worked, the phone number of my work, and to describe my husband. I did that and gave it to her, and she left, leaving me with another agent.

After more than an hour, I told the agent that I was hungry, and I hadn't eaten all day. It was now late afternoon, and I was ignored. Time passed and I had to use the bathroom. I was taken by two agents to the bathroom where they had me lean against the wall, spread my legs so that they could search me. After that, they let me go to the bathroom while they watched. I had been wearing a pantyliner that day, because I had been spotting. They ordered me to show them the pantyliner as well as the tissue that I used to wipe myself after I urinated.

Up until that point, I had full cooperated with them in every way, and then I asked to leave, but I was told I was going to be taken to a hospital in another city, that city being Miami. I was getting very scared for my children and my family and myself, and I told them that I wasn't going anywhere, and what was this all about? They ignored me, so I took out a piece a paper, and I started writing down the badge number of the agent. I also was writing down the way I was being treated. All of my personal belongings were taken from me at that time. I asked to call my mother. She was expecting me, and my kids had to be picked up from the day

care center. I was getting really scared, and she refused to let me call.

The agent read me some legal rights from a piece of paper and told me to sign it, and I refused. I asked to a call a lawyer; the agent said, "What for?" I told I believed that I was being arrested and that you are allowed a phone call. She refused. They handcuffed me and put me in a van and drove me to Miami.

When I got to the hospital, I was asked a lot of questions, and my picture was taken. Later, I was taken to a room where they had me change into a hospital gown. A doctor came in and asked if she could examine me, and I asked her what type of examination, and she told me a vaginal examination. And then she asked me how far along was my pregnancy? I told her I was almost 7 months pregnant. The doctor turned to the agent and told her that I was too far along for an examination; that I needed to be taken to the labor and delivery ward.

They handcuffed me again and took me there. After waiting and waiting, they took my blood pressure and did some other tests. Then they gave me a urine sample. After this, I was put on a bed and handcuffed to a bedrail. The handcuffs were so tight it hurt, and I told the agent, and she said, "Oh, don't worry about it." And I was scared. I didn't know what was happening. I didn't know what was going to happen.

The first agent left and another agent came into the room, and he loosened the handcuffs for me. Later, the first agent and a doctor came back in the room, and we discussed my pregnancy. At that time, the doctor had a portable sonogram machine and brought it in because she wanted to check me internally. She then discovered that I had a problem pregnancy, and I don't know if you want me to go into the details of the problem pregnancy, but the doctor put it in writing and told me that I should give it to my doctor.

Based on her examination with the sonogram, she told the agents that I had nothing inside of me but a child and that there was no room for anything else. They then took me off the bed and handcuffed my hands again. I reminded the first agent that I didn't have anything in my luggage and that I didn't have anything inside of me, and I asked if I could call home. She refused.

I was then taken to some place called Ward D. While in the elevator, another doctor told the agent that he didn't believe I had anything inside of me but a baby. I was taken to a room and again handcuffed to a bed.

That night, I asked for something to eat, and they gave me orange juice. Having not eaten all day, I needed something to eat. They put a frozen sandwich in front of me they had put into a microwave to warm up. It was really like a bunch of mess. It made me sick to look at it. I was told that I would not get anything until the morning.

Then the doctor brought in a clear jug of something called Go lyte, and I was ordered to drink it, and I asked, "What for?" The first agent told me I had to pass three clear stools before I could leave. I was scared to death for my child. I told the agent, "That is a laxative, and pregnant people should not take a laxative." I refused to drink it at first. They again handcuffed me to the bed. I

laid there that night crying for a long time, and then I asked if I could call my mother and let her know what was going on. The agent said I couldn't call anyone.

In the middle of the night, I had to go the bathroom. They forced me to use the bedpan. I had a bowel movement, and they examined it. After they examined it and found nothing, they handed it to me and made me empty it and clean out the bedpan. I was again handcuffed to the bed.

The next morning, they gave me a cold breakfast that I could not eat, though I tried. I had some orange juice and water. At that time, I heard the first agent outside my door call me a "thing." She said, "This thing has been in here since Friday, and she won't eat anything."

That afternoon, the first agent was replaced by another agent who told me the only way I was going to get out of there was to drink the laxative, and I agreed. I didn't know what else to do. He mixed it with juice and ice and told me that I had to drink 4 cups. I started drinking it. There I was, handcuffed to a bed. I was so scared, and I drank a laxative that might hurt me and my child. I threw up. Members of this panel, what was happening to me cannot be described in words, and I was forced to drink it until I could hold it down.

By the next morning, I passed two clear stools. About 4 hours later, the first agent returned to take me back to Ft. Lauderdale. They said they called my mother, but the truth is they never called my mother. My mother had been calling hospitals until she found me, and then the agent told her that I would be at the Ft. Lauderdale Airport in a couple of hours. I was taken to the Ft. Lauderdale Airport and nobody was there; they just left me.

For the next 2 days, I had severe diarrhea and incredible pain. After that, I began bleeding. I was taken to the hospital. After an examination, I was sent home and told to stay in bed. The bleeding never stopped; the pain never went away. Eight days later, the bleeding increased, and I was rushed to the hospital. At that time, doctors had to perform an emergency cesarean. When my son, Jordan, was born, he only weighed 3 pounds, 4 ounces. He was taken from me and placed in a prenatal intensive care unit where he stayed there for over a month. At this point, we don't know what permanent effects premature birth will have on my son, and there is not a waking hour that goes by that I don't worry about it.

The very fact that I am here speaking before you points out the greatness of our country, but what I and many other African-Americans and others have gone through points out a great failure in our country. Conduct such as this is both illegal and un-American, and, in the long run, can only serve to drive a wedge between you, the government, and the citizens of our country.

[The prepared statement follows:]

Statement of Janneral Denson, Palm Beach County, Florida, Passenger, from Jamaica to Fort Lauderdale

Good Morning. My name is Janneral Denson. I am here today on behalf of myself and my son, Jordan, to tell you what happened to me and my son at the hands of the United States Customs Service and their agents at Jackson Memorial Hospital on February 14, 1997 to February 16, 1997.

I am a United States citizen. I was born, raised and live in Palm Beach County, Florida.

On February 14, 1997, at about 2:00 in the afternoon my flight from Jamaica had arrived in Fort Lauderdale. My scheduled flight to Miami that morning had been canceled by the airline. I had been in Jamaica for two days visiting with my husband and his family. We were attempting to get a visa for my husband to come to the United States and we had been reviewing various immigration documents and notes. I had made notes of information that we would need to know for our meeting with Immigration. I had these documents with me when I returned to the United States. At that time, I was approximately six and one-half months pregnant.

After getting off the plane at the Fort Lauderdale Airport, I walked through the Customs area. The first customs agent stamped my passport and let me pass. As I was walking to the exit door, another agent stopped me and asked to search my luggage. After she searched my luggage and found nothing, she asked why I was in Jamaica. I told her the details of the visit with my husband. I also showed her the immigrations documents, notes, wedding pictures, my birth certificate, my husband's birth certificate, my social security card, and pictures of my two children, Darrick and Breanna.

After showing her these documents, she tore a piece of paper from my notepad and ordered me to write my full name, my address, where I worked, the phone number of my work, and to describe my husband. I did that, gave it to her and she left, leaving another agent with me.

After more than an hour, I told the agent that I was hungry, that I hadn't eaten all day. It was now late afternoon. I was ignored. Time passed and I had to go to the bathroom. I was taken by two agents to the bathroom where they had me lean against the wall, spread my legs, so that they could search me.

After that, they let me go to the bathroom while they watched. I had been wearing a panty liner that day because I had been spotting. They ordered me to show them the panty liner, as well as the tissue that I used to wipe myself after I urinated.

Up until that point I had fully cooperated with them in every way. I then asked to leave but was told that I was going to be taken to a hospital in another city, that City being Miami. I was getting very scared for my children, my family and myself, and told them that I wasn't going anywhere and what was this all about. They ignored me so I took out a piece of paper and started writing down the badge number of each agent. I was also going to describe the way I was being treated. All of my personal belongings were then taken away from me. I asked to call my Mother. She was expecting me and my kids had to be picked up from the day care center. I was getting really scared. She refused to let me call.

The agent then read me some legal rights from a piece of paper and told me to sign it. I refused. I asked to call a lawyer. The agent said what for? I believed I was being arrested and I told her so and your supposed to be allowed a phone call. She refused. They handcuffed me, put me in a van and drove me to Miami.

When we got to the hospital, I was asked lots of questions and my picture was taken.

Later I was taken to a room where they had me change into a hospital gown. A doctor came in and asked if she could examine me. I asked her what kind of examination and she said a vaginal examination. She asked me how far along was my pregnancy. I told her almost seven months, and the doctor turned to the agent and said that I was too far along for such an examination and that I needed to be taken to the Labor/Delivery ward. They handcuffed me again and took me to that ward. After waiting and waiting, they took my blood pressure, did some other tests, and had me give them a urine sample. After this, I was put on a bed and handcuffed to a bed rail. The handcuff was so tight it hurt. I told the agent. She said don't worry about it. I was scared. I didn't know what was happening. I didn't know what was going to happen. The first agent left and another agent came into the room. He loosened the handcuff.

Later, the first agent and the doctor came back into the room and we discussed my pregnancy. At that time, the doctor had a portable sonogram machine brought in because she wanted to check me internally. She then discovered that I had a problem pregnancy. I don't know if you want the details of the problem pregnancy, but the doctor put it in writing and told me to give it to my doctor. Based on her examination with the sonogram, she told the agents that I had nothing inside of me but my child and that there wasn't room for anything else. They then took me off the bed and handcuffed my hands again. I reminded the first agent that I didn't have anything in my luggage, and that I didn't have anything inside of me and I asked if I could go home.

She refused. I was then taken to someplace called ward D. While in the elevator, another doctor told the agent that he didn't believe that I had anything inside me other than my baby. I was taken to a room and again handcuffed to a bed.

That night I asked for something to eat. They gave me some orange juice. Having not eaten all day, I needed something to eat. They put a frozen sandwich in a microwave and handed me the soggy mess. It made me sick to look at it. I was told that I would not get anything until the morning. The doctor then brought in a clear jug of something called Go lyte and I was ordered to drink it. I asked what for? The first agent told me that I had to pass three clear stools before I could leave.

I was scared to death for my child. I told the agent, that's a laxative and pregnant people should not take a laxative. I refused to drink it. They again handcuffed me to the bed, I laid there that night crying for a long time. I then asked if I could call my mother and let her know what was going on. The agent said I couldn't call anyone. In the middle of the night, I had to go to the bathroom. They forced me to use the bedpan. I had a bowel movement and they examined it. After they examined it and found nothing, they handed it to me and made me empty and clean out the bedpan. I was again handcuffed to the bed.

The next morning they gave me a cold breakfast that I could not eat, though I tried. I had some orange juice and water. At that time, I heard the first agent outside my door call me a "thing." She said "that thing's been here since Friday and she won't eat".

That afternoon, the first agent was replaced by another agent. He told me the only way I was going to get out of here was to drink the laxative. I agreed, I didn't know what else to do. He mixed it with juice and ice and told me I had to drink four cups. I started drinking it. There I was, one hand handcuffed to a bed, so scared that I drank a laxative that might hurt me and my child. I threw up. Members of this panel, what was happening to me cannot be described in words and I was forced to drink four cups until I could hold it down.

By the next morning, I passed two clear stools. About four hours later, the first agent returned to take me back to Fort Lauderdale. They say they called my mother. The truth is that they never called my mother. My mother had been calling hospitals until she found me and then an agent told her I would be at the Fort Lauderdale airport in a couple of hours.

I was taken to the Fort Lauderdale airport. Nobody was there. They just left me.

For the next two days, I had severe diarrhea and incredible pain. After that, I began bleeding. I was taken to the hospital. After an examination, I was sent home and told to stay in bed. The bleeding never stopped. The pain never went away. Eight days later, the bleeding increased and I was rushed to the hospital. At that time, the doctors had to perform an emergency cesarean. when my son, Jordan, was born, he weighed three lbs., four ounces. He was taken from me and placed in the prenatal intensive care unit where he stayed for over a month. At this point, we do not know what permanent effects the premature birth will have on my son. There is not a waking hour that goes by that I don't worry about it.

The very fact that I am here, speaking before you, points to the greatness of our country. But what I, and many other African-Americans, have gone through, points to a great failure in our country. Conduct such as this is both illegal and Un-American, and, in the long run, can only serve to drive a wedge between you, the government, and the citizens of our country.

Chairman HOUGHTON. Thank you very much, Ms. Denson.

Mr. Fox, would you like to testify?

STATEMENT OF EDWARD M. FOX, ATTORNEY, ED FOX & ASSOCIATES, CHICAGO, ILLINOIS

Mr. FOX. Thank you. Good morning. I am an attorney presently representing about 90 African-American women who have been subjected to abusive pat downs, strip searches, visual cavity searches, and, in some cases, physical cavity searches and x-rays that have been done or caused by employees of the U.S. Customs Service.

I have talked to many other women whose cases I have not taken for various reasons, such as because the case is too old or a case involving an airport other than O'Hare Airport in Chicago.

In none of these instances were drugs found. In all the instances, the reasons for the searches were minimal or pretextual or otherwise were simply non-existent. In all the cases, the degradation of the women was at maximum.

