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## Body Scanning: Xmas Day's legacy

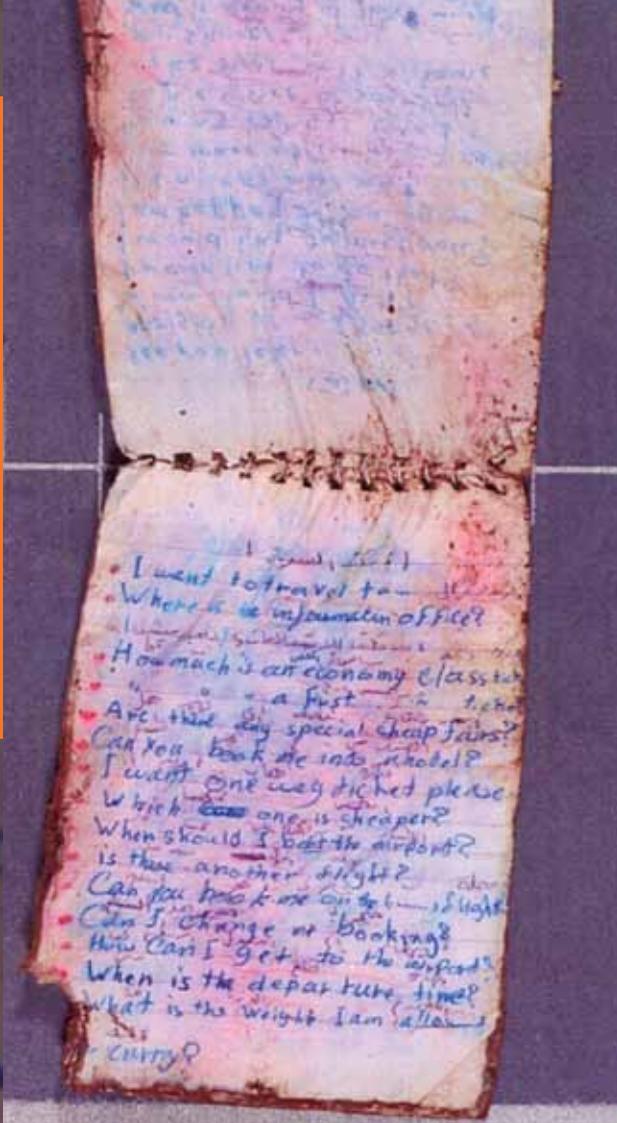
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# Failing to Curtail Terrorist Travel:

## failing to implement 9/11 Commission recommendations



One of the key phrases from the 9/11 Commission report is that, "for terrorists, travel documents are as important as weapons." The 2009 Christmas Day plot aboard Northwest flight 253 made clear to the world that, not only are travel documents as important as weapons to terrorists, but that executed terrorist plots aimed at the United States on 9/11, and subsequently, have normally incorporated air travel as an essential component. What we have learned about terrorist travel has been significant. Incorporating those lessons learned into an operational architecture has improved aviation security but, as **Janice Kephart** explains, we have some way to go to assure it.

The incredible devastation caused by 9/11 emboldened al Qaeda to keep trying to perpetrate such acts. They are well aware that loopholes in our aviation security system exist and, as such, they will continue to exploit them until they are closed. Interestingly, the installation of strong biometric-orientated controls and having watch-list information available at U.S. ports of entry, including the 'freezing' of passengers' identities upon arrival, has propelled al Qaeda to revert to

strategies whereby plots unfold prior to the perpetrators reaching the United States. Thus, both Richard Reid's 21 December 2001 and Abdulmutallab's 25 December 2009 "explosive fashion" attempts were on planes originating from Europe, bound for the United States with the plot unfolding in the air, prior to their reaching any U.S. border checkpoint.

That border security must begin beyond our physical borders was a key lesson learned from 9/11, including the use of intelligence to curb terrorist

travel. For some passengers, that process can begin the moment they apply for a visa.

