

# EXAMINING MANAGEMENT PRACTICES AND MISCONDUCT AT TSA: PART I

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## HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT  
AND GOVERNMENT REFORM  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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## EXAMINING MANAGEMENT PRACTICES AND MISCONDUCT AT TSA: PART I

Wednesday, April 27, 2016

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
WASHINGTON, D.C.

The committee met, pursuant to call, at 10:02 a.m., in Room 2154, Rayburn House Office Building, Hon. Jason Chaffetz [chairman of the committee] presiding.

Present: Representatives Chaffetz, Mica, Duncan, Jordan, Walberg, Amash, Gosar, DesJarlais, Farenthold, Lummis, Massie, Meadows, DeSantis, Mulvaney, Buck, Blum, Hice, Carter, Grothman, Hurd, Palmer, Cummings, Maloney, Norton, Clay, Lynch, Connolly, Kelly, Lieu, Watson Coleman, and DeSaulnier.

Chairman CHAFFETZ. The Committee on Oversight and Government Reform will come to order.

And without objection, the chair is authorized to declare a recess at any time.

We have an important hearing today examining the management practices and misconduct at the Transportation Security Administration, the TSA.

As we enter the summer travel, many Americans are headed to the airport. We get a lot of people who come in from overseas who want to travel domestically, but we have got a lot of Americans who are taking their families, they are going on business, a whole array, everything you can think about. And then the numbers are pretty amazing how many people travel on a daily basis.

But often when they get there, they are finding that there are very long lines. Now, we need our airplanes and airports to be as secure as possible, but the practices of securing those airports, I think, continues to be an ongoing question because sometimes the lines become so difficult and so long.

During one week in mid-March nearly 6,800 passengers missed their flights due to long waits at TSA checkpoints. At the Charlotte airport, passengers waited more than 3 hours just to get through security. And many airports are complaining TSA is only getting worse, not better, and yet there has been a rise in the sheer number of people that were working at the TSA certainly since its inception.

But you are also going to find that the attrition rate is pretty stunning, and there is a reason why. I think it is a key indicator as to how the organization is performing and who is being rewarded and not being rewarded and how do people generally feel about the organization.

I think people are patient. They are willing to wait in line if they feel like the airport is becoming secure, but last summer, the Department of Homeland Security inspector general performed covert testing at TSA's airports' security screenings and found "failures in technology, failures in TSA procedures, and human error." The IG, the inspector general, testified before this committee that "layers of security were simply missing."

I understand that some recommendations are still outstanding, although I appreciate the TSA has taken steps to address many of the inspector general's findings. As TSA works to improve security and reduce wait times to reasonable levels, the agency's staffing problem threatens to undermine its progress.

Currently, the agency is losing—think about this; these numbers are pretty stunning. They are losing about 103 screeners each week through attrition. Now, that is a little bit of a scary number because think that is telling us that they really don't like working there.

In 2014, this is again a very stunning number, 373 people joined but 4,644 people departed. There are a lot of people looking for good jobs, good opportunity in this country, and so when you have 4,600 people leave that job and they are only able to attract 373, what does that tell you? It tells you there is probably a management problem there and that there are probably some challenges and some underlying things and causes that ought to be examined.

The government actually, I think, does a good job in that it surveys Federal employees at all the different agencies across all of government. And remember, there are more than 2 million Federal employees out there. Of the 320 agencies that are ranked and scored, the TSA ranked 313 out of 320, making it one of the worst places to work.

The committee has been contacted by a large number of whistleblowers who have given us some insight into what it might be. We have also reached out to some individuals. I don't want you to assume that the panel here today are simply whistleblowers. In fact, that is not the case.

One of the biggest causes that have attributed to its TSA challenges is leadership and management. Strong, effective leadership could not be more important to an agency fraught with problems. Instead, as we have chatted with people and whistleblowers have come forward, we found that the TSA has developed a highly retaliatory culture that discourages speaking up about problems.

They have also raised concerns about leadership failing to punish high-level managers who commit misconduct. When hardworking rank-and-file men and women are severely punished, yet their managers get off easy, it creates a morale problem, and allowing such a culture to fester has a highly detrimental effect on the mission of the agency, keeping the airways safe.

I don't care where you are in life or what you are doing, when you see somebody who is doing something bad and it is not fixed, it is demoralizing. And when you have maybe a group of people on the line doing one thing and something happens and they get treated differently than the management, it is very demoralizing. And I think that is clearly what we are seeing at the TSA.

Today's hearing is intended to focus on the toll management challenges like this take on TSA employees. They are those tasked with protecting our transportation infrastructure.

This brings us to our witnesses today who are here to discuss their own experiences with systematic management and leadership challenges at the TSA. Their testimony before this committee, like all of their interactions with this committee, is protected. It is against the law to retaliate against individuals for engaging in protected activity. It doesn't matter if we reach out to them or they reach out to us, they are protected from retaliation. And communications to the press about waste, fraud, and abuse or mismanagement are also protected communications.

These important disclosures are often an effective way to bring waste, fraud, and abuse or mismanagement to the attention of those that are in a position to remedy it. But sometimes it doesn't matter how many protections you have in place. Management and leadership in Federal agencies find subtle ways to marginalize or demean those who do nothing more than speak the uncomfortable truth.

I want to be clear that this committee will not stand for reprisal against individuals for cooperating with congressional investigations. This is especially true for today's witnesses, and we appreciate their brave stature to come forward and at some risk come and chat with us before Congress. But it is the way we are going to get to the truth. It is the way we are going to be able to protect the greater whole. And I think the gentlemen here today will provide valuable insight and hopefully can make the whole of government, the whole of the TSA and its vital mission a better place to do it. So we thank these gentlemen for stepping forward and participating with us today.

Chairman CHAFFETZ. And with that, I will now recognize the ranking member, Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Today, we hear the testimony of three employees from the Transportation Security Administration who allege a series of abuses and improper practices within that agency. Whistleblowers are essential to identifying waste, fraud, and abuse, and they are critical to this committee's mission.

In fact, based on the work conducted by this committee today, Federal statutes protect employees who will bring wrongdoing to light. I know the chairman and I share a strong commitment to ensuring that Federal employees who come before us are protected from retaliation and reprisal.

Equally important, we as members of the committee also have an obligation to run these allegations to ground and determine if we can substantiate them. Of course, just as we want to protect whistleblowers from retaliation, I am sure we all agree that we also want to protect Federal employees from claims that are not substantiated.

I thank all three of these men who have stepped forward today for their willingness to testify and for the information that they provided in their transcribed interviews with the committee staff. These individuals have raised troubling allegations of improper personnel practices within TSA. All three have filed complaints

with the Office of Special Counsel through the Equal Employment Opportunity process or in Federal court. Each allegation we have heard deserves a thorough and fair investigation. I think these three individuals deserve that, too.

Unfortunately, as we hold this hearing today, the committee has not yet had an opportunity to complete such an investigation. In some cases, we have not spoken with those who have firsthand knowledge of the allegations we have heard. We have also not yet heard from TSA regarding most of the allegations raised by these employees. I hope the committee will talk with all of the individuals involved and review all of the documents relevant to the issues we will discuss today in all that is fairness and that is thoroughness.

Many of the allegations our witnesses today have raised were initiated under previous agency administrators. In some cases, the allegations were even resolved under previous administrators. It also appears that the current TSA administrator, Vice Admiral Peter Neffenger, has moved to address many of the practices that have been cited by the whistleblowers. One of today's witnesses, Jay Brainard, described this progress in his transcribed interview with the committee by saying, "I think we have made tremendous progress with Mr. Neffenger." He added, "Since Mr. Neffenger has come in, I have heard nothing in terms of misconduct."

Under Administrator Neffenger, TSA has issued new policies that clarify the membership and the role of the Executive Resources Council, curtail the abuse of awarded multiple achievement bonuses for the same activities, and ensure that directed reassignments are made only to support agency goals.

Administrator Neffenger has also moved to address the airport security lapses identified by the inspector general and by the agency's own testing teams that we examined in this committee's hearing on TSA last fall. He has ended the Managed Inclusion II program that permitted individuals who had not received background risk assessments to receive expedited screening, and he has placed agency focus squarely on resolving all alarms at screening checkpoints. As Administrator Neffenger testified before this committee last fall, he is "readjusting the measurements of success to focus on security rather than speed."

And so I am pleased to see that his actions are beginning to show real progress. However, people may not want to hear this, but these actions are likely to slow lines at airports even further, and things may get even worse if TSA's workforce continues to be reduced.

Administrator Neffenger recently testified that the TSA has nearly 6,000 fewer transportation security officers in his workforce than it had 4 years ago. It is being asked to do more with less, and that is indeed a problem.

So I hope that our committee will continue to focus on holding TSA accountable for completing essential reforms and that we will provide him with the resources he needs to do his job.

And so I look forward to the testimony of our witnesses today, and I want to thank you all for being with us.

Mr. Chairman, with that, I will yield back.



Chairman CHAFFETZ. I thank the gentleman. I will hold the record open for 5 legislative days for any members who would like to submit a written statement.

I will now recognize our witnesses. We are pleased to welcome Mr. Jay Brainard, Federal security director for the State of Kansas in the Office of Security Operations at the Transportation Security Administration.

Mr. Mark Livingston is the program manager in the Office of the Chief Risk Officer at the Transportation Security Administration.

And Mr. Andrew Rhoades, assistant Federal security director for mission support at the Minneapolis-Saint Paul International Airport in the Office of Security Operations at the TSA.

We welcome you and thank you for being here.

If you will please rise and raise your right hand.

[Witnesses sworn.]

Chairman CHAFFETZ. Thank you. You may be seated. And let the record reflect that all witnesses answered in the affirmative.

In order to allow time for discussion, we would appreciate it if you would limit your verbal comments to 5 minutes. Your entire written statement will be entered into the record.

And we will start with Mr. Brainard. You are now recognized for 5 minutes. Make sure you bring that microphone up nice and close there. You can straighten it out, but I want to make sure we get you clearly on audio. Thank you, Mr. Brainard. You are now recognized.

## **WITNESS STATEMENTS**

### **STATEMENT OF JAY BRAINARD**

Mr. BRAINARD. Chairman Chaffetz, Ranking Member Cummings, and members of the committee, I am pleased to appear at the request of this committee today to discuss issues surrounding the Transportation Security Administration.

Our business is a serious business. The national strategy of the United States of America is clear: Defending our Nation against all enemies, both foreign and domestic, is the first fundamental commitment of the Federal Government. When that commitment is in danger of being fulfilled, then it is incumbent upon those of us entrusted to ensure our national security to come forward, and if necessary, report to you, and to do so at whatever the cost may be. We are all here today for that purpose.

While the new administrator of TSA has made security a much-needed priority once again, make no mistake about it, we remain an agency in crisis. TSA remains in crisis as a result of poor leadership and oversight of many of our senior leadership appointments, which have taken place over the past several years, some of which still serve in key positions within our agency today.

Our culture went into rapid decline after having gone unchecked by its leader and various agencies and committees responsible for oversight, and for that reason we continue to have a crisis of leadership and culture.

From 2011 to early 2012 TSA chose in abundance unprepared employees to fill key leadership vacancies. These were people who were chosen not because they were time-tested leaders or mature

or experienced in actually leading people in large, complex organizations, but because they were liked or good at managing programs or projects. In fact, many of these leaders lacked any security experience and had never worked in a field operation their entire career.

The continuous result of the Federal Employee Viewpoint Survey each Federal agency's workforce responds to, as graded by its own people, has declared repeatedly our agency has failed its employees year after year. We continue to have a culture problem in TSA brought on by an unwillingness to address misconduct of senior executives, combined with poor leadership and decision-making, all of which have been the number-one contributing factor of our security risks and which led to our poor performance.

We have low morale, a lack of trust, and field leaders who are fearful to speak out, and for good reason. People at all levels of the agency, both in the field and at headquarters, have spent most of their time constantly looking over their shoulder when doing the right thing.

And let me make one thing abundantly clear: This is not a TSA headquarters issue. There are legions of decent people at our headquarters who are just as disgusted and just as concerned as I am sitting here today. This is and has always been a senior executive issue, a senior executive problem. I refer to those at the very top of the food chain.

For years, we had many senior executives, most of which who completely lacked the experience needed for their position, run amok and make decisions or conduct themselves in an unethical manner, which eroded our ability to complete the security mission and grossly compromised the integrity of our agency.

Until substantive change occurs, TSA will remain a culture of positional leadership. Despite the results of our covert testing being made public, we still have some of those very same leaders in critical positions whose focus and attention are on numbers first and leave security and people last. In fact, many of the same people who broke our agency remain in key positions of influence even today.

Because of this, we continue to empower positional leaders who obtain compliance because they fill a certain leadership vacancy. And to be clear, they are not followed because they are leaders. Subordinates follow these positional leaders out of fear, whose only objectives are limited to bean-counting and instilling fear into anyone who opposes them. These leaders are some of the biggest bullies in government, and as a result, many people feel battered, abused, and overworked.

These positional leaders convince themselves they are liked by everyone and their decisions are accepted because there's almost no one left to question them. They have become powerful in their own mind and regularly make decisions, regardless of the people affected by them. I know of several people in key leadership positions that "went along to get along," who regret having supported the agenda of those positional leaders.

In an effort to clean up our agency, TSA's former administrator John Pistole and his deputy John Halinski instituted an agency-wide ethics training, complete with a TSA Wall of Shame for the purpose of exposing a few bad apples in our agency and publicly

shaming them. And to quote Mr. Halinski's message to our people in one of the videos every employee was required to see, "People, we're better than this."

Well, that Wall of Shame is more than a few names light today as senior executives in TSA have been held to a completely different standard than the rest of the agency. Not one person for the state of our agency is glad to see any of us here today. Those who have spoken up have been and continue to be targeted and victimized, with the goal of running them out of Federal service.

Until the previous—under the previous administration, complaints were buried and, in many cases, so were the complainers. No significant, consistent, or even proportionate action has been taken to remove or even hold leaders in the TSA Executive Service properly accountable for misconduct and poor performance.

While the results of our covert testing were made public last May, it was embarrassing, and when it came time to address this problem, the people who were really to blame never stepped forward to accept or even acknowledge any responsibility. Instead, they sat back and they watched our officers on the frontline get publicly shamed. The truth is our officers did not fail. They did exactly what that TSA senior executive leadership team demanded of them.

For years, TSA executive leadership's priority shifted further away from security and eventually became focused only on reducing wait times and increasing checkpoint throughput. Those Federal security directors who raised concerns or voiced dissenting opinion to leadership were targeted, and one way was through the use of directed reassignments.

One of my counterparts had a conversation with one of the very senior executive leaders responsible for our problems who had indicated to him they developed a loyalty list and were systematically removing the Federal security directors who were on that list. For those not familiar, a directed reassignment is a tool regularly used by the airline industry to force people into retirement. And because it is technically permissible to do so in civilian service with a business reason even without a mobility agreement, they targeted specific FSDs and deputies. The only thing wrong was this—with this is they were absent a business reason.

As a Federal security director vacancy occurs, many of them were filled with under-qualified personnel whose only redemption was their loyalty to the positional leaders who put them there. TSA executive leadership waged an all-out campaign against the Federal security directors, and of the 157 original Federal security directors hired after the 9/11 attacks, there are only five of us left today.

When it became public knowledge that the Veterans Administration spent a few hundred thousand dollars on the directed reassignment of a few people, the public was outraged. TSA spent millions.

In looking at the hearing agenda posted on the committee's website, it mentions what I believe to be the most important part of why we are here, which was the toll that management challenges have taken on our workforce. My opening statement only scratches the surface.

As the saying goes, “Those who do not learn from history are doomed to repeat it.” While the idea of forgetting mistakes of the past and looking forward to a brighter future sounds good, the reality is our leadership usually changes when there’s a change of administration. If that happens, and if these issues continue to go unaddressed, the people who damaged this agency will once again be off the leash, and what progress we have made under Administrator Neffenger will have been in vain.

We need this committee to take a serious look at the road ahead and ensure this never happens again.

I hope to add value to this hearing by answering your questions and providing insight based upon my experiences. Thank you again for having me. Mr. Chairman, that concludes my opening statement.

Chairman CHAFFETZ. Thank you.

Mr. CUMMINGS. Would the gentleman yield?

Chairman CHAFFETZ. Mr. Cummings.

Mr. CUMMINGS. Yes.

Chairman CHAFFETZ. Yes.

Mr. CUMMINGS. I am very pleased, Mr. Chairman, that Mr. Livingston is a resident of Columbia, Maryland. This is an area that is shared between my district and the district represented by my distinguished colleague, Congressman Sarbanes. Mr. Livingston is a constituent of Congressman Sarbanes, and Mr. Sarbanes has written a letter to the committee to express his support for Mr. Livingston and to urge “that the committee thoroughly investigate Mr. Livingston’s claims.” And I just ask unanimous consent, Mr. Chairman, that Congressman Sarbanes’ letter be included in the record.