The origins of the case I am doing sheds light on the clearly discriminatory nature of the searches. In August 1997, Sharon Anderson was searched upon coming home from a vacation in Jamaica. She was and is an African-American schoolteacher with the Chicago Board of Education. She is middle-aged. She subsequently came to talk about what she had endured. I filed a case on her behalf in October 1997.

The case I filed at that time did not contain allegations of racial discrimination nor did it contain many of the allegations that eventually found their way into subsequent complaints. I did not have information at that time showing a racial or gender bias, and I certainly had no idea of the enormity of the problem. It was simply an unlawful search case at that time.

Subsequently, in about late March 1998, Ms. Anderson called me upon seeing a news report of another woman, Denise Pullian. Ms. Pullian described a remarkably similar scenario as that undergone and described by Ms. Anderson.

Thereafter, my office called the news station, as did my client, to see what information they had that might be useful. Thereafter, Ms. Anderson told others about what she went through. I and the news station started receiving many telephone calls from only African-American women who also recounted startlingly similar stories. Two of the women were travel agents who had known of tens of such cases. Thus, the word of mouth coupled with additional news stories on the same subject matter served to embolden many women who before had felt too alone, scared, and isolated to come forward.

It quickly became apparent that there was a racial component to the searches—only African-American women were calling. Additionally, many of them recounted stories of seeing only other African-American women in the secondary area where further questioning and searching by Customs are commenced.

Resulting from this and further news report, I have now received telephone calls or visits from women in many different States, including Illinois, Florida, Texas, Pennsylvania, Maryland, California, New Jersey, Ohio, Michigan, New York, Virginia, Georgia, and also Puerto Rico. Most of these women have come through an international airport terminal and all have described similar ordeals. The number of women I spoke to greatly exceeds 100. They are predominantly African-American.

Because you have just now heard from women whom have endured this, I am not going to go into detail regarding what they go through. However, there is two outrageous facets to the examination which I believe must be examined. First, and the most appalling, is that the women are literally held incommunicado during the entire procedure. This means not only can they not contact an attorney or other person by telephone, they are not even permitted to tell friends that are picking them at the airport why they are running late. This very Kafkaesque scenario lasts for as long as Customs desires it to last. Thus, if they take a woman to the hos-

pital in handcuffs to be further x-rayed and examined, as sometimes occurs, no telephone call is still permitted despite the great length of time that will lapse. The fear that these women go through during these ordeals is very real.

The second fact is that, often, a young, low-ranking government official who does not even obtain a supervisor's approval is conducting these searches and making critical determinations and decisions regarding how these women are to be treated.

There are many reasons motivating the discrimination. One of the overriding themes of the searches, from what I have seen in the Chicago area, is that Customs simply does not believe that Black women can afford to travel unless they are drug couriers. It is often noted by Customs in this incident logs—and I have seen many, many incident logs now that Customs has produced in the context of these women—that a search is recommended merely because this African-American woman has traveled frequently without any evidence of wrongdoing.

For example, in the responsive letter to one woman, Customs wrote, justifying a strip search, that—and I am quoting—"It was quickly determined that this was your third trip out of the United States in the last 3 months." That woman was a businesswoman. It is disturbing and absolutely true that often Customs recommends searches for these African-American women based solely on the amount of travel they do. This is so, because the logs indicate a recommendation to search before the woman will have even returned from her trip and thus without knowing the reason for travel, her occupation, or, indeed, anything about the woman, and I have some examples from Customs logs.

One remarks, dated October 28, 1995—this is from a log of an individual woman—she was a passenger analysis unit lookout, and this is what it—

> Passenger has three trips within the past 8 months; no travel prior to that time. Passenger has air only passage to Jamaica. Passenger was a no show for her return flight on October 28, 1995. A secondary exam is recommended.

Another example,

> Chicago passenger alert unit lookout; code appropriately and refer to U.S. Customs Service secondary, 100 percent, please; U.S. Customs Service. Very frequent travel to Montego Bay, Jamaica. Claims to be a travel agent/antique dealer, but she has no IATA. Please report name and exact address of antique shop.

In fact, one woman, Patricia Appleton—and she was the woman about who I just quoted—was searched so frequently that a Customs inspector wrote in the log after one such strip search as follows, "Please stop the madness." The madness, however, did not stop there. Ms. Appleton, a travel agent, has continued to be searched time after time after time.

Finally, and very briefly, Customs' own statistics reveal a highly disproportionate amount of African-American women being searched at O'Hare Airport. In 1997, Customs' own statistics show that of all strip searches undertaken broken down by race and gender, Black women were searched 46 percent of these strip searches. By way of comparison, white females were searched only 23 percent of the time, and white males were searched only 11 percent of the time. When this is coupled with the fact that the percent of negative searches of Black women was far greater than any other

group—much more than 80 percent—and the fact that Black women are a much smaller percent of the traveling population than whites, it is evident that racial profiling and thus discrimination occurs regularly and frequently.

And one additional thing regarding these statistics that you have seen and that I have seen. I would estimate based on the large amount of clients that I have and the many incident logs that I have that probably two to three times more Black women are searched than what Customs admits to.

In conclusion, there is a Supreme Court case that dealt peripherally with the issue here. It is *United States* v. *Montoya De Hernandez.* In that case, the issue was the reasonableness of a lengthy detention—the Court expressly did not deal with personal searches—and they were to obtain a monitored bowel movement when the officers had only "reasonable suspicion" and not probable cause or a warrant for a search. That search was upheld. However, the dissent in that case was prophetic in noting the problems that will arise as a result. Justice Brennan made the following comment—

> I do not imagine that decent and law-abiding international travelers have yet reached the point where they expect to be thrown into locked rooms and ordered to excrete into wastebaskets; held incommunicado until they cooperate, or led away in handcuffs to the nearest hospital for exposure to various medical procedures—all on nothing more than reasonable suspicions of low-ranking enforcement agents.

The above described scenario might have seemed hysterical or overstated when it was written, but it has come to pass with an alarming frequency. One of the most readily and easy ways to correct these problems is using a procedure and dealing with the fact that these women are held incommunicado. A magistrate's authorization should be and, in fact, is legally required before such searches take place but none ever occurs. I believe that this would go a long way toward solving the problem.

Thank you.

[The prepared statement follows:]

Statement of Edward M. Fox, Esq., Ed Fox & Associates, Chicago, Illinois

I. INTRODUCTION

I am an attorney presently representing close to 90 African-American women who have been subjected to pat downs, strip searches, visual cavity searches, and in some cases physical cavity searches and x-rays by employees of the United States Customs Service. I have talked to many other women whose cases I have not taken for various reasons, such as because the case is too old, or a case involving an airport other than O'Hare airport in Chicago. In none of theses instances were drugs found. In all the instances the reasons for the searches were minimal/pretextual, or otherwise were simply non-existent. In all the cases the degradation of the women was at a maximum.

In this written statement there are 3 issues that I intend to discuss. They include how a large case consisting of numerous African American women was discovered and commenced; (1) a generally described ordeal of the strip search process; (2) Customs purported justifications for undertaking their very intrusive searches; and (3) the problems with the activities of Customs (including some statistical data).

A. The Origins Of This Case

In August of 1997, Sharon Anderson was searched upon coming home from a vacation in Jamaica. She was and is a schoolteacher with the Chicago Board of Education. She is middle aged. She subsequently came to me about what she had endured. I filed a case on her behalf in October of 1997.

The case I filed at that time did not contain allegations of racial discrimination, nor did it contain many of the allegations that eventually found their way into sub-

sequent complaints. I did not have information at that time showing a racial or gender bias, and I certainly had no idea of the enormity of the problem. It was simply an unlawful search case.

Subsequently, in about late March of 1998, Ms. Anderson had called me upon seeing a news report of another woman, Denise Pullian. Ms. Pullian described a remarkably similar scenario as that described by Ms. Anderson. (See below.)

Thereafter, my office called the news station, as did my client to see what information they had that might be useful. Thereafter, Ms. Anderson told others about what she went through. I and apparently the news station started receiving many telephone calls from only African-American women who also recounted startlingly similar stories. Two of the women were travel agents who had known of tens of such cases. Thus, the word of mouth coupled with additional news stories on the same subject matter served to embolden many women who before had felt too alone, scared and isolated to come forward.

It quickly became apparent that there was a racial component to the searches. Only African-American women were calling. Additionally, many of them recounted stories of seeing only other African-American women in the "secondary" area where further questioning and searching are commenced. Resulting from this and further news reports, I have now received telephone calls or visits from women in many different states, including Illinois, Florida, Texas, Pennsylvania, Maryland, California, New Jersey, Ohio, Michigan, New York, Virginia, Georgia, and Puerto Rico. Most of these women have come through an international airport terminal, and all have described similar ordeals. The number of women I spoke to about this exceed 100. They are predominately African-American.

B. The Scenario To Which The Women Are Subjected

As noted above, the typical search that these women have been made to endure is remarkably similar. Generally, they are questioned by a "rover" who is a Customs inspector who stands near the luggage area. The questioning has the feel of an inspector who is incredulous that the particular woman has the financial means to travel. The answers are generally irrelevant to the decision to further search.

From the questioning stage, the women are made to go to a secondary area where their baggage is searched and further questioning is done. At this stage, often, gift bottles of just bought bottles of wine are opened and therefore the gift is destroyed. Additionally, it is rare that anything suspicious is found in the luggage. That is, there is no drug or drug paraphernalia found, no lubricants, large amounts of cash or drugs that might be used to suppress bowel movements are found. Notwithstanding this, the women are then taken to a small, windowless room that contains only a metal bench and sometimes a toilet that does not flush. In this room, Customs conducts pat down searches, that often are followed by strip searches and then visual body cavity searches.

Pat down searches are typically conducted in an abusive manner. When being "patted down" the women are told to spread their hands, placing them on a wall over the metal bench. They are further told to spread their legs. If they are not perceived to have spread their legs wide enough, they are yelled at, and sometimes have their legs kicked or pushed farther apart. The "pat down" consists of Customs inspectors pushing their fingers through the clothing or palpating the clothing over the skin hard, sometimes causing pain. This is done all over the body, including the breasts, and groin area. This is done regardless of whether the woman is wearing skin-tight clothing and the absence of things under the clothes is apparent.

Generally, the Customs inspectors ask the women at this stage of the search if they are menstruating. The women are then subjected to strip and visual cavity searches whether they are menstruating or not. In no case, during the pat down search was anything ever found which could then be used to justify a more intrusive search.

The strip search then proceeds. In doing a strip search, the women have been subjected to everything from having hands inserted up under their clothes, to being asked to taking off all their clothes and underwear. Some of the women are made to remain naked in the room for a substantial length of time.

Most strip-searched women are subjected to a visual body cavity search. In such a search, the women are asked to face the wall, bend over and they are then told either to "grab your ankles and cough" and/or "to spread your cheeks." Then the inspectors examine their vaginas and anuses. In some cases, the women were physically touched during the strip search and body cavity search. In some cases, fingers were inserted into the body cavity of a woman. It is not infrequent that a woman will be asked to retrieve her bloody tampon from her vagina to be inspected.

Additional outrageous facets to these examinations are two-fold. First, and most appalling, the women are literally held incommunicado during the entire procedure.

This means not only can they not contact an attorney or other person by telephone, they are not permitted to tell friends that are picking them up at the airport why they are running late. This very Kafkaesque scenario lasts for as long as Customs desires. Thus, if they take a woman to the hospital in handcuffs to be further x-rayed and examined, as sometimes occurs, no telephone call is still permitted—despite the great length of time that will lapse. The fear that these women thus go through during these ordeals is very real. Secondly, a young low-ranking government official who often does not even obtain a supervisor's approval is conducting these searches.

C. Customs Reasoning For Doing the Searches

There is no dispute by Customs officials that they must have "reasonable suspicion" to undertake the searches described above. The reasons they give, however, are stunningly thin and often pretextual.

A good example of Customs officials' "suspicion" is found in the case of Denise Pullian. She was the first to be profiled on the news. In a letter of complaint that she wrote to Customs, Ms. Pullian described in vivid detail being made to undergo a rude interrogation, followed by her luggage being examined, followed by an abusive pat down search, followed by a strip search, and followed by being made to pull her bloody tampon from her vagina.

In a responsive letter, the Customs Service indicated that the only reason for the search were some allegedly evasive answers to questions regarding her reasons for travel.

In fact, nothing was found during any part of the search that should have given rise to further searching. Customs acknowledged that there were no drugs, paraphernalia, dog alert, unusual amounts of currency, a lubricant or anything else of interest found before subjecting Ms. Pullian to her ordeal. In their responsive letter to Ms. Pullian, Customs indicated in its responsive letter that it was most concerned with the fact that Ms. Pullian said she was traveling on business, and that they undertook the search because they questioned whether her "business trip was legitimate." In doing so, Customs indicated that Ms. Pullian "volunteered no corroborating documentation supporting [her] reason for travel."

In fact, Ms. Pullian responded to all the questions regarding her business (she designs Youth At-Risk programs), and had various business documents in her luggage, which was clearly seen. Interestingly, as noted by Customs in its letter, Ms. Pullian suggested and accused the investigators during the search of doing this because she was black.

This accusation has merit as seen by Customs own documents. One of the overriding themes of the searches is that, apparently, Customs does not believe that black women can afford to travel—unless they are drug couriers.