The loopholes where aviation security meets border security are still wide enough for terrorists to exploit them, especially where those loopholes are magnified due to constraints placed upon the United States outside U.S. borders by other nations. Yet these loopholes need not exist. In fact, if the 9/11 Commission recommendations had been fulfilled in both letter and

*Facing page image: 9/11 hijacker's notebook found on board United Airlines Flight 93 (Pennsylvania)*

spirit, the Christmas Day Plot of 2009 would never have gotten off the ground, literally or figuratively.

Watch-lists, visa adjudication and pre-border vetting were all discussed in the 9/11 Final Report. While many new programmes and procedures have been put in place, some of the most important 9/11 Commission recommendations in these areas have been ignored because they are complex, were not politically prioritised, or have been indefinitely delayed due to arguments claiming civil liberty violations. The programmes and policies that are in place are a tremendous improvement over the pre-9/11 border and aviation screening processes, but without all the recommendations fulfilled, the gaps remain. President Obama has stated more than once that the gaps were huge - both an inaccurate statement as well as an unfortunate message to send around the world, as it indicates that the U.S. is weak on security. What is accurate is that due to the nature of the plot, the ramifications of these gaps were huge, but not the gaps themselves. It is these small gaps that add up to a huge failure, and a potentially tragic event. Filling these gaps will never 100 percent assure against another successful terrorist event, but it will edge aviation security closer to that assurance, and it is doable.

## The Role of Intelligence

The role of intelligence in preventing terrorist travel is essential, but secondary. At base, what matters the most to stop a plotter such as the 2009 Christmas Day bomber is a robust, dot-connected border and aviation security architecture.

President Obama marked this event as primarily an intelligence failure, and the global media continue to focus on the intelligence failures. Yet from the perspective of a former 9/11 Commission counsel - whose profession focuses on how terrorists exploit travel and what governments need to do to curb such activity - President Obama's answer is both too myopic and too politically convenient. The

President is myopic because he refuses to see the broader questions of border and aviation security that flow from the Christmas Day suicide bomber's significant breach of both systems. The President's answer is politically convenient because if he acknowledges a weakness in U.S. border security, the chance of the amnesty President Obama has pledged his supporters for nearly 11 million illegal aliens currently in the United States could be defeated when the issue arises for Congressional consideration this spring. The majority of Americans have made clear that only if border security is achieved first will the country consider such a massive - and inevitably insecure - amnesty.

The Obama administration also has never acknowledged the 9/11 Commission recommendations as a continuing government goal; instead, it has sought to reverse some key recommendations, including a driver license law known as REAL ID that would help assure identity security for domestic air travel. Despite making its repeal a legislative priority, the administration failed. Yet in so doing, tightening domestic aviation identity security is significantly delayed. Not an admission any administration would own up to.

Nor has President Obama dealt directly with issues stemming from the government's inability to get up and running a new aviation watch-list, called Secure Flight, which his supporters have opposed for years. Reversing 9/11 Commission recommendations such as these, and ignoring others described in more detail below, have not enabled this



**“...the Obama administration has never acknowledged the 9/11 Commission recommendations as a continuing government goal; instead, it has sought to reverse some key recommendations...”**

President to step back and embrace the Commission's recommendations. Instead, Obama has side-stepped these recommendations with a series of broad statements and narrow fixes aimed at the next al Qaeda attempt that mimics the Christmas plot; but such narrow fixes may not stop a different type of attack which al Qaeda tries based on their lessons learned about adjusted U.S. security measures.

Blaming the intelligence community - something the Obama administration has done more than once - is simply a convenient hook on which to hang these failures, but curing only those failures will not provide the efficiency and security the government needs to protect against terrorist travel. To be clear, the role of intelligence in preventing terrorist plots is absolutely essential, but when teamed with border and aviation security, it is only relevant under three circumstances: (1) the intelligence community has prior information on the individual; (2) aviation and border systems have sufficient access to the intelligence in real time; and (3) the decision authority within these systems is sufficient to stop the traveller. If any of these circumstances is lacking and an in-flight terrorist event is planned, the risk of success is high.

