

RECLAIMING THE SKIES FROM TERRORISM: THE AVIATION SECURITY IMPROVEMENT ACT OF 1990*

I. Introduction

On December 21, 1988, Pan Am Flight 103 was brutally blown out of the sky over Lockerbie, Scotland.¹ Two hundred fifty-nine innocent civilians, including one hundred ninety-two Americans plummeted six miles to their deaths in a thundering, screaming hail of metal, jet fuel and fire.² Terrorism aimed at the United States Government was soon determined to be the cause.³ Almost two years later, on November 16, 1990, President Bush signed the Aviation Security Improvement Act of 1990 (hereinafter the Aviation Security Act) into law.⁴ In his signing statement, President Bush noted, "[T]his Act reflects the work-

* Editors' Note: The author is a second-year law student who lost her husband of nine months when Flight 103 went down. She was involved in the lobby group, The Victims of Pan Am Flight 103 from its inception. Thus, many statements made in this Note are based on her own perceptions of events in which she was intimately involved.

¹ *Hearing Before the President's Commission on Aviation Security and Terrorism*, (Nov. 17, 1989) [hereinafter *Comm'n Hearing*] (statement of The Victims of Pan Am Flight 103).

² *Id.* In addition, eleven Lockerbie citizens were killed when the fuselage from the plane fell on their homes. This brought the death toll to 270. See also 136 CONG. REC. S16,538 (daily ed. Oct. 23, 1990) (statement of Sen. Lautenberg); William S. Sessions, Director of the FBI noted the resulting investigation of the bombing is the largest international terrorist investigation ever. U.S. Department of Justice: Federal Bureau of Investigation Press Release (Dec. 20, 1989); DAVID JOHNSTON, LOCKERBIE, THE REAL STORY (1989); STEVEN EMERSON & BRIAN DUFFY, THE FALL OF PAN AM 103 (1990); NEIL C. LIVINGSTON, INSIDE THE PLO, 216 (1990); Craig R. Whitney, *Jettliner Carrying 258 to U.S. Crashes in Scottish Town*, N.Y. TIMES, Dec. 22, 1988, at A1. In addition to the on-going international terrorist investigation, pursuant to Section 1(1) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, a Fatal Accident Inquiry was conducted in Scotland. Scottish law provides that an application be made for an Inquiry relating to deaths occurring in Scotland. The Inquiry took place from October 1, 1990 through February, 1991. It resulted in an extensive ninety-nine page report.

³ *Id.* Since the bombing of Flight 103, terrorist bombings have destroyed two other flights: the French UTA Flight 772, from Brazzaville, Congo to Paris in September, 1989, killing 171; and the November, 1989 downing of the Columbian Avianca Flight 203 from Bogota to Cali, Colombia, claiming 107 lives. REPORT OF THE PRESIDENT'S COMMISSION ON AVIATION SECURITY AND TERRORISM 27 (1990) [hereinafter *COMM'N REPORT*].

⁴ Aviation Security Improvement Act of 1990, Pub. L. No. 101-604, 104 Stat.

ings of the American democracy, an effort by private citizens, the Congress, and the executive branch to join in the common cause against international terrorism.”⁵ He also recognized that the Act is “a living memorial to those whose lives were so cruelly cut short by the terrorists [responsible] for bombing Pan Am 103.”⁶

The Aviation Security Act is an important step toward improving aviation security. But perhaps even more important, the Aviation Security Act represents the power every American citizen has to effect positive change. A group of average citizens from diverse backgrounds with but one thing in common—the loss of a loved one killed in the bombing—joined forces as The Victims of Pan Am Flight 103.⁷ The lobbying efforts of the group were largely responsible for the enactment of the Aviation Security Act. This Note will provide a critical look at the Aviation Security Act beginning with a broad discussion of the meaning of terrorism and its chilling effect on civil aviation. It will then trace the events that led up to the establishment of this key piece of legislation. These sections will focus on the roles played by The Victims of Pan Am Flight 103 and the President’s Commission on Aviation Security and Terrorism.⁸ The Note will then move to an analysis of the Act itself. Title I of the Act addresses aviation security and Title II deals primarily with the response of the Federal Government to victims of terrorism and their families.⁹

II. Terrorism as a Threat to Civil Aviation

An understanding of what constitutes terrorism is critical to analysis of the Aviation Security Act because terrorism, in its deadliest form, was the impetus for the establishment of this

3066 (1990) (codified in scattered sections of 49 U.S.C. and 22 U.S.C.) [hereinafter Aviation Security Act].

⁵ *Id.*

⁶ *Id.*

⁷ The Victims of Pan Am Flight 103 is a pro-active organization which seeks positive change in airport and airline security as well as a more aggressive stance on counterterrorism policies. The organization, based at 135 Algonquin Parkway, Whippany, NJ 07981, is led by Aphrodite Tsairis, Chair, and Bert Ammerman, President.

⁸ Exec. Order No. 12,686, 3 C.F.R. 232 (1989).

⁹ 136 CONG. REC. S16,541 (daily ed. Oct. 23, 1990) (statement of Sen. Lautenberg). As noted in Senator Lautenberg’s statement, the government response in the aftermath of the bombing of Pan Am Flight 103 was an area in which the United States Government failed miserably.

Act.¹⁰ Unfortunately, no one definition of terrorism has gained universal acceptance.¹¹ For most people the term "terrorism" is emotive and highly loaded politically.¹² The character of terrorism has mutated from isolated actions of individuals and small groups of fanatics, to full-scale, state-sponsored assaults.¹³ In July, 1985, in response to the increasing loss of American lives in terrorist attacks and repeated terrorist threats against Americans, President Reagan established a Cabinet-level Task Force on Combatting Terrorism.¹⁴ The Task Force, chaired by then Vice President Bush, was charged with reviewing and evaluating current United States policy and programs set up to deal with terrorism.¹⁵ In 1986, at the conclusion of the Task Force's review and evaluation, Vice President Bush issued a report on its findings and recommendations.¹⁶ The report noted that terrorism is a phenomenon easier to describe than define.¹⁷ It is the unlawful use or threat of violence against persons or property to further political or social objectives.¹⁸ Terrorism is generally used to in-

¹⁰ Aviation Security Act, *supra* note 4.

¹¹ United States Department of State, *Patterns of Global Terrorism: 1990*, Department of State Publication 9862, at iv (1991) [hereinafter *Patterns of Global Terrorism*].

¹² JOSEPH J. LAMBERT, *TERRORISM AND HOSTAGES IN INTERNATIONAL LAW* 13 (1990); *See also* Legislative Responses To Terrorism (Yonah Alexander & Allan Nanes eds., 1986); CLIVE WALKER, *THE PREVENTION OF TERRORISM IN BRITISH LAW* 4 (1986).

¹³ H.R. REP. NO. 845, 101st Cong., 2d Sess., pt. 1, at 15 (1990).

¹⁴ VICE PRESIDENT'S TASK FORCE ON COMBATTING TERRORISM, established July, 1985. *See* 131 CONG. REC. S9091-93 (daily ed. July 9, 1985) (statement of Sen. Byrd). *See also* Bernard Weinraub, *39 American Hostages Free After 17 Days; Go From Lebanon to Syria and Head Home*, N.Y. TIMES, July 1, 1985, at A1. Bernard Weinraub, *President Accuses 5 'Outlaw States' of World Terror*, N.Y. TIMES, July 9, 1985, at A1, A12.

¹⁵ *Id.*

¹⁶ The author wishes to comment that this report provides a thorough analysis of the policies that were in place in 1985 to deal with terrorism. Additionally, it provides a list of feasible and necessary recommendations to protect against terrorist attacks. Unfortunately, at the time of the bombing of Pan Am Flight 103 in December of 1988, the recommendations of Vice President Bush's Task Force were largely unimplemented. In effect, the report was just another stack of paper on the shelf in Washington. When questioned on April 3, 1989 about this lack of implementation by a group of five who lost loved ones on Pan Am Flight 103, President Bush could offer no explanation. (The author was one of the five individuals present.) *See* PUBLIC REPORT OF THE VICE PRESIDENT'S TASK FORCE ON COMBATTING TERRORISM, at 21 (1986); *see also* Nick Davies, *The Man Who Knew Too Much*, THE MAIL ON SUNDAY (London), July 16, 1989, at 50.

¹⁷ PUBLIC REPORT OF THE VICE PRESIDENT'S TASK FORCE ON COMBATTING TERRORISM at 1 (1986) [hereinafter TERRORISM TASK FORCE REPORT].

¹⁸ *Id.*

timidate or coerce a government, individuals or groups to modify their behavior or policies.¹⁹ In other words, terrorism is premeditated, politically-motivated violence perpetrated against non-combatant targets by subnational or clandestine agents, usually intended to influence an audience.²⁰ Sadly, the victims of terrorism seldom have a role in either causing or affecting terrorists' grievances as was evidenced in the bombing of Pan Am Flight 103.²¹

While the destruction of Pan Am 103 shocked the nation and the world with its cold brutality, it was not the first, nor the last such tragedy.²² Between 1949 and 1990, there were ninety-five documented explosions aboard aircrafts, with a combined death toll of over 2100 lives.²³ Within recent years, these attacks have increased in fury and tragedy. Attacks on passenger aircraft from 1985 to 1990 caused 1030 deaths and 113 injuries.²⁴ State sponsorship of terrorism remains one of the most important factors in fostering international terrorism.²⁵ Unfortunately, the United States (indirectly, its citizens) remains the most popular target of international terrorists.²⁶ Considering that an estimated one billion passengers board civilian aircraft each year, the challenge to the guardians of international aviation is vast.²⁷

¹⁹ *Id.*

²⁰ *Patterns of Global Terrorism*, *supra* note 11; See 22 U.S.C. § 2656f(d) (1987).

²¹ TERRORISM TASK FORCE REPORT, *supra* note 17, at 1.

²² H.R. REP. NO. 845, 101st Cong., 2d Sess., pt. 1, at 15 (1990); For a chronology of explosions aboard aircraft from 1983-87 see *Foreign Airport Security: Hearing, Before the Committee on Foreign Affairs*, 101st Cong., 1st Sess. 197 (1989) (Appendix 22) [hereinafter *Foreign Airport Security Hearing*].

²³ *Id.*; See also *The Aviation Security Improvement Act of 1990: Joint Hearing and Markup on H.R. 5200 and H.R. 5732: Hearing Before the Committee on Foreign Affairs and Subcommittee on Aviation*, 101st Cong., 2d Sess. (1990) [hereinafter *Joint Hearing and Markup on H.R. 5200 and H.R. 5732*] (statement of the Hon. James L. Oberstar, Chairman, Subcommittee on Aviation, Committee on Public Works and Transportation).

²⁴ *Id.*; see also Memorandum from Robert K. Boyer, Senior Staff Consultant and Toni G. Verstandig, Staff Consultant to the Honorable Dante Fascell, Committee Chair, Committee on Foreign Affairs (Mar. 8, 1990) (on file at the Seton Hall School of Law Legislative Bureau).

²⁵ *Patterns of Global Terrorism*, *supra* note 11, at 32. The United States Government currently lists Cuba, Iran, Iraq, Libya, North Korea, and Syria as state supporters of terrorism. *Id.*

²⁶ *Id.*

²⁷ *Joint Hearing and Markup on H.R. 5200 and H.R. 5732*, *supra* note 23 (statement of the Hon. James L. Oberstar, Chairman, Subcommittee on Aviation, Committee on Public Works and Transportation).

Terrorist tactics against civil aviation have evolved through the years.²⁸ Up until the early 1980's, hijacking was the principal threat to civil aviation.²⁹ Prevention of hijackings was largely dependent on the detection of weapons being carried on board planes.³⁰ In late 1982, the nature of the threat changed to one of sabotage devices.³¹ Sophisticated, plastic bombs replaced hijacking as the main threat to civil aviation.³² Plastic explosives are extremely effective in small quantities, and are almost impossible to detect under the current aviation security system.³³ Therefore, every airport, passenger, bag, and cargo container presents an opportunity for a terrorist to introduce a small amount of plastic explosive which is powerful enough to bring

²⁸ H.R. REP. NO. 845, 101st Cong., 2d Sess., pt. 1, at 15 (1990); *See also Foreign Airport Security Hearing, supra* note 22, at 9 (testimony of L. Paul Bremer III, Former Ambassador at Large for Counter-Terrorism); PAUL WILKINSON, RESEARCH INSTITUTE FOR THE STUDY OF CONFLICT AND TERRORISM, *THE LESSONS OF LOCKERBIE 1* (1989) [hereinafter WILKINSON, *THE LESSONS OF LOCKERBIE*].

²⁹ *The Bombing of Pan Am Flight 103: A Critical Look At American Aviation Security: Hearings Before the Government Activities and Transportation Subcommittee Of The Committee On Government Operations House Of Representatives*, 101st Cong., 1st Sess. (1989) [hereinafter *Hearings Before the Government Activities and Transportation Subcommittee*] (statement of Billie H. Vincent, former Director of the Federal Aviation Administration (FAA) Office of Civil Aviation Security). For a complete list of acts of sabotage from 1949 through 1989 *see* COMM'N REPORT, *supra* note 3, at 160.

³⁰ *Id.*

³¹ *Id.* *See also* Laura Parker and David B. Ottaway, *The Weak Link in Airline Security, Bomb Detection Dependent on Antiquated Technology*, THE WASHINGTON POST, Apr. 2, 1989, at A1, A25.

³² *Hearings Before the Government Activities and Transportation Subcommittee, supra* note 29 (statement of Billie H. Vincent). *See also* 136 CONG. REC. S16,555 (daily ed. Oct. 23, 1990) (statement by Sen. Lautenberg). Since at least the early 1980's terrorists have used plastic explosives as their preferred bomb material. Large quantities of semtex, a particularly powerful plastic explosive compound, are available to terrorists. Semtex is odorless and hard to detect. From the bombers' perspective the main attractions of a Semtex bomb are its enormous destructive power, and the fact that it is so malleable and easy to disguise from normal security checks. It can be molded and disguised as almost any innocent-looking object, or can be shaped to fit easily into the lining of a suitcase or handbag, or into a standard piece of personal electronic equipment. The bomb which downed Pan Am 103 was made of Semtex. It was only the size of a soft ball, but powerful enough to destroy a Boeing 747, kill 270 innocent people from 21 countries, devastate an entire community in Scotland and destroy countless families. The bomb was concealed in a radio cassette player and was designed to defeat the normal aviation security measures operating in major international airports. Isaac Yeffet, *No Airport in the U.S. is Safe*, LIFE, Mar. 1989, at 130. For a further discussion of Semtex, *see* WILKINSON, *THE LESSONS OF LOCKERBIE, supra* note 28, at 4.

³³ H.R. REP. NO. 845, 101st Cong., 2d Sess., pt. 1, at 15 (1990).

down a Boeing 747 and is effectively invisible to the security equipment currently in use in airports.³⁴ Although this transformation of the primary terrorist threat was recognized by the Federal Aviation Administration (hereinafter FAA) (the linchpin of American aviation security), the agency failed to address the change.³⁵ The security program in effect when Flight 103 exploded over Lockerbie in 1988 was originally introduced more than a decade earlier in January, 1973.³⁶ This history of failure to address the progressing threats against civil aviation is what makes implementation of the Aviation Security Act so critical.

III. *The Victims of Pan Am Flight 103*

In the wake of the tragedy, relatives of those killed in the bombing of Pan Am Flight 103 organized and focused their energies toward uncovering the truth behind the bombing.³⁷ Their efforts propelled them into the frenzied role of amateur lobbyists striving to effect changes in the international aviation security system in order to insure that a similar crime, with its attendant grief and loss, would not be inflicted on other airline passengers and their families in the future.³⁸ Families devastated by tragedy often channel their grief into demands for positive change,³⁹ but

³⁴ *Joint Hearing and Markup on H.R. 5200 and H.R. 5732*, *supra* note 23 (statement of Hon. James L. Oberstar, Chairman, Subcommittee on Aviation, Committee on Public Works and Transportation).

³⁵ *Hearings Before the Government Activities and Transportation Subcommittee*, *supra* note 29 (statement of Billie H. Vincent, former Director of the Federal Aviation Administration (FAA) Office of Civil Aviation Security); *see also* H.R. REP. NO. 845, 101st Cong., 2d Sess., pt. 1, at 15 (1990).

³⁶ Laura Parker & David B. Ottaway, *The Weak Link In Airline Security, Bomb Detection Dependent on Antiquated Technology*, THE WASHINGTON POST, Apr. 2, 1989, at A1, A25. Fortunately, there is a trend toward multinational cooperation on counterterrorism issues. Following the terrorist bombings of Pan Am Flight 103 and UTA 772, the United Nations directed the International Civil Aviation Organization (ICAO), the U.N. body which recommends standards and practices for aviation security, to develop a method of "marking" plastic explosives for preblast detection. Substantial work has been completed by ICAO members on a convention requiring all manufacturers of plastic explosives to add chemicals to the explosives that would make them easier to detect. An agreement, called the Convention on the Marking of Plastic Explosives for the Purpose of Detection, was signed in early 1991. *Patterns of Global Terrorism*, *supra* note 11, at 2.

³⁷ *See* Melissa Ludtke, *Keeping Lockerbie Alive*, TIME, Nov. 11, 1989, at 33.

³⁸ H.R. REP. NO. 845, 101st Cong., 2d Sess., pt. 1, at 14 (1990).