It is often noted by Customs in its incident logs that a search is recommended merely because the person has traveled frequently—without any evidence of wrongdoing. For example, in the responsive letter to Ms. Pullian, Customs wrote that: "it was quickly determined that this was your third trip out of the United States in the last three months." The implication is clear: that African-American women should not be able to afford to travel often.

It is disturbing and absolutely true that often, Customs recommends searches for these African-American women based solely on the amount of travel they do. This is so because the logs indicate a recommendation to search before the particular woman will have returned from her trip, and thus, without knowing the reason for travel, her occupation, or indeed, anything about the woman. Note the following examples taken from Customs' logs:

1. REMARKS—Date 020298

CHICAGO PAU [Passenger alert unit] LOOKOUT. INS: CODE TO REFER TO USCS. FREQ TRVLR FROM JM THRU MIA: 6/97, 8/97, 11/97. SUGGEST PROGRESSIVE NARC/$$$ EXAM. PLS SHOW OCCUPATION, REASON FOR TRVL, & OTHER PERTINENT IINFO IN REMARKS. THANKS.

2. REMARKS—DATE 102895

ORD-PAU LOOKOUT. PAX HAS 3 TRIPS WITHIN THE PAST 8 MONTHS. NO TRAVEL PRIOR TO THAT TIME. PAX HAS AIR ONLY PASSAGE TO JAMAICA. PAX WAS A NO SHOW FOR RETURN FLIGHT ON 102895. A SECONDARY EXAM IS RECOMMENDED.

3. REMARKS—DATE 102797

CHICAGO PAU L.O. CODE APPROPRIATELY AND REFER TO USCS SECONDARY 100% EXAM PLS. USCS: VERY FREQU TRAV TO MBJ; CLAIMS TO BE A TRVL AGNT/ANTIQ DEALER, BUT SHE HAS NO IATA# (SEE 6/4IOIL); PLS REPORT NAME & EXACT ADRESS OF "ANTIQUE SHOP".

In fact, one woman, Patricia Appleton was searched so frequently that a Customs inspector wrote in the log, after one such strip search, as follows: "PLS. STOP THE MADNESS." The madness did not, however, stop there. Ms. Appleton, a travel agent, has continued to be searched.

Finally, and very briefly, Customs' own statistics reveal a highly disproportionate amount of African-American women being searched at O'Hare airport. In 1997, Customs' statistics showed that of all strip searches undertaken, broken down by race and gender, black women were searched 46 percent of the time. By way of comparison, white females were searched 23 percent of the time and white males were searched 11 percent of the time. When this is coupled with the fact that the percent of negative searches of black women was far greater than any other group (more than 80 percent) and the fact that black women are a much smaller percent of the traveling population than whites, it is evident that racial profiling, and thus, discrimination occurs regularly and frequently.

II. CONCLUSION

There is a Supreme Court case that dealt peripherally with the issue at hand here. United States v. Montoya De Hernandez, 473 U.S. 531 (1985). In that case, the issue was the reasonableness of a lengthy detention (the Court expressly did not deal with personal searches) to obtain a monitored bowel movement when the officers had only "reasonable suspicion" and not probable cause or a warrant for a search. That search was upheld. However, the dissent in that case was prophetic in noting the problems that will arise as a result. Justice Brennan made the following comment:

> I do not imagine that decent and law-abiding international travelers have yet reached the point where they 'expect' to be thrown into locked rooms and ordered to excrete into wastebaskets, held incommunicado until they cooperate, or led away in handcuffs to the nearest hospital for exposure to various medical procedures—all on nothing more than the 'reasonable' suspicions of low-ranking enforcement agents.

The above describe scenario might have seemed hysterical or overstated when written—but it has come to pass with an alarming frequency.

One of the most readily corrected problems with the procedure concerns the fact that these women are held incommunicado. A magistrate's authorization should be, and in fact, is legally required before such searches take place, but none ever occurs. Thus, in the same Supreme Court opinion referenced above, Justice Brennan indicated as follows:

> Accordingly, in this country at least, the importance of informed, detached and deliberate [judicial] determinations of the issue whether or not to invade another's body in search of evidence of guilt is indisputable and great.

Respectfully submitted,

EDWARD M. FOX

Chairman HOUGHTON. Thank you very much.

Ms. Johnson.

STATEMENT OF SHERI LYNN JOHNSON, PROFESSOR OF LAW, CORNELL UNIVERSITY, ITHACA, NEW YORK, AND CO-DIRECTOR, CORNELL DEATH PENALTY PROJECT

Ms. JOHNSON. Good morning. I am a professor at Cornell Law School with expertise in racial profiling. Because racial profiling occurs in other settings and because deterring racial profiling is as important as unearthing it, the racial profiling practices of other law enforcement agencies are relevant as are the underlying dynamics that support racial profiling.

The individual experiences recounted this morning are virtually impossible to explain on any basis other than race. Moreover, the statistics released by Customs, itself, provides strong evidence that these experiences are not idiosyncratic but are part of a patter.

Nevertheless, Commissioner Kelly has repeatedly stated that Customs does not have a policy that targets racial groups. It is clear from the experience of other law enforcement agencies, however, that racial profiling frequently occurs in the absence of official permission.

Today, the most powerful cause of racial profiling is not policy but racial bias. Too often when we think of racial bias we think of conscious animosity toward persons of another race. While such animosity certainly exists, racial stereotyping, sometimes even unconscious stereotyping, is far more prevalent. It is no accident that the racial groups that Customs disproportionately subjects to searches are Black and Latino; both are stereotypically associated with criminal propensity in our culture.

When searches result from such stereotyping, at least three self-perpetuating mechanisms are generated. First, when drugs are discovered, biases are reinforced. As psychologists have observed, stereotype-consistent information is remembered far more readily than is information inconsistent with the stereotype; that is, failed searches.

Second, as agents treat travelers in extremely offensive ways and then discovered them to be innocent of all wrongdoing, those agents are likely to dehumanize such travelers in order to rationalize their own actions. If agents were to see these Black and Latino women as basically like themselves or their wives or their daughters, it would be hard to justify the humiliation they had inflicted. So, the agents focus on the women's race in order to create psychological distance, thereby simultaneously increasing the racial bias that led to the initial search decisions. Looked at from this perspective, the agents' incredibly callous response to these women suffering and to their complaints are predictable. The callousness flows from, justifies, and then perpetuates racial stereotyping.

Third, racial stereotyping is perpetuated by modeling. As new agents observe the practices of more senior employees, they learn bias on the job along with necessary skills. Although the racial bias and the mechanisms that reinforce it are the most important sources of racial profiling, in the Customs setting, there are at least two other factors likely to bear some causal responsibility. First is the issue of relative costs. If agents perceive that racial minorities are less likely to lodge complaints, it may seem less costly in the political sense to select minorities for enhanced scrutiny rather to engage in racially-blind screening of travelers. This is something we can learn from the New Jersey Turnpike litigation where police officers have now admitted that they selected African-American motorists for traffic stops in part because they wished to decrease the number of complaints. One of the purposes of this hearing, of course, is to increase the perceived costs of searching racial minorities to make clear that outrages, such as those described today, are not made more acceptable by virtue of the victim's race and, indeed, that targeting by race renders the intrusions less rather than more tolerable.

Finally, racial profiling occurs more often because there is no sanction against it. In the Customs context, internal rules do not appear to prohibit consideration of racial factors. Moreover, the Supreme Court has been extraordinarily loathe to interfere with

border searches. Not only is the standard for requisite suspicion needed to justify body searches much lower at the border, but the Supreme Court has refused to prohibit the use of ethnic criteria by the INS, thus creating at least a constitutional voice if not lending tacit approval to the use of racial criteria.

With these powerful psychological and institutional forces supporting discrimination, it is insufficient for the Commissioner to declare that Customs has no policy of targeting minorities. Eradication of racial profiling requires explicit prohibitions, new training, a better incentive system, and very careful external monitoring.

Again, observations of racial profiling in other law enforcement agencies are instructive. When New Jersey officers were ordered to keep records to ascertain the extent of race-based detention, at least some of the officers falsified racial information in order to conceal their continuing discrimination. Similarly, if one examines either the INS motorist stop case or the DEA airport stop cases, it is clear that both INS and DEA have used ludicrous pretext to hide heavy reliance on race.

As with all entrenched practices, resistance to change must be expected. Good faith requires, first, candid acknowledgment of past wrongs and then specific plans for reform. In their absence, corrective legislative action is necessary.

[The prepared statement follows:]

Statement of Sheri Lynn Johnson, Professor of Law, Cornell University, Ithaca, New York, and Co-Director, Cornell Death Penalty Project

Good morning. I am a Professor of Law at Cornell University, and Co-Director of the Cornell Death Penalty Project. I am here today not as an expert on Customs, but as an expert on racial issues in the criminal justice system, which I frequently litigate in capital cases, and concerning which I have published numerous law review articles. More particularly, I have expertise in racial profiling, first publishing an article on the improper uses of race in search and seizure decisions sixteen years ago in the Yale Law Journal. Because racial profiling is a phenomenon that extends beyond the agency here under review, and because I understand that this subcommittee is interested in deterring racial profiling as well as unearthing it, I believe that the practice of racial profiling by other law enforcement agencies is relevant, as are the underlying dynamics that support racial profiling.

The individual experiences recounted this morning are virtually impossible to explain on any basis other than race. Moreover, the statistics released by Customs provide strong evidence that these experiences are not idiosyncratic: Last year, Black and Latino travelers experienced 43 percent of the body searches conducted by Customs, and if we focus on the more intrusive strip searches, it appears that Black women travelers face approximately eight times the risk of a strip search by Customs agents than white males do. Commissioner Kelly has repeatedly stated that Customs does not have a policy that targets racial groups. Understanding the informal causes of racial profiling, however, can reconcile the Commissioner's denials of any formal targeting policy with the reality of race discrimination.

It is clear from the experience of other law enforcement agencies that racial profiling frequently occurs in the absence of official permission. Probably the most powerful cause of racial profiling is racial bias. Too often when we think of racial bias, we think of conscious animosity towards persons of another race. While such animosity certainly exists, and may influence some Customs officials, racial stereotyping—sometimes even unconscious stereotyping—is far more prevalent. It is not an accident that the racial groups that are disproportionately targeted for searches are Black and Latino; in our culture, both are stereotypically associated with criminal propensity.

When searches result from such stereotyping, at least three self-perpetuating mechanisms are generated. First, when drugs are discovered, biases are reinforced; as psychologists have observed, stereotype-consistent information is more readily remembered than is information inconsistent with the stereotype, so failed searches are unlikely to cause the agent to question the stereotype. Second, as agents treat

travelers in the extremely offensive ways described here today, and then subsequently discover them to be innocent of all wrongdoing, those agents are likely to dehumanize such travelers in order to rationalize their own actions; if agents were to see these Black and Latino women as basically like themselves (or their wives or daughters), it would be hard to justify the humiliation they had inflicted upon these innocent individuals. So the agents focus on the women's race in order to create psychological distance, thereby simultaneously increasing the racial bias that led to the initial search decisions. Looked at from this perspective, the agents' incredibly callous responses to these women's suffering and to their complaints are predictable; the callousness flows from, justifies, and perpetuates racial stereotyping. Third, racial stereotyping is perpetuated by modeling. As new agents observe the practices of more senior employees, they learn bias on the job, along with necessary skills. Racial profiling appears to be part of the expertise they must acquire, and in the process of participating in racial profiling, new agents reinforce any biases they previously had.

Although racial bias, and the mechanisms that reinforce it are the most important sources of racial profiling, in the Customs setting, there are at least two other factors likely to bear some causal responsibility. First is the issue of relative costs: If agents perceive that racial minorities are less likely to lodge complaints, it may seem less costly—in the political sense—to select minorities for enhanced scrutiny rather than to engage in racially blind screening of travelers. This is one of the lessons of the New Jersey Turnpike litigation, where some police officers have admitted that they selected African American motorists for traffic stops in part because they wished to decrease complaints. If we consider the horrors described by Ms. Denson, it is easy to imagine that officials would hesitate to impose such extreme treatment upon someone who might turn out to be powerful. One of the purposes of this hearing, of course, is to increase the perceived costs of searching racial minorities, to make clear that perpetrating outrages such as those described today is not made acceptable by virtue of the victim's race, and indeed, that targeting by race renders the intrusions less rather than more acceptable.

Finally, it should be observed that racial profiling will occur more often where there is no sanction for engaging in it. In the Customs context, internal rules do not appear to prohibit consideration of racial factors. Moreover, the Supreme Court has been extraordinarily loathe to interfere with border searches. Not only is the standard for the requisite suspicion needed to justify body searches much lower at the border, but the Supreme Court has refused to prohibit the use of ethnic criteria by the INS, thus creating at least a constitutional void, if not lending tacit approval to reliance on racial criteria.

With these powerful psychological and institutional forces supporting the existing practice, it is insufficient for the Commissioner to declare that Customs has no policy of targeting racial minorities. Eradication of racial profiling requires commitment, explicit prohibitions, new training, and careful monitoring. Again, observations of racial profiling in other law enforcement agencies are instructive. When New Jersey officers were ordered to keep records to ascertain the extent of race-based detentions, at least some of the officers falsified racial information in order to conceal their continuing discrimination. Similarly, if one examines either the INS motorist stop cases or the DEA airport stop cases, it is clear that both INS and DEA agents have used ludicrous pretexts to hide heavy reliance upon race. As with all entrenched practices, resistance to change, and in some quarters, even intransigence, is to be expected. At this point, good faith requires candid acknowledgment of past wrongs and specific plans for reform; in their absence, corrective legislative action would seem to be necessary.