*Umar Farouk Abdulmutallab, alleged perpetrator of the attack against Northwest flight 253 on 25th December 2009.*

## 9/11 Commission Recommendations

The 9/11 Commission recommendations need to be adhered to and upgraded as we garner more information as to how terrorists criminals travel. However, many of these recommendations, even taken individually, could have been sufficient to stop Abdulmutallab. Here are highlights of recommendations still not in place taken directly from the 9/11 Final Report, many of which are exactly the failure that has been acknowledged by government officials:

### Strategies for Aviation and Transportation Security (p. 390)

**Recommendation:** Improved use of the “no-fly” and “automatic selectee” lists should not be delayed while the argument about a successor to CAPPS (computer assisted airport screening which applies to checked luggage only) continues. This screening function *should be performed by TSA* (Transportation Security Administration created after 9/11), and it should *utilise the larger set of watch-lists* maintained by the federal government. [emphasis added] (p. 393)

**Recommendation:** The TSA and the Congress must give *priority attention to improving the ability of screening checkpoints to detect explosives on passengers*. As a start, each individual selected for special screening should be screened for explosives. [emphasis added] (p. 393)

### Terrorist Travel (p. 383)

**Recommendation:** The United States *should combine terrorist travel intelligence, operations, and law enforcement in a strategy to intercept terrorists*, find terrorist travel facilitators, and constrain terrorist mobility.

*Since officials at the borders encounter travellers and their documents first ... , they must work closely with intelligence officials.* [emphasis added] (p. 385)

### A Biometric Screening System (p. 385)

When people travel internationally, they usually move through defined channels, or portals. They may seek to acquire a passport. They may apply for a visa. They stop at ticket counters, gates and exit controls at the airports and seaports. Upon arrival, they pass through inspection points. They may transit to another gate to get on an airplane. ...

Each of these checkpoints or portals is a screening - a chance to establish that people are who they say they are and are seeking access for their stated purpose, to intercept identifiable suspects, and to take effective action.

*The job of protection is shared among many defined checkpoints. By taking advantage of them all, we need not depend on any one point in the system to do the whole job.* The challenge is to see the common problem across agencies and functions and develop a conceptual framework—an architecture—for an effective screening system. [emphasis added] (p. 385-386)

### The U.S. Border Screening System

*All points in the border system - from consular offices to immigration services offices - will need appropriate electronic access to an individual's file.* Scattered units at Homeland Security and the State Department perform screening and

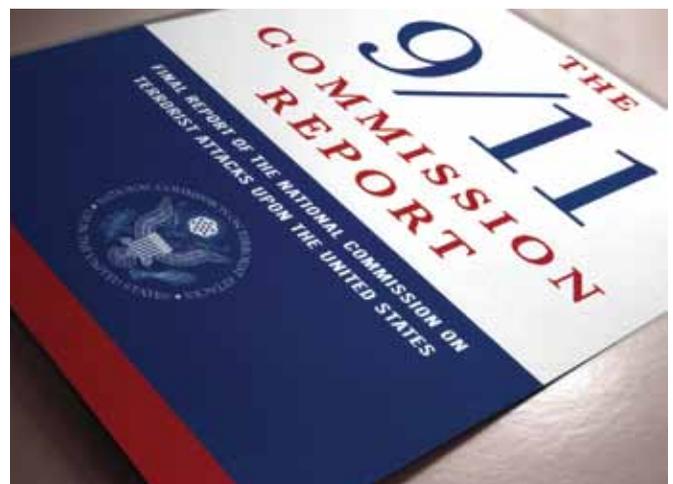
**“...Abdulmutallab was not scheduled to be questioned by border inspectors until landing in Detroit...”**

data mining: instead, a government-wide team of border and transportation officials should be working together. A modern border and immigration system should combine a biometric entry-exit system with accessible files on visitors and immigrants, along with intelligence on indicators of terrorist travel. [emphasis added] (p. 388-389)