Chairman CHAFFETZ. Without objection, so ordered.

[The information follows:]

Chairman CHAFFETZ. I thank the gentleman.

Mr. Livingston, you are now recognized for 5 minutes.

#### **STATEMENT OF MARK LIVINGSTON**

Mr. LIVINGSTON. Chairman Chaffetz, Ranking Member Cummings, and members of the committee, thank you for the opportunity to speak with you regarding the Transportation Security Administration and the reported issues of misconduct, whistleblower retaliation, security violations, and the lack of accountability pertaining to TSA’s senior executives and the potential impact on the mission.

I am here today to share with you what I have seen firsthand and as a member of the TSA senior leadership team and as a victim of these reprehensible practices after confronting and reporting misconduct by top leaders. I am here because I believe TSA has major management challenges, which are imposing great risk of failure to performing its mission effectively and could have serious consequences for the U.S. national and economic security. It matters what leaders do, and it matters what they do not do.

Noted educational leader scholars, Gruenter and Whitaker, have stated “The culture of any organization is shaped by the worst behavior the leader is willing to tolerate.” In TSA, that worst has yet to be identified because the men and women of the agency keep seeing examples of that worst behavior being confronted by the

media, not the Transportation Security Administration leadership, and there seems to be no bottom to this failed leadership abyss.

I would like to first state by telling you that the vast majority of the frontline employees at TSA are professional and truly care about the important mission of the agency. Most come in every day and do a great job, but what you hear about is that 1 percent of failed leadership, and that's why I'm here today.

For the record, I'm a career senior intelligence and security management executive, and for the past 36 years, I have served successfully in all of my prior roles. I am a disabled marine veteran, and for the one basic principle that has followed me through my entire adult life is that we do not lie, cheat, or steal, and we do not tolerate those that do. It's that simple.

I am not a novice when it comes to the important matters we will discuss here today. Beyond the almost four decades of leadership experience, I bring a scholarly practitioner viewpoint. My doctorate of management focuses on applied research and expanding leadership within the field of the executive organizational management. My field of study has been on crisis leadership in organizational crises.

The integration of organizational management issues with technological considerations and the global environment, while considering the critical role of information technologies in all aspects of management practice has been a direct correlation to my executive leadership role at TSA. I am an expert in the areas of organizational integration, the application of critical-thinking skills and how to develop the management high-performance teams and how to analyze and evaluate organizations.

I have held a top-secret clearance for the entire 36 years of my service as an intelligence professional. This is an important note, as I will be identifying security incidents and violations that have occurred at TSA and explain where TSA has failed to act properly.

My career professional status is good. I am in good standing with my agency, and I'm not pending any administrative action or investigation. I'm here today by my own choice to inform you of those challenges. I relay this information so that the committee might better understand that the issues I raised at TSA were more than just mere misconduct. This is about the inability of TSA to focus on the mission due to the overwhelming EEO complaints and personnel issues brought on by failed leadership.

The refusal to address or to hold senior leaders accountable is simply paralyzing this agency. The leadership imperative is missing at TSA. In your role as an oversight committee for TSA, you should be gravely alarmed and concerned with these issues because TSA employees are less likely to report operational security or threat-relevant issues out of fear of retaliation.

No one who reports issues at TSA is safe. This prevents the necessary organizational agility to respond to evolving threats and enemies who are always adapting to exploit any real, potential, or perceived opportunity to strike. This negates any operational improvement process that prevents the agency from fulfilling its mandated mission of protecting the United States transportation system and protecting the economic well-being from threats.

Retaliation by TSA senior leadership is used extensively and systematic, as reported by the media and historically acknowledged by the GAO report 10-139 that was provided to you in October of 2009. The exact same thing happened to me then and has happened to other SES leaders then.

Senior organizational leaders use this retaliation as a means to silence those who would report violations, security concerns, or operational issues by forcing employees into early retirement or resignations. No employee will be willing to report these issues when simple fraud, waste, or abuse are reasons for leaders to retaliate against employees.

Senior leaders appearing before Congress stated that they will correct this behavior or fix TSA should be held to strict timelines or you will continue to get platitudes and false narratives. I would bet that you've heard this in the last 6 months, yet you continue to hear these media reports.

I would to take this opportunity to thank my Congressman and my Senator Cardin for the opportunity to represent me with TSA. This is democracy at its best. Thank you.

[Prepared statement of Mr. Livingston follows:]

**STATEMENT OF DR. MARK A. LIVINGSTON  
PROGRAM MANAGER  
OFFICE OF THE CHIEF RISK OFFICER  
TRANSPORTATION SECURITY ADMINISTRATION  
U.S. DEPARTMENT OF HOMELAND SECURITY**

**BEFORE THE  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
U.S. HOUSE OF REPRESENTATIVES**

***CONCERNING*  
EXAMINING MANAGEMENT PRACTICES AND MISCONDUCT AT THE  
TSA, PART I**

**APRIL 27, 2016**



**Introduction**

Chairman Chaffetz, Ranking Member Cummings, and members of the committee, thank you for the opportunity to speak with you regarding the Transportation Security Administration and the reported issues of misconduct, whistleblower retaliation, security violations, and lack of accountability pertaining to TSA's senior executives and the potential impact on the TSA mission. I am here today to share with you what I have seen firsthand as a member of the TSA senior leadership team (SLT) and as a victim of these reprehensible practices after confronting and reporting misconduct of top leaders. I am here because I believe TSA has major management challenges, which are imposing great risk of failure to perform its mission effectively, and could have serious consequences for U.S. national and economic security. It matters what leaders do and it matters what they do not do. Noted educational leadership scholars, Gruenert and Whitaker, have stated "The culture of any organization is shaped by the worst behavior the leader is willing to tolerate." In TSA, that worst has yet to be identified because the men and women of the Agency keep seeing examples of the worst being confronted by the media – not by TSA leadership – and there seems to be no bottom of this failed leadership abyss.

I would like to first start by telling you that the vast majority of the front line employees at TSA are professional and truly care about the important mission of the Agency. Most come in and do a great job every day, as you would expect and you never hear about that. The headlines you do hear about are the failed leaders and that is why I am here.

For the record, I am a career senior intelligence and security management executive. For the past 36 years, I have served successfully in all of my prior roles, including as a Senior Government Advisor / Career Senior Executive Intelligence Professional / Corporate Executive for Intelligence, Surveillance & Reconnaissance Director/ Military & Contractor Combat Operational Leader / Supervisory Special Agent / Senior Nuclear Security Specialist and as a United States Marine Corps mustang officer for almost 21 years, from 1981 – 2002. I am a disabled Marine veteran, and the one basic leadership principle that has been with me my entire



adult life, is as a Marine, we do not lie, cheat or steal and we do not tolerate those that do. It is just that simple.

I am not a novice when it comes to the important matters we will discuss here today. Beyond the 36 years of leadership experience, I bring a scholarly practitioner view point. My Doctorate in Management focuses on applied research and expanding leadership within the field of executive organizational leadership. My field of study has been on crisis leadership in organizational crises. The integration of organizational management issues with technological considerations and the global environment, while considering the critical role of information technologies in all aspects of management practice has been a direct correlation to my executive leadership role at TSA. I am an expert in the areas of organizational integration. The application of critical thinking skills, or how to develop and manage high-performance teams, and how to analyze and evaluate organizations and their structures are all examples of what my terminal degree is about.

In addition, I have held a Top Secret SCI clearance for the entire 36 years of my service as an intelligence professional. This is important to note as I will be identifying security incidents and violations that have occurred at TSA and explain where TSA failed to act in a proper manner in this regard.

#### **My Career Professional Status**

I am in good standing with my agency. I am not pending any administrative action or investigation. I am here today by my own choice to inform you of the challenges facing TSA. I am a Senior Executive with verifiable year-after-year performance enabling organizational success, especially while at TSA.

I relay this information so that the Committee might better understand that the issues I raised at TSA were more than just mere misconduct. This is about the inability of TSA to focus on the mission due to the overwhelming EEO complaints and personnel issues brought on by failed leadership. The refusal to address or to hold senior leaders accountable is paralyzing this agency. As a member of the TSA senior leadership team, (SLT) I saw firsthand the lack of leadership at the highest levels of this agency.

**TSA Leadership Imperative**

In your role as an oversight committee for TSA, you should be alarmed and concerned with these issues because TSA employees are less likely to report operational security or threat relevant issues out of fear of retaliation from supervisors who fear further retaliation from their chain of command. NO ONE WHO REPORTS ISSUES IS SAFE AT TSA. This prevents the necessary organizational agility to respond to an evolving threat and enemies who are always adapting to exploit any real, potential or perceived opportunity to strike. This negates any organizational improvement process and prevents this agency from fulfilling its mandated mission of protecting the United States transportation system and economic well-being from threats.

Retaliation by TSA senior leadership is being used extensively and systematically, as recently reported by the media<sup>1</sup> and historically<sup>2</sup> acknowledged by the GAO 10-139 study in October 2009. There has been little or no improvement. Senior organizational leaders use retaliation as a means to silence those who would report violations, security concerns or operational issues by forcing employees into early retirement or resignations.<sup>3</sup> No employee will be willing to report operational issues when even reporting fraud, waste or abuse, are reasons for TSA leadership to retaliate against employees. Senior leaders appearing before Congress stating they will correct this behavior or fix TSA should be held to a strict timeline or you will continue to get more platitudes and false narratives that say TSA is getting better but in reality that is simply untrue. I would bet that you have heard that in the last 30 days, yet there have been numerous media stories about whistleblowers and retaliation at TSA in the same 30 days. What I have not heard is any leader at TSA address those issues. Ostrich like leadership, ignoring these issues will not make it go away.

I never cease to be stunned by how many skilled leaders remain silent at critical moments of organizational challenges, when even the casual observer can see that the situation calls for

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<sup>1</sup> See March 14, 2016 Reveal article titled: "Besieged by misconduct, TSA sows culture of dysfunction and distrust" at <https://www.revealnews.org/article/besieged-by-misconduct-tsa-sows-culture-of-dysfunction-and-distrust/>

<sup>2</sup> <http://www.nbcnews.com/news/us-news/tsa-fails-identify-73-employees-terror-watch-lists-n371601>

<sup>3</sup> See <https://www.dhs.gov/see-something-saw-something/about-campaign>.

the leader to speak out. I call this the “ostrich” dilemma paying homage to the pervasive (though false) notion that, in response to danger, these flightless birds bury their heads in the sand. It would appear that leaders have come to believe that if they do not respond in the midst of a leadership moment then they will somehow be less responsible for what unfolds in response to their silence. Nothing could be further from the truth. I believe that is where we are today at TSA, no leader is speaking out to the workforce about these leadership challenges. These great voids in leadership, the vast openness of lacking factual dialogue from TSA leadership, is filled with speculation, critical and harmful discussions at all levels across all of TSA, from the HQs to the field locations. The crisis communication has been woefully inadequate and more damaging than the stories you see constantly in the press.

Trust in leaders is a social exchange. For employees, it goes beyond just mutual obligations, or showing up and doing their job. TSA employees will do what is expected when leaders do the same. That exchange denotes a high quality relationship. I am here to tell you that does not happen universally or consistently at TSA. A leader’s character is very important because the leader may have authority to make decisions that have a significant impact on employees, this in turn impacts the employees’ ability to achieve his or her goals (promotions, pay, work assignments, training, etc.). This perspective implies that employee’s attempt to draw inferences about the leader’s characteristics such as integrity, dependability, fairness, and ability and that these inferences have consequences for work behavior and attitudes. At TSA, when employees cannot trust their leaders, they cannot do their job.

I am concerned that TSA employees RESPONSIBLE FOR TRANSPORTATION SECURITY, INTELLIGENCE AND ANALYSIS fear their supervisors more than they fear a potential terrorist threat. No employee will adhere to the DHS public policy of “See Something – Say Something”<sup>1</sup> when the danger is greater from within the organization than it is from the outside. Senior leader misconduct and retaliation, if left unaddressed, will place the American

public at a continued greater risk. Misuse and/or abuse of authority are directly correlated to the exact reasons that TSA continues to underperform.<sup>4</sup>

The America public, and Congress in its oversight role, should expect and demand that TSA work tirelessly to strengthen airport security; provide and train a competent screening workforce; prescreen passengers against terrorist watch lists; and screen passengers, baggage, and cargo. This includes surface transportation modes. The expectation there is no less important TSA should continue to take steps to improve safety and security, by developing a strategic approach. This must include securing mass transit, passenger and freight rail, commercial vehicles, highways, and pipelines. TSA needs to establish security standards for transportation modes; and conduct threat, criticality, and vulnerability assessments of surface transportation assets, particularly passenger and freight rail. However, all of this predicated on a highly trained and motivated workforce, which right now does not trust its senior leadership.

Today, TSA lacks the senior leadership courage to make the necessary changes so that the agency can accomplish its mission. The TSA failed leadership, toxic environment and lack of accountability for those who have proven to do wrong has placed this agency in a perpetual recruiting and replacement model that is unsustainable for either efficiency or effectiveness. The inability, or unwillingness to act, even in the most heinous misconduct cases, sends a message to the entire workforce that senior leaders are not accountable and there is a double standard. The transient nature of this work force is debilitating. Even as a young, new leader in the Marine Corps 36 years ago, I learned that what you permit --- you promote. Senior organizational leaders are expected to make decisions, but even when TSA has concrete proof of misconduct, it fails to act, so there can be no reasonable expectation that any real leadership would be forthcoming when tough decisions are needed in operational matters, especially when the mundane administrative matters are not addressed with integrity. The lack of institutional,

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<sup>4</sup> See March 14, 2016 Reveal article titled: "Besieged by misconduct, TSA sows culture of dysfunction and distrust" at <https://www.revealnews.org/article/besieged-by-misconduct-tsa-sows-culture-of-dysfunction-and-distrust/>

organizational and individual integrity prevents TSA from improving every day. There is no expectation of executive leadership setting the example, in any regard on any issue, at any time.

I was a member of the TSA Senior Leadership Team (SLT) senior executives at TSA Headquarters when we designed the TSA Code of Conduct. I had direct input and was part of the discussion with other senior leaders to ensure that the misconduct issues were addressed. I specifically, injected comments about integrity, being professional and reporting misconduct. At that time, I had no idea that I would eventually be the one reporting my SES peers and supervisor for misconduct. At the TSA HQs, there is a "go along to get along" mindset. When I reported misconduct, it was seen as a breach of etiquette rather than an act of responsible senior leadership. Much like the *Lord of the Flies'* story line, it is a choice between being attacked and attacking others. Senior leaders at TSA in my experience would rather have the focus on someone else rather than on themselves. So, silence is the predominant leadership trait at TSA HQs by the senior leaders followed only by complicity by not reporting misconduct. The TSA code of conduct states the following: As an employee, I will proudly serve to protect the traveling public. To this end, while on or off duty, I pledge that I will:

- Demonstrate integrity
- Be honest
- Be professional
- Be alert
- Obey all laws
- Report allegations of misconduct

From what I have seen or experienced, you would be hard pressed in any court of law, convicting the TSA Senior Leadership Team of these pledges. There are exceptions, but very few. For the most part, it is utter failure. I did all of these and was punished. I demonstrated integrity by telling the truth and refusing to lie, and was targeted, cleared and demoted. I was honest in my statements to all investigators with no measurable appreciation. I was professional,

alert, obeyed the law and I am here today telling my story in allegiance to that pledge and others which govern my behavior.

I reported allegations of misconduct and senior leaders above me failed to act. Instead, their response was punitive; they reduced me two pay grades and my pay was immediately reduced, unlike others who have save pay, which is standard practice at TSA. This action was intended to publicly humiliate me by announcing my departure as the Deputy for the TSA Intelligence Office at a live HQs town hall broadcast to three external locations. They sought to make an example of me. The intent was to send a message to others that silence and conformity was not only required but expected, or else they would ruin your career, regardless of performance or history of career achievements.

I reported allegations of misconduct and senior leaders above me failed to act. Instead, their response was punitive; they reduced me two pay grades and my pay was immediately reduced, unlike others who have save pay, which is standard practice at TSA. This action was intended to publicly humiliate me by announcing my departure as the Deputy for the TSA Intelligence Office at a live HQs town hall broadcast to three external locations. They sought to make an example of me. The intent was to send a message to others that silence and conformity was not only required but expected, or else they would ruin your career, regardless of performance or history of career achievements.

