

SKATING | ON STILTS

Why We Aren't Stopping Tomorrow's Terrorism

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If you want to understand how difficult it can be to change security policy in the face of privacy, international, and business opposition, the best place to start is in the months before September 11, 2001.

The entire government knew an attack was coming—somewhere. And yet so entrenched were civil liberties and international interests that it took an act of individual courage to keep even one hijacker out of the United States in the months before the attack.

Worse, that kind of courage was missing when the time came to look for known terrorists within the United States.

For years pockets of the FBI had waged a stubborn insurgency against the civil liberties strictures created by the court that administered the Foreign Intelligence Surveillance Act, or FISA. Unlike most agencies, the FBI had both intelligence and criminal authorities, and its agents often shared information with each other without much regard for the court's effort to build a wall between the intelligence and law enforcement. But in August 2001, just as sharing was needed most, the FBI's resistance was finally stamped out, and the last chance to stop the attacks was lost.

It's a long flight from London to Orlando, and in August it only takes a touch of Florida's afternoon heat and humidity to leave jet-lagged passengers slumped and rumpled in the line for immigration control. But in early August 2001, there was nothing slumped about Mohamed al Kahtani. He was a small man, but he stood in the line like a soldier.

That's what he was. He had come to Florida on a martyrdom mission for al Qaeda. At that moment, Mohammed Atta was waiting upstairs, on the other side of border control, talking to al Qaeda's man in Dubai on a pay phone, demanding to know where the new arrival was.

But Atta's soldier had a problem. When he strode to the immigration booth for what should have been a thirty-second interview, Kahtani told the officer he spoke no English. He left his customs and arrival form blank. Little things, but they made the officer suspicious. In four years at Orlando airport, this was the first Saudi she'd encountered who did not speak at least a bit of English.

She sent him to secondary inspection, where an experienced border official would be able to ask a few more questions.

That's when Kahtani met Jose Melendez-Perez.

Melendez-Perez is a quiet man with glasses and a mustache. He'd been in the military himself—twenty-six years as an enlisted man in the Army before starting a second career as a border inspector.

Melendez-Perez called Kahtani into the interview room. The man was "well groomed with short hair, thin mustache, black long-sleeved shirt, black trousers and black shoes," Melendez-Perez remembers.¹ Kahtani stood about five-feet-six and was in "impeccable shape . . . He had a military appearance," Melendez-Perez told the 9/11 Commission.² As soon as they made eye contact, though, Kahtani began behaving oddly. He gave the inspector a long stare with more than a hint of arrogance in it. Kahtani wasn't happy. He'd been cooling his heels in secondary inspection, and he was already impatient. As he sat down for the interview in a windowless room, the temperature in the room seemed to drop. Kahtani was giving off an air of menace.

Melendez-Perez launched into the interrogation, waiting for the translator on the speaker-phone to repeat the questions in Arabic. (In this book, conversations that are paraphrased or reconstructed from paraphrases are marked with dashes rather than quotation marks.)³

—Why don't you have a return ticket? Melendez-Perez asked.

Kahtani showed anger. He resented the question. And the finger he waved in Melendez-Perez's face didn't require translation.

—Where are you going when you leave the United States? Melendez-Perez asked, unfazed.

—I don't know; a friend is coming to the U.S. to travel with me. He is making the travel arrangements.

—And when will the friend arrive? Melendez-Perez asked.

—In three or four days, said the Saudi.

—And what is the purpose and length of your visit?

—I'll be here for six days. I'll travel around the United States with my friend, said Kahtani.

Melendez-Perez thought the whole thing was fishy. Why wait around for his friend for three or four days if the whole stay is just six days?

"It was clear that he was upset," Melendez-Perez recalled to me later. "He didn't have answers to my questions, so he started to get aggressive."⁴

The Saudi's anger and sense of entitlement were unusual.