Chairman HOUGHTON. Thank you very much, Ms. Johnson.

Mr. Tobias.

STATEMENT OF ROBERT M. TOBIAS, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

Mr. TOBIAS. Thank you very much, Chairman Houghton and Ranking Member Coyne and the Members of this Subcommittee. I am very pleased to be here and testify this morning.

I would like to start by saying that—

Chairman HOUGHTON. Pull the mike up just a little bit further. Thank you very much.

Mr. TOBIAS. I would like to start, this morning, by saying that on behalf of the employees of the Customs Service represented by NTEU, I would certainly like to apologize to those here today who were innocent but subject to personal searches. Clearly, these are extremely humiliating experiences for those who are subjected to these kinds of searches, and, clearly, the rights—

Chairman HOUGHTON. Mr. Tobias, can I interrupt again? You have got to pull that mike very, very close to you. Thank you.

Mr. TOBIAS. Clearly, the right people are not chosen every time, and I pledge my union's support to work with Commissioner Kelly and Members of this Committee to establish procedures and to provide training to Customs inspectors so that their targeting is more accurate and search procedures are clear and that the inspectors and the other Customs employees are well-trained in these policies.

Customs employees condemn the use of discriminatory factors as a basis for selecting passengers for secondary inspection or more intrusive search techniques, but it is also important to keep in mind and to remind ourselves that this is the time of the year when we celebrate high school graduations in towns and cities throughout the United States. Yet during this time of celebration, there are alarming statistics that show that those high school students who graduated in 1998, the percentage who used illegal drugs in the 12 months prior to graduation increased dramatically since 1992. More teenagers are experimenting with drugs, which means that drugs are more available to them. Presently, the greatest threat to our Nation's youth from abroad is the threat of illegal and dangerous drugs coming into the United States.

I agree with the Members of this Committee who have repeatedly stated that we have to stop drugs from coming across our borders, and Customs inspectors present the first line of defense to the illegal importation of drugs and contraband across our borders. They are on the frontlines at sea, land, and airports. It is a very difficult, it is a very dangerous job. They have been assaulted by travelers, shot, dragged to their death by cars running ports, threatened and accosted. As recently as last week, a Customs inspector in Puerto Rico was shot on his way home from duty, because he was recognized as a Customs enforcement official. Every day, these men and women must resist smugglers' attempts to corrupt them through bribery and threats.

They meet hundreds and often thousands of travelers every day. Their job is to make split-second decisions about people, while keeping in mind the danger that is often presented. They are required to be courteous but at all times on guard and wary of the traveler who may be dangerous to the Customs inspector or other travelers.

The job requires stamina. Most work a minimum of three different shifts without start and stop times. They have very little control over their schedules, and they are on call of management for orders to work overtime, and the job is seriously undervalued. At the very height of a career and even after 25 years of dedication to the Customs Service, the average inspector will make a base salary of about $40,000 per year. Unlike their counterparts in DEA,

FBI, and Border Patrol, the Customs inspectors do not have law enforcement status, thus they are denied the benefit of a 20-year retirement that they deserve.

The amount of work done is ever-increasing. In fiscal year 1999, Customs estimates it will process over 470 million land, sea, and air passengers. This number is up by 10 million from 1998 and up 23 million from 1997. The Customs Service is being asked to do more work, process more cargo and more passengers with fewer inspectors and outdated technology. A drug interdiction effort for the 21st century depends on 21st century equipment and increased staffing levels to meet the increases in the volume of travelers. The impact of not enough people or technology means that the available data is not analyzed which would increase the accuracy of targeting; reduce unnecessary delays for passengers, and decrease the danger for inspectors.

The shear volume of passengers at land, air, and sea ports requires the Customs inspector to be cautious, scrutinizing, and properly trained to select the potential smugglers or otherwise dangerous people.

Now, there is no typical drug smuggler or a typical way to smuggle drugs. Heroin has been strapped to human couriers, sewn into the lining of a traveler's jacket, compressed into the soles of travelers' hollowed-out tennis shoes, poured into condoms and ingested, and hidden in luggage or other type of belongings. Smugglers and distributors are teenagers, college graduates, middle-aged businesspeople, senior citizens, and young children. They are single, married, traveling with babies, in tour groups or alone. Customs inspectors must be attentive in their efforts to detect who is carrying drugs and how it is being done. Of course, drugs are not in plain view. Some smugglers have hidden drugs so well, they may even evade body scanners deployed in the airport terminal.

To narrow the field between the innocent traveler and the drug smuggler, inspectors use criteria developed by the Customs Service through the analysis of historical data. Such indicators include the traveler's origination of flight, including whether the traveler's flight included a stopover in a source country, the duration of stay, the method of payment for the ticket, the traveler's employment history, and many others. Most indicators are gleaned from a quick interview with the arriving passenger. The interview process should narrow the search to those who may be attempting to smuggle drugs. Certain passengers will display behaviors, such as avoiding eye contact, seeming nervous, or failing to answer simple questions. In these situations, the trained inspector will be on alert that the passenger may be carrying illegal contraband.

It is important that these criteria be constantly updated based on new intelligence and the constantly changing tactics of drug smugglers. In addition, it is important to ensure that whatever criteria are developed and applied, they are not done so in a discriminatory manner. The current criteria used by the Customs Service to identify a traveler for a more detailed interrogation or a personal search are being reviewed by a Personal Search Commission, chaired by Under Secretary Constance Newman. We look forward to the recommendations of the Commission and to working with

Commissioner Kelly to ensure that search policies, if necessary, are changed to safeguard against discrimination.

Just as Customs inspectors must be diligent in their efforts to protect our borders from illegal trade or drug activity, so, too, they must protect the constitutional rights of all travelers. Commissioner Kelly has proposed, and NTEU agrees, that there must be regular training opportunities for Customs enforcement personnel. It is not enough to have one formal training opportunity at the beginning of a career. In the constantly changing environment faced by Customs enforcement personnel, they must have the opportunity to receive new information, learn more techniques, and understand the changing laws and regulations. This type of training will allow better targeting of travelers. We will work to ensure that the Customs employees get the training necessary so that the policies to be followed are understood by all.

The U.S. Customs Service must facilitate the flow of legitimate trade and travel, while interdicting the illegal contraband and drugs, although this is a seemingly impossible mission—more and more people are traveling; more and more cargo is flowing across our borders ever year, and the agency continues to seize more illegal narcotics than all other Federal agencies combined.

With more personnel and technology and with increased focus on training and employee education, we can ensure better targeting and consistent application of the agency's search policies and procedures which will enable the Customs Service to continue to perform its critical enforcement mission while safeguarding the rights of the traveling public.

I would like to offer NTEU's assistance and cooperation to this Committee as it reviews the difficult issues before it. Thank you for this opportunity, Mr. Chairman.

[The prepared statement follows:]

Statement of Robert M. Tobias, National President, National Treasury Employees Union

Chairman Houghton, Ranking Member Coyne and Members of the Subcommittee, my name is Robert M. Tobias, and I am the National President of the National Treasury Employees Union (NTEU). NTEU represents approximately 155,000 federal employees, about 13,000 of whom work for the United States Customs Service. The majority of Customs employees represented by NTEU are inspectional personnel working at ports of entry throughout the United States and in Canada. I would like to thank the Subcommittee for this opportunity to present our Union's views on the very important issue of passenger inspection operations at the U.S. Customs Service.

Today, I would like to give you a sense of what Customs officers face each day that they report for duty. And, on behalf of all inspectional personnel represented by NTEU, I would like to state unequivocally that Customs Service employees condemn the use of discriminatory factors as a basis for selecting passengers for secondary inspection or more intrusive search techniques.

THE CUSTOMS MISSION

This is usually the time of year when we celebrate high school graduations in towns and cities throughout the United States. Yet, during this time of celebration, we must not forget the alarming statistics that show that of those high school students who graduated in 1998, the percentage of them who used illegal drugs in the twelve months prior to graduation increased dramatically since 1992. Marijuana use by graduating seniors in the twelve months prior to graduation increased by 80% since 1992. Heroin use increased by 100% and cocaine use by 80%. More teenagers are experimenting with drugs which means that drugs are more available to them.

Presently, the greatest threat to our nation's youth from abroad is the threat of illegal and dangerous drugs coming into the United States.

We must stop drugs from coming across our borders. We must make the eradication of drug use in the United States a number one priority in Congress. These are not just my sentiments, these are quotes from members of this committee on the importance of the War on Drugs.

INSPECTIONAL PERSONNEL

Customs inspectors present the first line of defense to the illegal importation of drugs and contraband across our borders. They are on the front lines at sea, land and air ports. They have been assaulted by travelers, shot at, dragged to their death by cars running ports, threatened and accosted. Very recently, a Customs inspector in Puerto Rico was shot, on his way home from duty, because he was recognized as a Customs enforcement official. Every day these men and women must resist smugglers attempts to corrupt them through bribery and threats.

For as many travelers as there are crossing our borders or landing in our international airport terminals, there are reasons they have made the trip. The job of the Customs inspector is to safeguard our borders from those who want to violate our trade and drug laws while facilitating the travel of all innocent persons. There is a tremendous amount of pressure on the Customs inspectors who greet arriving travelers from all over the world. Their job is demanding and dangerous. Customs inspectors carry weapons and undergo mandatory firearms training. They are taught to make arrests. They learn defensive tactics for protecting themselves from dangerous criminals with whom they may come face to face. They must be courteous, but at all times on guard and wary of the traveler who may be dangerous to the Customs inspector or other travelers.

Not many people recognize the concessions inspectors make for the Customs Service. Cargo shipments and travelers cross our borders at all times of the day and night, and Customs inspectors must be there to process them. Most work a minimum of three different shifts with odd start and stop times. They have very little control over their schedules, and they are at the call of management for orders to work overtime.

At the very height of a career, and even after twenty-five years of dedication to the Customs Service, the average inspector will make a base salary of about $40,000 per year. Unlike their counterparts in the DEA, FBI and Border Patrol, the Customs inspectors do not have law enforcement status, thus they are denied the benefit of a twenty-year retirement that they deserve.

INCREASED TRAFFIC AND TRAVEL

In FY 1999, Customs estimates it will process over 470 million land, sea and air passengers. This number is up by about 10 million from 1998, and up 23 million from 1997. Currently, staffing levels at almost all ports around the country are at minimum levels. Every year, the Customs Service is being asked to do more work, process more cargo and more passengers with fewer inspectors and outdated technology. A drug interdiction effort for the 21st century depends on 21st century equipment and increased staffing levels to meet the increases in the volume of travelers.

PROCESSING TRAVELERS

Whether inspectors are working at land, sea or air ports, most of the people they encounter will be unknown to them. In the case of some commercial vessels and airplanes, Customs inspectors may receive advance information about arriving passengers. In airports, this information may be analyzed by the Customs Passenger Analysis Unit (PAU) and the inspectors on duty may have some advance intelligence on the arriving passengers. But, too often this information is not forthcoming from the commercial airlines, or there are too few PAU employees to properly analyze the data and provide it to the inspectors. Customs does not have enough staffing to field the necessary number of "rovers" who walk among the passengers and watch for odd behaviors and actions. Staffing shortages have also resulted in decreased staffing at "choke points," where passengers first arrive in an airport Customs area. The Agency simply does not have enough staffing to cover all bases for passenger operations. This situation leads to unnecessary delays for travelers and increased dangers for inspectors.

In addition to staffing shortages, there is a profound lack of technology and information gathering equipment to adequately process travelers. We task these inspec-

tors with greeting the traveling public, quickly learning more about them and making split second decisions that can either facilitate or delay their travel.

In most cases, a passenger will be cleared immediately after retrieving his or her luggage. For some, a Customs inspector may ask several questions. For fewer, the inspector will direct the traveler to the secondary area for a personal search. Currently, the minimal staffing levels at most ports of entry allow for only 2% of the cargo and passengers to be reviewed in the secondary area. The sheer volume of passengers at land, air and sea ports requires a Customs inspector to be cautious, scrutinizing and properly trained to select potential smugglers or otherwise dangerous people.

HUMAN DRUG COURIERS

There is no typical drug smuggler or a typical way to smuggle drugs. Heroin has been strapped to human couriers, sewn into the lining of a traveler's jacket, compressed into the soles of a traveler's hollowed-out tennis shoes, poured into condoms and ingested, and hidden in luggage or any other type of belonging. Smugglers and distributers are teenagers, college graduates, middle-aged business people, senior citizens and young children. They are single, married, traveling with babies, in a tour group or alone. Customs inspectors must be attentive in their efforts to detect who is carrying drugs and how. Of course, drugs are not in plain view. Some smugglers have hidden drugs so well that they may evade body-scanners deployed in the airport terminal.

PERSONAL SEARCH

The most effective method available to Customs inspectors today, to find concealed drugs on a human courier, is the personal search. In 1998, Customs seized over two and one half tons of illegal narcotics on and in the bodies of drug smugglers. Any invasive physical contact is unpleasant for a traveler, and while less intrusive methods of searching the bodies of suspected smugglers are available, these body scan machines are extremely expensive and have been deployed in Customs areas in just two major airports so far.