**Failing forward in TSA is common, if you screw up, you move up. THIS IS WHY TSA HAS A MORALE PROBLEM AND CANNOT GET BETTER.**

#### **TSA Cannot Police Itself**

Much like the justice system here in the United States, the perception has to be that it is fair to and accountable for everyone, that no one is above the rules or the entire system is a failure. Today, TSA in regards to leadership and accountability is that dreaded failure. Until there is a leadership cadre in place at HQ and senior field locations that has a leadership commitment to create an action plan for accountability by demonstrating the capacity to have the organizational agility to move this agency forward, you will continue to see TSA in the news as the failure it is reported to be. TSA has shown over years, and with multiple GAO studies and

Congressional hearings that it is incapable or unwilling to improve. DHS is no better, and that's why we are the lowest rated federal agency in the federal government. Additionally, the Executive Resource Committee (ERC) is responsible for selection, assignment and directed reassignment for executives is currently incapable of being perceived as professional at this point. It is corrupted and needs to be moved out of TSA for a period of time. The ERC is where TSA executives have their pay set and bonuses are set, their assignments made or directed reassignments decisions made as well.

Key critical elements of the organization have been compromised and are not effectively contributing to the overall success. Over the years, integrity creep has simply killed any real or perceived credibility that major elements in this agency might have had; this includes the Office of Inspections (OOI), The Office of Professional Responsibility (OPR), and The Office of the Chief Counsel (OCC). These components, which should serve as a system of checks and balances instead is a system of assurances rubber-stamping bad management.

First, the TSA Office of Inspections, has been used as a blunt object meant to club employees into submission or force them out. When failed leaders purposely and falsely report employees for investigation, the Office of Inspections leadership, not employees, are willing partners to silence dissent or for those who would dare report misconduct, fraud, waste or abuse. Second, the TSA Office of Professional Responsibility has been used to issue letters and/or findings based on the results of investigation from OOI. And for the record, I do not believe that the leadership or the employees are in any way part of this are willing active willing partners in this, instead they are simply operating on good faith on the information that has been falsely provided to them by their leadership. However, this compromises the integrity of the process as they cannot dissent and deny the process from moving forward even if they wanted to, which therefore indicates that there is no independent thought or consideration. The facts have little or no bearing. Third, and most importantly, the Office of Chief Counsel is compromised in no less manner and is the least trusted in the trio. Change must begin here. The insatiable desire to have every single case (from EEO to misconduct) end with a non-disclosure agreement (NDA) is a 100% indicator that TSA is at most hiding the leadership failures and at least preventing the agency from learning from mistakes that have been identified. For the employees perception is

reality. The Office of Chief Counsel is viewed by TSA employees as corrupt and untrustworthy. There is not even an expectation, or false pretense, that this office will act in an unbiased manner. It is simply understood, and expected that you will not, cannot and should expect a fair shake from this office.

#### **Office of Intelligence & Analysis**

The office, in which I served, deserves intelligence professionals to lead them. You would never put a program manager or program specialist in charge of the Federal Air Marshals, or the TSA attorneys or any other office, why would you continue to do it to the intelligence office at TSA?

TSA overall and OIA specifically, because of the fear from our leadership, is not currently capable of deterring, detecting, and disrupting threats against our aviation system. This is not only for the reasons you see in the papers today, but because of the lack of meaningful leadership in mission operations offices like OIA. I have only named four offices here today, but there are major employee morale issues across TSA, not just at TSA HQs, or one specific airport. This issue of failed leadership is systemic, it permeates all aspects and locations of TSA leadership, but it does start at the top. I was meant to be made an example of so that others who would dare to question the leadership at TSA would think again. Why would any employee risk informing any supervisor at TSA about bad news when they see so many others being punished for that exact thing? There is no leadership accountability and therefore TSA is not a high performing agency.

#### **Securing the National Transportation Domain**

TSA leadership over has informed Congress again and again, through a number of different testimonies, data calls and other information sharing efforts that TSA recognizes the current threat environment. You have been told that TSA employs an intelligence-driven, risk-based approach to secure U.S. transportation systems. You have been told that TSA uses a risk-based security strategy to deter, detect, and disrupt attacks on the nation's transportation systems and critical transportation infrastructure, while facilitating the movement of legitimate travel and



commerce. You have been told that TSA must first better understand intelligence, as it drives our comprehension and assessment of that risk. You have been told that TSA uses risk and intelligence to make decisions on policy, operations, and countermeasures across TSA, while applying risk-based methods to best use existing resources in a manner that will help to minimize risk and ensure system resiliency. You have been told that TSA understands the importance in working closely with our stakeholders in aviation, rail, transit, highway, and pipeline sectors, as well as our partners in the law enforcement and intelligence community.

#### **Impetus for Change**

By any normal standard of evaluation, TSA has failed and continues to fail. The men and women on the front lines are not the cause of that failure, rather the very leadership intended to facilitate that success has become bloated, self-serving and insular. A critical examination of the recent complaints raised by me and other senior executives warrants a tactical pause in the conduct of TSA management actions. It is no small wonder that the directed reassignment memorandum went out only after a senior leader complained. It is no accident that a similar memorandum went out concerning SES bonuses. The real question is how many good leaders are left because of those directed reassignments being used as a weapon of choice to punish or silence those who report misconduct, or simply to get rid of an SES they did not like, regardless of how they performed. I implore you to please examine the cases of those forced out to see the real impact of these acts of aggression. Some of the best and brightest left while some of the worst and potentially criminal stayed to continue the perpetration and duplication of inept management and leadership masquerading as skilled, capable and competent professionals.

#### **TSA Senior Leadership**

Current leadership has publicly proclaimed that the future success of TSA is linked to a commitment to a common set of values. These values are supposedly core values, such as integrity, innovation, and team spirit. All of which you will find everywhere in TSA except at the highest levels of TSA leadership. Platitudes and false narratives will no longer suffice to help this agency move forward, as the workforce has seen the actual mistreatment of those who would report misconduct and mismanagement. The age of mass or social media has also shown the

current reporting on these topics which have hyper-linked the federal lawsuits, requests from Congress, and the actions of TSA leadership that follow that reporting. The employees see when deadlines are missed yet they have to adhere to them. They see when TSA leadership fails to recognize the authority of Congress providing oversight by obfuscating their responsibility to comply, or purposely delaying the answers to Congress, or sending an unprepared speaker to answer questions. The contempt for Congress by TSA leadership is easily translated into the same for employees to their failed leadership – all the while the mission of TSA is lost.

**Simply stated: there is no trust in leadership, there is no focus on the mission, and no one believes that the HQS leadership is committed to excellence on any level.**

#### **Misconduct/Poor Leadership**

I would like to draw your attention to four cases that I personally witnessed while serving as a Senior Executive at TSA:

- 1) I witnessed a fellow SES, a peer DAA, sexually harass a junior female employee and when I refused to lie, I was called a boy scout and put on his S\*\*\* list. He told me that if I was unwilling to lie for him, if the employee filed a complaint then he and the others would be unable to trust me and therefore could not work with me in the future. I had no idea how rampant the misconduct was, but I told the truth and reported his behavior to my supervisor, who's only response was to comment that this SES was harmless and not to worry about it. It was clear to me at this point that they were not taking complaints seriously nor was there any intention of doing the right thing.

The other three cases were when I reported SES misconduct in an SES preselection case, employee hazing, and lastly a series of security incidents and security violations. None of which were taken seriously. This is the modus operandi for TSA.

This was first reported in the GAO 10-139, on page 23, paragraph 2. More importantly, that negative failed leadership continues today. Because what was reported to you by GAO in October 2009, happened to me in October 2015. The exact same thing.

**Conclusion**

In conclusion, the toxic leaders at TSA are the individuals who, by virtue of their destructive behaviors and their dysfunctional personal qualities or characteristics, inflict serious and enduring harm on the individuals like me who report misconduct, and groups such as other TSA offices or future aspiring leaders, but sadly the most harm is done to the organization of TSA.

The current state of disarray at TSA will not just simply get better with time. It will continue to slowly decline and experienced professional employees will leave out of frustration or being targeted by failed leaders. Either way, TSA will not have the best of the best doing what was originally intended for TSA. There must be an accounting for the current problems that have been raised as issues with you, DHS OIG, OSC and within the federal lawsuits. TSA must clear the deck of these issues and prevent future complaints. There can be no forward movement until we reconcile the past. TSA has proven it is unwilling or incapable of thinking in an innovative fashion. Instead of addressing issues like how to vet the entire DHS work force or improve aviation security, or secure the rail or metro against current ongoing threats we are stuck dealing with the results of poor leadership. There has not been a major advancement or breakthrough at TSA in some time. I created one in OIA but the petty politics killed any possible momentum.

I thank this committee for the opportunity to appear before you. I know now that my time at DHS/TSA is done. However, I will not leave until this problem is fixed. Much like Cortez did when he went to the new world, I have burned my boats, there is no going back, and I have committed to seeing this through. I could have easily "went along to get along and or shut up to move up" or even left TSA as so many others before me, but integrity is not situational. You either have it or you don't.

I remain committed to seeing this through to the end and stand by to support this effort in any way. I would like to Thank Congressman Sarbanes, my Congressman for contacting TSA on my behalf. Thank you again for your time today, and I look forward to answering any questions you have.

Chairman CHAFFETZ. Thank you. Mr. Rhoades, you are now recognized for 5 minutes.

#### **STATEMENT OF ANDREW RHOADES**

Mr. RHOADES. Chairman Chaffetz, Ranking Member Cummings, and members of the committee, thank you for the opportunity to speak to you regarding the TSA's use of punitive directed reassignments, senior leader misconduct, retaliation, and its impact on security.

Directed reassignments have been punitively used by TSA senior leadership as a means to silence dissent, force early retirements or resignations. Senior leader misconduct and retaliation help explain why the TSA underperforms.

Recently, I was asked to profile Somali imams and community members visiting my office. I will not do this. I am not a tiff-tiff. Additionally, my supervisor accused me of "going native" after attending a meeting at a local mosque. Those in the community in Minneapolis know I would never betray their trust by profiling them.

This unfortunate incident is not reflective of the entire U.S. Government. TSA's problems are rooted in the areas of leadership and culture. Ours is a culture of misconduct, retaliation, lack of trust, cover-ups, and the refusal to hold senior leaders accountable for poor judgment and malfeasance.

Habitually, my agency bypasses merit principles in its allocations of awards and hiring. Simply put, we violate Jack Welch's principles of picking people. We elevate people in senior positions that do not have the experience, character, and ability to lead and manage a large, complex organization. The meteoric rise of unqualified individuals eventually corrects itself but only after subordinates and other employees suffer the consequences of poor leadership.

There is a chronic indifference towards investigating legitimate complaints. Moreover, my agency counsel employs nondisclosure agreements to keep people silent about misconduct and malfeasance, and the vicious cycle continues.

While some of these issues may predate the current TSA administrator, I've been in direct communication with him and my agency chief counsel on all these issues, some dating back since February of 2015, and I have yet to receive a reply.

Directed reassignments: I am the only TSA employee whose directed reassignment has been accepted by the U.S. Office of Special Counsel. I was given a directed reassignment based on the mistaken belief I was leaking information to the media in Minneapolis, and my professional and personal relationship with the former Minneapolis-Saint Paul Federal security director, area director, chief operating officer, and TSA acting administrator Ken Kasprisin. My agency was aware I was a recent father of two wonderful children but could not leave the State of Minnesota unless I was willing to lose custody of my children.

There's a financial price we as taxpayers pay for TSA mismanagement. I estimate the money saved by ending punitive directed reassignments, mismanagement, and out-of-control bonuses to senior executives would likely fund enough transportation security officers to staff some of our largest airports in the Nation.

The most egregious example of senior leader misconduct occurred with an assistant administrator. This employee sent provocative messages to a subordinate female under his purview. When questioned by an OI agent, he lied three times. The recommended penalty for a single lack of candor associated with an official investigation is removal from service.

A 24-page Office of Professional Responsibility report recommended this assistant administrator be removed from service. Instead, either the deputy or the acting TSA administrator ignored the advice of the Office of Professional Responsibility. The subject of this investigation is still employed with TSA. Why is it acceptable for TSA senior executives to lie when TSOs are removed for the same infraction?

In conclusion, the American public and Congress should care about what occurs in TSA because its senior leaders are mismanaging our agency, and our security effectiveness is compromised. Our corporate culture is analogous to the movie Animal House while the relationship between our headquarters and the field is best depicted in the TV series Game of Thrones.

I cannot imagine any company being successful when it treats its employee the way TSA does. If this was a private company, the entire leadership team would have been removed long ago.

I thank this committee for the opportunity to appear before you. I thank my Congresswoman from Minnesota, Betty McCollum, for her steadfast support. Until we correct the problems facing my agency, the TSA will always fall short of operating within the band of excellence. Our performance and potential reflects an agency in dire need of oversight. The American public deserves an agency focused on defeating the threat. Employees in TSA, TSOs in particular, deserve leaders who value and treat them with respect. We can do much better.

Mr. Chairman, this concludes my prepared statement. I look forward to answering any questions from you or other members of this committee. Thank you.

[Prepared statement of Mr. Rhoades follows:]

**Testimony of**  
**Andrew Rhoades**  
**Assistant Federal Security Director**  
**Office of Security Operations**  
**Transportation Security Administration**

**Before the**  
**House Oversight and Government Reform Committee**

**Concerning**  
**Examining Management Practices and Misconduct at TSA**

**April 27, 2016**

Chairman Chaffetz, Ranking Member Cummings, and members of the committee, thank you for the opportunity to speak with you regarding the TSA's use of directed reassignments, senior leader misconduct, retaliation and its impact on security. Directed reassignments have been punitively used by TSA senior leadership as a means to silence dissent, force early retirement or resignations.<sup>1</sup> Senior leader misconduct and retaliation, if left unaddressed, will place the American public at risk as managers are more worried of retaliation from their own supervisors than they are focused on defeating the threat. Directed reassignments, retaliation and misconduct are inextricably intertwined and help explain why the TSA underperforms.<sup>2</sup>

TSA's problems are rooted in the areas of leadership and culture. Ours is a culture of misconduct, retaliation, lack of trust, cover-ups and the refusal to hold its senior leaders accountable for poor judgment and malfeasance. Habitually my agency bypasses merit principles in its allocation of awards and hiring.<sup>3</sup> Simply put we violate Jack Welch's principle of picking

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<sup>1</sup> Federal Security Director Jay Brainard, who appears before this committee, captures a conversation he had with the region 3 TSA director in a complaint he provided to the committee staff. On April 14, 2014, the regional director stated to Jay Brainard: "*Look, we were going to do this 2-3 years ago in an effort to get some of the FSDs to retire...*" and "*...backups already stacked up at the ERC or leadership have pre-selected*" referring to a deliberate plan to use directed reassignments as a punitive tool and pre-selection of candidates thus bypassing merit principles (prohibited personnel practice). This information is also captured in my FOIA lawsuit against TSA in the District Court of Minnesota.

<sup>2</sup> See March 14, 2016 Reveal article titled: "Besieged by misconduct, TSA sows culture of dysfunction and distrust" at <https://www.revealnews.org/article/besieged-by-misconduct-tsa-sows-culture-of-dysfunction-and-distrust/>

<sup>3</sup> See February 9, 2016 Reveal article titled "TSA Official for Security Lapses Earned Big Bonuses" at <https://www.revealnews.org/article/tsa-official-responsible-for-security-lapses-earned-big-bonuses/>

people. If you are in favor or willing to retaliate against specific employees, you are advanced. We elevate people in senior positions that do not have the experience, character, and ability to lead and manage a large complex organization. The meteoric rise of unqualified individuals eventually corrects itself, but only after subordinates and other employees suffer the consequences of poor leadership. Moreover, there is a chronic indifference towards investigating legitimate complaints. And many senior leaders believe they are untouchable. When others see nothing occurring to repeat offenders, they avoid becoming a target and stay silent.

Reassignments background and history

The practice of directed reassignments began under the tenure of our fourth permanent TSA Administrator primarily at the direction of his deputy administrator.<sup>4</sup> The practice continued and intensified with the next administrator whose federal law enforcement background shaped his thinking on this subject. Because TSA administrators were unwilling to hold assistant administrators accountable or “become involved in personnel matters,” assistant administrators did whatever they wanted to. Assistant administrators used a poorly written reassignments policy to target people in hopes of gaining resignations and retirements.<sup>5</sup> This allegation can best be proven in the example of the TSA issuing Ed Goodwin a directed reassignment from Jacksonville, FL to Des Moines, IA in May 2014. Mr. Goodwin, a former state trooper and air traffic controller with the FAA for 19 years before joining TSA, was a candid and outspoken leader. He was the primary care giver for his elderly parents – 89 and 95 years of age. One of his parents was diagnosed with Alzheimer’s disease. His only daughter was a senior in high school and he was upside down on his mortgage around the time he was issued his reassignment. There wasn’t a viable option that he could leave Florida. TSA senior leadership was aware of his personal situation since he answered queries of his tenure and family situation at Jacksonville before he was given his directed reassignment. When faced with the dilemma of choosing between leaving his family or keeping his job, he resigned. The TSA had achieved its goal. The punitive practice of using involuntary reassignments was commonly known throughout my agency. And no one in a senior leadership position did anything to stop it. It’s the TSA version of “Game of Thrones.” When the most senior leader of an organization does not discipline his/her assistant administrators for misconduct, they allow bad behavior to continue.