"This was the first time anyone had done that in a secondary interview," Melendez-Perez told me. "Usually, you know, people try to stay calm and persuade you they're good people who should be admitted."⁵

Melendez-Perez kept pressing.

—And where will you stay?

—At a hotel.

—Won't it be hard to stay at a hotel if you don't have a reservation and don't speak the language? Melendez-Perez asked.

—I've got a friend upstairs waiting for me, Kahtani told him.

—And what is your friend's name? Melendez-Perez asked.

—Actually, I'm going to call my friend once I've found a place to stay.

Kahtani's story was changing.

—So, what's your friend's phone number, then? Melendez-Perez pressed.

—That's none of your business, said Kahtani. It's personal; there's no reason for you to contact him.

—How are you going to pay for your hotel and your travel and your flight home? Melendez-Perez asked him.

Kahtani had \$2,800 in cash and no credit cards. A return ticket would use up most of that.

—My friend is going to bring me some money, Kahtani said.

—Why would he bring you money?

—Because he is a friend, said Kahtani.

—How long have you known this person?

—Not too long, said Kahtani.

By now, Melendez-Perez had spent more than an hour with Kahtani, growing less and less comfortable with the hostile and evasive Saudi. It felt to Melendez-Perez almost as though Kahtani had received counterinterrogation training.

Kahtani must have known that his answers weren't satisfactory, but he didn't seem to care. In the end, he expected to be admitted no matter what he said. After all, his papers were in order. A search of his luggage had turned up empty. Melendez-Perez had nothing concrete, just a bunch of answers that he didn't like.

That would have been enough to turn most travelers away. But Kahtani was a Saudi. And as far as Melendez-Perez knew, no Saudi had ever been turned away by a border inspector.

The Saudis who came to the United States "knew they were going to get taken care of," Melendez-Perez told me.⁶

"When I started work in Miami, I got instructions about arriving flights with Saudi passengers. We were told 'Don't do anything to offend Saudi passengers.' When a flight with a lot of Saudis would arrive in Miami, the line supervisors would get nervous. They would tell the officers, 'Make sure you treat these people well and follow protocols for them.'"⁷

In Orlando it was the same.

"Even the supervisors were nervous about how Saudi passengers are greeted," Melendez-Perez said.⁸ The special treatment could be seen as simple cultural sensitivity. For example, if a female passenger accompanies a male, and the man doesn't want her to show her face to

the male officer, the female would be sent to secondary to be seen by a female officer.

But the supervisor's nervousness sent an informal message, too: "No one was into refusing Saudis," says Melendez-Perez.⁹

If he had any doubt about that, it didn't last long. Melendez-Perez stepped out of the interview room to check Kahtani's computer records. And to warm up. Just being in the room with the Saudi was chilling his blood. He'd been in there a while. The whole office must have realized what was happening.

As he stood by the computer, one of his coworkers walked by, a stack of immigration forms in hand.

"Hey, you're trying to refuse a Saudi? Are you crazy? You'll get in trouble for that," his colleague said without breaking stride.¹⁰

"He gave me the wrong answers. I can refuse anyone for that," Melendez-Perez retorted.¹¹

But he knew that wasn't true.

"I didn't really have the authority to refuse Kahtani. But I could recommend refusal. The question was, 'Would that fly?'"¹²

The problem wasn't the inspector's instincts. "I had a good record. Sometimes officers recommended refusal and it didn't stand up, but I had built up credibility."¹³

The problem was the nationality of the man he was trying to send home. The United States wanted Saudis to feel welcome when they came to the country. They were good for business; and anything that made them uncomfortable would provoke criticism from the tourism industry. And they had clout. Saudi Arabia had paid much of the cost of the first Gulf War. Its diplomats were wired in Washington, and unhappy Saudi tourists were quick to call the embassy. In fact, Washington had already made the front-line border supervisors nervous about anything that hinted at cultural insensitivity or discrimination.