³⁹ Lori Sharn, *Families Put Off Grieving to Seek Change*, USA TODAY, Apr. 3, 1989, at 3A. Personal losses often prompt the formation of advocacy groups including the founding of Mother's Against Drunk Drivers by Candy Lightener after her thirteen

the relatives in this instance banded together in a way unlike any other group of people affected by terrorism.⁴⁰ Daniel Pipes, a Philadelphia-based foreign policy analyst, likened the group to an organization that was formed in 1979 by relatives of the fifty-two American hostages in Iran.⁴¹ Unlike that group however—which consisted almost entirely of people with close ties to the State Department—The Victims of Pan Am Flight 103 is made up of average citizens with little or no first-hand experience in the public arena.⁴² “What they bring is a moral force,” said Pipes, “and I am impressed with how sophisticated and organized they are.”⁴³

In the immediate aftermath of the bombing, the primary concern of the relatives was to facilitate the identification and return of their loved ones’ remains.⁴⁴ At this juncture, the relatives were appalled by how unresponsive the State Department was to their requests.⁴⁵ The State Department is the lead agency responsible for coordination of the federal response to terrorist incidents against Americans abroad.⁴⁶ Unfortunately, however, the State Department’s only response to Pan Am Flight 103 was abdication of its authority to the airline.⁴⁷ Confirmation of who was on the plane, notification of identified remains and the return of bodies were crudely handled by Pan Am, rather than in a professional manner by the State Department.⁴⁸

year-old daughter was killed in 1980; also John and Reve Walsh turned their son Adam’s 1981 kidnap-murder into a campaign to find missing children. *Id.*

⁴⁰ Peter Marks, *Flight 103’s Bitter Legacy*, THE NEWSDAY MAGAZINE (New York), Nov. 12, 1989, at 13 [hereinafter *Flight 103’s Bitter Legacy*].

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Aviation Security, Hearing to Examine Aviation Security and Issues Related to Terrorism in Light of Terrorist Bombing of Pan American World Airways Flight 103 from Frankfurt, West Germany to the U.S., Destroyed Over Scotland on December 21, 1988: Hearing Before the Senate Subcommittee on Aviation, Senate Commerce, Science and Transportation, 101st Cong., 1st Sess. (1989)* (statement of The Victims of Pan Am Flight 103).

⁴⁵ *Id.*

⁴⁶ Memorandum from the United States Department of State, *The Role of the Bureau of Consular Affairs Within the Department of State* (1989) (on file at the Seton Hall University School of Law Legislative Bureau).

⁴⁷ *Comm’n Hearing, supra* note 1 (statement of The Victims of Pan Am Flight 103).

⁴⁸ *Id.* The bodies of the victims were returned to the United States by Pan Am. Families were instructed to pick-up their “cargo” (the remains of their loved ones) at the livestock cargo terminal at Kennedy Airport. No State Department representative was present to provide assistance or answer questions. *Aviation Security: Special*

Once the victims' remains were returned, the families had other questions ranging from the return of personal effects, to how the bomb was placed on the plane. All inquiries to the State Department were met with either silence or rude and abusive treatment. Frustrated and desperate for information, relatives who read about one another in the newspapers began contacting each other to see if everyone was receiving the same despicable treatment.⁴⁹ The story was always the same. Although Pan Am Flight 103 was blown up as an attack against the United States, the State Department failed to see how the victims' relatives' inquiries warranted even cursory explanations or assistance.

On January 29, 1989, John Cardinal O'Connor held a mass at St. Patrick's Cathedral in New York in memory of those killed in the bombing of Pan Am Flight 103.⁵⁰ After the mass, a group of relatives distributed flyers inquiring whether family members were interested in forming a group. The hope was that collectively the relatives would be more effective in evoking some response from the government than they had been individually. Many relatives were anxious to do something that would provide answers. Phone numbers and addresses were exchanged, and on February 6, 1989 more than thirty relatives held a news conference at the Grand Hyatt Hotel in Manhattan to express their frustration, disappointment and anger with the United States Government's response to the disaster.⁵¹ The relatives de-

Hearing Before a Senate Subcommittee of the Committee on Appropriations, 101st Cong., 1st Sess., 71 (1989) (testimony of Ed O'Connor, representative of The Victims of Pan Am Flight 103); see also Melissa Ludtke, *Keeping Lockerbie Alive*, TIME, Nov. 11, 1989, at 33. The families soon concluded that the reason why the State Department handled the aftermath of the bombing so poorly was because there was no effective crisis management system in place to deal with disasters involving a large number of Americans abroad.

⁴⁹ For example, Kathy Daniels, whose husband William was killed in the bombing, called to inquire about her husband's wedding ring. She was told by a State Department representative, "Face the fact that your husband is dead, lady, and get on with your life."

⁵⁰ See *Transcript of Service* (on file at Seton Hall University School of Law Legislative Bureau Office).

⁵¹ See *U.S. and Pan Am Assailed*, N.Y. TIMES, Feb. 7, 1989, at A3; Patricia Cappon, *Angry Kin of Pan Am Victims Assail U.S. on Failure to Warn of Terror Threat*, STAR-LEDGER (Newark), Feb. 7, 1989, at 8; Mike Santangelo, *Pan Am & Feds Rapped*, DAILY NEWS (New York), Feb. 7, 1989, at 15; Thomas Moran, *Kin of Flight 103 Victims Assail Secrecy*, THE RECORD (Hackensack), Feb. 7, 1989, at A3; Michael McKeon, *Flight 103 Relatives Demand "Truth" from Officials*, THE TIMES UNION, Feb. 7, 1989, Section B.

manded an independent investigation, believing that only an independent investigation would reveal why government employees, but not civilians, were warned of a terrorist threat against Pan Am; why the State Department failed to mobilize in response to a crisis involving a great number of Americans abroad;⁵² how a bomb with the capacity to blow up a 747 was able to slip through the system undetected; and what changes needed to be implemented to prevent the horror of Flight 103 from recurring.⁵³

Two weeks later, on February 19, 1989, over 100 relatives gathered in Hackensack, New Jersey to formally organize and set objectives.⁵⁴ The relatives decided to lobby under the name of The Victims of Pan Am Flight 103 (hereinafter the organization). The organization agreed that the purpose of its formation was to support and assist relatives of the innocent victims of Pan Am Flight 103.⁵⁵ In addition, the organization would seek positive changes in order to prevent the recurrence of this senseless tragedy. To this end, the organization agreed to focus on four spe-

⁵² The U.S. Department of State advises the President in the formulation and execution of foreign policy. The Department determines and analyzes the facts relating to American overseas interests, makes recommendations on policy and future action, and takes the necessary steps to carry out established policy. The Department also negotiates treaties and agreements with foreign nations. The Department is divided into 19 bureaus, each headed by an Assistant Secretary of State. The Bureau of Consular Affairs is a functional bureau which administers and enforces the provisions of the immigration and nationality laws as they concern the Department and the Foreign Service. The Consular officers abroad advise and help American citizens, especially in crises. When an American dies abroad, the Bureau must locate and inform the next-of-kin. Memorandum from the United States Department of State. *The Role of the Bureau of Consular Affairs Within The Department of State* (1989); see also TERRORISM TASK FORCE REPORT, *supra* note 17, at 31. This was just one of the responsibilities the Bureau abdicated to Pan Am in the wake of the bombing.

⁵³ Mimi Hall, Lori Sharn, *Getting on is Prolonged by Questions*, USA TODAY, Dec. 21, 1989, at 1.

⁵⁴ A core group of about fifteen relatives gathered at the author's house in Hasbrouck Heights, New Jersey on the morning of February 19 to plan a strategy of how best to proceed with the initial meeting. See, Darlene E. Superville, *Crash Victims' Kin Going on the Warpath*, THE HUDSON DISPATCH (Jersey City), Feb. 20, 1989, at 1; Peter Sampson, *Sharing Grief and Sense of Purpose*, THE RECORD (Hackensack), Feb. 20, 1989, at 1; Bill Gannon, *Kin Demand Action on Pan Am Crash*, STAR-LEDGER (Newark), Feb. 20, 1989, at 1.

⁵⁵ *Victims of Pan Am Flight 103 Newsletter*, vol. 1, issue 1, March, 1989, at 1 (available through The Victims of Pan Am Flight 103, 135 Algonquin Parkway, Whippany, NJ 07981).

cific objectives: First, to provide support, assistance and information to family members; second, to lobby for an independent investigation regarding the events surrounding the bombing and the actions and policies of the Federal Aviation Administration, Pan Am, the State Department, and other involved parties; third, to identify and provide specific recommendations for near-term and long-term improvements in airport and airline security; and finally, to demand the United States Government implement a more aggressive stance toward terrorism to insure that there be no safe haven for terrorists anywhere in the world.⁵⁶ At this time only two things were clear to the organization: There were many unanswered questions about the events which led to the massacre of 270 innocent individuals, and the current state of civil aviation security was inadequate at best.⁵⁷

The organization formed committees and began planning strategies.⁵⁸ Members began contacting their respective Congressional Representatives to arrange meetings to gain support for the organization's objectives. Senators Bradley (D-N.J.) and Lautenberg (D-N.J.) were among the first Congressional Representatives to meet with family members to discuss their concerns and advise them on how to proceed through the system. Both Senators affirmed their commitment to fully investigate the disaster and work towards creating a safer civil aviation industry in the United States and abroad.⁵⁹ The organization's next step was to

⁵⁶ *Id.* This objective was consistent with a stand taken by President Reagan on July 8, 1985 in an address to the American Bar Association regarding terrorism. In the words of President Reagan:

We must act against the criminal menace of terrorism with the full weight of the law—both domestic and international. . . We can act together as free people who wish not to see our citizens kidnapped, or shot, or blown out of the skies. . . There can be no place on Earth left for these monsters to rest, or train, or practice their cruel and deadly skills. We must act together, or unilaterally if necessary to ensure that terrorists have no sanctuary—anywhere.

Bernard Weinraub, *President Accuses 5 'Outlaw States' of World Terror*, N.Y. TIMES, July 9, 1985, at A1. Sadly, for the innocent citizens blown out of the sky in the bombing of Pan Am Flight 103 (three and half years after this address) these powerful words had merely been rhetoric which were never acted on by American leaders.

⁵⁷ See Darlene E. Superville, *Crash Victims' Kin Going on the Warpath*, THE HUDSON DISPATCH (Jersey City), Feb. 20, 1989, at 1; Peter Sampson, *Sharing Grief and Sense of Purpose*, THE RECORD (Hackensack), Feb. 20, 1989, at 1; Bill Gannon, *Kin Demand Action on Pan Am Crash*, STAR-LEDGER (Newark), Feb. 20, 1989, at 1.

⁵⁸ *Id.*

⁵⁹ See Letters from Senator Bill Bradley to Wendy Giebler, Former Board Mem-

wage a massive letter campaign to alert the House and Senate of the organization's existence and to begin the painstaking push for an independent investigation. The letter campaign focused on the following Senate and House Sub-Committees: House Sub-Committee on Aviation, Congressman James L. Oberstar (D-Minn.), Chairman; House Committee on Foreign Affairs, Congressman Dante Fascell (D-Fla.), Chairman; Senate Sub-Committee on Transportation Appropriations, Senator Frank Lautenberg, Chairman.⁶⁰

On March 14, 1989, the organization testified before the Senate Sub-Committee on Transportation Appropriations.⁶¹ In its testimony, the organization identified major problem areas in the security system as it existed at the time of, and in the wake of the bombing.⁶² Specifically, it raised the issue of notifying passengers and airline personnel of what are termed "high-level" security threats.⁶³ An extremely large number of anonymous threats are made against airlines and airports each year.⁶⁴ Yet, intelligence efforts rarely produce solid information about upcoming terrorist attacks directed specifically at civil aviation targets.⁶⁵ For example, in 1988 the FAA only issued twenty-seven security bulletins.⁶⁶ From that number, at least six of the FAA security bulletins issued between October 26 and December 19, 1988 contained information that might have been linked to Pan Am Flight 103.⁶⁷ Based on statistics like these, the organiza-

ber of The Victims of Pan Am Flight 103 (March 2, 1989) and Senator Frank Lautenberg to Wendy Giebler, (March 10, 1989) [hereinafter Senator Lautenberg letter] (on file with the Seton Hall University School of Law Legislative Bureau). Senator Lautenberg has remained one of the organization's staunchest supporters. His efforts were extremely instrumental in the creation of the Presidential Commission and the ultimate passage of The Aviation Security Improvement Act of 1990.

⁶⁰ Copies of these letters are on file at the Seton Hall School of Law Legislative Bureau.

⁶¹ *Aviation Security: Special Hearing Before a Senate Subcommittee of the Committee on Appropriations*, 101st Cong., 1st Sess., at 65 (1989) [hereinafter *Aviation Security Special Hearing*] (statement of The Victims of Pan Am Flight 103). See also 136 CONG. REC. S16,538 (daily ed. Oct. 23, 1990) (statement of Sen. Lautenberg); Letter from Senator Frank Lautenberg, *supra* note 59.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ COMM'N REPORT, *supra* note 3, at 86.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* See also *Kin of Pan Am Victims Call Terror Alert 'Too Late'*, STAR-LEDGER (Newark), Mar. 20, 1989, at 5.

tion adopted the position that individuals have a right to access this threat information prior to boarding flights in order to make informed decisions about whether or not to fly.⁶⁸ The organization adhered to a simple philosophy, "If you can't protect us, then you have to warn us!"

The organization also stressed the need for bomb detection equipment and, more importantly, *appropriately trained* security personnel to monitor the entire system.⁶⁹ The human element is critical to an effective aviation security system.⁷⁰ Although technology and the equipment it produces plays an important role in the security system, a truly first-rate security system can only be achieved with quality people who are properly motivated, continuously trained and adequately screened prior to being hired.⁷¹ Concern for the quality of intelligence-gathering by the respective intelligence agencies was also raised.⁷² Typically, the first line of defense against terrorist attacks is the collection of accurate and timely intelligence concerning the intentions, capabilities and actions of terrorists *before* they reach airports.⁷³ The organization noted its concern that the various agencies involved, including the Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI) and the Intelligence Division of the FAA, fail to work cohesively in a proactive rather than reactive manner.⁷⁴

Next, the organization raised the issue of compensation.⁷⁵ Typically, American citizens are compensated for international aviation disasters pursuant to the Warsaw Convention of 1929.⁷⁶

⁶⁸ *Aviation Security Special Hearing, supra* note 61, at 65 (statement of The Victims of Pan Am Flight 103).

⁶⁹ *Id.* Investigations after the bombing revealed German-speaking security personnel monitoring Pan Am's security in Frankfurt were trained with English video tapes and supplementary materials written in English.

⁷⁰ *Joint Hearing and Markup on H.R. 5200 and H.R. 5732, supra* note 23 (statement of Ann McLaughlin, Chair of the President's Commission on Aviation Security and Terrorism).

⁷¹ *Id.*

⁷² *Aviation Security Special Hearing, supra* note 61 (statement of The Victims of Pan Am Flight 103).

⁷³ COMM'N REPORT, *supra* note 3, at 69.

⁷⁴ *Aviation Security Special Hearing, supra* note 61 (statement of The Victims of Pan Am Flight 103).

⁷⁵ *Id.*

⁷⁶ Convention for the Unification of Certain Rules Relating to International Transportation by Air, opened for signature Oct. 12, 1929, 49 Stat. 3000, T.S. No.

The Warsaw Convention is an international treaty that governs carrier liability for commercial international air travel.⁷⁷ The treaty creates a presumption of airline carrier liability. The liability, however, is limited to only \$75,000 per victim, absent a showing of willful misconduct.⁷⁸ The organization rejects the treaty primarily because it is outdated. Furthermore, efforts to update it have not proposed adequate victims' compensation.⁷⁹ The treaty was designed in 1929 to prevent the fledgling airline industry from being wiped out by lawsuits at a time when air travel was hazardous simply because it was so new. In 1992, these concerns are no longer relevant. The technology and economics of aviation have changed in ways which were unforeseeable to the treaty's authors.⁸⁰ Nevertheless, the Convention's signatories still struggle through their domestic courts to follow the treaty's rules of liability.⁸¹

Finally, after calling for immediate short-term and comprehensive long-term airline security reforms, the organization accused the State Department of being insensitive to their plight and concerns.⁸² The organization stressed the need for procedures to ensure that families of victims receive prompt, humane and courteous treatment following overseas disasters.⁸³ At a

876, 137 L.N.T.S. 11, reprinted following 49 U.S.C. app. § 1502 (1988); The Warsaw Convention is an international treaty that governs carrier liability for commercial international air travel. COMM'N REPORT, *supra* note 3, at 105. See also LAWRENCE B. GOLDBIRSCHE, THE WARSAW CONVENTION ANNOTATED: A LEGAL HANDBOOK (1988). The United States has been a party to the Warsaw Convention since 1934.

⁷⁷ *Id.*

⁷⁸ *Id.* The original treaty provided for \$10,000 per victim, however, under the Montreal Agreement of 1966 for flights to and from the U.S., the carriers agreed to accept an increase in liability of up to \$75,000. For a discussion on the Warsaw Convention and carrier liability issues, see Roberta L. Wilensky, Comment, *Flying the Unfriendly Skies: The Liability of Airlines Under the Warsaw Convention for Injuries Due to Terrorism*, 8 NW. J. INT'L L. & BUS. 249 (1987).

⁷⁹ *Id.* A variety of protocols have been proposed to revise the Warsaw Convention, but the U.S. has ratified none of them. See H.L. Silets, *Something Special in the Air and on the Ground: The Potential for Unlimited Liability of International Air Carriers for Terrorist Attacks Under the Warsaw Convention and Its Revisions*, 53 J. AIR L. & COM. 321 (1987).

⁸⁰ GOLDBIRSCHE, *supra* note 76.

⁸¹ *Id.* The limits on carrier liability today operate as a disincentive for airlines to invest in security. Pursuant to the terms of the treaty it would not be cost effective to invest more money in security because the potential liability is nominal.

⁸² Robert Cohen, *Foreign Airlines Must Submit Anti-Terror Plans for Approval*, STAR-LEDGER (Newark), Mar. 15, 1989, at 1.