On February 19, 2015 I was abruptly issued a directed reassignment by my supervisor based on the mistaken belief I was leaking information to a local news reporter.<sup>6</sup> I was

<sup>4</sup> Kip Hawley was the administrator while Gail Rossides was the deputy TSA administrator.

<sup>5</sup> See Ed Goodwin v. DHS Secretary Jeh Johnson EEOC No. 510-2015-00209X decision by Chief Administrative Judge Patrick A. Kokenge dated June 30, 2015 provided to this committee by Mr. Goodwin. Ed Goodwin, the former federal security director for Jacksonville, FL was issued a directed reassignment on May 9, 2014. The agency refused to interview three decision maker(s) in Goodwin’s case and the judge issued a default judgment and sanctions against TSA. One of those “decision makers” is the current assistant administrator for the office of security operations.

<sup>6</sup> The MSP federal security director issued Andrew Rhoades a directed reassignment. Prior to this time, no federal security director had issued a directed reassignment in TSA. On April 29, 2015 – Fox 9 news story in which Tom Lyden admits Andrew Rhoades was not his source for TSA leaks to his news station, see “TSA whistleblowers expose Minneapolis airport security lapses, fear retaliation” at <http://www.fox9.com/news/1842070-story> After this

devastated and reached out to my former supervisor. Former acting TSA Administrator Ken Kasprisin called the deputy TSA administrator at that time. The deputy administrator admitted speaking with an assistant administrator who stated the basis of my directed reassignment was his, my regional director and my federal security director's beliefs that I was a leak to the media.

Even the former TSA Administrator – Ken Kasprisin was not immune from a directed reassignment. On October 25, 2011, Mr. Kasprisin was first issued a directed reassignment from Minneapolis to San Francisco. As part of a mediated settlement, he negotiated a 24 month assignment to remain in Minnesota. Several weeks after signing his settlement, the agency attempted to insert an addendum attempting to modify the terms of his settlement that included his scheduled retirement. His retirement was never part of the mediated agreement. During his tenure at the University of Minnesota, he was given exemplary ratings, yet TSA rated him as merely meeting expectations. In November 2013, Karen Shelton-Waters, the TSA Assistant Administrator for the Office of Human Capital, issued Mr. Kasprisin his second directed reassignment to Alaska. Before his expected report date of February 9, 2014 to Alaska, the TSA region three director in Minneapolis announced his resignation on January 14, 2014. Mr. Kasprisin offered to stay in Minneapolis as the region three director, a position he once successfully held. The agency built a region three headquarters in Minneapolis at a cost of \$300,000 for a regional director that never had any intention of moving to Minnesota. Instead, the TSA moved the regional headquarters to Romulus, Michigan and forced Mr. Kasprisin to accept the assignment to Alaska. Is there any reasonable explanation to rationalize how the agency treated its former TSA administrator the way it treated Mr. Kasprisin, other than to force his retirement?

Costs of directed reassignments

In one example, Mark Haught was involuntarily reassigned from Arlington, VA to Charlotte, North Carolina in November 2012. The cost to the American taxpayers was \$197,000 for one move. This figure does not capture a \$475,000 loss on his home in Loudon County, Virginia because he was upside down on his mortgage. After selling his home for a loss, his credit rating plummeted. In May 2014, he was involuntarily reassigned from Charlotte to Los Angeles, California. This was his *second* involuntary reassignment in an 18 month time period. During the time of these directed reassignments, two of his sisters and brother all passed. *Within 30 days of moving to Los Angeles, his wife a TSA employee, was given a directed reassignment from Los Angeles back to Washington, D.C!* I am sure any reasonable person would conclude the goal of the assistant administrator by giving this person a directed reassignment around the time three of his family members died, was to force his retirement. During the time this person and his wife received three directed reassignments, it is important to note they filed EEO complaints against the agency. But because the EEO process takes years to investigate, the agency knowingly retaliated against him hedging time and pressure on this employee would result in his

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occurred, on April 30, 2015, the MSP federal security director stated in a meeting that *"I was told who the problems were and what to do about it!"*



removal from the agency. On December 31, 2015 he retired. He is a former Marine with over 38 years of government service. His wife is currently employed with TSA.<sup>7</sup>

Retaliation

Besides the use of punitive directed reassignments, the TSA uses its office of inspections in a thinly veiled attempt at impartiality to target people. Inevitably the investigators do what the senior leader calling for the investigation wants. There are honest and hardworking inspections personnel, but the times they are used in a retaliatory manner absolutely ruins the organization's culture and fragments trust forever. Without trust, nothing works.

The TSA uses an inspection team comprised primarily of TSA criminal investigators (federal law enforcement officers) to visit a location. Once the criminal investigators complete a report of investigation, it is adjudicated by the TSA office of professional responsibility (OPR). TSA uses its table of penalties to determine the appropriate punishment. Once OPR concludes its work, it forwards a recommendation to a decision maker. The process is supposed to protect against bias, but it does not in all cases. In one example I am aware of, a criminal investigator stated to a senior leader in Los Angeles that he was "tired of being Kelly Hoggan's pawn" referring to his use as a tool to ruin Mark Haught's career.<sup>8</sup>

The punitive use of the office of inspections is not the only matter affecting morale and performance. As recently as March 16, 2016, the American Federation of Government Employees local 2222 released an article originally published by Andrew Becker from Reveal titled "Alyssa Bermudez and the TSA Culture of Misconduct and Unfairness."<sup>9</sup> When 45,000 members of our employee union read about the "golden parachutes" given to senior leaders while rank and file union members are "given the guillotine" for the same infractions, our morale and performance will further plummet.

TSA Senior Leader Misconduct

[REDACTED]

<sup>7</sup> The current assistant administrator for the office of security operations orchestrated Mark and Lisa Haught their directed reassignments. Mark Haught estimates all four reassignments (two involuntary and two voluntary) cost the American taxpayers \$450,000.

<sup>8</sup> This statement was discussed with Andrew Rhoades by Mark Haught.

<sup>9</sup> See <http://afgelocal2222.org/updates/?p=401>

<sup>10</sup> [REDACTED]

By comparison, Alyssa Bermudez was removed from service after she submitted a sexual harassment complaint against a male TSA colleague.<sup>11</sup> The same assistant administrator I mentioned earlier had “ogled” her in the presence of another senior leader – Mark Livingston who appears before you today. The assistant administrator stated to Mr. Livingston: “*if she submits a complaint, it’s our word against hers, right?*” Clearly the assistant administrator was attempting to coerce a male colleague into giving false testimony. Mr. Livingston, a former Marine officer, refused to lie. The female executive assistant submitted a complaint. After she submitted a complaint, she was moved to a different office. Five days before her probationary period ended, she was removed for performance however; her prior performance evaluation was an achieved excellence (4.8 of 5.0) rating. This person is a bronze star recipient and single mother. The person who refused to provide false testimony was later investigated by our office of inspections, cleared of any wrongdoing, but demoted two levels.<sup>12</sup> Any reasonable person would conclude Mark Livingston was punished because he would not provide false witness.

#### Non-disclosure agreements

The use of non-disclosure agreements contribute to the continued practice of misconduct. When a TSA senior leader walked in on an assistant administrator kissing the neck of his female subordinate, they issued this person a directed reassignment. When he submitted an appeal, the agency, anticipating it would lose, offered him a settlement and had this person sign a non-disclosure agreement. There are numerous others who signed non-disclosure agreements usually associated with settlements that mask the true effects of poor judgment and misconduct.

Wouldn’t the American public and Congress want to know the true financial cost U.S. tax payers are spending on TSA mismanagement? Does it surprise anyone that the TSA cannot quantify the money it spends on settlement agreements, directed reassignments, and high bonuses to select senior leaders? I estimate the money saved by correcting these practices would likely fund enough transportation security officers to staff some of our largest airports in the nation. I suggest an independent and external audit of all TSA awards, settlement agreements and directed reassignments to reveal the true cost of mismanagement.

#### The TSA response

The TSA has ignored my complaints. Instead of diligently looking into the matter, TSA’s response has not been forthcoming and it has obfuscated and delayed hoping my interest would diminish over time. When news organizations report of stories unflattering to TSA, they deliberately and systematically try to discredit the whistleblower. When I submitted my complaints to three different former and current TSA administrators and my agency chief counsel, in some cases since February 19, 2015, I am embarrassed to state not one single person did anything about it. Not one single email acknowledging my allegations by the current

<sup>11</sup> Alyssa Bermudez and her lawyer Tamara Miller spoke with select members of this committee’s staff on March 3, 2016.

<sup>12</sup> Mark Livingston is the former TSA executive who witnessed an assistant administrator ogle Alyssa Bermudez. He filed a lawsuit against TSA. It is my understanding he provided this committee a copy of his suit. His suit can also be viewed in the March 14, 2016 Reveal article titled “Besieged by misconduct, TSA sows culture of dysfunction and distrust.”

leadership team. Not one phone call other than the TSA chief counsel asking me to mediate my directed reassignment complaint to make it go away, like it never happened. When I submitted my complaints to the DSH-OIG, they wanted to refer the matter back to the TSA to investigate! I refused. I placed my faith in Congress, the Office of Special Counsel and the media. I only turned to the media when all my frequent attempts to internally resolve my complaints over a one year period failed.<sup>13</sup> Time after time again, the agency and department has demonstrated an unwillingness to address the many allegations I raised.

### Conclusion

In conclusion, the American public and Congress should care about what occurs in TSA because its senior leaders are mismanaging our agency and our security effectiveness is compromised. TSA mismanagement is affecting the airlines and airports adversely.<sup>14</sup> When TSA executives are preoccupied with fear of retaliation, it compromises security and places the public at risk. Our corporate culture is akin to the movie "*Animal House*" while the relationship between our Arlington HQ and the field is best depicted in the TV series "*Game of Thrones*." I cannot imagine any company being successful when it treats its employees the way TSA does.

[REDACTED]

[REDACTED]

[REDACTED] Not only does the TSA mistreat its employees, it alienates entire communities. On April 8, 2016 my supervisors asked me profile Somali imams and other Somali community members.<sup>15</sup> I refused. Treating all Somalis as suspects without any evidence makes our counter-terrorism mission more difficult than necessary. I contacted my administrator and chief counsel, but was disappointed I did not receive a simple acknowledgment of my message. If the TSA was a private company, the entire leadership team would have been removed long ago.

I thank this committee for the opportunity to appear before you. I thank my Congresswoman from Minnesota Betty McCollum for her steadfast support. I am adamant no other TSA employee should experience what would have occurred to me had I not fought back. I thank the media for reporting on the various issues to illustrate to the public what my agency wants to conceal. I apologize to those before me who experienced directed reassignments that

<sup>13</sup> See February 21, 2016 Fox News story "TSA Whistleblower: 'Public at risk' because of retaliation" <http://www.fox9.com/news/investigators/94688565-story>

<sup>14</sup> See March 24, 2016 Reveal article titled "2-hour lines at the airport? Brutal – and a security risk, experts say" at <https://www.revealnews.org/article/2-hour-lines-at-the-airport-brutal-and-a-security-risk-experts-say/> American Airlines, United, and the International Air Transport Association say TSA mismanagement is affecting their operations as well as the Atlanta and Minneapolis-St. Paul International airports are exploring privatization.

<sup>15</sup> See Andrew Rhoades April 8, 2016 mid-year evaluation comments on DHS Form 325 (07/15) TSA Homeland J-K Supv. Written on this form is: "I discussed a matter with the employee where he met with Imam [name redacted] in January at BLN office...Reminded the employee that with our current world affairs that we need to be mindful of those we interact with and advised that employee should check with FIO [field intelligence officer] [name redacted] on potential visitors to determine if we want them in our office space or meet elsewhere." This form was provided to the majority and minority staff.

were used to cause you and your families hardships.<sup>16</sup> I am embarrassed for those individuals who witnessed senior leaders use this tool to retaliate against others and did nothing; you are equally responsible. Until we correct the problems facing my agency, the TSA will always fall short of operating within the band of excellence. Our performance and potential reflects an agency in dire need of change. The American public deserves an agency focused on defeating the threat. Employees in TSA deserve leaders who value and treat them with respect. We can do much better.

My brother, a medical doctor and someone I respect, explains the Hippocratic Oath within the context of my experiences to encourage me to do the right thing – “also, I will, according to my ability and judgment, prescribe a regimen for the health of the sick; but I will utterly reject harm and mischief.” But before a sick patient can recover, they must take their medicine. My agency is in desperate need of oversight and very strong medicine.

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<sup>16</sup> Ken Kasprisin, George Naccara, Michael Young, Ray White, Ed Goodwin, Mark Haught, Wayne Thomas, Bob Ellis, and Heather Callahan are TSA executives whose careers were cut short based on involuntary and punitive directed reassignments designed to force their retirements. Because of this, TSA Administrator Neffenger is faced with a lack of confidence in his existing leadership team as he searches for external selections to existing senior leadership positions (chief operating officer and deputy TSA administrator).

Mr. MICA. [Presiding] Well, on behalf of the committee, we thank all three of the witnesses and we will now turn to questions. And I will begin with the first round.

All three of you are currently TSA employees?

Mr. RHOADES. Correct.

Mr. MICA. And all three of you bravely have come forward to talk about retaliation, about a toxic environment, about misconduct within the areas you have worked. What concerns me is some of it is historic but at least the first witness and the second witness—or third witness I heard say they believe it still continues. And would you say that is the case? Is it still going on?

Mr. BRAINARD. Yes, sir.

Mr. MICA. Mr. Livingston?

Mr. LIVINGSTON. Yes, sir, I would agree.

Mr. MICA. Mr. Rhoades?

Mr. RHOADES. Yes, sir.

Mr. MICA. So that is very troubling. You unfortunately confirmed some of our worst suspicions. They have a huge bureaucracy in TSA. We have had about 45,000 screeners. We are somewhere in the neighborhood of 42, I guess is the cap. But 52,000, and I know they cook the books a bit, moved some positions to other agencies, but they are somewhere in the neighborhood of 8 to 10,000 administrative personnel making—well, I know the 4,000 in the D.C. area make over \$103,000 a year on average. So they are well-paid.

I read the stories of what they did to you, and since we began this inquiry, we have had dozens of others come forward throughout TSA telling us that they have experienced similar misconduct.

I am a little bit concerned. I have tried to give Neffenger, the new administrator, a chance to straighten things up, but again, you tell me that the people who are the most abusive are still there. Is that right, Mr. Brainard?

Mr. BRAINARD. Yes, sir. I didn't go on record with your comment. What I have observed in TSA, I think Mr. Neffenger has done his best to engage and get his arm around the situation, but we haven't resolved it. There are—we have had instances happen —

Mr. MICA. But the people—I mean, this comes from a pretty high level, and the retaliation has taken place. I know there have been some memos, et cetera, operational guidelines that have been revised, but the folks are still in place. That has got to be pretty demoralizing.

Mr. BRAINARD. It is. And they are still in place. I can tell you that—and I don't want to go into specific detail by mentioning names because they are entitled to some sense of due process and an investigation, but the reality is not only are they still with the agency, some of them are still in their original positions even today.

Mr. MICA. So —

Mr. BRAINARD. So we continue to have this issue.

Mr. MICA. What concerns me, too, is the ability to perform now is also hindered. Neffenger is well-intended, but some of the reports that leaked about the poor performance—you saw some cooking of the books, too, on wait times, is that correct, any of you?

Mr. RHOADES. Yes, sir.

Mr. MICA. You did, Mr. Rhoades. That has been—well, the failures of performance and then the wait times and then the retaliation. There has been retaliation for also the facts coming out. I won't say that you revealed the facts, but those were the facts of what was taking place. Some of you got blamed for that, is that correct, Mr. Brainard, Mr. Livingston, Mr. Rhoades?

Mr. RHOADES. Yes, sir.

Mr. BRAINARD. [Nonverbal response.]

Mr. LIVINGSTON. [Nonverbal response.]

Mr. MICA. All three. I am very concerned about what has taken place. Again, Neffenger is well-intended. He is trying to correct the situation with more training, et cetera. But TSA can't recruit, it can't train, it can't retain, it can't schedule, and it can't manage the huge bureaucracy that has been created. That is part of the problem. And it won't be corrected.