Melendez-Perez was determined, though. This guy was bad. He took the problem to his supervisor, who had the authority to approve his recommendation. Listening to Melendez-Perez, the supervisor

must have wondered how he'd justify the refusal if the Saudis—or the U.S. ambassador to Saudi Arabia—decided to complain.

He'd say, "Well sir, my inspector's intuition told him the guy was up to no good. He didn't like the way Mr. Kahtani stared at him and Kahtani's answers to his questions seemed arrogant and strange." Could the diplomats make that sound like ethnic prejudice, or cultural insensitivity, or just an arbitrary bureaucratic power trip? Sure they could. He had no grounds for excluding Kahtani that would stand up to second-guessing.

The supervisor was willing to back his inspector, but only if he could find someone to back *him*.

—Let's take this higher, the supervisor said.

He put in a call to the assistant director of the port. Melendez-Perez listened nervously as his supervisor laid out the case to the assistant director. Then the supervisor fell silent. He handed the phone to Melendez-Perez.

The assistant director wanted to talk to Melendez-Perez directly. He had a lot of questions. He wanted to know why Melendez-Perez was pushing the issue so hard.

—When he looks at me, said Melendez-Perez, I feel a bone-chilling cold. The bottom line is, he gives me the creeps.

Now it was the assistant director's turn to squirm. The call was his. And so was the blame if the decision blew up into a diplomatic mess. He needed something more, a clear bureaucratic line of defense, not all this talk about Kahtani's "chilling" demeanor and unconvincing answers.

But the assistant port director had an idea. He quoted the Immigration and Nationality Act: "An applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States."¹⁴

"Put him under oath and ask the questions again," the assistant director ordered. "If he won't answer, he's in violation of the law. Then you can refuse him."¹⁵

The stakes were high as Melendez-Perez walked back to the windowless room where Kahtani was waiting. If Kahtani refused to answer, he would be on the next plane home. But if he just repeated what he'd said before, Melendez-Perez's boss—and his boss's boss—would be in a tough spot.

Melendez-Perez administered the oath. And he began asking the same questions Kahtani had already answered. Kahtani could see what was happening. They were covering the same ground all over again. The officer wasn't even trying to disguise the repetition. Kahtani had had enough. He balked. He was sick of the whole thing.

Melendez-Perez breathed a sigh of relief. That was it. They wouldn't have to rely on his intuition if they were called on the carpet. Kahtani had blundered into a flat violation of the law. Now he could be sent home.

Ninety minutes later Melendez-Perez and another inspector were on the jetway of a Virgin Atlantic flight to Heathrow with Kahtani between them. The plane was empty. Kahtani would be boarding before anyone else.

Before boarding, though, Kahtani had one more thing to say. He was standing erect, almost cocky, in the door when he turned to the inspectors.

"I'll be back," he said.¹⁶

For the first time all day, he spoke in English.

He was right. He would be back. But not in time to meet Mohammed Atta, who left the airport that day without his soldier.

And not in time to meet the other hijackers, either. Five weeks after Kahtani was sent home, Flight 93 took off with four hijackers on board. Every other hijacked flight that day had a team of five. As it turned out, the missing man made all the difference. Organizing quickly, the passengers attacked the shorthanded crew of hijackers. Unable to keep the passengers out of the cockpit, the hijackers were forced to crash the plane in an empty field near Shanksville, Pennsylvania. It never got near its likely target, the Capitol in Washington, D.C.

When Kahtani did return, it would be in shackles. He was captured in Afghanistan as an enemy combatant in 2002.

There's a good chance that the Capitol was spared thanks in part to the determination and imagination that Jose Melendez-Perez and his superiors showed. Melendez-Perez turns aside praise for what he did.

"That's why I was getting paid," he says.¹⁷ But, in fact, he managed to do his job in part because he and his bosses found a way to protect themselves from bureaucratic second-guessing.

A few months earlier, though, in New York and Washington, it was second-guessing that triumphed. As a result we lost our best chance to save the World Trade Center and the Pentagon.

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