CRITERIA TO NARROW THE TARGET

To narrow the field between the innocent traveler and the drug smuggler, inspectors use criteria developed by the Customs Service through the analysis of historical data. Such indicators include the traveler's origination of flight, including whether the traveler's flight included a stop-over in a source country, the duration of stay, the method of payment for the ticket, the traveler's employment history and many others. Most indicators are gleaned from a quick interview with an arriving passenger. The interview process should narrow a search to those who may be attempting to smuggle drugs. Certain passengers will display behaviors such as avoiding eye contact, seeming nervous or failing to answer simple questions. In these situations, a trained inspector will be on alert that the passenger may be carrying illegal contraband.

The inspectors are required to apply criteria developed by the Customs Service. It is important that this criteria be constantly updated based on new intelligence and the constantly changing tactics of drug smugglers. In addition, it is important to ensure that whatever criteria are developed and applied, they are not done so in a discriminatory manner. The current criteria used by the Customs Service to identify a traveler for a more detailed interrogation or a personal search are being reviewed by a Personal Search Commission chaired by Under Secretary Constance Newman. We look forward to the recommendations of the Commission and to working with Commissioner Kelly to ensure that search policies, if necessary, are changed to safeguard against discrimination.

Just as Customs inspectors must be diligent in their efforts to protect our borders from illegal trade or drug activity, so too, they must protect the Constitutional rights of all travelers. Commissioner Kelly has proposed and NTEU agrees that there must be regular training opportunities for Customs enforcement personnel. It is not enough to have one formal training opportunity at the beginning of a career. In the constantly changing environment faced by Customs enforcement personnel, they must have the opportunity to receive new information, learn more techniques, and understand the changing laws and regulations. This type of training will allow better targeting of travelers. We will work to ensure that Customs employees get the training necessary so that the policies to be followed are understood by all.

PERSONAL SEARCH POLICIES AND PROCEDURES

Whenever a passenger is referred to the secondary area for a personal search, an inspector must follow the Customs Service's nation-wide policies and procedures. Inspectors at every port of entry around the country are taught these procedures when they receive their initial training at the Federal Law Enforcement Training Center (FLETC). But, these policies must be reiterated and relearned so that inspectors who may not perform personal searches regularly are aware of every nuance, change in policy or added procedure. Currently, Customs does not provide standardized update training to continue the education process and alert inspectors to new patterns and methods of smuggling. There is no follow up training after inspectors have been working for several years, where they can comment on the policies and procedures, and Customs can reinforce the law and policies on personal searches. There must be regular, formal training opportunities for Customs enforcement personnel.

The United States Customs Service must facilitate the flow of legitimate trade and travel while interdicting illegal contraband and drugs. Although this is a seemingly impossible mission, more and more people are traveling, more and more cargo is flowing across our borders every year, and the Agency continues to seize more illegal narcotics than all other federal agencies combined. With more personnel and technology and with increased focus on training and employee education we can ensure better targeting and consistent application of the Agency's search policies and procedures, which will enable the Customs Service to continue to perform its critical enforcement mission while safeguarding the rights of the traveling public.

Shortly after the Personal Search Commission was formed, I sent the attached letter to Under Secretary Newman asking to provide the views of front line Customs personnel to the Commission and offering NTEU's assistance and cooperation. I would also like to offer NTEU's assistance and cooperation to this Committee as it reviews the difficult issues before it.

Thank you for the opportunity to be here today on behalf of the Customs Service employees to discuss these very important issues.

THE NATIONAL TREASURY EMPLOYEES UNION
Washington, DC, May 6, 1999.

The Honorable Constance Berry Newman
Under Secretary
Smithsonian Institution
Washington, D.C.

Dear Under Secretary Newman:

I have recently learned that U.S. Customs Service Commissioner Raymond Kelly has appointed you to chair the Independent Personal Search Review Commission which will review the procedures and policies of the U.S. Customs Service regarding passenger searches. I write to request an opportunity to provide the Commission with the views of Customs inspectors who perform their duties every day at our land, sea and air ports throughout the country.

Customs inspectors experience first hand the rigors of inspectional work and they have keen insight into the constantly changing environments at our ports of entry. Their views will be valuable to your Commission as you conduct your review.

Thank you for considering my request to appear before the Commission. Please feel free to contact me if you have any questions. I look forward to your response.

Sincerely,

ROBERT M. TOBIAS
National President

Chairman HOUGHTON. Thank you very much, Mr. Tobias.

We are going to continue here for about 5 minutes, and then we are going to have to vote. We will interrupt the hearing, and then we will come right back.

Mr. Coyne.

Mr. COYNE. Thank you, Mr. Chairman.

Mr. Tobias, have any of your members of the union ever complained about being instructed to concentrate on minorities when making searches?

Mr. TOBIAS. Well, your question assumes, Mr. Coyne, that they have been instructed to focus on minorities, and I am not aware that anyone has been instructed to focus on minorities.

Mr. COYNE. So, none of them have ever complained to you that they have been instructed to do that?

Mr. TOBIAS. No.

Mr. COYNE. OK. Is there any racial profiling at Customs now, to the best of your knowledge?

Mr. TOBIAS. To the best of my knowledge, the answer is no.

Mr. COYNE. Has there ever been, to your knowledge?

Mr. TOBIAS. To my knowledge, the answer is no.

Mr. COYNE. Have Customs employees ever been disciplined for selecting passengers for personal searches based on race or other illegal factors?

Mr. TOBIAS. You know, I don't know the answer to that question, Mr. Coyne. What I can say is that no person has come to the union to be represented for that kind of a disciplinary action, but it could have happened, and we just wouldn't be aware of it. So, to the extent I know, the answer is no.

Mr. COYNE. If more funds were available to train Customs inspectors on appropriately identifying and searching passengers, what specific skills would need to be improved, in your judgment?

Mr. TOBIAS. Well, I think that—one of the problems, I think, that the Customs Service faces, like all law enforcement agencies, is patterned behavior. If you fall into a pattern of behavior without an opportunity to say, "Well, I have been doing it this way, because it has yielded results," and there is not an opportunity to step back and say, "OK, this is the way I have been doing it, but maybe there is a different way. Maybe there is information from other agencies that are doing it differently."

Right now, the only training a Customs—formal training a Customs inspector gets is his initial training; that is not enough. In order to be a professional law enforcement agency, people have to be constantly challenged with new information, new opportunities, new strategies, new techniques. That doesn't happen in the Customs Service.

Mr. COYNE. Could you briefly describe what that initial training is?

Mr. TOBIAS. It is several weeks of formal training in the Law Enforcement Officer Training School in Georgia.

Mr. COYNE. Thank you.

Chairman HOUGHTON. Mr. Portman.

Mr. PORTMAN. Mr. Chairman, I will be brief with the hope that we can get back down to the other side of panel.

I was going to ask about training also. I am pleased to hear, Mr. Tobias, about the Newman Commission. I wonder if you could tell us when that is expected to report?

Mr. TOBIAS. Soon. I don't have a date.

Mr. PORTMAN. In your testimony, you attached a letter that you had sent to Under Secretary Newman hoping that input from Cus-

toms people on the line in the field would be included in their deliberations. Has that been done?

Mr. TOBIAS. It has not happened yet.

Mr. PORTMAN. I would hope that that would happen and that we can get—it sounds like there is an effort being undertaken to have an independent review of personal searches, generally, through this Commission. I think that would be very helpful to the Subcommittee.

Mr. TOBIAS. I agree.

Mr. PORTMAN. Let me just quickly ask, if I could, some of the early witnesses who spoke—and, again, I appreciate your willingness to come today, Ms. Buritica, particularly, and Ms. Denson, and for your willingness to talk publicly on the record about a very difficult personal experience you had, and our hearts go out to you, because it sounds like it was indeed a very disturbing sequence of events and many hours you had to go through.

I would just ask you a question following on the questions that I asked the Commissioner earlier about less intrusive means. I know that some of these less intrusive means, such as a body scan where you are able to keep your clothing on, and you go through a scan that essentially tells you whether there is something hidden underneath your clothes. As compared to a strip search, for instance, it would be an alternative to that, whether that would have been something that you would have found to be as troubling—would you have had any trouble, any problem going through that kind of a body scan? Ms. Buritica. Do you understand my question?

Ms. BURITICA. I am sorry; I didn't understand your question.

Mr. PORTMAN. There is new technology being developed, and it is employed, I understand, at some airports already where instead of having a strip search, people who are identified, in whatever means they are identified, are simply asked to go through a piece of equipment where you can keep your clothes and have—you talked particularly, Ms. Buritica, about your humiliation you felt through that strip search, and the alternative would be to go through a scan that would be able to determine, not internal but external, drugs or anything else that might be hidden. Would that have been something that you would have had a problem going through had you been asked to do that?

Ms. BURITICA. I think it would make a difference. I think it would make a difference rather than have someone take off their clothes against their will. I think it would make a difference.

Mr. PORTMAN. Ms. Denson, do you have any thoughts on that?

Ms. DENSON. Obviously, in my case, I would have been thrilled to just walk through a scanner versus being treated the way I was treated.

Mr. PORTMAN. Well, I think we have to—obviously, that would not, as I understand it, be a replacement for everything you had to go through from a Customs perspective, but at least a strip search could be avoided through that kind of technology, and perhaps we can look more into these kinds of questions after we get back from our votes.

And, again, I thank you all for being here, and thanks, Mr. Tobias.

Chairman HOUGHTON. Yes, thanks very much. If you can just hold with us, we will be right back. Thank you.

[Recess.]

Chairman HOUGHTON. Could we continue the hearing? Thanks very much.

Mr. Lewis.

Mr. LEWIS. Thank you, Mr. Chairman.

Mr. Fox, Mr. Tobias stated that to his knowledge no Customs inspector had complained about being told to engage in racial profiling. To your knowledge, is this the case? Is this true?

Mr. FOX. There has been a well-publicized case out of your district in Georgia where a Customs inspector named Kathy Harris complained about how the investigations and the searches were going on, and she then got disciplined, and then—I don't know all the details of that—but then it was found that she was actually correct, and the person who disciplined her then got disciplined himself. So, there was a big thing in your home district regarding that.

Mr. LEWIS. Mr. Fox, would you please describe what criteria Customs and the courts have established regarding a Customs inspector's ability to stop and search travelers?

Mr. FOX. I am not sure I understand your question. What are the criteria to stop and search travelers?

Mr. LEWIS. Yes.

Mr. FOX. I have read many, many incident logs, and I have also read the policy manual carefully. I have taken depositions of Customs inspectors, and it is clear from looking at all these materials that the criteria are so vague and amorphous they could literally be used to justify the search of anybody, and I will give you some examples.

Frequently, for the women that they have done searches of coming from Jamaica, they will list three factors. They will say coming from a source country; they will say they wore bulky clothing, and they were nervous. That is the most common tactics used among Customs inspectors when they have to justify a search, and the interesting thing about that is that in deposition testimony, Customs inspectors have said that every country in the world can be deemed to be a source country and is deemed to be a source county, because you never know where a traveler had been prior to the flight which brought them to the border anyway.

So, when you couple that with the policy manual—and I think it was mentioned there were 43 factors that are looked to. The 43 factors, themselves, are so vague and amorphous, they can be used on anybody. For instance, the factors—we will say if a person acts unusually cool in light of questioning, that could be a sign. Then they also say if a person acts unusually argumentative, that could be sign, or contradictory. If a person—another one—if a person wears revealing clothes, that could be a sign. If a person dresses real conservatively, that can be a sign. And you can go down the list and see that every factor, almost, has a counterpart, which then makes it potentially applicable to 99 percent of the travelers that come through, and then Customs can just use these—and they do—as they feel necessary.

Mr. LEWIS. Professor Johnson, how would you address the argument that race should be a factor and that inspectors are just doing their job?

Ms. JOHNSON. Well, it may be the case that there are somewhat more proportionately Black women who are engaged in drug trafficking; it may be. We don't really have the information that would tell us that, because we just don't have the data on who's engaging that. But even if it were true, it is absolutely clear that whatever prohibitive ability there might come from race, it is vastly overestimated by Customs. Black women are searched and unsuccessfully searched at greater rates, but I think even more important than the fact that it would be statistically erroneous is that that puts the burden of law enforcement on minority communities, and the burden of law enforcement has historically always been placed largely on minority communities, and it is wrong to do that. The Constitution says it is wrong to do that, and everything we know about race relations in this country ought to tell us that.

Moreover, I think it is important to notice that there is an additional humiliation of being searched or treated in any disrespectful way when you know that it is on the basis of your race. So, that that kind of profiling is not only damaging in that it subjects people to those searches, but it also subjects them to degradation and humiliation really through racial stigma, which we ought to avoid at all costs.

Mr. LEWIS. Ms. Buritica and Mrs. Denson, as one Member of Congress and as a Member of this Committee, let me apologize to you. What happened to you shouldn't happen to anyone, and I will tell you I will do all in my power to see that it never happens again. This reminds me of another period back in 1961, 38 years ago, when I was on the freedom ride, and we went to the State penitentiary at Mississippi, and we were strip searched. Our civil rights, our civil liberties were being violated, and I think your civil liberties and your civil rights were violated.

Thank you, Mr. Chairman.