Then those people on the line see what is taking place, and they have pulled me aside at my airport, you see those three guys that are doing nothing, Mr. Mica, sitting there, they are all making over a hundred grand. We are busting our tail trying to process these people, and they are having a sit-down chat and enjoying themselves. Part of the—I guess the TSA gets the name thousands standing around, but these guys are a thousand sitting around earning huge salaries while the others are doing their work.

The meltdown that has already occurred, my colleagues, here are just a few headlines. This is Fort Lauderdale-Miami, American Airlines, 6,800 people last month missed their flights. Chicago, 1,100 American Airlines missed their flights, Chicago. Charlotte airport, 3-hour waits on Good Friday. Long lines, cranky travelers. Seattle, this one is Denver, this one is JFK. I mean, and we haven't gotten to the summer when you get the heavier traffic. You all know what I am talking about. You think we are headed for a rough time this summer, Mr. Brainard?

Mr. BRAINARD. I absolutely believe that's the case. And you know, I think it's important to point out that when we're talking about personnel issues and we're going and talking about the senior executive service and the people are still here, it's—it goes beyond that. A lot of the things that you're reading about in the paper, the things about the \$1.5 million app for instance, same decision-makers. When you're talking about moving security resources out of airports, same decision-makers. When you're talking about, you know, turning the FTE back in in order to bean-count, which has put us in quite a situation for this summer, same administrators. The same people who broke this agency are the same people who are essentially still running it.

And I will offer to you that in—post the testing results coming out, there was a tiger team effort that took place in TSA. And of that tiger team effort, there were some wonderful recommendations that were offered. I can offer you that I served as a senior advisor for a period of about 2 months, and I can tell you the most important part of that survey, the most important part of that working group was to fix the security. And the second most important part was fix the leadership. And somehow I don't think that message got back.

Mr. MICA. Well, I thank you.

Mr. LIVINGSTON. Sir?

Mr. MICA. Did you want to say something?

Mr. LIVINGSTON. Sir, I can add —

Mr. MICA. Real quick. I am going to yield as much time to Mr. Cummings, but go ahead.

Mr. LIVINGSTON. Sir, I can add a very unique perspective to your first question. As member of that senior leadership team, I sat in the office or at the table with the other senior leaders as a deputy assistant administrator. I can tell you that Administrator Neffenger has brought a new perspective to the agency. He's actually hired a chief operating officer. The problem is he's got the same people doing the same thing, doing the same problems. He has the right mindset and the energy to change it, but he's got to put different people in different positions. He's not going to get there with the same team. He has the energy and the focus to do it, but he can't do it with the same people.

Mr. MICA. Well, what you tell us is troubling.

Let me yield now to Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Gentlemen, I want to thank you for being here. And I am concerned about the allegations. I think they are very serious allegations. And we definitely need to have a thorough inquiry so we can hear all sides. I think you would agree with that?

Mr. BRAINARD. Yes, sir.

Mr. LIVINGSTON. Yes, absolutely.

Mr. RHOADES. Yes, sir.

Mr. CUMMINGS. Mr. Livingston, you testified that you were removed from your position, and basically, you were demoted, is that right?

Mr. LIVINGSTON. Two grades, that's correct, sir.

Mr. CUMMINGS. So two grades, that meant you lost some pay?

Mr. LIVINGSTON. I did, yes, sir.

Mr. CUMMINGS. About how much did you lose?

Mr. LIVINGSTON. I think it's about \$10,000 a year plus bonuses and other stuff, sir.

Mr. CUMMINGS. And you said that right at the end of your—so you said that they did it right at the end of your 1-year —

Mr. LIVINGSTON. Probation —

Mr. CUMMINGS.—probationary period, is that right?

Mr. LIVINGSTON. Yes, sir. They removed —

Mr. CUMMINGS. So how close were you to the end of the period before they did this?

Mr. LIVINGSTON. I think it was roughly about 48 days before my probationary period, but I had served in that period as a probationary SES for 17 months. But because the Secretary of Homeland Security, Secretary Napolitano, had announced her retirement, they had frozen all CQ—ECQs being certified as they put in a new Secretary of Homeland Security at the time.

So I was in that position, in an active position an extraordinarily long time, plus my agency was slow in getting my ECQs to OPM. The bottom line is they removed me, then investigated me, and when I was cleared, they didn't reinstate me. The reason they removed me is because I had found my senior culpable for preselection, and then I had reported another one for sexual har-

assessment. So after they removed me, I had failed my probationary period. And after I had failed that, they couldn't reinstate me. They had already removed me.

Mr. CUMMINGS. And what do you think the probationary period is for?

Mr. LIVINGSTON. It's to evaluate your performance, sir.

Mr. CUMMINGS. So as I understand it, during your probationary period, you don't have certain important rights, is that right?

Mr. LIVINGSTON. That's correct, sir.

Mr. CUMMINGS. Like the ability to challenge your demotion to appeal, right?

Mr. LIVINGSTON. Yes, sir.

Mr. CUMMINGS. So they basically demoted you, and they can demote you if they want to and you don't have any adequate protections and there is no due process during that period, is that right?

Mr. LIVINGSTON. That's correct, sir.

Mr. CUMMINGS. So you must have been very upset about that?

Mr. LIVINGSTON. Well, considering that I had gotten two medals and a great midterm and was pending another medal at the time, I was shocked. I was blindsided.

Mr. CUMMINGS. So during your interview with the committee staff, you were asked if it would be easier for agencies to retaliate against employees if probationary periods were extended beyond 1 year, you said, "yes," is that —

Mr. LIVINGSTON. Yes, sir, it would.

Mr. CUMMINGS. You were also asked, "Given what happened to you and you claim that TSA retaliated against you during your probationary period, would you support probationary periods that are longer than the 1 year?" And you said, "no," is that right?

Mr. LIVINGSTON. At TSA, sir, it hasn't worked. I've seen other agencies where it would. If it's done in good faith, I think it could, but in my current situation, I couldn't see it working for 2 years, so my answer would be no. No, sir.

Mr. CUMMINGS. So there is a proposal that has been made before our committee —

Mr. LIVINGSTON. Yes, sir.

Mr. CUMMINGS.—to extend the probationary period and to make it even longer.

Mr. LIVINGSTON. Yes, sir.

Mr. CUMMINGS. That would mean that you could have been demoted even if you worked there even longer. Do you think that that is a good idea?

Mr. LIVINGSTON. Well, that recommendation also comes with some other regulations that include a mentor and then 60/90-day checkups. So there's a process that comes with that where you're informed as you go. I was blindsided. And that recommendation wouldn't allow that.

Mr. CUMMINGS. So if we made it longer, then whistleblowers like you would have fewer due process protections for an even longer period of time. And you would oppose that change?

Mr. LIVINGSTON. If it came with checks and balances, I would not be opposed to it, sir. The whole point of being an SES is to help the government. It's not about the individual. But if it's not bal-



anced, it wouldn't work. The time period isn't the issue. It's the quality.

Mr. CUMMINGS. I got you.

Mr. LIVINGSTON. And TSA hasn't shown that quality, sir. They haven't acted in good faith.

Mr. CUMMINGS. Okay. So, Mr. Brainard and Mr. Rhoades, do you agree with that, and do you oppose having a longer probationary period when whistleblowers like you would have for your protections?

Mr. RHOADES. So, I think the problem that's plaguing our agency is the fact that we have codes of conduct, we have policies, but we don't follow them. We have leaders that just abuse their power and authority. On a general term, if we had competent, ethical leaders, you can make the probationary period 10 years. It wouldn't matter if they would do the right thing. But as I—as Mr. Livingston stated, in the current state of TSA with as much retaliation, with as much of—you have to be in an inner circle or liked to get promoted, I absolutely would not support it.

Mr. BRAINARD. Sir, I really don't care. I don't care if it's a year. I don't care if it's two years as long as there's a checks-and-balance system in place. I mean, it's—you know, you have to have engaged leadership that is going to follow the performance of the individual, and if the person is not performing, to give them a plan to help them be successful and if they're not, end it. So as long as there is a structured process in place to help develop the individual and to make a determination if they're going to be a good fit, to me, it doesn't matter how long it is.

Mr. CUMMINGS. So you have a situation where you are saying no matter who is at the top, you have got people that have been there—I guess, most of these people have been there for a while?

Mr. BRAINARD. Yes, sir.

Mr. CUMMINGS. Did you want to say something, Mr. Livingston?

Mr. LIVINGSTON. I was going to answer —

Mr. CUMMINGS. Yes, let me finish my question. So no matter who you have at the top, you have got these folks underneath. I guess many of them have been around for as long as TSA has been around, I guess, am I right?

Mr. LIVINGSTON. Many years, sir.

Mr. CUMMINGS. And are these people easily identifiable? I mean, is it easy to know who they are?

Mr. RHOADES. Yes, sir.

Mr. LIVINGSTON. Yes, sir.

Mr. CUMMINGS. And so they basically—so Neffenger can do whatever he wants or put out whatever mandates or rules to correct the situations generally, but unless you have these folks cooperating, it is still not going to be resolved. Is that a fair statement?

Mr. LIVINGSTON. Sir —

Mr. CUMMINGS. Things are not going to be resolved?

Mr. LIVINGSTON. My perspective is they're waiting him out to see if he's going to be sticking through, and they're just not giving him a fair, honest, professional shake. And a career professional would support him no matter how long he's going to be there, a day or 10 years. When he makes a decision, it should be carried out. And he's not getting a fair, honest, professional shake.

Mr. BRAINARD. If I can say also to that, when you're talking about the whole of TSA, some 50 or 60,000 employees and then you get to the leadership component, that starts getting even smaller. And then you get to the real crux of the problem. We're not talking about 50 people. We're talking about a handful of people up there who've managed to maintain power in this agency who have escaped accountability.

Now, some of those people, some of the most egregious offenders, they've departed TSA with either a golden parachute or some private sector lucrative offer. But we're only talking about a handful of people.

There are a number people within the executive service within TSA that are outstanding at what they do, just as our—there are a number of people in the frontline with our officers that are outstanding at what they do. We're talking about a very small number of people for whatever reason I cannot explain have managed to hold onto power, and they've—they're the worst people abusers in the agency and they're still there and there's nothing being done about that. And I don't know to what extent our current administrator is being empowered to do his job.

Mr. CUMMINGS. All right. Thank you very much.

Mr. MICA. Okay. Thank you, Mr. Cummings.

The gentleman from Tennessee, Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman.

Dr. Livingston, I have an article which talks about the \$336,000 TSA paid IBM for producing an app. This article says "When an app isn't much more than a random number generator, it is hard to imagine how it could cost that much for the development alone, but it is typical of government spending."

And I understand from the staff that you once recommended an analysis that another employee refused to do that—and ended up spending \$12 million on a project that should have cost just \$3 million. Would you tell us about that and any other examples of huge waste that you have seen on your watch?

Mr. LIVINGSTON. Sir—yes, sir. When I came on as the deputy assistant administrator for the Office of Intelligence and Analysis, we did a watch floor transformation. And in that, we had allocated originally \$3–3.5 million to do this transformation. And because there was no alternative of analysis completed, it was not managed properly. There was a 30/60/90-day signature that was completed that was not done properly. So the wrong equipment was ordered. It arrived, didn't work. We had to do it over, and it cost three times the amount.

And even today, if you went and looked in that watch floor, there's about \$500,000 worth of equipment sitting in a box in that office space, and there isn't manned—where it should be about 12 people working, there's probably four, maybe five people working. It was a total waste of money.

And while it may not sound like a lot when you look at the big picture, it's wasted almost \$7, \$8, maybe \$9 million. That's a lot of money if it was being paid for out of our pocket. And I think the taxpayers would be upset to know that TSA wasted that money.

Mr. DUNCAN. Well, it may not sound like much to those in the Federal Government, but I can tell you, it sounds like a lot to the

average person out there when you pay \$12 million for something that should have cost \$3 million.

Do either of you, Mr. Rhoades, Mr. Brainard, have you seen examples of waste in your positions?

Mr. RHOADES. Yes, sir. In Minneapolis we built a regional headquarters for a regional director that had no intentions of coming to Minneapolis. He stayed in Michigan. And throughout that whole process, as I worked with the Office of Real Estate, I would identify why are we spending \$300,000 on an office space that this regional director has no intention of coming to?

We're in the process right now of Minneapolis of changing that, but we're going to spend more money to revamp that office space for a coordination center where we should have done that at the beginning. We identified that years ago. I identified that years ago. But what happens is when you make suggestions like that, they just move around you or you get cut out of the meeting and you're not consulted anymore. So we'll spend—we've already spent \$300,000 on this office space and we're going to spend, I don't know, \$100, \$150,000, potentially more, when we should have done that upfront. And it's just—it's gross mismanagement.

Mr. DUNCAN. Well, the easiest thing in the world is to spend other people's money.

Mr. Brainard —

Mr. BRAINARD. Sir, I'd like to comment on the app that you just mentioned. And I've got to tell you, that's one of the strongest indicators of the mentality that we have not only of the feeling that they're bankrolled to pretty much do whatever they want no matter how silly it seems, but when this story came out about the app, you find out that the app's no better than chance.

And I put together this Ouija board that's got expedited screening on it and standard screening here at the bottom, which would had been just as effective as that app, and it would have cost a lot less. You could have the same type of outcome with a quarter, flipping a quarter at the checkpoint. And —

Mr. DUNCAN. Well, I understand that there have been other software developers who, just for fun, have created a similar app at almost no cost, and to pay \$336,000 to IBM was a total rip-off, it seems to me.

Mr. BRAINARD. Yes, sir. I also do app development as well, and I can tell you, it does not take a lot of thought to do what they did. And —

Mr. DUNCAN. Yes, Mr. Livingston—Dr. Livingston?

Mr. LIVINGSTON. Sir, I wanted to make a comment for the record. I pointed out that fraud, waste, and abuse, and I was told to let it go. And I also made a point of saying that this was a lot of money and it was wasteful, and nobody took any action.

Mr. DUNCAN. All right. Well, let me mention one other thing since my time is running out. Mr. Rhoades, I understand that you think that the wait times at the Minneapolis airport have been falsified. Is that correct? And have you heard about that happening in other locations, too?

Mr. RHOADES. I cannot comment specifically on other locations. I can comment at Minneapolis. In 2013 we received what's called a Federal security director office of inspection—basically, a health

check. And on page 18 of 40, which I provided to this committee, a supervisor at the checkpoints had identified that he or she—it doesn't give his or her gender—had expressed some frustrations that the wait times that they submit up for was being changed by management.

I can tell you at the Minneapolis-Saint Paul airport the airport police has at times begun to tabulate wait times. So think of that for a second. We are expending police resources at our airports to check on TSA reporting our wait times.

And as recently as last month, the airport is investing in some sort of automated wait time calculations. That would indicate, sir, that they don't trust the numbers that we're reporting.

Mr. DUNCAN. All right. Thank you very much.

Mr. MICA. I thank the gentleman.

The gentlelady from New Jersey, Mrs. Watson Coleman, you are recognized.

Mrs. WATSON COLEMAN. Thank you very much, Mr. Chairman, and thank you, gentlemen, for being here.

I want to ask one question. I think it was you, Mr. Brainard, who said that there are only a handful of really bad administrative-level people, a lot of others have left, but you said there is only a handful. Is that 10, is that 12, is that 5?

Mr. BRAINARD. I'd say it's less than 20, ma'am. I don't know the precise number, only the people that I deal with in my world. I don't speak for—I'm speaking strictly within operations. I don't speak for the Office of Law Enforcement, the Office of Global Strategies, the Office of Human Capital. There are some 13, 15 different divisions within TSA. I can only speak to what I know and the impact. But I will tell you that operations has the largest piece of the pie.

Mrs. WATSON COLEMAN. I think I better pay better attention to your organizational chart because I am really kind of confused where people are located on it, and I will do that.

Dr. Livingston —

Mr. LIVINGSTON. Yes.

Mrs. WATSON COLEMAN.—you wrote in the statement you submitted for the record today, "Today, TSA lacks the senior leadership courage to make the necessary changes so that the agency can accomplish its mission," right?

Mr. LIVINGSTON. I did.

Mrs. WATSON COLEMAN. Now, in your transcribed interview with committee staff you stated the following about Administrator Neffenger, "I give him all due credit for being probably one of the smartest people in DHS, and he is the right guy to lead TSA." Is that accurate?

Mr. LIVINGSTON. It's —

Mrs. WATSON COLEMAN. You said that? Thank you.

Mr. LIVINGSTON. Yes, ma'am.

Mrs. WATSON COLEMAN. You also stated in your transcribed interview, and again "Now, Pete Neffenger has stood up publicly and said this is what we need to do, but he is the only voice." Why is Admiral Neffenger the right guy to lead TSA, and what has Administrator Neffenger actually said that needs to be done at the TSA?