### Assessing the 2009 Christmas Plot

In the case of Abdulmutallab, intelligence existed but there was a gap in aviation and border systems obtaining that information in a timely manner. The intelligence itself was also not sufficiently analysed or shared across agencies, highlighting issues with inadequate risk assessment software tools and failures to integrate the border and aviation systems sufficiently with intelligence. It thus was of little consequence that the intelligence was as solid or strong as it was, if it could not reach the right people at the right time with the authority to make the right decisions. However, had the intelligence and border community had Abdulmutallab’s full immigration history available when an intelligence officer in Nigeria delivered a report on visits and phone calls from Abdulmutallab’s prominent and credible father concerned about his son cutting off communication and radical leanings (al Qaeda requires a communication cut-off from families when a sworn member is designated to be conduct a mission), as well as visa information and the young man’s prior visits to the United States that included a religious conference, both a visa revocation and ‘no fly’ would more likely have been generated, with or without British intelligence pertaining to a denied student visa or more general U.S. information regarding a Nigerian dubbed for a mission in coming months.

The U.S. State Department had more than sufficient authority to revoke Abdulmutallab’s visa; statements stating otherwise are a matter of long-held State Department policy,



not legal authority. In fact, the 9/11 Commission recommended and it is law that legal authority for visa revocations is wide and not challengeable in court. The State Department had enough information and authority to revoke this terrorist's visa, but simply failed to do it. The problem with the visa process is that even since 9/11, it remains an arm of diplomatic favouring and reciprocity around the world. Security is of much lower priority.

On the other hand, those with a security mission, U.S. border personnel do conduct intelligence and risk assessments of passenger manifest lists backed up by a security mission, but are hamstrung by both the lack of legal authority to conduct law enforcement activities overseas and a "too small" watch-list vetting process pre-boarding. This is the case even at international airports such as Schiphol in Amsterdam, where the United States has border inspectors on the ground yet were never tasked with screening Abdulmutallab. Nor would these inspectors have had the authority to stop his boarding without agreement from their Dutch counterparts, even if the U.S. immigration analysts reviewing his information had requested a secondary screening and no-board.

In addition, the watch-lists vetted - only a narrow 'no fly' and 'selectee' list were reviewed pre-boarding - were wholly inadequate to stop an in-flight terrorist attempts. Had the vetting of more complete watch-lists that the 9/11 Commission recommended occurred pre-boarding, a secondary would have been sought. Instead, Abdulmutallab was not scheduled to be questioned by border inspectors until landing in Detroit. The layers were in place, but the timing and content of the layers insufficient.

If the full body scan equipment available at Schiphol had been used, also in tune with 9/11 recommendations, this also could have stopped Abdulmutallab. In addition, TSA personnel are still without direct access to Secure Flight data - the aviation watch-list tool that has not gone live in eight years due to constant pushback from those claiming civil liberties violations. In addition, integrated intelligence garnered from immigration pre-screening with TSA

body scan procedures would inevitably help assure that a proper architecture is in place to vet the entire person, not just a body, an ID, or a combination of watch-lists. Any one of those layers could be sufficient, but this one was not in place. As was said in the 9/11 Final Report, "the job of protection is shared among many defined checkpoints. By taking advantage of them all, we need not depend on any one point in the system to do the whole job."

There were many opportunities to stop the 2009 Christmas plot, and all fell through gaps because 9/11 Commission recommendations were not fully implemented, even five years after those recommendations

were published and most made law. Too little too late is no longer an excuse. Much was in place prior to this administration, and it has been up to President Obama to continue implementation. That President Obama has a second chance is lucky for us all. Let's hope that whether it is by name, or not, the 9/11 Commission recommendations become fully implemented. We may not be so lucky next time. ■

*The author is a former border counsel to the 9/11 Commission and currently serves as National Security Policy Director at the Centre for Immigration Studies.*

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