Chairman HOUGHTON. Thank you, Mr. Lewis.

Mr. Hulshof.

Mr. HULSHOF. Thank you, Mr. Chairman.

Ms. Buritica and Ms. Denson, let me also echo what Mr. Lewis has said. There really is no amount of money that can compensate you for the experience that you have undergone. I recognize, Ms. Buritica, that in your testimony, you mentioned that there was some sort of a court settlement. I assume that was without a jury trial. Was that settlement reached before going to a jury?

Ms. BURITICA. I am having a hard time——

Mr. HULSHOF. Yes, ma'am. In your testimony, you mentioned that you received a monetary award after a civil lawsuit was filed. Was that an out-of-court settlement that you reached with the other side or was that after a jury trial?

Ms. BURITICA. It was after a jury trial, sir.

Mr. HULSHOF. Ms. Denson, let me ask you without divulging the—I recognize you have counsel with you—is there ongoing litigation regarding your situation right now, Ms. Denson?

Ms. DENSON. Yes.

Mr. HULSHOF. OK. Let me turn, Mr. Fox and Professor Johnson. Professor Johnson, time doesn't permit—I would love to have a good dialog with you about having defended and prosecuted 17 capital murder cases, the issue of race in capital crimes, but that is not the issue that is here before us.

Mr. Fox, let me ask a couple of questions. The statistics that we have up here, Customs say that there have been only 12 cavity searches in the entire country last year. Is that true or false or do you take issue with that number?

Mr. FOX. Well, I can answer it this way: I have seen their statistics from 1997, and they list zero Black women being cavity searched in 1997; I personally know of three.

Mr. HULSHOF. So, some question—and any time we start talking about statistics, you recognize or you have mentioned in your testimony, Mr. Fox, that African-American women are searched 46 percent of the time. Professor Johnson, you mentioned that Black women are likely to face eight times the risk of a strip search, and I know when we get into these numbers, I don't know that we can compare them.

For instance, let me ask you, Mr. Fox, you mentioned, in your testimony that one in five searches of African-American women are positive; that is 20 percent of the time contraband is discovered. Now, when you include the word "searches," does that mean like a *Terry* v. *Ohio* pat down or are you talking about a cavity search or a strip search?

Mr. FOX. Actually—to correct that—it is actually more than 80 percent, and I believe the number 17 percent. So, 83 percent of the time there is nothing there, and I reviewed all of the incident logs from those searches. Many times, the drugs were found in the luggage or in other places; they weren't necessarily found in the body cavity.

Mr. HULSHOF. So, when you include 17 percent of the positive searches, as you cite, that could include clothing, luggage beyond the very intrusive type of searches that we have been hearing about today?

Mr. FOX. It does include that.

Mr. HULSHOF. Do you agree, Mr. Fox, or disagree with the Commissioner that pad down searches and the more intrusive searches are, in fact, a deterrent at our borders to stem the flow of drugs coming into our country?

Mr. FOX. Of course they are deterrent. I think what has to be looked at is the costs that it is costing society against the evil you are trying to eradicate, and I know—and a lot of numbers have been thrown out—I have the statistics from 1997 at O'Hare, and, for example, they found 56 pounds of cocaine at O'Hare in 1997. That is 56 pounds too much, no doubt, but it is not the great big numbers, and when you weigh that against the cost that this has done to people's lives, I am not sure if it is worth it. And, at some point, when you balance the cost against the evil you are trying to eradicate, you cross the line from being a democracy to being a police State, and I think we might have gotten there.

Mr. HULSHOF. Mr. Fox, do you take criminal cases regarding these situations, as well, or mostly civil litigation?

Mr. FOX. I have taken one criminal case.

Mr. HULSHOF. Do you believe that there—you mentioned in the last page of your testimony that a magistrate's authorization should be required; that is a search warrant before searches could take place. Would that include all searches, including casual contact or maybe a pat down?

Mr. FOX. No, I believe—and I think the case law would support—that once you become strip searched that is a serious enough intrusion that your liberty interests are implicated, and a magistrate would be required.

Mr. HULSHOF. In one of your examples from Customs logs, you point out in the first one—since that is probably the one time that I am going to have to ask you—"frequent traveler from a source country of Jamaica," which you would agree is known as a source country for importation of drugs, would you not?

Mr. FOX. They say it is. I don't have any comparison statistics.

Mr. HULSHOF. OK. Fifty percent of the cocaine is seized from passengers coming from flights from Jamaica. Does that comport with the numbers that you know or should we just leave the numbers aside?

Mr. FOX. That is consistent, but the problem is they leave out—they don't search the flights coming from many European countries and other places in the world.

Mr. HULSHOF. Mr. Chairman, if you would just indulge me for this follow-up. On that one example from the Customs log, "frequent traveler from Jamaica through Miami; three trips in the course of 4 or 5 months." Would it not be reasonable or is it reasonable for Customs to ask questions regarding reason for travel and other pertinent information, and if a business traveler, legitimate business traveler, would you not expect there to be some sort of documentation they could prove, show to these Customs—that is not an intrusive stop, is it?

Mr. FOX. If they were to stop white males who were frequent business travelers and do the same thing, I would have no problem with it, but they don't.

Mr. HULSHOF. My time has expired, Mr. Chairman, and I thank you for the time.

Chairman HOUGHTON. OK, Mr. Hulshof, you may want to ask other questions.

I would like to, sort of, associate myself for a minute with Mr. Lewis, who I work with on a variety of different projects.

Clearly, there is racial bias in this country; there is no question about that. We hope it is less than it was, but it is still there. We hope we are doing things to help improve that, and you just have to keep working on it, bit by bit by bit. So, I guess the question for today's hearing is that with the Booze-Allen report in the background making certain suggestions, are those the things or are there other things we can do to make the Customs Service more sensitive to this. I would really like to ask you, Mr. Tobias, what you think?

Mr. TOBIAS. Well, thank you, Mr. Chairman. One thing I would like to say is that NTEU is currently representing Kathy Harris in a disciplinary procedure, but that is not based on a contention that she was told to use racial statistics.

And I think it is important to keep in mind when we are considering these issues, that while maybe 56 pounds of illegal narcotics were seized in O'Hare, in 1998, 2.5 tons of illegal narcotics were seized across the country from people who were carrying it on their person or in their luggage. That is a lot of drugs. And I think that the focus has to be on the fact that people do bring illegal drugs into this country on their person, and what we have to be doing is focusing on identifying those folks who are indeed the most likely carriers and supporting these Customs inspectors and canine enforcement officers with the training and the technology that they need to be successful. Obviously, the trauma that is associated with making a mistake is large, and so a lot more work has to be done, and I think a lot more work can be done to do a better job as a Customs inspector and a canine enforcement officer.

Chairman HOUGHTON. OK. Mr. Rangel, I would like to call on you. You have always been very sensitive and concerned about these issues. So, would you like to do some questioning here?

Mr. RANGEL. Thank you for the courtesy, Mr. Chairman.

I couldn't help but think of my mother, sister and daughter when I heard the testimony of these ladies. I suspect that most people when they hear these type of stories put themselves in the same situations as to how they would have felt if something like that had happened to one of their loved ones. I think it takes a lot of courage to come here publicly and to share with us these experiences. So, at least on this side of the mike, when part of the Government goes wrong, we apologize for that part of the Government.

Mr. Tobias, I am really disappointed at the lack of outrage in response to the testimony we have heard and the questions that you have been asked. To read your testimony, one would think that an attack has been made on the integrity of the dedicated men and women who serve with Customs. Nothing is further from the truth. What we are talking about are people who behave in such a manner that decent human beings find that to be repugnant. The Chairman of this Committee was asking you what contribution in a positive way could you make to assist us in seeing that these type of things don't happen again. But you said that you really think the focus ought to be on drugs and likely carriers. Oh, no. That is not what this hearing is about.

This hearing is about human beings, American citizens, being treated in an uncivilized way that makes no American proud. That is the focus of this particular hearing. If you think the focus should be on likely carriers, then we would assume that without the statistical data, that you have already made the conclusion, based on the work of Customs, that Blacks and Latinos are more likely carriers of drugs than others. We would assume that if you don't really check Whites and you only check Blacks and you find more Blacks have drugs because you didn't checks Whites, that this is a formula that you approve. We would assume that the 2½ tons of drugs that you, I think, say were confiscated, that all of this came as the result of the uncivilized way in which we handled these two ladies, in that they were hidden in body cavities. We would assume that your defense would mean that we don't want to stop drug trafficking, that we don't want searches. None of this is true. We are talking about the manner in which citizens have

been treated; that is what we are talking about. And we are asking for your assistance in how we can stop drugs without having to be a part of this type of treatment, which is basically un-American.

Now, do you know, since you are armed with so many statistics, how many people have cavity body searches and how much drugs was actually confiscated as a result of these searches?

Mr. TOBIAS. Mr. Rangel, I think it was before you came into the room. I started my testimony by apologizing to the witnesses who——

Mr. RANGEL. I was here. I said it lacked outrage.

Mr. TOBIAS. And I think the experiences that were described here were indeed and are indeed humiliating, and, as I say, I apologize to the folks who were here, and, obviously, this kind of action, this kind of result is unacceptable; there is no question about that.

Mr. RANGEL. How much drugs came out of body searches?

Mr. TOBIAS. I don't have the answer to that.

Mr. RANGEL. How many body searches did you have where there were no drugs?

Mr. TOBIAS. I don't know the number.

Mr. RANGEL. Well, let me tell you one thing, Mr. Tobias, no one has challenged the integrity of Customs in terms of its risking their lives in trying to protect Americans. But, each time something is done wrong, there is no need to defend the Corps. We defend the Corps, and we always have, but there are certain people in the Corps that bring disgrace on Customs, on the U.S. Government, and you and I, together, we have to make certain that this doesn't happen. Clearly, there is overtone of racism in the United States, and Customs is able to avoid having people just look at people's color. These numbers that we have, and you will look at and get back to us, are astounding. It is not justified.

The question I will ask you to study and come back to us is this: When you ask a person to submit to the type of things that these ladies and probably men are asked to do, I want to know whether you think it is a deterrent to drug smuggling? I want to know how successful you have been with these searches? The Commissioner truly believes that those who put these type of dangerous drugs in their bodies, and have it in their bodies for over 8 hours, that they put themselves and their lives at risk. Do you believe that to be so?

Mr. TOBIAS. I do.

Mr. RANGEL. You might consider, then, letting all passengers know that they might be held for 8 hours. I think they would respond a lot more readily if they thought their lives were in danger. I think Attorney Fox said it. For the results we get, I want you to tell us, Mr. Tobias, is it worth what we are doing? There has to be a balance.

I hope you continue to do the good work at Customs, and I hope to see the union in the frontline of maintaining its reputation by making certain that we don't have complaints like this because of the way these people have been treated.

Mr. TOBIAS. I will be happy to respond to you, Mr. Rangel.

Mr. RANGEL. Thank you, Mr. Tobias.

Chairman HOUGHTON. Picking up on this, Mr. Tobias, the Booze-Allen report really is written in terms of communication between Customs and the passengers. The thing that intrigues me is this Personal Search Review Commission, because it not only involves the mechanics of it, but also the training, emphasis, and the weeding out of those people. Also, I would imagine, that it would take a look at recruitment. I would hope that you could have a very close look at that, as it evolves, and as the Commission begins to work. I think it will have a direct bearing on the things which we have been concerned with here today.

Well, ladies and gentleman, I want to thank you so much, particularly, Ms. Buritica and Ms. Denson. I really appreciate this, and I hope if there are any other issues that you think that we ought to look into in our overall process of hearing and oversight on this case, you let us know.

So, thank you.

[Whereupon, at 11:42 a.m., the hearing was adjourned.]

[Submission for the record follow:]

Statement of Andrew M. Caplan, Alexandria, VA

I submit the following statement to the Subcommittee based on my concerns, as both an attorney and an American citizen, that the U.S. Customs Service is exercising its statutory authority in a manner which is resulting in the abuse of innocent Americans, and in conduct by individual Customs officers that is marked by racist, anti-Semitic, and other forms of discrimination inconsistent with our Constitution and its command that all persons be accorded equal protection of law.

The first part of this statement recounts an incident to which I was recently a party upon my return to the United States from a trip overseas. The second part examines the relevant Constitutional background to Customs' search and seizure authority and discusses the inconsistency between current Customs' practices and the Constitutional guarantee of equal protection of law. Finally, the third part of this statement draws on my experience as a former military attorney in the U.S. Armed Forces to suggest a potential legislative amendment to Customs' existing statutory authority which, in my view, should correct the current deficiencies in the agency's practices.

During the last two week of October 1998, I visited Sweden, Norway, and the Netherlands. I returned to the United States on October 30, 1998 via Amsterdam, the Netherlands, arriving at the Detroit Metro-Wayne County Airport on Northwest flight 8617 (which is a code-share flight operated by KLM Airlines). My ticket for this flight was purchased with a major credit card, through a travel agent, as part of a travel package (including air tickets and hotel accommodations) sponsored by Northwest World Vacations.