Mr. LIVINGSTON. When I was the deputy assistant administrator, I sat next to him probably 8 months as a member of the Counterterrorism Advisory Board. I know him to be an intellectual, I know him to be a leader, and when he was the vice admiral of the Coast Guard, he spoke truth to power. He talks now about innovation, he speaks with authority, and I think he is a man of integrity.

What I don't think is he has the supporting cast around him. If you think of it as a sports analogy, he can't play every position on the field. I think he has good intentions for TSA. I think he needs the supporting cast to help him. I think all of you have heard him here when he's testified. I think he's—speaks honestly. I think he is well-intended. But what I think he needs is the people around him to buy into what he's doing.

He has since hired a chief operating officer, Gary Rasicot, to come in and help him. That is one example of him trying to get things right, Congressman.

Mrs. WATSON COLEMAN. You also stated in your transcribed interview, "Here's the thing. The workforce is waiting out Mr. Neffenger because they think the elections are coming."

Having worked in State government at various levels, I know what it is for people to wait for leadership to come in and then wait for leadership to come out, and they say we were here when you got here; we are going to be here when you leave. So are you speaking of those individuals that have some kind of an—and I am going to use this as a generalized term—civil service protection that can't be moved that are representing the most difficult element to deal with and to work with?

Mr. LIVINGSTON. Ma'am, my intention with that comment was to admit that the middle management and the senior-level leadership hasn't provided the necessary leadership to support the administrator to let it be known that they bought in, that no matter how long he's there, whatever he has said should be carried out. I don't think there's the necessary buy-in to carry out what he's advised and directed to be done. Whether he's there a day or 4 years like Mr. Pistole, once he decrees it, it should be carried out, regardless of the time frame.

Mrs. WATSON COLEMAN. Do you —

Mr. LIVINGSTON. That was my intent.

Mrs. WATSON COLEMAN. Do you think you could share with me some of the things you think need to be institutionalized under Mr. Neffenger's leadership that would help this agency as it may transition into new leadership under a new administration?

Mr. LIVINGSTON. Yes, ma'am, I do. I think he's come out very specifically, and when he has his weekly staff meetings, he says he's interested in five things. He wants to know about how well we're doing in the airports with the pre-check, he wants to know about the acquisitions, he wants to know how we're doing with our budget, he wants to know how we're doing with the morale. He's very clear where he's going. He's very specific, and I can provide you that information very clearly.

Mrs. WATSON COLEMAN. Okay. I appreciate that. Thank you very much. I yield back my time.

Mr. MICA. I thank the gentlelady.

Mrs. WATSON COLEMAN. Thank you, sir.

Mr. MICA. The gentleman from North Carolina, Mr. Meadows.

Mr. MEADOWS. Thank you, Mr. Chairman. Thank each of you for your testimony here today, for your willingness on behalf of the American people to speak up. We know that it does not come without risk. And I for one am committed to making sure that all of our Federal employees are treated fairly. And certainly, when we see retaliation, it is troubling.

Dr. Livingston, when I hear some of your testimony, I always watch the audience, and I see people nodding their head yes or shaking their head that they can't believe these kind of things are happening. So let me just make sure that I am clear. During your probationary period, were there areas where you were able to appeal to other—like the special counsel where—did you appeal some of the decisions to those or could you have appealed to those?

Mr. LIVINGSTON. Sir, the rules from OPM is it's a 1-year probationary. They have any right to terminate you for any reason. And under the current guidelines, there's no recourse. The problem is I was never told one time, either in writing or verbal, to adjust. What I do have is a record of 96 emails saying great job. What I do have is a midterm saying great job. There was no indication there was ever a problem. I was told on a Monday great job over the weekend working for some work for the White House —

Mr. MEADOWS. Right.

Mr. LIVINGSTON.—I was told Tuesday that you're being nominated for an award, and I was told Thursday you're done.

Mr. MEADOWS. So now, you do have a claim currently with OSC, is that correct?

Mr. LIVINGSTON. Yes, sir, I have a petition with OSC, yes.

Mr. MEADOWS. How about from an EEO standpoint? Do you have —

Mr. LIVINGSTON. I have filed a lawsuit and an EEO as well, sir, and —

Mr. MEADOWS. All right.

Mr. LIVINGSTON.—have an attorney.

Mr. MEADOWS. So you have those two appeals, I guess, sitting out there or at least requests at this particular point. I just wanted to make sure that that is clear, that in addition to this probationary period, you have actually filed in those two areas, is that correct?

Mr. LIVINGSTON. It is a first time for me, sir, in 36 years, but I have.

Mr. MEADOWS. No, and that is fine. You know, when injustice happens or that perceived injustice, certainly, we want to make sure that you are given the right to appeal.

So let me go a little bit further because part of this is a Federal employee, you know, management issue, but the American taxpayers probably are not as in tune to that or care about that as much as the safety and security of air travel.

Mr. LIVINGSTON. Yes, sir.

Mr. MEADOWS. So is it your testimony, Dr. Livingston, that this mismanagement is affecting the safety and security of Americans?

Mr. LIVINGSTON. Sir, it's my testimony today that we have non-intel professionals running your Office of Intelligence and Analysis.

Mr. MEADOWS. So non-intel running the Office of Intelligence. All right.

Mr. Brainard, is it your testimony here today that the lack of sufficient management practices within TSA is putting Americans at risk?

Mr. BRAINARD. Mr. Meadows, I would say that's the case, and let me quantify that. When I talk about the lack of experience in positions, right now, this summer we are going into what they call a very challenging, challenging season, and we're looking at situations in these airports where they have recently pulled out the Managed Inclusion II aspect of expedited screening. That is a very small part of that whole process and package.

Mr. MEADOWS. Right.

Mr. BRAINARD. And because they have done that, we're going to have this problem. The problem along with that is the fact that plan A was to put that in place, but nobody sat down and put a plan B in place if they had to pull any one or all those options off the table. In this business you have to understand continuity of operations, and it's very clear to me just on that alone they didn't have a continuity of operation. That is detrimental to our security.

Additionally, when you're talking about security at the airport, you're talking about things like this app, this randomizer. There are stories out this week about a proposal that existed pre-current administrator about not screening passengers on flights out of airports. To me, that speaks in and of itself the level —

Mr. MEADOWS. So your testimony is that correcting the situation is of the highest priority for the security of the American traveler, is that correct?

Mr. BRAINARD. Absolutely.

Mr. MEADOWS. All right. So let me finish in the last few seconds. I was at Dulles a few weeks back visiting with Customs and Border Protection as we looked at the whole vetting of visa overstays of the country. And there, they indicated that TSA doesn't check all the background areas of potential workers. So they can be on a terrorist watch list, they could have other backgrounds, and that we are not systematically checking all of the backgrounds, resources that we have at our disposal. Is that correct, Dr. Livingston?

And I yield back to the chairman.

Mr. LIVINGSTON. Sir, let me research and get back to you that. I'm not exactly sure of that. I think that's the case, but let me get back to you specifically. I don't want to mislead you on that, but I can find out.

Mr. MICA. I thank the gentleman.

The gentlelady from Illinois, Ms. Kelly, you are recognized.

Ms. KELLY. Thank you, Mr. Chair, and welcome to the witnesses.

Just for clarity, Mr. Rhoades, you told committee staff that after March 1, 2015, no one has told you that they believe wait times are being falsified. Is that correct? Is that what you said to the committee staff?

Mr. RHOADES. Ma'am, I described to the committee staff that in March 1, 2015, I was aware of an incident at Minneapolis where a manager was in our coordination center. He was counting the wait times of the people in the checkpoint queue, and he was pulled away to respond to a real incident at the airport. He had

counted approximately 18 minutes, and then a new manager came in. I believe she counted either somewhere around 5, but we've reported 18.

Ms. KELLY. So is that —

Mr. RHOADES. So —

Ms. KELLY.—a yes or no?

Mr. RHOADES.—that's as best as I can tell is March 1, 2015. But as I stated earlier, ma'am, when the airport police start having police officers count your wait time, it's an indication of trust. And so I would maybe look at that as the measurement that when police organizations at airports are starting to count the wait times of your checkpoint security queue, then something's wrong.

Ms. KELLY. But to that question, you don't have a yes or a no?

Mr. RHOADES. I don't have any information, ma'am.

Ms. KELLY. Okay.

Mr. RHOADES. Yes, ma'am.

Ms. KELLY. In early 2015, the preliminary results of tests of TSA's screening operations conducted by the Department of Homeland Security's inspector general leaked to the press. The inspector general made findings that, according to the Secretary of Homeland Security Jeh Johnson, "were completely unsatisfactory." In response to these results, Secretary Johnson ordered TSA to implement the 10-point plan. Mr. Brainard, are you aware of these findings?

Mr. BRAINARD. I am, ma'am.

Ms. KELLY. Okay. As part of the ongoing effort to complete the 10-point plan and resolve security vulnerabilities, Administrator Neffenger had worked to address what he identified as a "disproportionate focus on efficiency and speed and screening operations rather than security effectiveness." To that end, Administrator Neffenger testified before this committee that he has provided new training to "every transportation security officer and supervisor to address the specific vulnerabilities identified by the OIG test."

Mr. Brainard, has your staff received this training?

Mr. BRAINARD. Yes, ma'am.

Ms. KELLY. Okay. You discussed the impact that this training has had on the performance of the screener workforce during your transcribed interview with the committee staff. You stated, "Well, the management-essentials training obviously has improved our situation in terms of how they conduct their jobs, the thoroughness, I mean. There have been improvements in terms of, I think, without seeing any test results, the detection capabilities." Is that correct?

Mr. BRAINARD. Yes, ma'am.

Ms. KELLY. Okay. Administrator Neffenger has also refocused the screener workforce on resolving alarms at checkpoints, and he testified he is readjusting the measurements of success to focus on security rather than speed. When you spoke with committee staff, you were asked whether under Administrator Neffenger there had been "a new emphasis on resolving the alarm," and you said, "absolutely." Is that correct?

Mr. BRAINARD. Yes, ma'am.



Ms. KELLY. What is the importance of resolving alarms at the checkpoints?

Mr. BRAINARD. Ma'am, making sure that our people are thorough. You know, the job that an officer does is certainly the most important job in TSA. And one of the hazards of that job is when you're constantly dealing with people all day and the routines are the same, it's very easy to get lax in procedures.

And so part and parcel with that training—and I use that word culture and I really mean it—is to improve our culture, to make sure that people understand the importance of resolving the alarm versus just clearing the passenger and letting him go. Also, part of that was to explain limitations of the equipment that we had.

You know, and this is—these are all things that came out of the tiger team effort, some great stuff that happened. And certainly since Mr. Neffenger has been in, there has been a shift to security and trying to get that pendulum to go back so we strike a balance.

But I'll offer to you this: The things we talk about, a lot of things we talk about happened prior to his administration. Those testing results, those aren't new. They may have been released, but the previous administration knows what our performance was, and they still implemented a number of different programs and processes, which in my opinion did not help our security situation.

I've talked with the committee staff members about some other security concerns which have happened. All those things took place when they knew, they knew what the testing results were.

As a Federal security director, I see the testing results within my AOR. I see everything currently today within the State of Kansas. What I didn't see prior to that was everybody else's, but that leadership team did.

Ms. KELLY. I just want to throw in one more question. What is the nature and impact of TSA's staffing shortages?

Mr. BRAINARD. Say that again, ma'am?

Ms. KELLY. What is the nature and impact of TSA's staffing shortages? And I am out of time after you answer.

Mr. BRAINARD. That's a very good question, and I can sit here probably for the next 20 minutes and talk about it.

Ms. KELLY. The chairman won't let you do that.

Mr. BRAINARD. I know they won't let me do that. So let me just say the most important aspect of this. You know, when we are not properly staffed, it causes our people to be under a lot more stress. Now, regardless of how much Mr. Neffenger or myself or our supervisors preach the importance of resolving the alarm, it puts pressure on security checkpoint, the officers.

Additionally, when you look in the media, you've got airports screaming about the possibility of going privatized. And if there's one thing that puts pressure on a Federal employee of 13 years is the threat of privatization. That is one thing that is absolutely at the forefront of their mind. And you can't have people focused on the security mission when they're focused on their job security.

I give Mr. Neffenger a lot of credit because he's baring the news to the public. And the word on the street is you remember the day after Thanksgiving? That's going to be every day this summer. And so it's important for us to make sure that we reassure our officers so that, regardless of the fact that somebody is going to have to

wait a few extra minutes, we still have their back. And we have an administrator who fully supports that, and that is part of the culture that he has established with TSA. That's a very difficult job. It's certainly not the most popular job, and we certainly appreciate it.

Mr. RHOADES. Mr. Chairman, may I add one thing?

Mr. MICA. Yes, sir, in conclusion.

Mr. RHOADES. We keep talking about the failures at the checkpoints, and candidly, I think that's insulting to TSOs because the leaders are what put the TSOs in that environment. And so, yes, they've got a difficult mission, yes, we need to resource them, but let's not forget the fact that the people who brought us to the dance of those—the failures have the detection rate are still in leadership positions. And what training did they get? So, again, we're deflecting the problem on the TSOs, but we're not really talking about all the people in leadership positions who brought them to that dance.

Mr. MICA. I thank the gentleman and yield now to the gentleman from Michigan, Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chairman. Thanks to the panelists for being here.

Mr. Livingston, you know, we have been, of course, here today talking about failure at seemingly all levels in employee morale and training, et cetera, and the consistent terrible rankings that DHS has. What do you think it is going to take to instill a meaningful change in employee morale?

Mr. LIVINGSTON. Leadership. Accountable leadership that gets results that's consistent and that is honest because, right now, there's no trust.

Mr. WALBERG. Accountable leadership, go back to that. What does that mean?

Mr. LIVINGSTON. Well, right now, the value on conformity and silence is greater than integrity and innovation. If we don't have an agile agency that's more focused on the threat and making security the priority, you're not going to get an agency that's going to be agile. And right now, the agency is supposed to be working on the threat, and right now, we are more worried about conformity and silence. So I would tell you if you don't build trust with the workforce, you're never going to make the morale better.

Mr. WALBERG. So the results that we are talking about today aren't a surprise to you?

Mr. LIVINGSTON. Not in the least bit, sir.

Mr. WALBERG. Mr. Brainard, we have heard of senior positions being filled with unqualified staff, untrained staff, specifically individuals with little or no management or security experience. Can you share your experience in this regard, specifically whether you know of any efforts on the agency to address this issue?

Mr. BRAINARD. Well, let me give you another example, and there are several. In 2013, an active shooter opened fire at the Los Angeles airport, killed one of our officers, wounded two, wounded a total of seven people. And in response to that, some of our senior leaders, these folks who have a questionable background and certainly lack the security experience necessary, all got together and decided to standardize a checkpoint panic alarm system. And the purpose of the alarm was to press it when there's an eminent threat so our

people could have protection from law enforcement at the quickest possible opportunity.

So of the 450 airports where they installed those, some 710-plus checkpoints, they installed those alarms. That's great. It's a good security move. The problem is they're all covert alarms. They've got an auto dialer that calls the police department.

So if you have a law enforcement officer standing there and you have a situation like you did in New Orleans where the guy comes through the checkpoint chasing our people with a machete, if that officer hadn't been there to take that perpetrator out, several people would have been hurt or possibly killed that day.

How do you install 710 alarm systems on a government contract and you forget to put in an audible alarm? We installed the audible alarm in our hub in Wichita, and we put out the specs to other Federal security directors nationwide.

That in and of itself, when you're talking about the changes that they put into these airports, I mean, there's a—the rationale behind some of this stuff absolutely makes no sense from a security standpoint.

You know, risk-based security is a title that's slapped on everything. And the motto is from the previous administration there's never been a risk I wasn't willing to accept. It's like dealing with a financial investor. You give a financial investor \$100,000 of your money and he or she will do things with it they would never do with their own. That's one example of the logic that goes and the thought process that goes on.

One of my counterparts took a survey over a period of 5 months with calls that we have with TSA leadership prior to Mr. Neffenger's arrival, and over a 5-month period there were 147 topics discussed, not one of them was security-related. They may have talked about playbook or they may have talked about some security aspect, but there was always a metric driving it. And it was a running joke. This is the priority of that leadership.

Mr. WALBERG. Okay. Let me jump to another point here. Can you walk us through the process that TSA engages when they are evaluating a potential new hire?

Mr. BRAINARD. At which level, sir?

Mr. WALBERG. At any level, a new hire at management level specifically, but any other. What is the process that TSA walks through?

Mr. BRAINARD. Well, it varies, sir. You have—with officers, obviously, there's an online process, and locally, we're not involved in that. It will do candidate assessments and so forth. There's background checks conducted. As a Federal security director, I don't get a lot of insight into that.