⁸³ *Aviation Security Special Hearing*, *supra* note 61 (statement of The Victims of Pan

minimum, the organization emphasized that the State Department must take a leadership role in notifying the next-of-kin of a loved one's death rather than leaving it to the airline.⁸⁴

The organization premised its lobbying efforts on the notion that unless the truth behind the bombing of Pan Am Flight 103 was fully uncovered, no progress could be made to keep history from repeating itself.⁸⁵ The lessons of Lockerbie needed to be learned and put to use. This view was reinforced by Sen. Lautenberg who introduced Senate Resolution 86 on March 17, 1989, calling on the President to establish an independent commission to investigate the events surrounding the Flight 103 disaster.⁸⁶

Sen. Lautenberg promoted this resolution by stressing that long-term changes could not be made in civil aviation anti-terrorism policies until the bombing of Pan Am Flight 103—one of the worst terrorist attacks in airline history—was carefully examined.⁸⁷ He emphasized that an independent inquiry was necessary to get a thorough review of “what went wrong.”⁸⁸ Sen. Lautenberg insisted that government agencies (i.e., the FAA and State Department) should not investigate their own actions, but should be scrutinized by those outside the executive branch.⁸⁹ Sens. Lautenberg, D’Amato (R-N.Y.), Dodd (D-Conn.) and Kennedy (D-Mass.) thereafter sent a “Dear Colleague” letter to the members of the Senate on May 19, 1989 urging support of an

Am Flight 103); *see also* *Joint Hearing and Markup on H.R. 5200 and H.R. 5732*, *supra* note 23.

⁸⁴ *Id.* *See also* 135 CONG. REC. S10,145 (daily ed. Aug. 4, 1989).

⁸⁵ *See* 135 CONG. REC. E820 (daily ed. Mar. 15, 1989) (statement of The Victims of Pan Am Flight 103 submitted for the record by the Hon. Michael R. McNulty of NY).

⁸⁶ S. Res. 86, 101st Cong., 1st Sess. (1989). *See also* 136 CONG. REC. S16,539 (daily ed. Oct. 23, 1990) (statement of Sen. Lautenberg); Letter from Sens. Lautenberg, Hollings, and Ford to President Bush (Mar. 17, 1989) (on file with Seton Hall University School of Law Legislative Bureau). The letter stressed the need for an independent investigation and requested the President's appointment of a special commission.

⁸⁷ Maureen Castellano, *Bitter Tears for Bomb Victims*, NORTH JERSEY HERALD & NEWS, Apr. 4, 1989, at A1, A5. For a complete list of Acts of Aviation Sabotage from 1949 through 1989 *see* COMM'N REPORT, *supra* note 3, at 160.

⁸⁸ Robert Cohen, *U.S. to Bolster the Fight on Airline Terror*, STAR-LEDGER (Newark), Apr. 4, 1989, at 1, 12.

⁸⁹ *Id.*

independent investigation.⁹⁰ Unfortunately, the Administration and leadership of the Senate minority blocked efforts to move the resolution forward⁹¹ despite the fact that each day brought more disturbing news about the events surrounding the bombing. Each new disclosure reinforced the organization's commitment to security reform in the airline industry.

For example, a report revealed that Pan Am had been fully aware of its security flaws since at least 1986, when it hired an Israeli security firm, K.P.I., Ltd., to review Pan Am's security procedures in a public relations effort to show the public its commitment to passenger safety.⁹² At the conclusion of its examination in 1986, K.P.I. submitted a report to Pan Am World Services, Inc. titled *A Recommended Security Program*.⁹³ The executive summary of the report noted that "under the present security system, Pan Am is highly vulnerable to terrorist attack. The fact that no major disaster has occurred to date is merely providential."⁹⁴ K.P.I. warned that Pan Am conducted insufficient baggage checks, did a poor job of questioning passengers boarding planes and was slow to react to warnings of possible terrorist activity.⁹⁵ The report contained numerous recommendations which were left largely unimplemented.⁹⁶ The only explanation given for failure to implement the recommendations presented in the foreboding report was "FAA procedure was being followed."⁹⁷

The information which continued to surface emphasized that a massive breakdown in system-wide communications and extensive flaws in security allowed the bombing of 103 to occur. In

⁹⁰ A letter written directly to Senator George Mitchell (D-Me.), Senate Majority Leader, and Senator Robert Dole (R-Kan.), Senate Minority Leader was attached to the "Dear Colleague" letter. In this letter, it was noted that some members of the Senate were supporting legislation to form a special commission with Presidential, Congressional and private appointees to investigate the bombing. (Letter on file with the Seton Hall University School of Law Legislative Bureau).

⁹¹ S. Res. 86, 101st. Cong., 1st Sess. (1989) See also 136 CONG. REC. S16,539 (daily ed. Oct. 23, 1990) (statement of Sen. Lautenberg).

⁹² *Pan Am Security Faulted*, THE RECORD (Hackensack), Mar. 21, 1989, at A8.

⁹³ K.P.I. Ltd., *A Recommended Security Program for Pan Am World Airways*, (1986). See also COMM'N REPORT, *supra* note 3, at 4.

⁹⁴ *Id.* at Executive Summary.

⁹⁵ *Id.*

⁹⁶ *Hearing Before the Government Activities and Transportation Subcommittee, supra* note 29 (statement of Isaac Yeffet, Former Director General of Security for El Al Airlines). In 1986 Yeffet was part of the team commissioned by Pan Am.

⁹⁷ *Id.*

mid-March, 1989, American and British governments admitted to having knowledge that terrorists were planning to blow up another airliner with a bomb-rigged radio cassette player seven weeks before the bombing of Flight 103.⁹⁸ The British Transport Department alleged it warned airports and airlines of the threat of terrorist attacks and distributed a photo of the same type of radio-cassette player used to conceal the bomb which destroyed Pan Am Flight 103 on November 22, 1988 and again on December 19.⁹⁹ Pan Am however, claimed they never received the November 22 warning and did not receive the December 19 memo from the British Transport Department until January 17, 1989 — almost one month after the destruction of Flight 103.¹⁰⁰ A British Transport Department spokesman ultimately admitted that the letter warning about the bomb dated December 19, 1988 (two days before the bombing of 103) was not sent to the airlines until early January, 1989 because color photographs of a suspect radio cassette recorder had to be prepared.¹⁰¹

Amid the continual influx of devastating disclosures, the organization gathered in Washington on April 3, 1989 to hold a vigil to honor their dead.¹⁰² (This day was chosen because it was the 103rd day after the bombing.) The day began with a meeting with President Bush.¹⁰³ This meeting was especially important to the families because it was a long delayed gesture of official concern.¹⁰⁴ A five member delegation attended the meeting.¹⁰⁵ The

⁹⁸ *Terrorist Details Admitted*, ASBURY PARK PRESS, Mar. 17, 1989, at 1; Thomas Moran, *Pan Am Had Early Warning of Bomb*, THE RECORD (Hackensack), Mar. 17, 1989, at A1; James Dao and Ruth Landa, *2 Bomb-Plot Warnings*, DAILY NEWS (New York), Mar. 17, 1989, at 15.

⁹⁹ *Relatives Denounce Pan Am's Inaction*, ASBURY PARK PRESS, Mar. 17, 1989, at A13.

¹⁰⁰ *Id.* See also COMM'N REPORT, *supra* note 3, at 6.

¹⁰¹ *FAA Ripped on Untimely, Inaccurate Warnings Before Flight 103 Tragedy*, STAR-LEDGER (Newark), Mar. 20, 1989, at 5. No explanation has been given for what happened to the November 22 warning which Pan Am claims it never received. *Delay in Bomb Warning Explained*, THE RECORD (Hackensack), Mar. 20, 1989, at A1.

¹⁰² Thomas Moran, *Kin Honor Victims of Air Crash*, THE RECORD (Hackensack), Apr. 3, 1989, at 1.

¹⁰³ Statement by Press Secretary Fitzwater on the President's Meeting with Representatives of the Families of the Victims of Pan American Flight 103, 25 WEEKLY COMP. PRES. DOC. 466 (Apr. 3, 1989).

¹⁰⁴ *Making up for Callousness*, THE RECORD (Hackensack), Apr. 2, 1989, at B10.

¹⁰⁵ Statement by Press Secretary Fitzwater on the President's Meeting with Representatives of the Families of the Victims of Pan American Flight 103, 25 WEEKLY COMP. PRES. DOC. 466 (Apr. 3, 1989); see also Thomas Moran, *Kin Honor Victims of Air*

meeting, scheduled for twenty minutes, was extended to over an hour.¹⁰⁶ Secretary of Transportation, Samuel Skinner, White House Chief of Staff, John Sununu, and National Security Advisor, Brent Scowcroft, were also in attendance.¹⁰⁷ The delegation implored the President to endorse an independent congressional inquiry and discussed concerns over the current state of airport security — emphasizing the need for immediate short-term action, and long range alterations in the system.¹⁰⁸ Specifically, the representatives urged President Bush to compel the appropriate agencies to institute procedures for hand searching luggage until bomb detection equipment is installed, to abolish the policy of curb-side baggage checks and to end the practice of selective notification.¹⁰⁹ Another key focus of the meeting was to alert the

Crash, THE RECORD (Hackensack), Apr. 3, 1989, at 1. The representatives attending the meeting were Bert Ammerman, Joe Horgan, Paul Hudson, Wendy Giebler, and Vicki Cummock. Many members believed that Bush agreed to the group's request for a meeting because a refusal would have been politically costly. The author was a member of the five member delegation who met with the President. It is her opinion that the meeting was indeed granted because it was deemed the politically correct thing to do. At this point in time, the media was giving the organization's efforts high priority treatment, and individuals with contacts in the Executive Branch told the group's leaders that the organization was gaining too much recognition and was becoming an embarrassment to the Executive Branch.

¹⁰⁶ Thomas Moran, *Kin Honor Victims of Air Crash*, THE RECORD (Hackensack), Apr. 3, 1989, at 1. See also statement by Press Secretary Fitzwater on the President's Meeting with Representatives of the Families of the Victims of Pan American Flight 103, 25 WEEKLY COMP. PRES. DOC. 466 (Apr. 3, 1989); Lisa Parker, *U.S. Agency Orders Measures to Improve Airline Security*, THE WASHINGTON POST, Apr. 4, 1989, at A1.

¹⁰⁷ Statement by Press Secretary Fitzwater on the President's Meeting with Representatives of the Families of the Victims of Pan American Flight 103, 25 WEEKLY COMP. PRES. DOC. 466 (Apr. 3, 1989); see also Thomas Moran, *Bush Meets with Flight 103 Relatives*, THE RECORD (Hackensack), Apr. 4, 1989, at A1.

¹⁰⁸ Thomas Moran, *Bush Meets with Flight 103 Relatives*, THE RECORD (Hackensack), Apr. 4, 1989, at A1. See also Statement by Press Secretary Fitzwater on the President's Meeting with Representatives of the Families of the Victims of Pan American Flight 103, 25 WEEKLY COMP. PRES. DOC. 466 (Apr. 3, 1989).

¹⁰⁹ Statement by Press Secretary Fitzwater on the President's Meeting with Representatives of the Families of the Victims of Pan American Flight 103, 25 WEEKLY COMP. PRES. DOC. 466 (April 3, 1989); see also Laura Parker, *U.S. Agency Orders Measures to Improve Airline Security*, THE WASHINGTON POST, Apr. 4, 1989, at A1, A4. Curb-side baggage checks provide an easy opportunity for terrorists to place bombs on planes with no risk to themselves. While curb-side baggage checks were stopped during the Gulf War, the procedure is now back in use throughout the United States. Selective notification refers to the government's policy of notifying government personnel of threats with explicit instructions not to distribute the information to the public, thereby giving government personnel the opportunity to

President to the insensitivity and lack of responsiveness encountered by families from the Executive Branch following the tragedy (i.e., the State Department).¹¹⁰ The delegation's goal was to impress upon the President the failure of the American Government to prevent and respond to a massive terrorist attack against the United States. The government failed its citizens, both before and after the bombing, and only affirmative changes could prevent the government from repeating its mistakes.¹¹¹ Although the delegation came away from the meeting with a promise to tighten airport security and to address the internal problems with respect to the State Department's crisis response techniques, President Bush refused to endorse an independent investigation claiming it might hinder the ongoing criminal probe.¹¹²

Following the meeting with the President, The Victims of Pan Am Flight 103 gathered in Lafayette Park, located across the street from the White House, to pay a distinguished tribute to their loved ones on this 103rd day after the disaster.¹¹³ At the conclusion of this somber tribute, Bert Ammerman, then political action chairman for the organization, closed the vigil with a *Call to Action*.¹¹⁴ The *Call to Action* stated in part:

Today we are joined together by the love we have for those individuals who were so cruelly taken from us in the bombing of Pan Am Flight 103. It is this same love that has given us the strength and determination to forge ahead in the wake of our grief to make some sense out of this horrific tragedy. We will continue our quest for the truth of what led up to the largest terrorist attack ever on American civilians. An independent congressional investigation must take place to determine what

make informed decisions about whether or not to fly while not affording the same consideration to civilians. See COMM'N REPORT, *supra* note 3, at 84-85.

¹¹⁰ Robert Cohen, *U.S. to Bolster the Fight on Airline Terror*, STAR-LEDGER (Newark), Apr. 4, 1989, at 1, 12. See also Nick Davies, *The Man Who Knew Too Much*, THE MAIL ON SUNDAY (London), July 16, 1989, at 50.

¹¹¹ *Id.*

¹¹² Tom Foster, et al., *The Darkest Day, The Bombing of Pan Am Flight 103*, THE POST-STANDARD (Syracuse), May 7, 1989, at 23; see also Letter from Secretary of Transportation, Samuel Skinner to Wendy Giebler (Apr. 21, 1989) (on file with the Seton Hall University School of Law Legislative Bureau).

¹¹³ Lori Sharn, *Families Put Off Grieving To Seek Changes*, USA TODAY, Apr. 3, 1989, at 3A.

¹¹⁴ Maureen Castellano, *Bitter Tears for Bomb Victims*, NORTH JERSEY HERALD & NEWS, Apr. 4, 1989, at A1, A5.

and where the breakdowns were that let this massacre of so many innocent civilians occur. We will continue to pursue radical, but necessary changes in airline and airport security policy and procedures, calling for immediate as well as long term adaptations. As a nation, we need to have a comprehensive counterterrorism policy not only on paper, but also effectively implemented. . . . On December 21, 1988 we lost our loved ones in a preventable massacre at 31,000 feet. . . . We will continue to strive for the changes that will make our airways safe in order to give some meaning to the loss of those we love so very much. . . . We are now going to the Hill to gain the support of each and every Senator and through our labors of love, The Truth Will Be Known!¹¹⁵

The organization then moved to Capitol Hill to gain support for an independent congressional investigation. One hundred of the organization's members had each been assigned to visit one of the 100 Senators.¹¹⁶ The remaining members visited congressional offices.¹¹⁷ The organization already had the support of a few Senators and Representatives including Sen. Frank Lautenberg,¹¹⁸ Sen. Bill Bradley, and Rep. Marge Roukema (R-N.J.).¹¹⁹ By the day's end, the members reported that twenty-six senators supported the investigation, three opposed it, and thirty-three were undecided.¹²⁰

While the organization was busy lobbying the Senate and the House,¹²¹ Secretary of Transportation Samuel Skinner held a press

¹¹⁵ Bert Ammerman, Former Chairman of the Political Action Committee for The Victims of Pan Am Flight 103 (Current President), Call to action at the *Memorial Vigil in Commemoration of The Victims of Pan Am Flight 103* (Apr. 3, 1989).

¹¹⁶ Maureen Castellano, *Bitter Tears for Bomb Victims*, NORTH JERSEY HERALD & NEWS, Apr. 4, 1989, at A1, A5. Prior to April 3, each Senator received a letter notifying them of the organization's pursuit of an independent investigation. The letters informed the Senators that a representative of the organization would visit their office on April 3 to ascertain the Senator's position on establishing an independent investigation.

¹¹⁷ *Id.*

¹¹⁸ Senator Lautenberg attended the vigil and stated that while he supported the group's efforts to establish an independent congressional investigation, he preferred a presidential panel. Thomas Moran, *Bush Meets with Flight 103 Relatives*, THE RECORD (Hackensack), Apr. 4, 1989, at A1, A5.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ The lobbying focused on gaining support for an independent investigation and even more important at this early phase, impressing upon the Senate and House the serious flaws existing in the aviation security system as well as in the State Department's crisis response techniques. See Andrew Blum, *Flight 103 Efforts Center on Data*, NATIONAL LAW JOURNAL, June 5, 1989, at 3. On May 18, 1989, Sena-

conference. The purpose of the press conference was to announce a sweeping series of security initiatives to combat airline terrorism, including heightened security requirements at airports in Western Europe and the Middle East.¹²² Additionally, Skinner reported 100 state-of-the-art bomb detectors would be ordered and installed at high-risk airports,¹²³ the FAA's security bulletin procedures would be changed to enhance surveillance, and a contingent of FAA security inspectors would be sent to airports in Europe and the Middle East to assist U.S. carrier operations.¹²⁴

After the April 3 vigil, members of the organization continued to methodically walk the halls of Congress to solicit support for an independent congressional investigation.¹²⁵ As time passed, the organization's goals for an independent investigation became more refined. Specifically, the group wanted an investigation to probe the FAA's practices when issuing security warnings, the state of Pan Am's security methods the day of the bombing, and the crisis management policies and procedures of the State Department.¹²⁶ The

tor Wendell H. Ford, (D-Ky.), introduced Bill No. S.1043 to be cited as the "Aviation Security and Terrorism Commission Act of 1989" which provided for a commission to investigate the Pan Am 103 bombing and the 1983 downing of Korean Air Lines Flight 007. The relatives of Pan Am Flight 103 opposed this bill and noted that at this point they had the support of 61 senators for an independent investigation.