Upon exiting the aircraft, I proceeded through the jetway connecting the airplane with the gate area. While in the jetway, I observed what I recognized to be a drug detection dog. I proceeded past the dog without incident. However, while still in the jetway, I observed the same dog approach a woman standing near me and, in a spirited and zealous fashion, lunge at the individual, requiring a uniformed officer to, in effect, remove the dog from the person. The actions of the dog in relation to the individual were entirely unique and distinct from the dog's actions in relation to all the other passengers in the jetway and, in my view, constituted a possible "alert" on the individual. The individual in question was a pale-complexioned Caucasian woman with light blonde hair who appeared to be approximately 30 years of age.

After clearing the Immigration/Passport Control area and retrieving my checked baggage, I proceeded to the Customs checkpoint area and was approached by a uniformed Customs officer. I was wearing black, wing-tip shoes, charcoal grey wool slacks with cuffs, a black turtleneck shirt, a grey wool sportscoat, and a tan London Fog trench coat. (Due to the fact that northern Europe can be quite cold by the end of October, virtually all of the arriving passengers were wearing bulky outer garments of one sort or another.) My hair was roughly the same length as when I was on active duty as a naval officer, and I was not wearing any facial hair. I was 36 years of age at the time. The Customs officer asked to see my passport and Customs declaration form. She asked where I had traveled and what was the purpose of my trip. She asked what I do for a living and who is my employer, to which I responded

that I am an attorney and work for a federal agency, and I specified the agency. She then asked who was my prior employer, to which I responded that I had previously worked for a different federal agency, and specified the agency. She then asked, again, what type of work I do, and I, again, stated that I am an attorney and work in the General Counsel's office of my agency.

(The views expressed in this statement are strictly my own as a private citizen and are not intended to represent the views or policies of my current agency or former agency. For this reason, I have omitted the names of my current and former agency. I will be happy to supply this information to the Subcommittee upon request.)

Without explanation, I was ordered by the officer to follow her, in full glare of the other passengers (who appeared to be proceeding through the Customs area without any questioning or search at all) to a different room where I was ordered to place my luggage, a 26-inch upright, "pullman" style American Tourister suitcase, as well as a matching carry-on case, onto a large metal examining table.

The space constraints of this statement prevent me from chronicling the full extent of the abusive treatment to which I was then subjected. In all, I was held in custody for almost an hour. During that time, the officer laboriously searched my luggage, going so far as to X-ray a double-sealed bottle of Scotch I had purchased as a gift for my father at the duty-free shop in Amsterdam. This search entailed the Customs officer carefully scrutinizing virtually all of my possessions, including clothing, shoes, toiletries, medicines, vitamins, a book, magazines, a camera—even children's T-shirts I was bringing as gifts for my nieces and nephew.

In addition, I was subjected to what I can only describe as a humiliating interrogation in which I was ordered to chronicle virtually every detail of my vacation. In addition, I was ordered to produce for inspection all my hotel receipts, my airline ticket receipt, and was ordered to recite for the officer the name and address of the travel agent who had booked the vacation. Moreover, the officer inquired whether I had ever been searched before on my prior trips abroad; when I responded that I had not, the officer exhibited an expression of dismay and ordered me to specify what airports I had traveled through in the past. When I responded that my prior trips overseas had been through JFK airport in New York, the officer responded, "Are you sure you've never been searched before?"—to which I responded that I had not been searched before, to which she yet again asked, "Are you sure?"—to which, yet again, I responded that I had not been searched before.

After completing the search of my carry-on bag and finding nothing suspicious, after nearly having completed the search of my checked suitcase and finding nothing suspicious, after conducting the aforementioned interrogation, and even after having been apprised that I was an attorney who worked for a federal agency, the Customs officer informed me in no uncertain terms that I was a suspected drug smuggler. (The officer stated, "Do you know what I'm looking for? Tell me what I'm looking for . . . I'm looking for drugs. Am I gonna find drugs?")

Finally, I was ordered to produce a business card or some other form of professional identification. I provided the officer with my bar association identification card, which she carefully analyzed. The officer took the ID card and my passport to a telephone in another part of the room and conducted an extended telephone conversation while I remained in custody. After approximately 10–15 minutes, the officer returned, stated that I had been to a "source city," gave no other explanation for the treatment to which I had been subjected, told me I could leave and directed me toward the Northwest terminal. As I exited, I noted that all the other passengers were gone from the luggage arrival/Customs area, and that I had been held in custody for close to an hour. While I was held in custody, I noticed only one other person in the "secondary search area," a bearded, olive-complexioned man who appeared to be approximately 40 years of age. That individual was released after 5–10 minutes. I did not observe in the secondary search area the blonde-haired woman I had previously witnessed being lunged at by the drug detection dog.

The leading judicial decision addressing the Constitutional limitations on Customs' search and seizure authority is *United States* v. *Montoya de Hernandez,* 473 U.S. 531 (1985). That case involved an individual convicted of attempted smuggling of narcotics into the United States through the use of an alimentary canal "balloon" device. However, the case is instructive regarding border searches generally. The *Montoya* decision held that under the Fourth Amendment's search and seizure clause, "routine searches" of persons and effects at border entrances are not subject to any requirement of reasonable suspicion, probable cause, or warrant. However, the decision held that the detention of a traveler at a border beyond the scope of a "routine search" and inspection is justified only if the Customs officer reasonably suspects that the traveler is smuggling contraband. The Court defined "reasonable suspicion" as a "particularized and objective basis for suspecting the particular per-

son" of smuggling. Thus, the Court made clear in Montoya that for any search beyond that of a "routine" search, there must be reasonable suspicion—an objective standard requiring particularized, articulable facts; the officer's subjective impressions, or "gut feelings," are insufficient to justify any search beyond that which is "routine."

The majority opinion in *Montoya* did not define the phrase "routine search." Justice Brennan's opinion, while dissenting with respect to other issues in the case, was in concurrence, in effect, with respect to the majority's view that no reasonable suspicion (or greater standard) is required to conduct "routine" searches at international borders. His opinion indicated that routine searches are "typically conducted on all incoming travelers" (emphasis added). Moreover, the opinion indicates that reasonable suspicion is required for individual travelers to be "singled out" for further investigation.

In the case of *United States* v. *Martinez-Fuerte*, 428 U.S. 543 (1976), the Court discussed the phrase "routine search" in the context of vehicle searches for illegal aliens near the Mexican border. There, the Court noted that the Fourth Amendment's limitation on search and seizure power is intended to prevent "arbitrary and oppressive" police tactics. The Court upheld the validity of checkpoint vehicle searches based on a "routine search" rationale. In its decision, however, the Court placed great emphasis on the fact that the checkpoint searches were non-discretionary (i.e., all vehicles passing through the checkpoint were included) and that all the searches (including those involving secondary search procedures) were extremely brief in nature. The Court noted that another type of vehicle search for illegal aliens, known as "roving-patrols," which, unlike the checkpoint searches, are discretionary in nature, can only be undertaken when the stopping officer is aware of specific, articulable facts, when taken with rational inferences, would reasonably warrant suspicion that the vehicle contained illegal aliens.

Thus, the Court's decisions make clear that a routine border search is characterized by two primary elements: (1) it must be brief in nature; and (2) it must be non-discretionary, i.e., it must be based on procedures to which all similarly-situated persons are subjected (be they all passengers disembarking from an airplane, or all motorists passing the same checkpoint along a highway). Any search that does not meet the definition of a routine search may only be conducted based on reasonable suspicion-a standard requiring that there be objective, articulable facts suggesting the individual may be in violation of law.

Montoya de Hernandez was a Fourth Amendment search and seizure case. The essence of such a case is evidentiary in nature-that is, the court is exploring whether, under the Exclusionary Rule, evidence must be suppressed because law enforcement officials violated the Fourth Amendment's requirement that searches and seizures be conducted in a reasonable manner. A ruling that a particular police practice does not offend the Fourth Amendment means only that, within the context of a criminal proceeding, the government will be permitted to introduce the seized evidence and use it against the accused. The ruling does not necessarily imply that a particular police practice is otherwise legal when viewed in the context of other Constitutional requirements, outside the limited issue of what is admissible in a criminal proceeding. In other words, the fact that a government agency is in compliance with one provision of the Constitution does not give the agency license to violate other provisions of the Constitution.

It is well settled that the Fifth Amendment requires the federal government to accord equal protection of law to all citizens. (As it is frequently conceptualized, the Due Process clause of the Fifth Amendment "incorporates" the equal protection doctrine of the 14th Amendment applicable to the states). Likewise, it is well settled that discriminatory practices based on racial criteria are subject to the most rigid scrutiny and are only allowed when there is a compelling governmental interest and the discriminatory practice is necessary to the accomplishment of a legitimate purpose rationally related to that compelling interest. In addition, the Court has held that while the burden is on the individual alleging unlawful discrimination to demonstrate that the governmental action had a racially discriminatory purpose, such may be demonstrated by showing that the totality of the relevant facts gives rise to an inference of purposeful discrimination, and that under some circumstances, unlawful discrimination may be demonstrated where the discrimination is very difficult to explain on non-racial grounds. In this regard, an individual need not show that other members of the same racial group were similarly treated; a single discriminatory governmental act violates the Constitutional requirement of equal protection. Moreover, once an individual has made the requisite showing of racial discrimination, the burden shifts to the government agency to profer a race-neutral explanation for the complained of actions; general assertions that its officials did not

discriminate or that they properly performed their official duties do not satisfy the agency's burden. See *Batson* v. *Kentucky*, 476 U.S. 79 (1986).

In short, the Customs Service, as a federal agency, is required to comply with both the Fourth Amendment and the Fifth Amendment; it may not subject members of the public to unreasonable searches or to treatment that is arbitrary and oppressive and, at the same time, it may not engage in racially discriminatory practices. While the Court in *Montoya* indicated that Customs could perform routine searches without any reasonable suspicion or probable cause, nothing in the Court's decision indicated, either expressly or by implication, that Customs could exercise this authority in a racially discriminatory manner, that the Custom Service, alone among federal agencies, is excused from the Fifth Amendment's requirement of equal protection, or that individual Customs officers are at liberty to perpetrate racist, anti-Semitic, or other unlawful discrimination.

Following the incident described above concerning my return to the United States from an overseas trip, I reported the incident to the Customs Service, asked for an investigation into the matter, and posed a number of questions with respect to the agency's interpretation of its legal authority, as well as questions concerning the legal obligations of arriving passengers. Among other points of inquiry, I asked whether the Customs Service had determined that federal law permits Customs officers to subject persons entering the country at international airports to discriminatory treatment on account of such person's race, religion, ethnicity, or national origin. Although most people would assume that in the United States, the answer to such a question would be self-evident, the response I received suggests that the Customs Service, as a matter of law, does not consider itself constrained by the Constitutional guarantee of equal protection.

My inquiry was addressed to the Chief Counsel of the Customs Service, who responded, through the Associate Chief Counsel for Enforcement, Steven L. Basha, that his "office does not provide legal opinions to the public." This response is interesting in itself, since legal offices in federal agencies, in fact, routinely provide advisory and interpretative legal opinions to members of the public concerning matters that are under the purview of their agency. Mr. Basha indicated that my inquiries were being forwarded to the office of the Assistant Commissioner for Field Operations, which would respond to me directly. With respect to my inquiries, he indicated only that searches "based upon race or ethnicity are not permitted by Customs policy" (emphasis added). Nowhere in the letter did Mr. Basha indicate that such discrimination is against the law, only that it violates Customs "policy."

Several months after sending the agency my inquiry, I received a response from John B. McGowan, Director, Passenger Operations, Office of Field Operations. Of the eight questions I posed in my correspondence, Mr. McGowan's letter was responsive to only one, that is, whether racial/ethnic discrimination is permitted by Customs policy. To this, Mr. McGowan indicated only that a "person's race and ethnic background are not part of the decision process." Again, nothing in the letter states that the Customs Service considers racial/ethnic discrimination to be illegal-only that it violates the agency's "policy."

It is disturbing, to say the least, that in the year 1999, decades after most Americans had assumed it was a long settled matter that it is illegal for employees of a government agency to engage in racial and ethnic discrimination, that two senior officials of a federal agency, when given the opportunity to do so, specifically decline to state that it is a violation of law for employees of their agency to perpetrate such discrimination. With respect to explaining why I, alone among 400 some-odd passengers on the flight, was held prisoner for almost an hour, subjected to abusive treatment, and informed by a Customs officer in no uncertain terms that I was a suspected drug smuggler, Mr. McGowan offered only that I was selected based "on the fact that [I was] arriving from a source city, Amsterdam." The statement is fascinating more for what is does not say than for what it does say. It does not say I was selected for such treatment because I was arriving from a source city plus some other specified factor; or that I was selected for such treatment because I was arriving from a source city plus some other factor which they decline to specify for law enforcement reasons. Instead, it says only that I was selected for such treatment merely because I was arriving from a source city, period. The letter does not even pretend that there was anything to distinguish me from any other person who got off that airplane-other than my ethnic background.