At the administrative level, posting it on USAJOBS, whether it's internal and external people apply for it, and then you have within the SES level, and those are done by the Executive Resource Council at TSA headquarters. The administrator is certainly involved in that decision. It just varies with different components.

Mr. WALBERG. Okay. Mr. Rhoades, complaints to leadership at the TSA going unacknowledged, ignored, et cetera. Have you ever heard justification for these complaints not being accepted or reviewed?

Mr. RHOADES. No, sir, there is no logical explanation for that.

Mr. WALBERG. What explanations have been given?

Mr. RHOADES. Precisely, none.

Mr. WALBERG. None? None at all?

Mr. RHOADES. No contacts; no emails; no Drew, you're nuts: I've got a differing opinion; hey that's a good idea; nothing.

Mr. WALBERG. So it just happens and allowed to happen?

Mr. RHOADES. I can't answer that. It just—I—the only thing I can answer, sir, is I've been—I've not been contacted.

Mr. WALBERG. Okay. Okay.

Mr. RHOADES. That's all I can answer.

Mr. WALBERG. Thank you. I yield back.

Mr. MICA. The gentleman from Massachusetts, Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman. And I want to thank the witnesses for helping the committee with its work today.

In my previous life, I was a union steward and a union president, and then later on, a labor lawyer, practicing labor lawyer on behalf of unions. I am just curious, you know, when I was a steward on the worksite, when I had employees that were being treated unfairly, I would take it on myself. That would be my job. I would deal with management to make sure that people were being treated fairly. That way, my workers weren't continually banging heads with management; it was me. And, you know, I sort of enjoyed that work, but a lot of people don't.

Would it be helpful at all in your workplace if you had somebody like that that you could go to that would—I know that AFGE has a representative in the workplace, but you don't have full bargaining rights and all the rights that the other Federal employees have, so you don't have those. Would that be helpful?

Mr. RHOADES. Sir, I'd like to answer that. I'd like to first answer this by saying my AFGE president from Minnesota is here in attendance in support of this testimony.

Mr. LYNCH. Great.

Mr. RHOADES. I think the fact that she is here supporting me talking about mismanagement —

Mr. LYNCH. Yes.

Mr. RHOADES.—in my agency is a powerful signal hopefully to my agency.

I'll start off by saying this: My AFGE president in Minneapolis and I sat in my office. The management wanted to fire this person because he made a mistake, and when I looked at the table of penalties, it was excessive. So what I did as what's called the designated grievance official is I reversed it. I eliminated it. We had a great conversation in my office, and I own the decision. And like I said, as long as you have ethical leaders willing to do the right thing and not be —

Mr. LYNCH. Yes.

Mr. RHOADES.—coerced from the top, it could work.

Mr. LYNCH. Yes.

Mr. RHOADES. But it requires ethical leadership, sir.

Mr. LYNCH. No, I understand that.

Mr. RHOADES. And totally off topic, I grew up in Braintree, Massachusetts —

Mr. LYNCH. Oh, God bless. That is my district.

Mr. RHOADES. Yes, sir.

Mr. LYNCH. You know, you are still voting there, you know.

Mr. RHOADES. I wish I could, sir.

Mr. LYNCH. Oh, you do. We just know how you would vote anyway, so we do that on your behalf.

[Laughter.]

Mr. RHOADES. Yes. Yes, sir. Yes, sir.

Mr. LYNCH. Now, I don't want to spend a lot of time on that, just, you know, what do you think, Mr. Livingston?

Mr. LIVINGSTON. Sir, the most important thing about TSA is the people, the people in the mission. And if you don't make it to match, TSA is never going to get better.

Mr. LYNCH. Yes.

Mr. LIVINGSTON. We've got a great leader, but it's getting lost in translation —

Mr. LYNCH. Look, I have got to tell you, I am very happy to hear about Mr. Neffenger. And he has been before this committee. He is a frequent flyer here, and he is trying to put in some of the changes that we need.

I want to jump to something else, though. We did talk with Mr. Neffenger about the—look, checkpoints are very important.

Mr. LIVINGSTON. Yes, sir.

Mr. LYNCH. I mean, all you have got to do is if you Google checkpoint bombings or checkpoint attacks, you know, you look at what happened in Brussels, you know, you look what happened, you know, at the airport checkpoint, and the rail checkpoint —

Mr. LIVINGSTON. Right.

Mr. LYNCH.—you know, suicide bombers detonating at both of those, look at Paris outside the stadium where President Hollande was watching the game between France and Germany, those suicide bombers hit at the checkpoint. So what goes on at that checkpoint is incredibly important, and we have got to have a whole different strategy for how we handle that because that has been the focal point of all these attacks.

And, you know, I am not calling out my TSA screeners, but, you know, as the ranking Democrat on the National Security Subcommittee, I go to those classified briefings and I saw what the inspector general did, you know, sending people through with Ace bandages with knives in their Ace bandages or guns is strapped to their leg, and I have got to tell you, like 90 percent of those folks got through, 90 percent of them. And these are major airports in our country.

So I am not looking to place the blame on any particular aspect of this, but that is unacceptable. So we have got to work together. And Mr. Neffenger has said he is going to go back and redesign this whole thing so that we will do a better job at that.

Mr. LIVINGSTON. Yes, sir.

Mr. LYNCH. But I cannot not criticize when we have a 90 percent failure rate, so that has got to change.

But we get a lot of turnover. We get a lot of turnover, and I think some of that is related to the fact that we don't—the way we treat our employees. You know, this ought to be a profession, and these folks are doing incredibly important work.

You know, people yell about protecting our borders. Well, that screener at that airport, that is your border, and, you know, we have got to make sure that those employees have the protections and the rights to be able to do their job.

And one of the things I am concerned about, and this is what I want to ask you about, my concern from a national security standpoint is whether or not those passengers are screened efficiently. The airline priority is moving people through that checkpoint and getting so many people—that is why you have got these people being timed, your screeners being timed on how many—what is the wait time on getting these people through.

Anybody who travels, and we all travel regularly, you have got to get there a little earlier, you have got to adjust your schedule so, you know, in case you do have, you know, an alert or something like that at the airport. And we want our screeners to do a damn good job. So the priority has to be safety and security and what's going on at that checkpoint. It can't be the airline needs to move product, needs to move people through that.

So what do you think is winning out today between those two priorities, effective screening or moving passengers? What is the priority that is prevailing today in our nation's airports?

Mr. LIVINGSTON. Sir, I don't speak for the agency. I can tell you that we're not going to compromise security for speed. I can tell you that we're going to balance it. I tell you that TSA is not going to compromise our mission to expedite passengers through at the expense of our mission. What we're going to do is we're going to get better, we're going to keep pushing pre-check, we're going to keep pushing a better process, and we're going to get more people, and we're going to get better at this. Mr. Neffenger has made it a priority.

There's a day that doesn't go by a TSA where this isn't a priority. I can tell you that every single senior leader that he talks to at TSA, this is a topic of discussion.

Mr. LYNCH. Okay.

Mr. LIVINGSTON. I don't want you to think that it's not a priority

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Mr. LYNCH. Okay.

Mr. LIVINGSTON.—but I've got to go back to the original point I made earlier. He needs the right team to do it.

Mr. LYNCH. Sure. Sure.

Mr. BRAINARD. Sir, if I can, as a Federal security director, I work in a field operation, and I'm responsible for everything in the State of Kansas. Speaking for Kansas, I was in Maine last year, Iowa for 10 years before that, Indiana before that, and I can tell you there's a stereotype with the airlines that all they care about is customer service and throughput. That's not necessarily accurate.

Mr. LYNCH. Okay.

Mr. BRAINARD. There are a number of airlines that partner with TSA successfully every day. There are a number of airports that partner successfully with TSA every day. The issue is is that we are the only entity with the DHS that deals with three constants: departures, arrivals, connections. And when we're not doing our job as efficiently or as effectively as we can, they have a right to be upset about that, and we need to find a solution.

The problem that we have right now is that the previous leadership team oversaw—that oversaw TSA put in a plan A without a plan B.

Mr. LYNCH. Yes.

Mr. BRAINARD. If we had the plan B, we would not be here right now, and that's reflective upon that leadership. And I don't think there's a day that Mr. Neffenger doesn't come to work and just—he didn't get full disclosure when he took the appointment probably, and God bless him for being here. But he's out trying to cheerlead this. But that's why we're at where we're at, and it's the lack of experience within leadership that got us there. We did not have a plan B when we put in plan A.

Mr. LYNCH. Okay.

Mr. BRAINARD. Thank you.

Mr. LYNCH. Mr. Chairman, I want to thank you for your indulgence. I appreciate that.

Mr. MICA. Thank you.

Mr. LYNCH. Thank you.

Mr. MICA. Let me turn to the gentleman from Alabama, Mr. Palmer.

Mr. PALMER. Thank you, Mr. Chairman.

Mr. Rhoades, I believe you used to work alongside former acting head Ken —

Mr. RHOADES. Kasprisin, sir.

Mr. PALMER. Kasprisin, thank you very much, at Minneapolis-Saint Paul. Mr. Kasprisin has stated before that thousands of airport workers who are only subject to random threats are the single-greatest threat to aviation security. Now, TSA employees are regularly rooted out for being caught rummaging through baggage or for inappropriate behavior, which obviously it is good that we are catching them. But my concern is by the repeated reports that there are only three U.S. airports that currently require employee security checks—Atlanta, Miami, and Orlando—and in Atlanta they had a major gun-running operation busted in 2014. Additionally, we have reports that there are some 73 employees at about 40 airports who potentially have terrorist ties.

At some point is the TSA causing more insecurity than it solves? I mean, frankly, as a very frequent traveler, it gives some concern that the screening process may identify potential terrorists, yet they continue to work there.

Mr. RHOADES. So let me try to answer that question, sir. I believe if the TSA was mandated to screen every employee at airports, it candidly would require much more resources. I am unqualified to professionally comment on how much those resources would require, but what I can say is that the Minneapolis-Saint Paul airport there are, I believe, over 10,000 people that work at that airport. Now, obviously some of them come during various times of the day in various shifts. And certainly the insider threat has received a new focused based upon world events.

What I will say is we are resourced in FTE based upon our mission, our baggage and passenger screening. Again, I'm unqualified to comment whether we should also receive resources —

Mr. PALMER. Well —

Mr. RHOADES.—in that, but I can say that's not our specific focus.

Mr. PALMER. Let me put it this way. Obviously, we're talking about just some basic screening, right?

Mr. RHOADES. Yes, sir.

Mr. PALMER. Okay. Every staff member that works here goes through screening to get into an office here. And in terms of, you know, being able to do their job, if you know you have to go through a screening process, you show up early.

Mr. RHOADES. Just —

Mr. PALMER. Is that unreasonable?

Mr. RHOADES. No, that's not unreasonable, sir. I think what our administrator has done, rightfully so, is focus—is reducing some of those access points at those airports. And if you're aware of what's called SIDA badges in various access points, those are available to some employees. However, again, I don't have any data to suggest or talk intelligently with respect to how many access points. I can say at Minneapolis the number of access points have been reduced, and we continue to reduce them.

Mr. PALMER. Well, just think about it for a moment that if we know there is—the TSA thinks there is 73 potential employees potentially with terrorist ties, that is who they have identified, that there might be potentially others, and that we are not screening them. It doesn't give you a high comfort level.

Mr. RHOADES. I don't disagree with you, sir.

Mr. PALMER. Mr. Brainard, I would like to follow up on Mr. Duncan's questions regarding wasteful spending in which you all described expenditures such as \$330,000 spent on an absentee regional director in Minneapolis-Saint Paul, a \$12 million project that was over budget by three times its original amount. And I could almost ask for a hearing just on project overruns. Three hundred and thirty-six thousand on an app that you, Mr. Brainard, described as being as effective as an Ouija Board in accomplishing its task. I am sure the more we continue to hear from other employees at different airports, we are going to continue to hear similar stories to that effect.

You might be aware that last April, the TSA Aviation Security Advisory Committee released a report concluding that they could not afford full employee screening and that it would not reduce the risk of overall public safety despite numerous voices from inside the TSA speaking out to warn of insider threats. Do you believe this illustrates where their priorities lie when you look at this other spending.

Mr. BRAINARD. Thank you for the question, sir. Sorry. Thank you for the question, sir. When it comes to spending, another example to give you where they could have put the money into making—toward making something like that happen, when they did the directed reassignments, I went from Iowa to Maine. I had received a near-perfect evaluation. There was no vacancy in Maine. The Federal security director in Maine received a perfect evaluation. He was being sent to Wisconsin. Between the two of us, you're talking in excess of a \$250,000 just for the move that was earmarked for those two Federal security directors.



The FSD in Jacksonville got sent to Iowa. I was there. There was no vacancy. There was no reason to send it. All of these Federal security directors were performing in excess of standards. No Federal security director had more experience. The Maine operation, which is a wonderful operation, was smaller and less complex than what I had. The FSD in Wisconsin to Arkansas, the FSD in North Carolina to Los Angeles, his spouse from Los Angeles to Washington, the FSD in West Virginia to San Diego, there was no reason for these moves. I don't know what the price tag is on all those moves, but we could have certainly used that funding more appropriately.

Mr. PALMER. Well, and that just brings me back to the point I was trying to make with Mr. Rhoades, that you are spending all this money and we know that not every TSA employee is up to standard. I mean, potentially, 73 may have terrorist ties. But we are spending all this money and we are not investing in the security apparatus that we need to make sure, absolutely, positively certain that we have the very best people on the job and that we are protecting our airports.

I saw you shaking your head, Dr. Livingston. I presume you may have a comment.

Mr. LIVINGSTON. Sir, full disclosure, just like my partner here to my left, we're from the same area as well. I'm from Prattville. I know you're from Clanton so —

Mr. PALMER. Well, actually, I am from Hackleburg, Alabama, and I lived in Hoover. And by the way, today is the 5-year anniversary of the tornados that went through Alabama with such devastating impact.

Mr. LIVINGSTON. Wow. Okay.

Mr. MICA. I thank the gentleman. Did you want to finish a response, Mr. Livingston?

Mr. LIVINGSTON. Yes, sir. So to answer your question, sir, there needs to be greater oversight. I was part of the office that identified that original 73. We didn't have access to the list. I was actually part of the team that decided we needed to notify NCTC that we needed to generate a letter back to them to say we didn't have access to that database.

I've also been part of the secure flight team that identified we needed to do a better job of screening. So there is an opportunity there to do better screening, and there's also a better opportunity for TSA to do better monetary discipline. I identified the \$10—\$10 million excess spent on a watch floor. So yes. Yes, sir, there is an opportunity to be more prudent with the taxpayers' money. Any time you see an example of waste, fraud, and abuse, we've got to do better. Yes, sir.

Mr. PALMER. I thank the chairman. I yield back.

Mr. MICA. I thank the gentleman.

The gentleman from Missouri, Mr. Clay.

Mr. CLAY. Thank you, Mr. Chair.

And, Mr. Livingston, TSA cut its screening staff over the past couple of years anticipating that its pre-check program would help speed up the overall process, but not enough passengers have enrolled. News reports have indicated that morale inside of TSA is

extremely low, which is likely a factor contributing to staffing shortages affecting TSA security.

Reports indicate that travelers are arriving at security checkpoints where not available queues are open for general screening. And I can attest to that going through St. Louis's airport. I am part of the pre-check program, but it is more often than not it is closed. And I am told by officers that they don't have enough people to staff it.

Is there a long-term strategy to fix the morale issue and the employment issue? I know there is—go ahead.

Mr. LIVINGSTON. Yes, sir. Yes, Congressman. There is a plan. I know the administrator has touted the fact that we're putting 200 extra TSO officers through the academy each week.

Both of my counterparts here work in those airports and can speak directly to the screening process, but I can tell you from a pre-check standpoint I know that we're putting more advertising out to get more people enrolled. We're dutiful trying to get more people into the program. We're showing—trying to show them the advantages of that. Pre-check is a high priority for the agency, sir, and we're trying to get more people into that. Once we do that, the more people that are in pre-check, we think we can sustain that much better. And then I'll let my counterparts, sir —

Mr. CLAY. No, no, no. Here is the point is that the excuse I get

Mr. LIVINGSTON. Yes, sir.

Mr. CLAY.—at St. Louis airport is we don't have enough officers to staff it. So, you know, is that just something they are telling me?

Mr. LIVINGSTON. Sir, there is a staff at issue, and I know the administrator has talked to OMB about staffing issues. I know that there is a long-term strategy to address that issue. It is a resource issue of both money and people. Turning the switch is going to take some time, but he has addressed that. I think he has a short and a midterm and a long-term plan. He's working with the senior staff around him to do that. And I think both of these gentlemen who are working in the airport can tell you what they're doing —

Mr. CLAY. Well —

Mr. LIVINGSTON.—daily.

Mr. CLAY.—some of suggested shifting officers from TSA's controversial Behavior Detection Program to regular screeners. So let me go on.