¹²² 135 CONG. REC. S10,145 (daily ed. Aug. 4, 1989) (statement of Sen. Dole); see also Laura Parker, *U.S. Agency Orders Measures to Improve Airline Security*, THE WASHINGTON POST, Apr. 4, 1989, at A1; Statement by Press Secretary Fitzwater on the President's Meeting with Representatives of the Families of the Victims of Pan American Flight 103, 25 WEEKLY COMP. PRES. DOC. 466 (April 3, 1989); Letter from Secretary of Transportation, Samuel Skinner to Wendy Giebler, (April 21, 1989) [hereinafter, Skinner letter] (on file with the Seton Hall University School of Law Legislative Bureau); *Aviation Security Special Hearing*, supra note 61, at 7 (statement of Samuel K. Skinner).

¹²³ 135 CONG. REC. S10,145 (daily ed. Aug. 4, 1989) (statement of Sen. Dole); see also Laura Parker, *U.S. Agency Orders Measures to Improve Airline Security*, THE WASHINGTON POST, Apr. 4, 1989, at A1. Senior FAA officials conceded that the detection equipment known as "thermal neutron analysis" (TNA) will take two years to acquire. In the meantime, the FAA and airlines would rely on techniques currently in use for detecting explosive devices and their couriers. To bolster the system Skinner said the FAA will now require mandatory compliance with security bulletins and airlines would be required to acknowledge receipt of the bulletins within 24 hours and submit to the FAA specific plans on how they plan to perform supplemental security requirements.

¹²⁴ *Id.*

¹²⁵ Laura Parker & David B. Ottaway, *Aftermath of Flight 103: Probe, Relatives Stymied*, THE WASHINGTON POST, July 9, 1989, at A4.

¹²⁶ *Id.*

organization members continued to hold meetings to coordinate their efforts and strived to cultivate and maintain relationships with Senators, Representatives and key aides in an effort to have their voices heard. Additionally, the organization testified before the Senate Subcommittee on Narcotics, Terrorism and International Operations on April 7, 1989 and the Senate Subcommittee on Aviation, Senate Commerce, Science, and Transportation on April 13, 1989.¹²⁷

At the April 3 meeting with the organization's representatives, President Bush directed Secretary Skinner to remain in contact with The Victims of Pan Am Flight 103 to keep its members advised of security issues.¹²⁸ Pursuant to this directive, Secretary Skinner notified the organization of certain key happenings that had taken place since the bombing.¹²⁹ Namely, on January 15, 1989, the FAA administrator wired a request to all major aviation carriers urging them to raise security levels for all carriers.¹³⁰ On January 24, 1989, the United States and the United Kingdom called for a special session of the International Civil Aviation Organization (ICAO), the aviation branch of the United Nations, to address security concerns.¹³¹ Secretary Skinner traveled to Montreal in February for the

¹²⁷ *Aviation Security, Hearing to Examine Aviation Security and Issues Related to Terrorism in Light of Terrorist Bombing of Pan American World Airways Flight 103 from Frankfurt, West Germany to the U.S., Destroyed Over Scotland on December 21, 1988 Before Senate Subcommittee on Aviation, Senate Commerce, Science, and Transportation*, 101st Cong., 1st Sess. 80 (1989) (statements of Paul Hudson and Brian Barry, representatives of The Victims of Pan Am Flight 103). Members of the organization also participated in numerous television interviews on such programs as *Prime-Time Live*, *MacNeil-Lehrer Newshour*, *Cross-Fire*, *Donahue*, *Good Morning America* and *The Today Show*.

¹²⁸ Statement by Press Secretary Fitzwater on the President's Meeting with Representatives of the Families of the Victims of Pan American Flight 103, 25 WEEKLY COMP. PRES. DOC. 466 (Apr. 3, 1989).

¹²⁹ Skinner Letter, *supra* note 122.

¹³⁰ 135 CONG. REC. S10,145 (daily ed. Aug. 4, 1989) (statement of Sen. Dole); *see also* Skinner Letter, *supra* note 122.

¹³¹ *Id.* ICAO is a specialized agency within the United Nations system. It was created during President Roosevelt's administration in 1944 by the Convention on International Civil Aviation, more commonly known as the Chicago Convention. Its membership consists of 160 countries. The purpose of the organization at that time was to establish common working rules for the operation of aircraft around the world. Today, ICAO continues to recommend standards and practices for aviation security. These standards and practices are found in the International Standards and Recommended Practices, Security, Safeguarding International Civil Aviation Against Acts of Unlawful Interference, Annex 17 to the Convention on International Civil Aviation, (4th ed.). *Foreign Airport Security Hearing*, *supra* note 22, at 24 (statement of the Honorable Edmund Stohr, U.S. Representative to the Int'l

ICAO special session and worked successfully for the unanimous adoption of a resolution that could potentially lead to strengthened procedures throughout the world.¹³²

Through all of this, the organization steadfastly continued its lobbying efforts. These efforts were not confined to the United States. When appropriate, action was taken overseas as well.¹³³ For example, while visiting Lockerbie, one member of the organization had the opportunity to discuss the situation with the United States Ambassador to Britain, Henry Catto.¹³⁴ Although the meeting was not planned, it provided the opportunity for a representative of the organization to further campaign for the independent congressional investigation and to raise the public's awareness of the United States' abysmal treatment of the entire disaster.¹³⁵ Each encounter rallied support for the organization's objectives. Slowly but surely support grew for an independent congressional inquiry which was critical to the organization's ultimate goal of overhauling the civil aviation security system and counterterrorism policy. By June, 1989, the organization had gained the support of sixty Senators for an independent investigation.¹³⁶

Unfortunately, however, the Bush Administration continually stymied the organization's efforts for the investigation.¹³⁷ Legislation to begin an inquiry was again introduced in the Senate, this time by Senate Majority Leader George Mitchell (D-Me.) and his Re-

Civil Aviation Organization on International Civil Aviation Security). See also COMM'N REPORT, *supra* note 3, at 170.

¹³² *Id.*

¹³³ James Meek, *US Ambassador Challenged by Widow at Lockerbie Ceremony*, THE SCOTSMAN, June 8, 1989, at 3; Andrew McCallum, *Widow Takes U.S. to Task for Bombers*, THE GLASGOW HERALD, June 8, 1989, at 1. The "widow" named in these titles is the author. This meeting was not anticipated or welcomed by the United States Ambassador. The kind people of Lockerbie were good enough to inform the author of the Ambassador's impending visit and managed to get her into the cemetery at the time the Ambassador was due to arrive. The author recalls that the Ambassador was condescending and clearly annoyed that her presence and concerns turned the press's attention to the plight of the victims rather than the Ambassador's visit to Lockerbie.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Paul Hudson, *Victims of Pan Am Flight 103 Newsletter*, vol. 1, issue 3, June, 1989, at 1 (available through The Victims of Pan Am Flight 103, 135 Algonquin Parkway, Whippany, NJ 07981).

¹³⁷ Laura Parker & David B. Ottaway, *Aftermath of Flight 103: Probe, Relatives Stymied*, THE WASHINGTON POST, July 9, 1989, at A4.

publican counterpart, Minority Leader Robert Dole (R-Kan.).¹³⁸ Secretary of State James Baker, Attorney General Richard Thornburgh and Transportation Secretary Samuel Skinner warned Senate leaders that such an inquiry could compromise the criminal investigation of the bombing.¹³⁹ Specifically, in a letter to Senate Minority Leader Robert Dole, the three expressed concern that any commission or panel to investigate Pan Am Flight 103 in particular, or aviation in general, would intrude upon the Administration's ability to enhance aviation security and prosecute the culprits of the Flight 103 bombing.¹⁴⁰ The Administration's opposition prompted the organization to charge the Bush Administration with assisting in the cover-up of inadequacies in the security system at the time of the bombing.¹⁴¹ The organization insisted the questions it wanted answered had nothing to do with the hunt for the culprits, but with the ability of the government to warn and adequately protect airline passengers against the threat of terrorism.¹⁴²

Undaunted by the Administration's opposition, the organization forged ahead. Members continued their lobbying efforts in conjunction with a host of other activities ranging from letter campaigns, to trips to Capitol Hill, to monthly demonstrations at the Pan Am Building in Manhattan. In August, 1989, a delegation traveled to London, Lockerbie and Germany to meet with authorities to make specific recommendations and propose solutions on how to deal with airport and airline security and the issue of terrorism.¹⁴³ The trip was designed to press for more information from the international arena and to heighten public awareness of the organization and its goals on an international level.¹⁴⁴ The delegation made criti-

¹³⁸ S.1043, 101st Cong., 1st Sess. (1989). See also Richard Robbins, *Flight 103 Victims' Families Skeptical of Government*, TRIBUNE-REVIEW, Sept. 3, 1989, at A1, A10.

¹³⁹ Laura Parker & David B. Ottaway, *Aftermath of Flight 103: Probe, Relatives Stymied*, THE WASHINGTON POST, July 9, 1989, at A4.

¹⁴⁰ *Id.* The Administration's reasoning for this stance was that the Pan Am 103 investigation being conducted by the FBI and Scottish, British and West German authorities was one of the largest international criminal investigations ever undertaken. The Administration claimed another layer of the investigation would be unnecessary and disruptive.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Victims's Kin Confident on Pan Am Bomb Probe*, STAR-LEDGER, (Newark), Aug. 23, 1989, at 14. The delegation included: Bert Ammerman, Glenn Johnson, Rick Hartunian, Adelaide Marek, Peter Lowenstein, Joe Horgan, Stan Maslowski, and Frank Rosenkrantz.

¹⁴⁴ *Victims of Pan Am Flight 103 Newsletter*, vol. 1, issue 4, Aug., 1989, at 7 (available

cal contacts for the organization on this trip and brought the concerns of Pan Am Flight 103 back into the public eye. The trip itinerary included meetings with John Prescott, United Kingdom Labor Party Spokesperson for Transport; Ron Wood, Deputy Ambassador to the United Kingdom; Michael Portillo, Minister of State for Transport; and Lord Advocate Fraser of the Crown Office.¹⁴⁵ The unanswered questions surrounding the bombing had by now piqued the interest of more than the organization's members.

Finally, on August 4, 1989, after months of negotiations, and in the face of mounting evidence that a thorough, outside review of the events surrounding the bombing was truly needed, President Bush announced his plans to create a commission to examine security measures on Pan Am Flight 103.¹⁴⁶ Although the Presidential Commission was not specifically the type of investigative body the organization had lobbied for, advisors to the organization believed the Commission was an appropriate body to perform the investigative task. The organizations's demand for an independent congressional investigation was premised on the belief that a congressional body must ultimately answer to the voting public, whereas a Commission, appointed by the Administration, would be subject to the political pressure of an Administration whose goals to uncover the truth were not necessarily in line with those of the organization. Advisors to the organization assured the members that enough had come out about the bombing to prevent the Commission's investigation from being merely a symbolic gesture to quiet the organization's outrage.¹⁴⁷ The organization heeded this advice and agreed to endorse

through The Victims of Pan Am Flight 103, 135 Algonquin Parkway, Whippany, NJ 07981).

¹⁴⁵ *Id.* The meeting with Lord Advocate Fraser was the first of its kind in the history of Scotland's chief prosecutorial branch.

¹⁴⁶ Tom Toolen, *Bush to Tackle Airline Security*, THE RECORD (Hackensack), Aug. 6, 1989, at 1. In early August, 1989, Americans were shocked by photographs of Col. William Higgins, a United Nations peacekeeper, kidnapped and eventually murdered by his terrorist captors. Strangely, this incident, seemed to galvanize the Bush Administration to support an official inquiry into the Flight 103 tragedy. On the afternoon television first broadcasted photographs of Col. Higgins, an aide to Senator Mitchell contacted a Board Member of The Victims of Pan Am Flight 103 to relay a message from the Administration: "Give us 48 hours without linking, in a press release or other publicity, Flight 103 and Col. Higgins, and we will try to deliver the Commission." The Commission was established within the week. Richard Robbins, *Flight 103 Victims Families Skeptical of Government*, TRIBUNE-REVIEW, Sept. 3, 1989, at A1, A10; see also Flight 103's Bitter Legacy, *supra* note 40, at 14.

¹⁴⁷ 135 CONG. REC. S10,144 (daily ed. Aug. 4, 1989).

the establishment of the Presidential Commission.

IV. The President's Commission on Aviation Security and Terrorism

The President's Commission on Aviation Security and Terrorism (hereinafter the Commission) was established pursuant to Executive Order 12,686.¹⁴⁸ The Order called for a seven member panel, appointed by the President, which would include two Senators, two Members of the House of Representatives and three members from the private sector with expertise in aviation transportation, security or counterterrorism.¹⁴⁹ Rep. Marge Roukema and an aide to Sen. Lautenberg expressed the belief that the intense lobbying by The Victims of Pan Am Flight 103 was largely responsible for the establishment of the Commission.¹⁵⁰ This was later confirmed in the Commission's Report which noted "the Commission was a response to the unwavering dedication of the families."¹⁵¹

Almost two months after the Commission was established, the President named the Commission members.¹⁵² Ann Dore McLaughlin, Former Secretary of Labor, was named Chairperson;¹⁵³ members named were Edward Hidalgo, Former Secretary of the Navy,¹⁵⁴ General Thomas C. Richards, U.S.A.F.,¹⁵⁵ Sen.

¹⁴⁸ Exec. Order No. 12,686, 3 C.F.R. 232 (1989 compilation and parts 100 to 102, 1990) (Established Aug. 4, 1989). See also 25 WEEKLY COMP. PRES. DOC. 31 for a White House Statement on the establishment of the Commission; 135 CONG. REC. S10,143 (daily ed. Aug. 4, 1989) (statement of Sen. Mitchell & Sen. Dole) at S10,146 (statement of Sen. Lautenberg).

¹⁴⁹ *Id.*

¹⁵⁰ Tom Toolen, *Bush to Tackle Airline Security*, THE RECORD (Hackensack), Aug. 6, 1989, at A1, A15. Up until the day the Commission was established the President rejected any form of independent investigation.

¹⁵¹ COMM'N REPORT, *supra* note 3, at 1.

¹⁵² Press Release issued by the White House Office of the Press Secretary (Sept. 29, 1989).

¹⁵³ Ann McLaughlin served as Secretary of Labor from 1987 to 1989, Under Secretary of the U.S. Department of Interior from 1984 to 1987, and Assistant Secretary to the U.S. Department of Treasury from 1981 to 1984. At the time of her appointment to the Commission, Ann McLaughlin was a Visiting Fellow and Board Member of the Urban Institute in Washington, D.C. as well as a member of the Board of Directors for five major corporations and several not-for-profit institutions. COMM'N REPORT, *supra* note 3, at 126.

¹⁵⁴ Edward Hidalgo served as Secretary of the Navy from 1979 to 1981. COMM'N REPORT, *supra* note 3, at 126.

¹⁵⁵ General Richards served as Deputy Commander in Chief, Headquarters, U.S.

Alfonse M. D'Amato, Sen. Frank Lautenberg,¹⁵⁶ Rep. John Paul Hammerschmidt (R-Ark.), and Rep. James L. Oberstar (D-Minn.).¹⁵⁷

The Commission's function was to conduct a comprehensive study and appraisal of practices and policy options with respect to preventing terrorist acts involving aviation.¹⁵⁸ Particular reference was to be given to the destruction of Pan Am Flight 103.¹⁵⁹ This included evaluating the adequacy of existing procedures for aviation security, compliance with said procedures, and enforcement of these procedures.¹⁶⁰ The Commission was also charged with reviewing options for handling terrorist threats including, prior notification to the public and investigating practices, policies, and laws with respect to the treatment of families of victims of terrorist acts.¹⁶¹ As established, the Commission was to conduct its investigation and submit a report to the President by February 4, 1990.¹⁶² The Commission, however, asked for and was granted an extension pursuant to Executive Order 12,705.¹⁶³

The Commission began its work in mid-November, 1989.¹⁶⁴ On November 17, 1989, the Commission held its first of five public hearings.¹⁶⁵ The organization testified at this first hearing in order to bring its main concerns to the Commission and to provide a basis for the questions it hoped the investigation would answer.¹⁶⁶ The organization set forth the following challenge to the Commission:

Your task has but one focus—to find the truth. In your quest

European Command from 1986 to 1989 when he retired from active duty. COMM'N REPORT, *supra* note 3, at 126.

¹⁵⁶ Chairman of the Senate Transportation Appropriations Sub-Committee.

¹⁵⁷ Chairman of the House Public Works and Transportation Committee's Aviation Subcommittee.

¹⁵⁸ Charter of the President's Commission on Aviation Security and Terrorism. See Exec. Order No. 12,686, 3 C.F.R. 232 (1989 compilation and parts 100 to 102, 1990) (Established Aug. 4, 1989).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ Order issued on March 3, 1990. See COMM'N REPORT, *supra* note 3, at 143.

¹⁶⁴ COMM'N REPORT, *supra* note 3, at i.

¹⁶⁵ *Id.* at 1.