As the Supreme Court has observed, discrimination may be demonstrated where the discrimination is very difficult to explain on other grounds. In this respect, Mr. McGowan's acknowledgment that the treatment to which I was subjected was based merely on a single factor which applied equally to every person on the plane (i.e., that I was arriving from a source city) constitutes an implicit acknowledgment of discrimination based on ethnicity. I wish this were not so, as I have managed to

live for 37 years without ever making such an accusation against anyone, let alone a federal law enforcement officer. Indeed, I would have been vastly relieved if the Customs Service had proffered some explanation-any explanation-that would reasonably suggest that the treatment to which I was subjected was not based on my ethnic background. However, given a full and fair opportunity to do so, the agency has declined to even pretend that there was anything other than my ethnic background that distinguished me from the other passengers on that airplane. I turn now to what may, perhaps, be the most distressing aspect of this entire affair. I am, of course, referring to the fact that while I-who proceeded past a drug detection dog without incident-was subjected to discriminatory and abusive treatment, a pale-complexioned, "Aryan" person who had been lunged at by a drug detection dog was permitted to proceed through the Customs process without being subjected to even some, much less all, of the humiliating treatment to which I was subjected. Of all the facts of this case, this by itself would be more than adequate to establish not only a case of ethnic discrimination, but a particularly stark and disturbing example of such. (On this point, the response I received from Mr. McGowan stated that the canine enforcement officer in the jetway indicated nothing unusual and had made no record of an alert on a passenger. This statement merely underscores the self-evident proposition that persons engaged in improper conduct generally do not keep written records of such improper conduct, and that law enforcement officers who perpetrate racial, anti-Semitic, or other illegal discrimination are not likely to make an official report of that fact.)

Mr. McGowan's letter also stated that, "You underwent extensive questioning and review of travel and other documents in order to verify that you were law abiding." This statement, perhaps more than any other in the letter, summarizes the problem with the current practices of this agency, and highlights the racial and ethnic bigotry that is being perpetrated. I was required to verify that I was law abiding. White, Gentile persons-even those who are lunged at by drug detection dogs-are not required to verify they are law abiding; they are presumed to be law abiding. Blacks, Jews, Hispanics, and other minority members are accorded no such presumption; we are required to prove that we are worthy of being allowed to re-enter the country, where no such proof is required of White, Gentile persons.

In fact, the current practices of the Customs Service are in violation of both the Fourth and Fifth Amendments of the Constitution. In *Montoya de Hernandez*, the Supreme Court held that Customs may perform routine searches in the absence of any objective evidentiary standard (e.g., reasonable suspicion or probable cause). *Montoya* was decided at a time when the routine Customs practice was to engage in brief baggage searches of all returning passengers; indeed, Justice Brennan's opinion in *Montoya* emphasized that such searches are "typically conducted on all incoming travelers" (emphasis added); he went on to note that reasonable suspicion is required for individual travelers to be "singled out" for further investigation. In upholding the authority to engage in routine searches, the Court almost certainly had in mind the routine searches of the time-searches that were brief and non-discretionary-searches that all arriving passengers were required to undergo.

The current practices of the Customs Service are markedly inconsistent with this standard. According to the agency itself, fewer than two percent of airline passengers who pass through Customs are subjected to baggage search. On the flight on which I arrived, the percentage was even lower-just two persons out of approximately 400 on a nearly-full Boeing 747. Under the Court's rulings-indeed, under the very definition of the word-a search is not routine if only two percent of passengers are affected. Searches conducted without reasonable suspicion that involve only two percent of passengers are precisely the type of arbitrary police behavior that the Court has held to be in violation of the Fourth Amendment.

The fact that members of racial and ethnic minority groups are overwhelmingly the victims of such unlawful tactics attests to the fact that Customs-not content with merely violating one provision of the Bill of Rights-is engaged in widespread violation of yet a second Constitutional guarantee-that the government is required to accord all persons equal protection of law. Instead, the Customs Service is permitting its officers to subject citizens of this country to discriminatory treatment based on racist, anti-Semitic, and other forms of bigotry-discriminatory treatment being perpetrated with the imprimatur of the United States government. The draft legislation I have outlined below seeks to remedy this shameful practice.

The proposed legislation which follows is based on my experience as a former military attorney. As a Navy prosecutor, I represented the government in several drug-related cases, and I was responsible for sending to prison individuals who were in violation of federal drug laws. I was very proud to wear the uniform of this country's Armed Forces, and I was very proud of the service I performed in helping rid the Navy of drug offenders. In my experience, the military has by far the most success-

ful anti-drug program in this country. One of the reasons the military's anti-drug program is so successful is that the program is designed to prevent-in practice as well as word-precisely the sort of arbitrary and discriminatory practices that are currently permitted by Customs Service policy. The people who lead our Armed Forces understand something that the Customs Service does not understand: namely, that to successfully wage any war, be it a war against an armed enemy, or a war on drugs, it is of vital importance to maintain not only public support for the war effort, but also the support of the very troops who are waging the war-and that such support will not be forthcoming if the war is perceived as no more than a pretext for perpetrating racist and ethnic discrimination.

Department of Defense policy (see DoD Directive 1010.1) provides for nonconsensual urinalysis testing for drug use under specifically-prescribed circumstances. The first of these is when the testing is part of an inspection program. Such urinalysis inspections fall into two sub-categories: unit sweeps (where all members of a unit, or all members of a defined sub-unit, are required to submit samples) and random samplings (generally derived by randomly drawing a number, and all unit members whose social security number ends in that digit are required to provide a sample). Both forms of inspection share the attribute of being non-discretionary in nature-the decision that a particular person will be required to provide a sample is based either on the draw of numbers, or on the person's membership in a unit or sub-unit. An analogous practice with respect to arriving passengers passing through Customs would be conducting baggage searches of all arriving passengers (or at the very least conducting searches based on a genuinely random selection process).

The second circumstance in which a nonconsensual urinalysis may be conducted is when there has been a search authorization issued based on a finding of probable cause when there is reasonable belief that the sample to be collected contains evidence of illegal drug use. This is an objective standard requiring specific, articulable facts indicating an illegal act has occurred.

These are the only circumstances in which the military uses nonconsensually obtained urine samples in a criminal proceeding to form the prosecution's case in chief; samples obtained in a manner not in conformity with these principles may be used in a criminal proceeding only for impeachment or rebuttal. (Urinalysis results obtained through neither a valid inspection, nor through probable cause, may be used for other non-criminal, administrative purposes-such as safety mishap investigations and fitness for duty determinations-clearly not analogous to Customs searches of arriving passengers.)

With this as background, I propose the following statute:

Section 1582 of Title 19 of the United States Code is amended to read as follows:

(a) The Secretary of the Treasury may prescribe regulations for the search of persons and baggage and is authorized to employ female inspectors for the examination and search of persons of their own sex; and all persons coming into the United States from foreign countries shall be liable to detention and search by authorized officers or agents of the Government under such regulations, subject to the following limitations.

(b)(1) The limitations described in subsections (b)(2) through (b)(4) of this subsection shall apply to persons arriving in the United States by way of any common carrier transportation, including, but not limited to, commercial passenger airline service and maritime passenger vessels.

(b)(2) Except as provided in subsections (b)(3) and (b)(4) of this section, and notwithstanding any other provision of law, the search and detention authority described in subsection (a) of this section shall be exercised only in a non-discretionary manner in which equivalent procedures relating to search, detention, and all other matters pertaining to the processing of persons described in subsection (b)(1) are applied uniformly to all persons arriving in the United States on the same airplane, maritime vessel, or other common carrier.

(b)(3) Disparate procedures of any sort, including, but not limited to, those relating to search, detention, or questioning, may be carried out only if there is reasonable suspicion to believe that an individual passenger is in violation of United States law. For purposes of this section, the phrase "disparate procedures" shall mean any procedures not applied uniformly to all persons arriving in the United States on the same airplane, maritime vessel, or other common carrier. The phrase "reasonable suspicion" shall mean a particularized and objective basis for suspecting the individual passenger of being in violation of United States law.

(b)(4) No person entering the United States may be held in detention in excess of six hours, or be subject to any search, inspection, or viewing, by any means or device, of such person's internal bodily cavities, genitalia, buttocks,

rectum, or, in the case of a female passenger, breasts, except when so authorized by court order.

(b)(5) No person entering the United States may be held in detention in excess of two hours without being afforded an opportunity, at Government expense, to make a telephone call to any person chosen by the detained passenger. The Government may monitor such telephone calls, but the substance of such communications will be admissible in any subsequent legal proceeding only as allowed by the Federal Rules of Evidence. A detained passenger shall be afforded an opportunity to make such a telephone call at least once for each additional two-hour increment in which the individual continues to be held in detention.

This statute would, if enacted, require the Customs Service to comply with the Constitution of the United States and the decisions of the Supreme Court. Subsection (b)(2) makes clear that searches may be conducted without any objective level of suspicion only when conducted under "routine" circumstances, and that such circumstances exist only when based on procedures applied uniformly and in a non-discretionary manner. Subsection (b)(3) makes clear, as the Supreme Court has held, that non-routine search procedures may be utilized only when there is reasonable suspicion that a violation of law has occurred. At present, Customs is performing suspicionless searches on fewer than two percent of arriving air passengers. Search procedures applied to only two percent of passengers are clearly not "routine." Although there do not appear to be published statistics available with respect to baggage searches, Customs' statistics indicate that during 1998, over 43 percent of passengers subject to some form of body search were Black or Hispanic. It is readily assumable that similar statistics are true for passengers subject to suspicionless baggage search and interrogation. When adding in Jews, Asians, Arab-Americans, and other minority groups, it is clear that well over 50 percent of persons subject to disparate procedures based on no objective suspicion are minority members.

The prevalence of such discrimination is not difficult to understand. Customs allows its officers to subject passengers to disparate treatment based on a subjective standard, i.e., one that is based on what the individual officer, in his or her own mind, without reference to any objective criteria, considers to be suspicious. If the officer, in the recesses of his mind, considers Blacks or Jews to be inherently suspicious, the officer is permitted, notwithstanding the stated "policy" to the contrary, to subject the passenger to discriminatory and abusive treatment-when, in fact, there is no objective indication that the particular passenger is any less likely to be a law abiding citizen than any of the White, Gentile passengers.

The study of psychology teaches us that human beings, by nature, tend to be suspicious of people who are different from themselves. If this is true, as there appears to be empirical reason to believe, then allowing the Customs Service to continue to subject people to disparate treatment based on the subjective biases of individual Customs officers is to ensure that this agency, with the imprimatur of the United States government, will continue to abuse and stigmatize citizens of this country based on race, religion, ethnicity, and other minority status. The proposed statute remedies this by requiring that the agency only subject persons to disparate, non-routine treatment when there is reasonable suspicion to believe that a person has done something illegal. In essence, it requires that the Customs Service accord Black people, Jewish people, Hispanic people, and other minority members the same presumption of innocence that is currently accorded White, Gentile people.

The proposed statute is a reasonable balance between legitimate law enforcement objectives and legitimate Constitutional rights of individual passengers. It allows Customs to continue to perform suspicionless searches, provided they are performed in a uniform, non-discriminatory manner. The agency has the flexibility to move resources, as it deems necessary, to perform such suspicionless searches of all passengers arriving from "high risk" areas, and it even has the flexibility to determine which specific plane or ship arrivals should be subject to more rigorous procedures. The only thing the agency will no longer have the flexibility to do is to subject people to racial, religious, and ethnic discrimination. No agency of the United States government should ever have flexibility of that sort.

Moreover, the proposed statute will almost certainly increase the amount of seized narcotics and other contraband. Last year, according to recent testimony by the Commissioner of the Customs Service, of the 1.35 million pounds of narcotics seized by Customs, only 5,000 pounds were seized from air passengers; that represents less than one-half of one percent. The reason for this abysmal record is easy to understand; it is the result of conducting operations based on racial and ethnic bigotry rather than on valid law enforcement methods. In fact, Customs is catching only an infinitesimal amount of the narcotics that are being smuggled into the country by air passengers-the vast majority of which is being smuggled by blonde-haired, blue-

eyed people who are well aware of Customs' discriminatory practices. Anyone who was in the Detroit airport on October 30, 1998, as I was, and witnessed such a person being lunged at by a drug detection dog and not being subjected to even the most minimal search procedures, to which minority members are routinely subjected, would have no difficulty understanding the reason for Customs' appalling record. By requiring all non-uniform searches to be based on reasonable suspicion, the proposed statute will force Customs to develop more effective detection and investigative techniques, thus increasing the amount of seized narcotics.

Finally, subsections (b)(4) and (b)(5) seek to remedy the most abusive of Customs' current practices by ensuring that no person is subject to search of their intimate body parts except when so authorized by a detached judicial officer, and by ensuring that most fundamental of American rights-that no person may be held incommunicado for an indefinitie period by the police.

In summary, the proposed statute precludes the Customs Service from subjecting persons to discriminatory treatment based on the subjective impulses of its officers-a system which has led to the current prevalence of racial and ethnic discrimination. Instead, it establishes the principle that non-uniform search procedures may be utilized only when an objective standard of suspicion has been met. The Armed Forces have long operated under such a principle, as discussed above; indeed, the military, which runs by far the most successful anti-drug program in the country, uses a "probable cause" standard for its discretionary drug testing intended for use in the prosecution's case in chief. The proposed statute imposes on Customs a lower objective standard, "reasonable suspicion." If our military leaders can run the Armed Forces of this country using an objective standard for their anti-drug program, there is no legitimate reason why a civilian agency like Customs cannot run its search program using an objective standard that accords to civilians the same rights that members of the military have-to be free of abusive, arbitrary, and discriminatory treatment.

In conclusion, I would like to thank the Chairman, the Ranking Minority Member, and the other Members for holding these very important hearings, and for allowing members of the public the opportunity to express their views. If there are any questions about this statement, I will be happy to provide any additional information or be of any further assistance to the Subcommittee.

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