¹⁶⁶ *Comm'n Hearing, supra* note 1 (statement of The Victims of Pan Am Flight 103). The Union des Transports Aeriens Flight 772 also testified at this hearing followed by representatives of the aviation community.

you will struggle down the same path we have been traveling since December 21, 1988. This road has been a tortuous one fraught with lies, half-truths, denials, allegations, revelations, and enormous amounts of buck-passing providing excellent fodder for media debate, but not one scintilla of credibility.¹⁶⁷

The Commission held the other four hearings on December 18, 1989; February 2, 1990; March 9, 1990; and April 4, 1990.¹⁶⁸ Testimony at the hearings came from the State Department, scientists, security experts, manufacturers, the FAA, and executives from various airlines who discussed their companies' aviation security procedures.¹⁶⁹ The April 4 hearing disclosed evidence of the serious flaws in Pan Am's security measures that existed before and lingered long after the bombing of Flight 103.¹⁷⁰ One security lapse that was crucial to the inquiry into the bombing was confirmed by FAA and Pan Am officials at this hearing.¹⁷¹ The officials confirmed that Pan Am disregarded FAA rules which require hand searches of unaccompanied luggage.¹⁷² James Wiedner, the Commission's counsel, read from a series of FAA inspections before and after the bombing noting continuous violations of security rules at Frankfurt in the eight months after the bombing.¹⁷³ Wiedner emphasized the description provided in a June, 1989 FAA report regarding Pan Am's security at Frankfurt: "Totally unsatisfactory. Major violations in all

¹⁶⁷ *Id.* at 3.

¹⁶⁸ COMM'N REPORT, *supra* note 3, at 1-2.

¹⁶⁹ *Id.*

¹⁷⁰ *Joint Hearing and Markup on H.R. 5200 and H.R. 5732, supra* note 23 (statement of Ann McLaughlin, Chair of the President's Commission on Aviation Security and Terrorism); see also John Cushman, *U.S. Panel is Told of Pan Am Security Flaws*, N.Y. TIMES, Apr. 5, 1990, at A8. Also in April, 1990, Bert Ammerman, President of The Victims of Pan Am Flight 103 was selected from a list of 19 nominees to receive the Conway Safe Skies Award. The selection panel represented broad corporate, scientific, aviation, civic and global travel interests. Bert Ammerman received a \$25,000 award which he donated to the organization. At the presentation by McKinley Conway, President of Conway Data, Inc., Mr. Conway stated, "Mr. Ammerman has demonstrated outstanding courage and leadership in organization and managing a grass roots citizens' group that has helped shape U.S. policy relative to air terrorism." See *Victims of Pan Am Flight 103 Newsletter*, vol. 2, issue 3, May, 1990, at 1 (available through The Victims of Pan Am Flight 103, 135 Algonquin Parkway, Whippany, NJ 07981).

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.* See Letter from FAA to Pan Am detailing inspections conducted on Dec. 22, 1988 and Jan. 31, 1989 (on file at the Seton Hall School of Law Legislative Bureau).

areas . . . All passengers flying out of Frankfurt on Pan Am are at great risk."¹⁷⁴

In addition to the hearings, the Commission reviewed the security measures in place at airports in the United States and Europe and conducted over 250 investigative interviews from Lockerbie to Helsinki.¹⁷⁵ The Commissioners traveled to five countries where they participated in thirty meetings to review aviation security problems and procedures first hand.¹⁷⁶ The findings and recommendations of this exhaustive investigation are contained in the Report on the President's Commission on Aviation Security and Terrorism (hereinafter the Report) which was presented to the President pursuant to Executive Order 12,705 on May 15, 1990.

On the morning of May 15, 1990, President Bush gave a brief statement to the relatives of those killed on Pan Am Flight 103 in the Old Executive Office Building.¹⁷⁷ The purpose of the meeting was to assure the families that the Report issued by the Commission would not "sit on the shelf, like others have."¹⁷⁸ Later that day, the Commission reported its findings and recommendations at a press conference, and released its report to the public.¹⁷⁹ The Report

¹⁷⁴ Don Phillips, *FAA Disputes Pan Am on Inspections*, THE WASHINGTON POST, Apr. 5, 1990, at 4.

¹⁷⁵ COMM'N REPORT, *supra* note 3, at 1, 2. The Commission met with government officials in both the United States and abroad charged with directing and implementing aviation security and intelligence-gathering; security specialists, representatives of airlines and airports, and with officials of the U.S. consular, intelligence, and counterterrorism communities. The Commission's work also brought them to Lockerbie where the members of the Commission shared and sought to understand the families' and community's grief. *Id.*

¹⁷⁶ *Joint Hearing and Markup of H.R. 5200 and H.R. 5732*, *supra* note 23 (statement of Ann McLaughlin, Chair of the President's Commission on Aviation Security and Terrorism).

¹⁷⁷ Thomas Moran, *Victory is Bittersweet*, THE RECORD (Hackensack), May 16, 1990, at A16; *Still Angry, Victims' Relatives Meet With Bush*, JOURNAL NEWS, May 16, 1990, at A12.

¹⁷⁸ Elizabeth Auster, *Flight 103 Commission Calls for Drastic Reforms*, THE RECORD (Hackensack), May 16, 1990, at A1. Senator Lautenberg vowed to press for legislation to enact the policy changes endorsed in the Commission's Report.

¹⁷⁹ See Robert Cohen, *Probers Urge Major Revamp of Aviation Security System*, STAR-LEDGER (Newark), May 16, 1990, at 1; Richard Sisk, *Hindsight on Flight 103 & Future Fear*, DAILY NEWS (New York), May 16, 1990, at 11; John Cushman, *New Steps Urged For Air Security*, N.Y. TIMES, May 16, 1990, at A5; Elizabeth Auster, *Flight 103 Commission Calls For Drastic Reforms*, THE RECORD (Hackensack), May 16, 1990, at A16. For Summary of contents of Comm'n Report see statement of Ann McLaughlin, *Report of the President's Commission on Int'l Aviation Security and Terrorism: Hearing Before the House Committee on Foreign Affairs*, 101st Cong., 2d Sess., at 8 (1990).

gives a chronology of the shameful performance of Pan Am and the FAA.¹⁸⁰ Pan Am's security lapses and the FAA's failure to enforce its regulations followed a pattern that existed for months prior to Flight 103, during the day of the tragedy, and—notably—for nine months thereafter.¹⁸¹ The Commission's Chair, Ann Dore McLaughlin stated:

Sadly, everywhere we looked we found another problem. . . It became clear to this Commission that terrorists were able to place a bomb on Pan Am 103 not because some one thing failed, but because the aviation security system was badly flawed. The system did not provide an effective defense against sabotage even though there were many warning signs.¹⁸²

Not surprising to the families, the Commission noted the destruction of Flight 103 "may well have been preventable."¹⁸³

The Commission called for a sweeping overhaul of a seriously flawed American aviation security system, charging the government with failing to adequately protect the traveling public from the threat of terrorist attack (before and after Pan Am 103) at foreign and domestic airports.¹⁸⁴ In addition, the Commission called for dozens of steps to combat terrorism aimed against civil aviation. A portion of the Report focused on the aviation security system in general, and pointed to the unique difficulties encountered by international carriers.¹⁸⁵ Specifically, there is no uniform international civil aviation security system in place to assure a consistent level of

¹⁸⁰ Aphrodite Tsairis, *Victims of Pan Am Flight 103 Newsletter*, vol. 2, issue 4, June, 1990, at 1 (available through The Victims of Pan Am Flight 103, 135 Algonquin Parkway, Whippany, NJ 07981).

¹⁸¹ *Id.* A FAA inspector, in a report dated June 7, 1989 regarding security operations at Pan Am Frankfurt, noted that while operations of the four other U.S. carriers operating at Frankfurt were "good", Pan Am was "totally unsatisfactory" and that "anyone flying Pan Am out of Frankfurt is doing so at great risk."

¹⁸² *The Tragedy Continues*, TRIBUNE-REVIEW, May 22, 1990, at A-6. See also *Joint Hearing and Markup on H.R. 5200 and H.R. 5732*, *supra* note 23 (statement of Ann McLaughlin, Chair of the President's Commission on Aviation Security and Terrorism).

¹⁸³ COMM'N REPORT, *supra* note 3, at i.

¹⁸⁴ Robert Cohen, *Probers Urge Major Revamp of Aviation Security System*, STAR-LEDGER (Newark), May 16, 1990 at 1. See also John H. Cushman, Jr., *New Steps Urged For Air Security*, N.Y. TIMES, May 16, 1990, at A-5; COMM'N REPORT, *supra* note 3, at 27; *Report of the President's Commission on Int'l Aviation Security and Terrorism: Hearing Before the House Committee on Foreign Affairs*, 101st Cong., 2d Sess., at 8 (1990) (statement of Ann McLaughlin).

¹⁸⁵ COMM'N REPORT, *supra* note 3, at 27.

security for passengers.¹⁸⁶ Although many nations have adopted the standards of the International Civil Aviation Organization (ICAO), these standards only proscribe a minimum level of security that is inadequate for "high-threat" international airports.¹⁸⁷ The Report identified the role of the FAA which was created in 1958 and is responsible for ensuring the safety of air travel.¹⁸⁸ In 1985, the FAA's role in aviation security expanded significantly with the passage of the International Security and Development Cooperation Act.¹⁸⁹ This Act requires the FAA to assess security at foreign airports served by U.S. carriers, and the security procedures of foreign air carriers flying to the United States.¹⁹⁰

The Commission was sharply critical of the State Department's treatment of relatives of the victims of Flight 103. The Report noted the responsibility for rendering assistance in crisis situations (e.g., the repatriation of Americans who die overseas) rests primarily with the Department of State's Bureau of Consular Affairs.¹⁹¹ The State Department testified as to at least three actions it takes when an American dies abroad which relate directly to communications with the families of victims.¹⁹² These three actions are (1) to be satisfied the next of kin are notified or to make notification themselves; (2) to provide all "appropriate information to families about" the return of remains and personal effects; (3) in the case of an airplane (or similar) tragedy, to organize task forces to respond to public inquiries and seek to ascertain the welfare of Americans believed to be involved.¹⁹³ After the investigation, however, the Commission

¹⁸⁶ *Id.*

¹⁸⁷ See *supra* note 131 for a discussion of ICAO. See also *Foreign Airport Security Hearing*, *supra* note 22, at 27 (statement of the Honorable Edmund Stohr, U.S. Representative to the Int'l Civil Aviation Organization on International Civil Aviation Security); *THE FREEDOM OF THE AIR* (Edward McWhinney & Martin Bradley, eds., 1968), at 17.

¹⁸⁸ *Id.*

¹⁸⁹ 22 U.S.C. § 2151 note (1985).

¹⁹⁰ *COMM'N REPORT*, *supra* note 3, at 27.

¹⁹¹ *Id.* at 100. See *Disaster Assistance Handbook*, printed in *Citizens Consular Services Procedures for Handling Reports on Death and Estates of Victims of Disasters and Emergency Travel Documentation for Survivors of Disasters Abroad*, and reprinted as Tab D to *Consular Affairs Task Force Assistance Handbook*, (Sept. 1989); see also Elizabeth Auster, *Flight 103 Commission Calls for Drastic Reforms*, *THE RECORD* (Hackensack), May 16, 1990, at A16; Robert Cohen, *Probers Urge Major Revamp of Aviation Security System*, *STAR-LEDGER* (Newark), May 16, 1990, at 24.

¹⁹² *COMM'N REPORT*, *supra* note 3, at 100.

¹⁹³ *Id.*

could not find any area in which the State Department took a lead role.¹⁹⁴ In dealing with Pan Am Flight 103, the Department failed to mobilize with respect to any of these actions and instead deferred to the actions taken by Pan Am and the Scottish authorities.¹⁹⁵

The Report criticized Pan Am for the lax security procedures which existed before and after the bombing.¹⁹⁶ However, the Commission faulted the FAA for allowing such conditions to exist, calling it a reactive agency preoccupied with responses to events to the exclusion of adequate contingency planning in anticipation of future threats.¹⁹⁷ The Report contained more than sixty detailed recommendations designed to improve the civil aviation security system to deter and prevent terrorist attacks.¹⁹⁸ The recommendations spanned numerous areas relevant to civil aviation security from current technology and research and development, to security personnel, to the treatment of families of victims of terrorism, to the national will with respect to terrorism.¹⁹⁹ Furthermore, the Commission observed that before new laws are passed and more regulations promulgated, existing ones must be fully enforced and properly carried out.²⁰⁰ The Commission emphasized that no amount of government reorganization or technological developments could ever replace the need for well-trained, highly motivated people to make the security system work.²⁰¹ Once the content of the Report was discussed, Sen. Lautenberg announced he was already preparing legislation to implement many of the panel's recommendations.²⁰²

After the Commission's press conference, The Victims of Pan

¹⁹⁴ See *supra* note 191.

¹⁹⁵ *Id.*

¹⁹⁶ Robert Cohen, *Commission Fails to Douse Fury of Those Who Lost Kin in Pan Am Blast*, STAR-LEDGER (Newark), May 16, 1990, at 25; COMM'N REPORT, *supra* note 3, at 24.

¹⁹⁷ Robert Cohen, *Probers Urge Major Revamp of Aviation Security System*, STAR-LEDGER (Newark), May 16, 1990, at 1.

¹⁹⁸ COMM'N REPORT, *supra* note 3, at ii.

¹⁹⁹ *Id.* at 121-25.

²⁰⁰ *Id.* For example, for 9 months after the bombing, Pan Am failed to correct security faults. Richard Sisk, *Hindsight on Flight 103 and Future Fear*, DAILY NEWS (New York), May 16, 1990, at 11. See COMM'N REPORT, *supra* note 3, at 24.

²⁰¹ *Id.* See also *Aviation Security Special Hearing*, *supra* note 61 (statement of The Victims of Pan Am Flight 103).

²⁰² Thomas Moran, *Victory is Bittersweet*, THE RECORD (Hackensack), May 16, 1990, at A16. This legislation would eventually be titled the Aviation Security Improvement Act of 1990.

Am Flight 103 held one of their own. The organization noted that while the Report was a vital first step in setting forth critical information and in making recommendations, the organization did not see this as an end, but merely a step forward.²⁰³ The organization speculated the recommendations were not of great value unless they were implemented and therefore, vowed to lobby Congress for passage of legislation based on the Commission's findings.²⁰⁴

On May 17, 1990, the House Foreign Affairs Committee conducted a hearing to review the Commission's Report.²⁰⁵ Ann McLaughlin, Chairperson of the Commission, gave an overview of the Report including the views and recommendations concerning aviation security improvements and counterterrorism issues.²⁰⁶ Elizabeth Tamposi, Assistant Secretary, Consular Affairs, Department of State; Morris Busby, Coordinator, Counterterrorism; and James Busby, Administrator of the FAA, provided statements regarding the Department of State's efforts to improve counterterrorism and related programs, including programs for assisting victims of terrorism.²⁰⁷ Also, within days after the Commission issued its report, Senators Lautenberg and D'Amato issued a "Dear Colleague" letter as a precursor to elicit support for pending legislation.²⁰⁸ The Senators' letter exhorted their colleagues in the Senate to support their bipartisan efforts to enact legislation recommended by the President's Commission.²⁰⁹ On May 24, 1990, their combined staffs met to draft the legislation.²¹⁰

V. *The Aviation Security Improvement Act of 1990*

A. *Legislative History*

On November 16, 1990, a major goal of The Victims of Pan

²⁰³ Robert Cohen, *Commission Fails to Douse Fury of Those Who Lost Kin in Pan Am Blast*, STAR-LEDGER (Newark), May 16, 1990, at 25; Thomas Moran, *Victory is Bittersweet*, THE RECORD (Hackensack), May 16, 1990, at 1.

²⁰⁴ *Id.*

²⁰⁵ *Report on the President's Commission on International Aviation Security and Terrorism: Hearing Before the Committee on Foreign Affairs House of Representatives*, 101st Cong., 2d Sess. (1990).

²⁰⁶ *Id.* at 3-90.

²⁰⁷ *Id.* at 41-89.

²⁰⁸ Aphrodite Tsairis, *Victims of Pan Am Flight 103 Newsletter*, vol. 2, issue 4, June, 1990, at 7 (available through The Victims of Pan Am Flight 103, 135 Algonquin Parkway, Whippany, NJ 07981).

²⁰⁹ *Id.*

²¹⁰ *Id.*

Am Flight 103 was realized with the signing into law of the Aviation Security Improvement Act of 1990.²¹¹ The Aviation Security Act²¹² varies slightly from the recommendations of the President's Commission, but for the most part, is a reflection of the views described in the Commission's report.²¹³ On June 28, 1990, in response to the findings of the Presidential Commission, Senators Lautenberg, D'Amato and Mitchell (D-Me.) introduced S.2822.²¹⁴ That same day in the House, Rep. Oberstar (D-Minn.), Rep. Hammerschmidt (R-Ark.), Rep. Fascell (D-Fla.) and Rep. Broomfield (R-Mich.) introduced companion Bill H.R. 5200.²¹⁵ The primary purpose of both bills was to promote and strengthen aviation security in light of the Commission's findings.²¹⁶

On July 26, 1990, the Joint Session of the House Foreign Affairs Committee and the Subcommittee on Aviation of the Public Works and Transportation Committee conducted a hearing and markup of H.R. 5200.²¹⁷ The purpose of the hearing was to examine the findings and recommendations of the President's Commission and to refine, elaborate upon, or substantially modify them.²¹⁸ The committee noted that H.R. 5200 as introduced put the Commission recommendations in a legislative form.²¹⁹ Sen. Lautenberg stated that it was the perseverance and diligence of the families of the victims of Pan Am Flight 103 that kept aviation security on the agenda.²²⁰ The Victims of Pan Am Flight 103

²¹¹ Pub. L. No. 101-604, 104 Stat. 3066 (1990). (codified in scattered sections of 49 U.S.C. and 22 U.S.C.). See *Aviation Security Improvement Act of 1990 Passed in House and Senate; Victims of Pan Am Flight 103 Newsletter*, September/October, 1990, at 1 (available through The Victims of Pan Am Flight 103, 135 Algonquin Parkway, Whippany, NJ 07981).

²¹² *Id.*

²¹³ 136 CONG. REC. S16,539 (daily ed. Oct. 23, 1990) (statement of Sen. Lautenberg).

²¹⁴ S.2822, The Aviation Security Improvement Act of 1990, 101st Cong., 2d Sess. (1990). 136 CONG. REC. S9171, S9201-09 (daily ed. June 28, 1990) (statement of Sen. Lautenberg).

²¹⁵ H.R. 5200, The Aviation Security Improvement Act of 1990, 101st Cong., 2d Sess. (1990). 136 CONG. REC. H4,403 (daily ed. June 28, 1990) (statement of Rep. Oberstar).

²¹⁶ 136 CONG. REC. H13,495, 13,504 (daily ed. Oct. 24, 1990) (statements of Rep. Anderson and Rep. Hammerschmidt).

²¹⁷ *Joint Hearing and Markup of H.R. 5200 and H.R. 5732, supra* note 23.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.* (statement of Sen. Lautenberg).

testified on the proposed legislation, endorsing it with several qualifications.²²¹ The two main qualifications are addressed below.

First, the organization had reservations about the congressional findings concerning the proposed amendments to the antiquated Warsaw Treaty.²²² The proposed amendments are referred to as the Montreal Protocols.²²³ The organization noted the Protocols were designed to protect the airlines by eliminating the willful misconduct exception and all other means of avoiding or defeating the \$75,000 limit.²²⁴ With the elimination of the negligence standard, there would be no motivation for the airlines to prevent accidents and subsequent liability payments.²²⁵ Under the Protocol system the entire burden of paying for the protection would fall on the passenger.²²⁶ Additionally, preventing airline passengers or their survivors from using the legal system to find fault or to learn the facts is contrary to the American judicial process.²²⁷ The organization emphasized that without the Warsaw Treaty, America's airlines would be kept in check by the threat of financial loss from lawsuits if their security was not kept up to standard.²²⁸ As proposed, the Protocols provide the airlines with a system of no-fault insurance which is not conducive to efforts attempting to raise the standards of airline security.²²⁹

Second, the organization contended that five years was too long to wait for new equipment and procedures to be put in place

²²¹ *Id.* (statement of Bert Ammerman, The Victims of Pan Am Flight 103); *see also* Aphrodite Tsairis and Wendy Giebler, *Preventing Future Flight 103's*, THE RECORD (Hackensack), July 29, 1990, at O1, 4.

²²² *Joint Hearing and Markup of H.R. 5200 and H.R. 5732*, *supra* note 23. *See* H.R. 5200, The Aviation Security Improvement Act of 1990, 101st Cong., 2d Sess. (1990). § 211 Proposal to Increase Limit on Carrier Liability under the Warsaw Convention; GOLDBIRCH, *supra* note 76. *See generally* text accompanying notes 76-81.

²²³ *Joint Hearing and Markup on H.R. 5200 and H.R. 5732*, *supra* note 23 (statement of Ann McLaughlin, Chair of the President's Commission on Aviation Security and Terrorism).

²²⁴ *Id.* *See also* H.R. 5200 § 211 Proposal to Increase Limit on Carrier Liability under the Warsaw Convention; GOLDBIRCH, *supra* note 76.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Joint Hearing and Markup of H.R. 5200 and H.R. 5732*, *supra* note 23.

²²⁹ *Id.*

to meet the technological challenges presented by terrorism.²³⁰ Reducing the time frame was critical to the organization because of the certainty that another terrorist bombing of a civilian aircraft would occur long before the passage of five years. It was urged that new equipment and procedures be devised and implemented with the utmost expediency and urgency.²³¹ Therefore, the organization recommended that a thirty-six month time frame would be more appropriate.²³² In summing up its testimony, the organization emphasized that the Act, as proposed, should not be perceived as the final answer, but rather as the beginning to an affirmation of our nation's will to fight terrorism and to preserve the inalienable rights of its citizens above all else.²³³

After this hearing, the organization focused on facilitating passage of the legislation as it was written. The goal of the organization and the Congressional members who served on the Presidential Commission was to insure the legislation mirrored the recommendations put forth by the Commission and to keep the bill unencumbered by amendments which would diffuse its purpose and block its passage.²³⁴ On August 15, 1990, the organization sent a letter to each member of Congress requesting their stand on the bill and the name of the legislative aide assigned to it.²³⁵ On September 25 and 26, the organization coordinated a massive lobbying effort in Washington.²³⁶ Every Senator and House member was personally visited and polled by one or more of the organization's members. Intensive meetings were held between the organization's leadership and the Depart-

²³⁰ *Id.* See S.2822, The Aviation Security Improvement Act of 1990, 101st Cong., 2d Sess. § 9 Research and Development, subsection (d)(3) (1990). H.R. 5200, The Aviation Security Improvement Act of 1990, 101st Cong., 2d Sess. § 108 Research and Development, subsection (d)(3) (1990).

²³¹ *Id.*

²³² *Joint Hearing and Markup on H.R. 5200 and H.R. 5732, supra* note 23 (statement of Bert Ammerman, The Victims of Pan Am Flight 103); *see also* Aphrodite Tsairis and Wendy Giebler, *Preventing Future Flight 103's*, THE RECORD (Hackensack), July 29, 1990, at O1, 4.

²³³ *Id.*

²³⁴ *Victims of Pan Am Flight 103 Newsletter*, September/October, 1990 (available through The Victims of Pan Am Flight 103, 135 Algonquin Parkway, Whippany, NJ 07981).

²³⁵ *Id.* Sheila and Joe Horgan were the organization representatives who led this letter campaign.

²³⁶ *Id.* This effort was led by Brian Barry, Joe Horgan and Adelaide Marek.

ment of Transportation, the State Department and legislative aides to Senators Lautenberg, D'Amato, Mitchell, Hollings and Ford, and Rep. Oberstar.²³⁷

On September 27, 1990, after a markup session, H.R. 5200 was killed and a clean bill, H.R. 5732, was introduced in lieu of H.R. 5200.²³⁸ H.R. 5732 was considered and passed unanimously, under suspicion, by the House on October 1, 1990.²³⁹ The organization then sent a letter to President Bush urging him to honor the commitment he made to the families on May 15, 1990 by signing the bill into law. On October 23, 1990, the Senate considered H.R. 5732, a modified version of its own S.2822 which was introduced on June 28, 1990 by Senators Lautenberg, D'Amato and Mitchell.²⁴⁰ (The Senate bill was a watered down version of H.R. 5200). H.R. 5732 was amended and passed.²⁴¹ On October 24, 1990, the House reconsidered H.R. 5732 and concurred in the Senate amendment.²⁴² H.R. 5732 was then presented to President Bush and signed into law on November 16, 1990.²⁴³

B. *Key Provisions of the Aviation Security Improvement Act of 1990*

The legislation is divided into two sections. Title I includes provisions to amend the Federal Aviation Act of 1958.²⁴⁴ It calls for the establishment of a Department of Transportation Director of Intelligence and Security,²⁴⁵ an FAA Assistant Administrator for Civil Aviation Security,²⁴⁶ Federal Security Managers at U.S. airports, and Foreign Security Liaison Officers at foreign airports.²⁴⁷ Title I also directs the FAA to require employment in-

²³⁷ *Id.*

²³⁸ 136 CONG. REC. H8469 (1990); *see also* 136 CONG. REC. H13,501 (daily ed. Oct. 24, 1990).

²³⁹ *Id.*

²⁴⁰ 136 CONG. REC. S16,555 (daily ed. Oct. 23, 1990).

²⁴¹ *Id.*

²⁴² 136 CONG. REC. H13,501 (daily ed. Oct. 24, 1990).

²⁴³ Aviation Security Act, *supra* note 4; *H. R. 5732 Signing Statement*, 26 WEEKLY COMP. PRES. DOC. 1832 (Nov. 19, 1990).

²⁴⁴ Aviation Security Act, *supra* note 4 (amending 49 U.S.C. App. §§ 1315, 1356, 1357, 1358a, 1358b, 1358c, 1358d, 1380, 1432).

²⁴⁵ Aviation Security Act, *supra* note 4, at § 101.

²⁴⁶ *Id.* at § 103.

²⁴⁷ *Id.* at § 104. *See also* 136 CONG. REC. S16,539 (daily ed. Oct. 23, 1990) (state-

vestigations or security arrangements for persons having access to air carriers and security areas in U.S. airports.²⁴⁸ It requires the FAA and FBI to assess threats to airport security, and directs the FAA to order cancellation of flights whose safety cannot be ensured.²⁴⁹ It orders the FAA to accelerate and expand the research and development, and implementation of technologies and procedures to counteract terrorism against civil aviation.²⁵⁰ It provides guidelines for public notification of threats to civil aviation and expressly prohibits selective notification.²⁵¹ Finally, Title I directs intelligence services to insure that intelligence reports concerning international terrorism are made available (as appropriate) to other members of the intelligence community, the Department of Transportation and the Federal Aviation Administration.²⁵²

Title II includes provisions directing the Department of State to continue to negotiate for security improvements with foreign governments under the Foreign Airport Security Act,²⁵³ and provides that the Coordinator for Counterterrorism be responsible for coordination of international aviation security for the Department of State.²⁵⁴ Additionally, it directs the Department of State to provide for notification and assistance to families of U.S. victims of aviation disasters abroad, as well as requiring designation of a State Department Family Liaison for families of victims.²⁵⁵ Critically, in light of the fact that the De-

ment of Sen. Lautenberg). Sections 101-104 make structural changes within the Department of Transportation. These changes are made to address a common thread that ran throughout the Commission's review: lack of focus on security and the lack of accountability for security responsibilities.

²⁴⁸ *Id.* at § 105.

²⁴⁹ *Id.* at §§ 106, 109.

²⁵⁰ Aviation Security Act, *supra* note 4, at § 107.

²⁵¹ *Id.* at § 109. See note 109 for a discussion of selective notification; *Aviation Security Special Hearing*, *supra* note 61, at 14.

²⁵² *Id.* at § 111.

²⁵³ *Id.* at § 201. Foreign Airport Security Act, 22 U.S.C. § 5510 (Contained in Int'l Security and Development Act of 1985 (amending § 1115 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1515))).

²⁵⁴ *Id.* at § 202.

²⁵⁵ Aviation Security Act, *supra* note 4, at §§ 204, 205. § 206 provides for disaster training for State Department personnel. The Victims of Pan Am Flight 103 have worked very closely with the State Department on this area providing advise and recommendations on "how to" and "how not to" deal with families in crisis situations. The organization conferred regularly with State Department representatives to develop an effective crisis management program.

partment was at a complete loss of how to react to the Lockerbie crisis, the legislation explicitly identifies the Department of State's responsibilities and procedures at international disaster sites.²⁵⁶ Title II also requires an assessment of the Department of State's response to the bombing of Pan Am Flight 103 for the purpose of promulgating guidelines for appropriate official expressions of respect and support for the families of United States citizens killed through acts of terrorism abroad.²⁵⁷ Additionally, Title II calls for the Secretary of State and the Secretary of Transportation to enter into negotiations with other nations for the establishment of international standards regarding guidelines to thwart international terrorists. Finally, it directs the Secretary of State, in consultation with the Secretary of Transportation, to submit a proposal to ICAO for purposes of establishing a comprehensive aviation security program worldwide.²⁵⁸

C. *Analysis of Key Provisions*

I. Title I

The President's Commission found that "the aviation security system administered by the FAA has not provided the level of protection the traveling public demands and deserves."²⁵⁹ The Commission identified the agency's reactive policy to problems, rather than an anticipatory policy, to be the source of the agency's inefficiency.²⁶⁰ The Commission's perception was the FAA's reliance on a reactive approach stems from a lack of visibility of the security function within the agency;²⁶¹ a lack of an effective information base; inattention to human factors and training; and a lack of accountability.²⁶²

Sections 101-104 of the Act make structural changes within

²⁵⁶ *Id.* at § 207.

²⁵⁷ *Id.* at § 209.

²⁵⁸ *Id.* at §§ 214, 215.

²⁵⁹ H.R. REP. NO. 845, 101st Cong., 2d Sess. pt. 1, at 16 (1990).

²⁶⁰ COMM'N REPORT, *supra* note 3, at 53; *see also* *President's Commission on Aviation Security and Terrorism Hearing*, March 9, 1990 (statement of Rep. Dante Fascell, Chairman of the Committee on Foreign Affairs) in which Rep. Fascell stated: "The U.S. Government is playing catch-up ball with respect to aviation security rather than taking innovative steps to get ahead of the curve."

²⁶¹ When the Commission conducted its work, aviation security was four rungs down in the agency hierarchy; *see also* H.R. REP. NO. 845, 101st Cong., 2d Sess., pt. 1, at 16 (1990).

²⁶² COMM'N REPORT, *supra* note 3, at 60.

the Department of Transportation to remedy these flaws.²⁶³ The legislation establishes within the Office of the Secretary of Transportation the position of Director of Intelligence and Security.²⁶⁴ This Director will have a strong working relationship with the highest levels of the intelligence community in order to facilitate receipt, assessment, and distribution of intelligence information relating to long-term transportation security.²⁶⁵ The Director's duties will include development of policies, strategies and plans for dealing with threats to transportation security, as well as serving as the primary liaison for the Secretary to the intelligence and law enforcement communities.²⁶⁶ Most important, this Director will be ultimately accountable for security and intelligence within the DOT.²⁶⁷ Lastly, with regard to the Director, the Secretary of Transportation must submit an annual report detailing the activities of the Director of Intelligence and Security and an assessment of the trends and developments in terrorist activities.²⁶⁸

The Act also provides for creation of an Assistant Administrator for Civil Aviation Security within the FAA who will have the responsibility and accountability for the day-to-day functioning of the aviation security system.²⁶⁹ Additionally, the legislation institutes a procedure for assigning Federal Security Managers (FSM) at domestic airports and Foreign Liaison Officers (FLO) abroad to specific airports on a priority basis.²⁷⁰ These individuals will replace the ineffective periodic inspections previously used by the FAA to oversee compliance with regulations.²⁷¹ The FMS's and FLO's will remain at designated facilities until a single, comprehensive security plan is in effect and

²⁶³ 136 CONG. REC. S16,539 (daily ed. Oct. 23, 1990) (statement by Sen. Lautenberg).

²⁶⁴ *Id.* This is a slight change from the Commission report, which recommended the creation of a new Assistant Secretary of DOT.

²⁶⁵ Aviation Security Act, *supra* note 4, at § 101.

²⁶⁶ *Id.*

²⁶⁷ 136 CONG. REC. S16,539 (daily ed. Oct. 23, 1990) (statement by Sen. Lautenberg). The Commission's review consistently turned up a lack of accountability for security responsibility.

²⁶⁸ Aviation Security Act, *supra* note 4, at § 102.

²⁶⁹ *Id.* § 103; *See also* H.R. REP. NO. 845, 101st Cong., 2d Sess., pt. 1, at 17 (1990).

²⁷⁰ *Id.* § 104; *See also* CONG. REC. S16,539 (daily ed. Oct. 23, 1990) (statement by Sen. Lautenberg); H.R. REP. NO. 845, 101st Cong., 2d Sess., pt. 1, at 18 (1990).

²⁷¹ *Id.*

adhered to in a consistent manner.²⁷²

Another key provision in the Act focuses on air carrier and airport security personnel.²⁷³ Airport and airline security personnel are the first line of defense against terrorism.²⁷⁴ However, investigations have shown that security personnel have been hired with little or no attention paid to personal backgrounds and qualifications.²⁷⁵ The legislation authorizes criminal history checks of prospective employees and mandates development of employment standards.²⁷⁶ Prior to this legislation, each airline devised its own methods and standards, resulting in dangerously inconsistent levels of standards.²⁷⁷

Research and development (R&D) is a critical factor of an efficient aviation security system. Any industry that faces continuous technological change must consistently put forth the effort to stay one step ahead. The Act recognizes the need for an effective R&D program and responds by focusing and accelerating the FAA's security R&D program.²⁷⁸ The goal of the provision is to develop and have in place within three years equipment and procedures capable of meeting the terrorist threat (e.g., plastic explosives).²⁷⁹ The provision also takes into account that in addition to R&D for technological improvements, it is critical to improve and enhance human performance as well.²⁸⁰

With regard to public notification of threats to civil aviation, there are arguments on both sides regarding this issue. On one side, there is concern of breach of classified intelligence information; on the other side, is the right of each individual to make informed decisions based on available information. This portion

²⁷² *Id.*; 136 CONG. REC. S16,539 (daily ed. Oct. 23, 1990) (statement by Sen. Lautenberg).

²⁷³ Aviation Security Act, *supra* note 4, at § 105.

²⁷⁴ H.R. REP. NO. 845, 101st Cong., 2d Sess., pt. 1, at 19 (1990).

²⁷⁵ 136 CONG. REC. S16,540 (daily ed. Oct. 23, 1990) (statement by Sen. Lautenberg).

²⁷⁶ Aviation Security Act, *supra* note 4, at § 105(a)(2), (h). The employment standards shall include minimum training requirements for new employees; retraining requirements; minimum staffing levels; minimum language skills; and minimum education levels as appropriate.

²⁷⁷ H.R. REP. NO. 845, 101st Cong., 2d Sess., pt. 1, at 19 (1990).

²⁷⁸ Aviation Security Act, *supra* note 4, at § 107.

²⁷⁹ 136 CONG. REC. S16,540 (daily ed. Oct. 23, 1990) (statement by Sen. Lautenberg).

²⁸⁰ Aviation Security Act, *supra* note 4, at § 107. *See also* 136 CONG. REC. S16,540 (daily ed. Oct. 23, 1990) (statement by Sen. Lautenberg).

of the Act directs the President to develop guidelines for ensuring notification of threats to civil aviation to the public in appropriate cases.²⁸¹ Additionally, this section of the legislation makes it clear that there should not be, under any circumstances, selective notification of a threat.²⁸²

The issue of selective notification is particularly sensitive with regard to the bombing of Pan Am Flight 103.²⁸³ On December 5, 1988, the United States Embassy in Helsinki received an anonymous telephone threat that a bomb would be carried aboard a Pan Am flight bound for New York within two weeks.²⁸⁴ The threat was taken very seriously, as is evidenced by the fact that the FAA issued a security bulletin to certain regions and representatives overseas and through the State Department to numerous embassies abroad.²⁸⁵ On December 14th, the United States Embassy in Moscow posted the bulletin.²⁸⁶ The State Department characterized the posting as a mistake.²⁸⁷ However, the State Department's standing policy regarding this issue in December, 1988 was opaque at best — providing little or no guidance to officials like those at the Embassy in Moscow.²⁸⁸ Therefore, prior to the bombing of Pan Am Flight 103, there was

²⁸¹ *Id.* at § 109.

²⁸² *Id.* at § 190. 136 CONG. REC. S16,541 (daily ed. Oct. 2, 1990) (statement by Sen. Lautenberg).

²⁸³ 136 CONG. REC. S16,541 (daily ed. Oct. 23, 1990) (statement by Sen. Lautenberg).

²⁸⁴ COMM'N REPORT, *supra* note 3, at 83. "Authorities" concluded that the threat was a hoax, however, the FAA never retracted the security bulletins or notified any entity in receipt of the bulletin that the threat warning was no longer in effect. Frank Moss of the State Department attended a meeting of The Victims of Pan Am Flight 103 in June of 1989 and stated to the membership that the "Helsinki threat was merely a gruesome coincidence." Kevin Riordan, *Lockerbie Victims Group Hears 'Enough' From U.S.*, COURIER POST (Camden), June 25, 1989 at 28; *See also* H.R. REP. No. 845, 101st Cong. 2d Sess. pt. 1, at 21 (1990); John Cushman, Jr., *Pan Am Was Told of Terror Threat*, N.Y. TIMES, Dec. 23, 1988, at A1.

²⁸⁵ *Id.*

²⁸⁶ *Id.* *See Foreign Airport Security Hearing*, *supra* note 22, at 140 (Appendix 17); COMM'N REPORT, *supra* note 3, at 84.

²⁸⁷ *Id.*

²⁸⁸ *Id.* at 84. *See also Hearing of President's Commission on Aviation Security and Terrorism*, (March 9, 1989) (statement of Raymond F. Smith). Raymond F. Smith of the Moscow Embassy testified at a hearing before the President's Commission on March 9, 1989 regarding his decision to post the bulletin. Mr. Smith raised the moral dilemma of having access to the threat information and deciding whether or not to distribute the information. He noted that if he had been planning to travel he would have taken the information into account and would have passed it onto

selective notification of government personnel regarding terrorist threat activity. In December, 1989, the United States Government issued a rare "National Threat Advisory" and reversed a long standing policy by publicizing the advisory.²⁸⁹ As a result of this Act, the policy is now clear.²⁹⁰ Selective notification is prohibited and public notification will be addressed via guidelines set forth by the President.²⁹¹

II. Title II

Title II reinforces U.S. policy to seek bilateral agreements²⁹² to achieve U.S. aviation security objectives with foreign governments and to continue to press vigorously for security improvements through the Foreign Airport Security Act.²⁹³ The Foreign Airport Security Act was passed in 1985.²⁹⁴ It directs the Secretary of State to negotiate airport security agreements.²⁹⁵ Additionally, the Act directs the Secretary of Transportation to provide regular assessments of the adequacy of security at foreign airports.²⁹⁶ If security measures are found to be inadequate, the Secretary of Transportation, in consultation with the Secretary of State, must invoke certain sanctions as provided by the Foreign Airport Security Act.²⁹⁷ The Commission found the Foreign Airport Security Act to be an effective means of correcting deficiencies and implementing improvements in aviation security abroad, but added that, in reality, the Act is only as good as the FAA's performance in enforcing its provisions.²⁹⁸

family and friends, so he felt compelled to give the same opportunity to other members of the American community in Moscow.

²⁸⁹ Memorandum from Robert K. Boyer, Senior Staff Consultant & Toni G. Verstandig, Staff Consultant to the Honorable Dante Fascell, Committee Chair, Committee on Foreign Affairs (Mar. 8, 1990) (on file at the Seton Hall School of Law Legislative Bureau).

²⁹⁰ Aviation Security Act, *supra* note 4, at § 109.

²⁹¹ *Id.*

²⁹² COMM'N REPORT, *supra* note 3, at 36.

²⁹³ Aviation Security Act, *supra* note 4, at § 201.

²⁹⁴ Foreign Airport Security Act, 22 U.S.C. 5510 (Contained in Int'l Security and Development Act of 1985, P.L. 99-83, signed into law Aug. 8, 1985).

²⁹⁵ *Id.*

²⁹⁶ *CounterTerrorism Policy and Embassy Security in Eastern Europe, Report of a Study Mission to Eastern Europe by the Committee of Foreign Affairs, U.S. House of Representatives*, (March 11, 1988) 100th Cong., 2d Sess., at IX.

²⁹⁷ *Id.*

²⁹⁸ COMM'N REPORT, *supra* note 3, at 36.

The primary focus of Title II is the federal government's response to victims of terrorism and their families.²⁹⁹ After Pan Am 103 went down, Scottish authorities and Pan Am immediately mobilized, but the State Department failed to assist relatives.³⁰⁰ Instead, the State Department chose to pass its responsibilities on to Pan Am and the Scottish authorities. One reason given by the State Department for abdicating their responsibilities was that it was unable to access the passenger manifest from Pan Am for seven hours and when it finally did receive the manifest, most families had already been notified that their loved ones were on the plane.³⁰¹ This had a "negative ripple effect" on subsequent activities and communications with relatives.³⁰² Subsequent investigations did not reveal why the State Department did not press Pan Am for the manifest sooner, but the Department testified it lacked the legal authority to force an airline to produce a passenger list.³⁰³

The Aviation Security Improvement Act remedies this situation. The Act provides that American carriers must provide passenger manifest information for any flight to the State Department no later than one hour after any such carrier is notified of an aviation disaster outside the U.S.³⁰⁴ Additionally, the Act emphasizes that it is the policy of the State Department pursuant to the State Department Basic Authorities Act to directly and promptly notify the families of aviation disasters abroad.³⁰⁵ Also, the Act provides for designation of a State Department family liaison and toll-free family communication system.³⁰⁶ This provision is critical because in the event of a disaster like Pan Am 103, family members need confirmation of whether or not their loved one is involved in the disaster. If their loved one is in fact involved, the State Department must advise the families, for example, on whether or not to travel to the disaster site, how to

²⁹⁹ 136 CONG. REC. S16,541 (daily ed. October 23, 1990) (statement by Sen. Lautenberg).

³⁰⁰ *Aviation Security Special Hearing*, *supra* note 61 (statement of Bert Ammerman, The Victims of Pan Am Flight 103).

³⁰¹ COMM'N REPORT, *supra* note 3, at 100.

³⁰² *Id.* at 101.

³⁰³ *Id.* at 100.

³⁰⁴ Aviation Security Act, *supra* note 4, at § 203. The Secretary of Transportation shall also consider a comparable requirement for foreign air carriers.

³⁰⁵ *Id.* at § 204.

³⁰⁶ *Id.* at § 205.

facilitate identification of bodies, what the average time frame is for identification of bodies, and how to facilitate the return of bodies and personal effects. The Act also provides for disaster training of State Department personnel, and explicitly details the Department's responsibilities and procedures at international disaster sites.³⁰⁷ Overall, Title II lays the groundwork for an effective system for dealing with families of victims of terrorism in an efficient yet compassionate manner. Taken in its entirety, the Act provides the methodology required to secure the safety of airways from the terrorist threat. Fully implemented and enforced, the Act will provide the tools necessary to realize the goal of securing the skies.

VI. Conclusion

Terrorism is a deadly weapon used by the weak and cowardly to wage violence against innocent victims.³⁰⁸ The Aviation Security Improvement Act of 1990 is a comprehensive piece of legislation which can be a powerful weapon in the war against terrorism. However, it is only as powerful as the people who implement and enforce it. When Pan Am Flight 103 was blown out of the sky at 31,000 feet, there were laws in effect that could have prevented it. Unfortunately, they simply were not being enforced. Hopefully, the events which led up to the enactment of this legislation raised the consciousness of the government, the airline industry and the American people. Gambling with the safety and security of a single life should never be tolerated. No airline official or government agency has the right to place bets on other people's lives. Compliance with the Aviation Security Improvement Act is a major step toward taking the gamble out of flying. It is a major step toward reclaiming the skies from terrorism. While passage of the Act is an empty victory for The Victims of Pan Am Flight 103, it is a victory for all air travelers who are particularly vulnerable to the terrorist threat.

With the enactment of this Act, the organization has altered its path, but it nevertheless remains a viable force. For one, the organization has implemented a "watchdog" mechanism to monitor implementation of the Act. As of October 1, 1991, Federal

³⁰⁷ *Id.* at §§ 206, 207.

³⁰⁸ COMM'N REPORT, *supra* note 3, at 113.

Security Managers (FSM's) were on the job at 18 major airports. The Congressionally mandated FSM's are acting as the FAA's focal point of security at the designated airports. The Act also requires the FAA to station Civil Aviation Security Liaison Officers at selected United States embassies to perform similar duties. The agency now has 11 liaison officers on duty overseas and soon will be adding six more.³⁰⁹

Additionally, the organization will continue to work with the State Department Consular Affairs Bureau to insure that an effective crisis management plan is in place.³¹⁰ To date, the Bureau has developed an instructional video featuring members of the organization recounting the abysmal treatment given to the relatives in the aftermath of the bombing. The purpose of the video is to sensitize State Department representatives to the needs of victims' families during a time of crisis. The State Department has also established a Travel Advisory Information number and a Crisis Management number as a direct result of the lobbying pressure of The Victims of Pan Am Flight 103. The messages provide comprehensive information for the traveling public regarding high risk areas and current threat information. The organization has also offered its services to the Bureau of Consular Affairs in the event of a terrorist attack to assist meeting the needs of victims' families.

A key focus for the organization has been monitoring the criminal investigation which continues more than three years after the bombing. On November 4, 1991, a five member delegation returned to the United Kingdom to meet with government officials in London, Edinburgh and Lockerbie.³¹¹ The purpose of the trip was to press investigators and politicians to release the names of the parties responsible for the bombing. The delegation was assured that indictments would be issued in the very near future. On November 14, 1991, the United States and British authorities charged two Libyan intelligence agents with the

³⁰⁹ *Victims of Pan Am Flight 103 Newsletter* vol. 3, issue 5 (Sept. 11, 1991) (available through the Victims of Pan Am Flight 103, 135 Algonquin Parkway, Whippany, NJ 07981). See generally Pat R. Gilbert, *Bomb Scanner to be Tested in Newark*, *THE RECORD* (Hackensack), October 8, 1991, at A3.

³¹⁰ See 135 CONG. REC. S10,145 (daily ed. Aug. 4, 1989).

³¹¹ The delegation included Bert Ammerman, Aphrodite Tsairis, Peter Lowenstein, Joe Horgan and Glenn Johnson.

fatal bombing.³¹² Acting Attorney General William Barr stressed that the United States charged two Libyan officials, acting as operatives of the Libyan intelligence service, along with other co-conspirators, with planting and detonating the bomb that destroyed Pan Am Flight 103.³¹³ Barr, the White House and the State Department emphasized that Washington held Libya itself responsible, not just the individuals.³¹⁴

While the indictments marked a milestone in nearly three years of unresolved grief and unrelenting persistence to find the truth, nagging questions remain.³¹⁵ For nearly three years, the investigation focused on the hypothesis that the bombing was the result of joint planning of the Popular Front for the Liberation of Palestine - General Command (PLFP-GC) of which Syria is the primary sponsor and the Iranian Revolutionary Guard Corps (IRGC).³¹⁶ When the indictments were finally released however, our new-found allies, Syria and Iran, seem to have been protected from the fallout of the Pan Am investigation.³¹⁷ The touchstone of the organization has always been to uncover the full truth behind the bombing of Pan Am Flight 103. The organization is not content to accept the theory that Syria and Iran were in no way responsible. A main focus of the organization in the

³¹² U.S., *British Charge 2 Libyans in Bombing of Pan Am 103*, STAR-LEDGER (Newark), November 15, 1991, at 1; *Bush Moves to Punish Libya*, ASBURY PARK PRESS, November 15, 1991, at A1; *See also Fact Sheet: Additional Information on the Bombing of Pan Am Flight 103*, U.S. Department of State, Bureau of Public Affairs, Office of Public Communication, November 15, 1991; *Libya's Continuing Responsibility for Terrorism*, White Paper issued by the Department of State (Nov. 1991); *Criminal Indictment: United States of America v. Abdel Ali Al-Megrahi, et al.*

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ Aphrodite Tsairis, *Politics Came Before Truth in the Pan Am 103 Indictments*, THE RECORD (Hackensack), Nov. 27, 1991, at B7.

³¹⁶ *Fact Sheet, The Iranians and the PFLP-GC: Early Suspects in the Pan Am 103 Bombing*, U.S. Department of State, Bureau of Public Affairs, Office of Public Communication, November 15, 1991.

³¹⁷ Aphrodite Tsairis, *Politics Came Before Truth in the Pan Am 103 Indictments*, THE RECORD (Hackensack), Nov. 27, 1991, at B7. *See also* Eloise Salholz, et al. *Who Paid for the Bullet*, NEWSWEEK, Nov. 25, 1991, at 26; statement of Acting Attorney General William Barr (on file with the Seton Hall School of Law Legislative Bureau). There is widespread suspicion that the U.S. Government backed away from any theory pointing to Syrian involvement because Syrian support is believed to be critical to the Mideast peace process. *See Damascus Demand Stalls Mideast Peace Talks*, STAR-LEDGER (Newark), Nov. 24, 1991, at 2.

near future will be directed towards insuring that the criminal investigation continues until the full truth is disclosed.

In the long term, the organization will continue to advocate a more aggressive stance towards defeating terrorism and to promote progressive changes in airline security. Specifically, in the area of terrorism the organization will target state-sponsored terrorism. The now confirmed state-sponsored bombing of Pan Am Flight 103 has propelled the issues surrounding the disaster into the international political arena. A major weakness of all democratic governments in addressing terrorism is that instead of devising a sensible and rational long-term strategy, the focus is on crisis management and political damage control in response to the latest outrage.³¹⁸ Once a disaster is off the front page, public memory recedes.³¹⁹ Inevitably, then, the general public and politicians lose interest, and the pressure to make urgently needed fundamental improvements in security falls by the way side, only to be promised once more when the next crisis is splashed across the headlines.³²⁰ The Victims of Pan Am Flight 103 intend to insure that public memory does not recede and refuses to allow the politicians to lose interest. The issue of state-sponsored terrorism is much bigger than the bombing of Pan Am Flight 103. It is a plague of society and will continue to fester if ignored. The organization perceives itself as "putting a face on terrorism" and is dedicated to keeping the horror of that December night in 1988 in the minds of all those who have the power to effect change. More innocent people should not have to die before the nations of the free world unite to take firm collective action against state sponsors of terrorism. The organization proposes to compel the United States, with other nations of the free world, to isolate the handful of outlaw nations sponsoring terrorism through the use of diplomatic, economic and if need be, military sanctions.³²¹

Ann McLaughlin who served as Chair to the President's Commission eloquently noted that, "the national will of the

³¹⁸ WILKINSON, *THE LESSONS OF LOCKERBIE*, *supra* note 28, at 8.

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ See *The Victims of Pan Am Flight 103 Position Paper* regarding the indictments issued in November, 1991 (on file at the Seton Hall School of Law Legislative Bureau).

American people and the moral courage of their elected leaders are the ultimate means to defeating terrorism. Terrorism must be confronted at its source, and not only after terrorists have enacted their bloody toll."³²² The Commission recommended a more vigorous United States policy that not only pursues and punishes terrorists, but also makes the state sponsors of terrorism pay a price for their actions. The United States can never provide iron-clad protections against terrorism, but it can make it more difficult for terrorism to succeed.³²³ That is what our security system is supposed to do. That is not what the system did on December 21, 1988. Hopefully, the Aviation Security Improvement Act of 1990 will be a successful link in a system that works proactively to combat terrorism, or else, Pan Am 103 provides a stark example of the acts of terrorism the civil aviation industry is sure to face in the future.

*Wendy Giebler **

³²² *Joint Hearing and Markup on H.R. 5200 and H.R. 5732, supra* at 23 (statement of Ann McLaughlin, Chair of the President's Commission on Aviation Security and Terrorism).

³²³ *Id.* (statement of Sen. Lautenberg).

* This note is dedicated in loving memory to the 270 individuals who lost their lives in the terrorist bombing of Pan Am Flight 103. *See* Appendix.

Appendix

The following is a list of the men and women who lost their lives in the bombing of Pan Am Flight 103:

AIRLINE STAFF*Cockpit Crew*

Captain: MacQuarrie, James, Bruw, 55, Kensington, New Hampshire. American

First Office: Wagner, Raymond Ronald, 52, Pennington, New Jersey. American

Fight Engineer: Avritt, Jerry Don, 46, Westminster, California. American

Pursers

Murphy, Mary Geraldine, 51, Twickenham, England. British
Velimirovich, Milutin, 35, Hounslow, England. Czechoslovakian

Flight Attendants

Avoyne, Elisabeth Nichole, 44, Croissy-sur-Seine, France. French

Berti, Noelle Lydie, 41 Paris, France. French

Engstrom, Siv Ulla, 51, Windsor, England. Swedish

Franklin, Stacie Denise, 20, San Diego, California. American

Garett, Paul Isaac, 41, Napa, California. American

Kuhe, Elke Etha, 43, Hannover, Germany. German

Larracoche, Maria Nieve, 39, Madrid, Spain. Spanish

Macalooloy, Lilibeth Tobila, 27, Kelsterbach, Germany. Filipino

Reina, Jocelyn, 26, Isleworth, England. American

Royal, Myra Josephine, 30, Hanwell, London, England. Dominican Republic

Skabo, Irja Syhnove, 38, Oslo, Norway. Finnish

PASSENGERS

Ahern, John Michael Gerard, 26, Rockville Center, New York. American

Aicher, Sarah Margaret, 29, London, England. American

Akerstrom, John David, 34, Medina, Ohio. American

Alexander, Ronald Ely, 46, New York City. Swiss

Ammerman, Thomas Joseph, 36, Old Tappan, New Jersey. American

Apfelbaum, Martin Lewis, 59, Philadelphia, Pennsylvania.
American

Asrelsky, Rachel Marie, 21, New York City. American

Atkinson, Judith Ellen, 37, London, England. American

Atkinson, William Carreston, 33, London, England. American

Bacciochi, Clare Louise, 19, Tamworth, England. British

Bainbridge, Harry Michael, 34, Montrose, New York. American

Barclay, Stuart Murray, 29, Farm Barnard, Vermont. American

Bell, Jean Mary, 44, Windsor, England. British

Benello, Julian MacBain, 25, Brookline, Massachusetts.
American

Bennett, Lawrence Ray, 41, Chelsea, Michigan. American

Bergstrom, Philip, 22, Forset Lake, Minnesota. American

Berkley, Alistair Davis, 29, London, England. British

Bernstein, Michael Stuart, 36, Bethesda, Maryland. American

Berrell, Steven Russell, 20, Fargo, North Dakota. American

Bhatia, Surinder Mohan, 51, Los Angeles, California. Indian

Bissett, Kenneth John, 21, Hartsdale, New York. American

Boatman-Fuller, Diane Anne, 35, London, England. American

Boland, Stephen John, 20, Nashua, New Hampshire. American

Bouckley, Glenn, 27, Liverpool, New York. British

Bouckley, Paula, 29, Liverpool, New York. American

Boulanger, Nicole Elise, 21, Shrewsbury, Massachusetts.
American

Boyer, Francis, 43, Toulosane, France. French

Bright, Nicholas, 32, Brookline, Massachusetts. American

Browner (Bier), Daniel Solomon, 23, Parod, Israel. Israeli

Brunner, Colleen Renee, 20, Hamburg, New York. American

Burman, Timothy Guy, 24, London, England. British

Buser, Michael Warren, 34, Ridgefield Park, New Jersey.
American

Buser, Warren Max, 62, Glen Rock, New Jersey. American

Butler, Steven Lee, 35, Denver, Colorado. American

Cadman, William Martin, 32, London, England. British

Caffarone, Fabiana, 28, London, England. Argentinian

Caffarone, Hernán, 28, London, England. Argentinian

Canady, Valerie, 25, Morgantown, West Virginia. American

Capasso, Gregory, 21, Brooklyn, New York. American

Cardwell, Timothy Michael, 21, Cresco, Pennsylvania. American

Carlsson, Bernt Wilson, 50, New York City. Swedish

- Cawley, Richard Anthony, 43, New York City. American
 Ciulla, Frank, 45, Park Ridge, New Jersey. American
 Cohen, Theodora Eugenia, 20, Port Jervis, New York. American
 Coker, Eric Michael, 20, Mendham, New Jersey. American
 Coker, Jason Michael, 20, Mendham, New Jersey. American
 Colasanti, Gary Leonard, 20, Melrose, Massachusetts. American
 Concannon, Bridget, 53, Banbury, England. Irish
 Concannon, Sean, 16, Banbury, England. Irish
 Concannon, Thomas, 51, Banbury, Engalnd. Irish
 Corner, Tracey Jane, 17, Millhouses, England. British
 Cory, Scott, 20, Old Lyme Court, Connecticut. American
 Coursey, Wills Larry, 40, San Antonion, Texas. American
 Coyle, Patricia Mary, 20, Wallingford, Connecticut. American
 Cummock, John Binning, 38, Coral Gables, Florida. American
 Curry, Joseph Patrick, 31, Fort Devens, Massachusetts. American
 Daniels, William Allen, 40, Belle Mead, New Jersey. American
 Dater, Gretchen Joyce, 20, Ramsey, New Jersey. American
 Davis, Shannon, 19, Shelton, Connecticut. American
 Della Ripa, Gabriel, 46, Floral Park, New York. Italian
 Di Mauro, Joyce Christine, 32, New York City. American
 Di Nardo, Gianfranca, 26, London, England. Italian
 Dix, Peter Thomas Stanley, 35, London, England. Irish
 Dixit, Om, 54, Fairborn, Ohio. Indian
 Dixit, Shanti, 54, Fairborn, Ohio. Indian
 Dornstein, David Scott, 25, Philadelphia, Pennsylvania.
 American
 Doyle, Michael Joseph, 30, Voorhees, New Jersey. American
 Eggleston, Edgar Howard III, 24, Glens Falls, New York.
 American
 Ergin, Turhan, 22, West Hartford, Connecticut. American
 Fisher, Charles Thomas IV, 34, London, England. American
 Flick, Clayton Lee, 25, Coventry, Engalnd. American
 Flynn, John Patrick, 21, Montville, New Jersey. American
 Fondiler, Arthur, 33, West Armonk, New York. American
 Fortune, Robert Gerard, 40, Jackson Heights, New York.
 American
 Freeman, Paul Matthew Stephen, 25, London, England.
 Canadian
 Fuller, James Ralph, 50, Bloomfield Hills, Michigan. American
 Gabor, Ibolya Robertine, 79, Budapest, Hungary. Hungarian

- Gallagher, Amy Beth, 22, Quebec, Canada. American
- Gannon, Matthew Kevin, 34, Los Angeles, California. American
- Garczynski, Kenneth Raymond, 37, North Brunswick, New Jersey. American
- Gibson, Kenneth James, 20, Romulus, Michigan. American
- Giebler, William David, Jr., 29, London, England. American**
- Gordon, Olive Leonora, 25, London, England. British
- Gordon-Gorgacz, Linda Susan, 39, London, England. American
- Gorgacz, Anne Madelene, 76, Newcastle, Pennsylvania. American
- Gorgacz, Loretta Anne, 47, Newcastle, Pennsylvania. American
- Gould, David, 45, Pittsburg, Pennsylvania. American
- Guevorgian, André Nikolai, 32, Sea Cliff, New York. French
- Hall, Hicola Jane, 23, Sandton, South Africa. Australian
- Halsch, Lorraine Frances, 31, Fairport, New York. American
- Hartunian, Lynne Carol, 21, Schenectady, New York. American
- Hawkins, Anthony Lacey, 57, Brooklyn, New York. British
- Herbert, Pamela Elaine, 19, Battle Creek, Michigan. American
- Hilbert, Rodney Peter, 40, Newton, Pennsylvania. American
- Hill, Alfred, 29, Sonthofen, Germany. German
- Hollister, Katherine Augusta, 20, Rego Park, New York. American
- Hudson, Josephine Lisa, 22, London, England. British
- Hudson, Melina Kristina, 16, Albany, New York. American
- Hudson, Sophie Ailette Miriam, 26, Paris, France. French
- Hunt, Karen Lee, 20, Webster, New York. American
- Hurst, Roger Elwood, 38, Ringwood, New Jersey. American
- Ivell, Elizabeth Sophie, 19, Robertsbridge, Engalnd. British
- Jaafar, Khalid Nazir, 20, Dearborn, Michigan. Lebanese/
American
- Jeck, Robert van Houten, 57, Mountain Larkes, New Jersey. American
- Jeffreys, Paul Avron, 36, Kingston-upon-Thames, England. British
- Jeffreys, Rachel, 23, Kingston-upon-Thames, England. British
- Jermyn, Kathleen Mary, 20, Staten Island, New York. American
- Johnson, Beth Ann, 21, Greensburg, Pennsylvania. American
- Johnson, Mary Alice Lincoln, 25, Wayland, Massachusetts. American
- Johnson, Timothy Baron, 21, Neptune, New Jersey. American

Jones, Christopher Andrew, 20, Claverack, New York. American
 Kelly, Julianne, Frances, 20, Dedham, Massachusetts. American
 Kingham, Jay Joseph, 44, Potomac, Maryland. American
 Klein, Patricia Ann, 35, Trenton, New Jersey. American
 Kosmowski, Gregory, 40, Milford, Michigan. American
 Kulukundis, Minas Christopher, 38, London, England. British
 LaRiviere, Ronald Albert, 33, Alexandria, Virginia. American
 Leckburg, Robert Milton, 30, Piscataway, New Jersey. American
 Leyrer, William Chase, 46, Bay Shore, New York. American
 Lincoln, Wendy Anne, 23, North Adams, Massachusetts.

American

Lowenstein, Alexander 21, Morristown, New Jersey. American
 Ludlow, Lloyd David, 41, Macksville, Kansas. American
 Lurbke, Maria Theresia, 25, Balve Beckum, Germany. German
 McAllister, William John, 26, Sunbury-on-Thames, England.

British

McCarthy, Daniel Emmet, 31, Brooklyn, New York. American
 McCollum, Robert Eugene, 61, Wayne, Pennsylvania. American
 McKee, Charles Dennis, 40, Arlington, Virginia. American
 McLaughlin, Bernard Joseph, 30, Bristol, England. American
 Mack, William Edward, 30, New York City. American
 Malicote, Douglas Eugene, 22, Lebanon, Ohio. American
 Malicote, Wendy Gay, 21, Lebanon, Ohio. American
 Marek, Elizabeth Lillian, 30, New York City. American
 Marengo, Louis Anthony, 33, Rochester, Michigan. American
 Martin, Noel George, 27, Clapton, England. Jamaican
 Maslowski, Diane Marie, 30, New York City. American
 Melber, Jane Susan, 27, Middlesex, England. American
 Merrill, John, 35, Hertfordshire, England. British
 Miazga, Suzanne Marie, 22, Marcy, New York. American
 Miller, Joseph Kenneth, 53, Woodmere, New York. American
 Mitchell, Jewell Courtney, 32, Brooklyn, New York. Guyanese
 Monetti, Richard Paul, 20, Cherry Hill, New Jersey. American
 Morgan, Jane Ann, 37, London, England. American
 Morson, Eva Ingeborg, 48, New York City. German
 Mosey, Helga Rachael, 19, Warley, England. British
 Mulroy, Ingrid Elizabeth, 25, Lund, Sweden. Swedish
 Mulroy, John, 59, East Northport, New York. Irish
 Mulroy, Sean Kevin, 25, Lund, Sweden. American
 Noonan, Karen Elizabeth, 20, Potomac, Maryland. American

- O'Connor, Daniel Emmett, 31, Boston, Massachusetts.
American
- O'Neil, Mary Denise, 21, Bronx, New York. American
- Otenasek, Anne Lindsey, 21, Baltimore, Maryland. American
- Owen, Bryony Elise, 1, Bristol, England. British
- Owen, Gwyneth Yvonne Margaret, 29, Briston, England. British
- Owens, Laura Abigail, 8, Cherry Hill, New Jersey. American
- Owens, Martha, 44, Cherry Hill, New Jersey. American
- Owens, Robert Plack, 45, Cherry Hill, New Jersey. American
- Owens, Sarah Rebecca, 14, Cherry Hill, New Jersey. American
- Pagnucco, Robert Italo, 51, South Salem, New York. American
- Papadopoulos, Christos Michael, 45, Lawrence, New York.
Greek/American
- Peirce, Peter Raymond, 40, Perrysburg, Ohio. American
- Pescatore, Michael, 33, Solon, Ohio. American
- Philipps, Sarah Suzanne Buchanan, 20, Newtonville, Massachusetts. American
- Phillips, Frederick Sandford, 27, Little Rock, Arkansas.
American
- Pitt, James Andrew Campbell, 24, South Hadley, Massachusetts.
American
- Platt, David, 33, Staten Island, New York. American
- Porter, Walter Leonard, 35, Brooklyn, New York. American
- Posen, Pamela Lynn, 20, Harrison, New York. American
- Pugh, William, 56, Margate, New Jersey. American
- Quiguyan, Crisostomo Estrella, 43, London, England. Filipino
- Ramses, Rajesh Tarsis Priskel, 35, Leicester, England. Indian
- Rattan, Anmol, 2, Warren, Michigan. American
- Rattan, Garima, 29, Warren, Michigan. American
- Rattan, Suruchi, 3, Warren, Michigan. American
- Reeves, Anita Lynn, 24, Laurel, Maryland. American
- Rein, Mark Alan, 44, New York City. American
- Rencevicz, Diane Marie, 21, Burlington, New Jersey. American
- Rogers, Louise Ann, 20, Olney, Maryland. American
- Roller, Edina, 5, Hungary. Hungarian
- Roller, Janos Gabor, 20, Hungary. Hungarian
- Roller, Zsuzsana, 27, Hungary. Hungarian
- Rootn, Hanne Maria, 26, Toronto, Canada. Canadian
- Rosen, Saul Mark, 35, Morris Plains, New Jersey. American
- Rosenthal, Andrea Victora, 20, New York City. American

- Rosenthal, Daniel Peter, 20, Staten Island, New York. American
 Rubin, Arnaud David, 28, Waterloo, Belgium. Belgian
 Saraceni, Elyse Jeanne, 20, East London, England. American
 Saunders, Scott Christopher, 21, Macungie, Pennsylvania.
 American
 Saunders, Theresa Elizabeth, 28, Sunbury-on-Thames, England.
 British
 Schauble, Johannes Otto, 41, Kappellenweg, West Germany.
 West German
 Schlageter, Robert Thomas, 20, Warwick, Rhode Island.
 American
 Schultz, Thomas Britton, 20, Ridgefield, Connecticut. American
 Scott, Sally Elizabeth, 22, Huntington, New York. British
 Shapiro, Amy Elizabeth, 21, Stamford, Connecticut. American
 Shastri, Mridula, 24, Oxford, England. Indian
 Sheanshang, Joan, 46, New York City. American
 Sigal, Irving Stanley, 35, Pennington, New Jersey. American
 Simpson, Martin Bernard Christopher, 52, Brooklyn, New York.
 South African
 Smith, Cynthia Joan, 21, Milton, Massachusetts. American
 Smith, Ingrid Anita, 31, Berkshire, England. British
 Smith, James Alvin, 55, New York City. American
 Smith, Mary Edna, 34, Kalamazoo, Michigan. American
 Stevenson, Geraldine Anne, 37, Fisher, England. British
 Stevenson, Hannah Louise, 10, Fisher, England. British
 Stevenson, John Charles, 38, Fisher, England. British
 Stevenson, Rachael, 8, Fisher, England. British
 Stinnett, Charlotte Ann, 36, New York City. American
 Stinnett, Michael Gary, 26, Duncanville, Texas. American
 Stinnett, Stacey Leanne, 9, Duncanville, Texas. American
 Stow, James Ralph, 49, New York City. American
 Stratis, Eliz G., 43, Montvale, New Jersey. Sudanese
 Swan, Anthony Selwyn, 29, Brooklyn, New York. Trinidadian
 Swire, Flora Margaret, 24, London, England. British
 Tager, Marc Alex, 22, London, England. British
 Tanaka, Hidekazu, 26, London, England. Japanese
 Teran, Andrew Alexander, 20, New Haven, Connecticut. Brit-
 ish/Bolivian
 Thomas, Arva Anthony, 17, Detroit, Michigan. American

Thomas, Jonathan Ryan, 2 months, Southfield, Michigan.
American

Thomas, Lawanda, 21, Southfield, Michigan. American

Tobin, Mark Lawrence, 21, North Hempstead, New York.
American

Trimmer-Smith, David William, 51, New York City. British

Tsairis, Alexia Kathryn, 20, Franklin Lakes, New Jersey.
American

Valentino, Barry Joseph, 28, San Francisco, California. American

van Tienhoven, Thomas Floro, 45, Buenos Aires, Argentina.
American

Vejdany, Asaad Eidi, 46, Great Neck, New York. Iranian

Vrenios, Nicholas Andreas, 20, Washington, D.C. American

Vulcu, Peter, 21, Alliance, Ohio. Romanian

Waido, Janina Jozefa, 61, Chicago, Illinois. Polish

Walker, Thomas Edwin, 47, Quincy, Massachusetts. American

Weedon, Keshia, 20, Bronx, New York. American

Weston, Jerome Lee, 45, Baldwin, New York. American

White, Jonathan, 33, North Hollywood, California. American

Williams, Bonnie Leigh, 21, Crown Point, New York. American

Williams, Brittany Leigh, 2 months, Crown Point, New York.
American

Williams, Eric John, 24, Crown Point, New York. American

Williams, George Waterson, 24, Joppa, Maryland. American

Williams, Stephanie Leigh, 1, Crown Point, New York. American

Wolfe, Miriam Luby, 20, Severna Park, Maryland. American

Woods, Chelsea Marie, 10 months, Willingboro, New Jersey.
American

Woods, Dederia Lynn, 27, Willingboro, New Jersey. American

Woods, Joe Nathan, 28, Willingboro, New Jersey. American

Woods, Joe Nathan, Jr., 2, Willingboro, New Jersey. American

Wright, Andrew Christopher Gillies, 24, Surrey, England.

British

Zwynenburg, Mark James, 29, West Nyack, New York. American

RESIDENTS OF LOCKERBIE

Flannigan, Joanne, 10.

Flannigan, Kathleen Mary, 41.

Flannigan, Thomas Brown, 44.

Henry, Dora Henrietta, 56.

Henry, Maurice Peter, 63.
Lancaster, Mary, 81.
Murray, Jean Aitken, 82.
Somerville, John, 40.
Somerville, Lyndsey Ann, 10.
Somerville, Paul, 13.
Somerville, Rosaleen Later, 40.

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