Mr. LIVINGSTON. Yes, sir.

Mr. CLAY. Mr. Rhoades, I have a question for you.

Mr. RHOADES. Yes, sir.

Mr. CLAY. I am kind of concerned about this article I am reading about a Mohamed Farah from Minneapolis. Are you familiar with him?

Mr. RHOADES. I am.

Mr. CLAY. And he is an imam and part of an influential Somali group. You know, here is what he says. There is an ongoing pattern of racial profiling and harassment by TSA agents at the Twin Cities airport. He said recently he was asked by an agent who says, "Hey, were you going to make a run for it if I hadn't given your ticket back?" And the only response he has gotten from TSA and

the Congressman from that area, Mr. Ellison, is that they take these complaints seriously.

Well, I think it is a little bit more than that. He has also been given a TSA control number from the agency's redress program, and he said it doesn't help either. So what we can do for Mr. Farah that would change the conditions that he experiences every time he goes through your airport?

Mr. RHOADES. Thank you for that question, sir. You may not realize, but there's a New York Times article that was published this morning about profiling. You may know that in my opening statement I was asked to profile Somali imams and community members visiting me in my office. Those are facts. It's contained in my written midyear evaluation that I provided to this committee.

So Mohamed Farah is the director of what's called Ka Joog. I was not at the checkpoint during that time so I can't intelligently speak to what was or was not said. What I can say is whether you're black, white, male, female, Somali, Jew, Christian, Hindu, we should treat you the same. And it doesn't matter if you're flying on whatever airlines, you should be treated with respect.

Again, I'm not either taking Mohamed's position or refuting his position inasmuch as I—to say that when we get to know people of the Somali community, they're hardworking. They want to be American citizens. My mother was an immigrant. My mother was a Japanese national, became a U.S. citizen and took her oath of citizenship in Boston, Massachusetts.

Mr. CLAY. Well, how are you going to change Mr. Farah's experience when he encounters your agents, your officers?

Mr. RHOADES. The best way I can answer that, sir, is like any investigation or inquiry, you've got to get the facts. I have met Mohamed Farah many times. We can at times have what's called a passenger support specialist, have someone assigned to him in the future when he flies out to make sure things like that don't happen, and we're happy to do that.

Mr. CLAY. Have you disciplined the officers that he has encountered?

Mr. RHOADES. I don't know the names of the officers, candidly, sir. I'm unqualified to speak to that. So I don't have that information with me.

Mr. CLAY. Your camera footage can identify—you have identified these officers?

Mr. RHOADES. Again, sir, I don't have those facts. What I am suggesting is in my own experience with respect to the TSA, they've been less than forthcoming in addressing my complaints. So I would say that my complaints mirror Mohamed Farah's.

Mr. CLAY. This is totally unacceptable.

Mr. LIVINGSTON. Sir, has somebody from TSA gotten back to you with these questions?

Mr. CLAY. No, no, I am just reading it today and realizing this guy is being mistreated here.

Mr. LIVINGSTON. Would you like for somebody from TSA to —

Mr. CLAY. Sure, I certainly would.

Mr. LIVINGSTON. I'll take that as an action, sir, and get back to you with somebody from TSA, sir.

Mr. CLAY. Thank you. I'm sorry —

Mr. MICA. No problem.

Mr. CLAY.—about going over.

Mr. MICA. I thank the gentleman. And you will get, hopefully, a response.

Let me recognize the gentleman from Georgia, Mr. Carter, now.

Mr. CARTER. Thank you. Thank you, Mr. Chairman. And thank all of you for being here. We appreciate your presence here today.

I want to start with you, Mr. Brainard, if that is okay. As I understand it, at one point you were assigned in Iowa, is that correct

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Mr. BRAINARD. Yes, sir.

Mr. CARTER.—in the Midwest? And while you were there in Iowa, you received the highest performance rating that you could possibly receive —

Mr. BRAINARD. Yes.

Mr. CARTER.—while you were working there? And also, I believe that you received a Federal Security Director of the Year Award?

Mr. BRAINARD. Yes, sir, I've received the Federal Security Director of the Year, Secretary's Team Award, the Gale Rossides People First Award, which is one of the two top awards you can receive in our agency, and a number of other types of awards from local stakeholders, partners, fusion centers, things like that.

Mr. CARTER. Right. Okay. Well, then, as I understand it, they tried to reassign you to Maine?

Mr. BRAINARD. Yes, sir.

Mr. CARTER. They tried to reassign you to Maine after you had

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Mr. BRAINARD. They did reassign me to Maine.

Mr. CARTER. They reassigned you to Maine after you received all these accolades and all these awards?

Mr. BRAINARD. Yes, sir.

Mr. CARTER. Do you believe that that was their way of trying to get rid of you, to reassign your position?

Mr. BRAINARD. Well, I can't speak to their motives. It would be unfair for me to speak to their motives. I'll speak to facts.

Mr. CARTER. Was it a bigger airport? Were you needed there or

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Mr. BRAINARD. No, sir, it was a smaller airport, less complex, fewer employees, fewer airports.

Mr. CARTER. Why would an agency take one of their best employees? Obviously, they wouldn't have given you these awards if they didn't think you were doing a good job and put you at a smaller airport where your skills and your abilities would not be as useful.

Mr. BRAINARD. Because, according to them, the reason for the directed reassignment was because my skill set was needed for that particular operation. Unfortunately, there was another Federal security director who had the same length of service in that I did and who had been a high performer. That's the reason they provided each of the Federal security directors who happened to be the longest-serving Federal security directors in TSA. There was a caveat. There were at least three Federal security directors that I was aware of that they did not move but they had to sign an agreement to stay at their duty station one year and then they would retire.

And they forfeited their right to take any type of litigation against the agency.

Mr. CARTER. Now —

Mr. BRAINARD. So three people were provided an exemption with the caveat that they had to retire.

Mr. CARTER. Okay.

Mr. BRAINARD. July, right after that came—I think this bears worth mentioning—there was a VERA announcement, which reminded everybody that putting pressure or coercion on employees to retire is a prohibited practice.

Mr. CARTER. Okay. Well, let me ask you. And you did relocate to Maine?

Mr. BRAINARD. Yes, sir.

Mr. CARTER. When you relocated to Maine, was that a financial hardship on you?

Mr. BRAINARD. Oh, yes.

Mr. CARTER. And your family, I can assume it was.

Mr. BRAINARD. Yes, sir.

Mr. CARTER. Okay. Was there a vacancy near where you were before or —

Mr. BRAINARD. No, there was no vacancy. There was in Maine a sitting Federal security director. There was no vacancy. And if there had been a vacancy, there were certain—certainly other people there at the operation qualified to fill these positions.

It's important to note that when you're moving this particular skill set around the country, we have some 750 assistant Federal security directors and deputy Federal security directors, and the men and women that fill those positions, most of them are more than qualified —

Mr. CARTER. Okay.

Mr. BRAINARD.—to fill those positions.

Mr. CARTER. Well, let me ask you. How much would it have cost TSA to relocate you to Portland, Maine?

Mr. BRAINARD. They earmarked on the PCS move in excess of \$100,000.

Mr. CARTER. I have got down here in my notes \$113,000.

Mr. BRAINARD. That would accurate.

Mr. CARTER. And is this happening elsewhere? Does this happen, Mr. Rhoades?

Mr. RHOADES. Sir, it happens everywhere. As you may read in my written testimony, I'd like to call the example of Mark Haught. This was a gentleman who was moved from Charlotte to Los Angeles. When he moved from Virginia over to Charlotte, the agency paid him \$197,000 for one move. During that time, two of his sisters and his brothers died. His wife, after he got a directed reassignment to Los Angeles, was given a directed reassignment in Los Angeles back to Washington, D.C., on the opposite end of the United States. That's the punitive nature of directed reassignments

Mr. CARTER. Okay.

Mr. RHOADES.—and the high cost.

Mr. CARTER. Let me make sure I'm understanding this now. So this is taxpayers' money that we're paying this?

Mr. RHOADES. Yes, sir.

Mr. CARTER. So we could potentially be talking about millions of dollars in taxpayers' money to put —

Mr. BRAINARD. You are talking about millions of dollars.

Mr. CARTER. And not only that, but it also causes the employee financial hardship?

Mr. BRAINARD. I'll offer you this. When they moved me to Iowa, my counterpart in Jacksonville couldn't come. He didn't come to Iowa. He was off on medical. So you know what they did? They TDY'ed an assistant Federal security director in Iowa, put that acting Federal security director in hotel for 9 months, 9 months. They put her in that hotel for 9 months, and they didn't fill that position until January of 2015.

Mr. RHOADES. Sir?

Mr. CARTER. Go ahead.

Mr. RHOADES. Ed Goodwin from Florida, he was given a directed reassignment. He was supposed to replace Jay Brainard in Des Moines, and he had—his parents were 89 and I believe 95 years old. One of them had Alzheimer's. His daughter was a high school senior in her last year of high school, and he was underwater in his mortgage and they gave him a directed reassignment. You know what he did? He quit. He resigned. And that's what he—and the New York Times wrote about him as well. That's what our agency does to people they want to run out.

Mr. CARTER. Okay. Well, we have got a number of moving parts here. You know, we have got what I consider to be wasting taxpayers' money I am very concerned about. We have got another concern about whether this is intentional and a way to get rid of employees or to discipline employees.

Mr. Chairman, I just have to tell you, I am pretty disgusted right now, and I am looking forward to us having another hearing. From what I understand, we are going to be doing that. And certainly, we want to get to the bottom of this.

Mr. RHOADES. Yes, sir.

Mr. CARTER. Mr. Chairman, I will yield back, and thank you all again for being here.

Mr. RHOADES. Yes, sir.

Mr. MICA. I thank the gentleman.

I will recognize the delegate from the District, Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman.

Could I just say to all three of you that we very much appreciate your service and appreciate your courage in coming forward.

I chair the Equal Opportunity Commission. I am very interested in this kind of alleged retaliation. It is interesting that when Congress passed title VII, it passed a retaliation provision in the statute that it is very, very important. And of course if there isn't any sense that when can I be punished for coming forward, this very, very heavy presumption against coming forward. So I was interested to hear about—I don't remember even though I had to essentially reform the entire agency, creating new parts of the agency, bringing together people—I don't remember anything called directed reassignments. In my view I can think of no more powerful instrument in the hands of an agency. You testified, I think it was, Mr. Rhoades, about somebody just quit.

Mr. RHOADES. Yes, sir.

Ms. NORTON. And if that was the intention, it certainly worked. Mr. Livingston, let me just start with you because you reported that you indeed did suffer discrimination at TSA. Is that right?

Mr. LIVINGSTON. Yes, ma'am. Yes.

Ms. NORTON. And what was the basis for the discrimination?

Mr. LIVINGSTON. It started with the disability harassment, and then it was based on my veteran status. They were making fun of me for my service-connected disabilities. Then it started with the—as the management directed official in a case for EEO, I found against the senior SES for preselection. Then it started with the sexual harassment. Another SES asked me to lie and I refused. And then there was another case where I reported serious security violations, and it started—that same official is the one that testified against me in my ERC or my probationary period.

Ms. NORTON. All right. This seems like one thing leads to another.

Mr. LIVINGSTON. If you tell the truth in TSA, you will be targeted. I call it the Lord of the Flies. You either attack or be attacked.

Mr. RHOADES. Ma'am, if I may?

Ms. NORTON. Yes.

Mr. RHOADES. I was accused of going native.

Ms. NORTON. Going what?

Mr. RHOADES. Going native.

Ms. NORTON. You will have to explain that, sir.

Mr. RHOADES. Ma'am, it's a slang term where I was visiting mosques in my official role working with the Somali community where Jeh Johnson, my Secretary, tells me he wants me to conduct community outreach, and my supervisor accused me of going native. I take that to mean I'm somehow converting to Islam, I'm acting as a native. It's a disgusting, bigoted term. And when I think of that within the context of my written midyear evaluation that tells me to profile Somali people, I'm disgusted by it. Going native? I'm truly disgusted by it.

Ms. NORTON. Now, this committee and I think the House has unanimously passed a bill called the Federal Employee Anti-discrimination Act to help hold managers accountable. You know, the kinds of retaliation that would happen below your level perhaps is apparently better taken care of. Now, I was an original co-sponsor. It looks like most of the committee was. This bill, by the way, is pending in the Senate. It hasn't passed the Senate yet.

But it would require the agencies to keep track of every single complaint to somehow—for the string of issues, Mr. Livingston, for example, you indicated there would have to be a tracking of the complaint through inception and resolution. Do you think this would help bring some additional level, Mr. Livingston? Any of the three of you, I will start with you, Mr. Livingston —

Mr. LIVINGSTON. Yes, ma'am. Any time —

Ms. NORTON.—to the process —

Mr. LIVINGSTON. Yes, ma'am. I think any time there's checks and balances, that you track that, I think that's always a good thing.

Ms. NORTON. See if something funny is going on here with a string of—did you see the string of —

Mr. LIVINGSTON. Oh, yes, ma'am.

Ms. NORTON. Yes.

Mr. LIVINGSTON. I think TSA has a management protocol problem. I think if you can track and show the process—and I know that the committee has looked at it for years—I think if you can show that because all these leaders are not bad. Some are very good, exceptional. I could name several. But all it takes is somebody to circumvent that process, and now you've ruined the good work of many. But if you track that and you quantify it and you can show the progress of the well-intended, I think everybody benefits. If you have toxic, cancerous leaders that are injected into this process, it undoes all the good work that the well-intended leaders do. And that's why Mr. Neffenger needs a team around him that can do that.

And this process that you're talking about, this tracking, this mechanism, the numbers and the data doesn't lie and it's forever. Once you put it into the record and once you track it, it's consistent over time. And that's what we need is consistent, persistent, quality leadership because factual data will make us better.

Ms. NORTON. And, Mr. Livingston, they gave me something of what you said, the staff, indicating that these nondisclosure agreements stand in the way. And of course I would like to know whether you think our bill that says that you can't restrict the employee from disclosing waste, fraud, or abuse to the Congress, special counsel, or the inspector general, whether that reaches far enough.

Mr. LIVINGSTON. I think we overuse the nondisclosure agreements in my agency. I think every legal case we have ends in one, and I think that's an abuse of the power that we have. I did write a statement to that. I will look for it very quickly and read it to you. Every case from a misconduct to an EEO case ends in an NDA. That hides the potential to make us better, and at worst, it shows our problems. And at the least it shows a cover-up. Every case can't be an NDA. We have—should have public disclosure. We should show the public what we're doing, and if we're hiding it, we're hiding something.

Mr. MICA. I thank the gentleman.

And I will recognize the gentleman from South Carolina, Mr. Mulvaney.

Mr. MULVANEY. I thank the chairman. And I wish that Mr. Lynch had stuck around for just a few minutes because he said something, and I thought Mr. Brainard handled it very well, but I will go back just for the record and say I think Mr. Lynch mentioned at the end that the airlines were just interested in moving product, moving people through the room. And I think, Mr. Brainard, you handled that extraordinarily well.

I think that is unfair. I know some folks who work there and their families fly, their friends fly, and they care just as much about safety as we do. It is probably just as inaccurate to say that the airlines only care about moving product as it would be to say that all you care about is safety and that you don't care about the folks who have to stand in line and how long they do.

In fact, I look forward to a longer conversation with Mr. Lynch at another time as to who cares less about people, a corporation or a bureaucracy. My guess is they are probably tied.



But I want to get back to the purpose of the hearing, which is to talk a little bit about the way that the employees are treated. And I just have to ask, and I don't know the answer to this question, is anybody familiar with the circumstance that happened at Charleston, South Carolina, with a Ms. Kimberly Barnett? Does that name ring a bell for anybody?

Mr. BRAINARD. No, sir.

Mr. MULVANEY. Just an example of exactly what we have talked about here today. She complained about her supervisor falsifying records in her area. Her area dealt with the K-9 use of the dog. And then she went to the OSC, which is where she was supposed to go, and made the complaint in June of 2014. And by November of 2014 she was fired. She was fired over a completely different allegation regarding using inappropriate language when her car got struck by a bus.

So I wanted to mention her because it is more than just you gentlemen. We have heard your stories, but I think everybody from every one of our districts could bring some of these stories in.

But let's talk about how to fix it and if it can be fixed because, Mr. Livingston, I think you hit the nail on the head which is your exact language was accountable leadership, which I agree with. Can you name for me a Federal agency that has that?

Mr. LIVINGSTON. I used to work at the Nuclear Regulatory Commission, and I thought they had great leadership. I've worked at the Department of the Navy. I thought they've had it.

Mr. MULVANEY. And they may have. All I can tell you is maybe it is just a function of what we do in this committee, but since we see the bad stuff all the time, we can tell you that again and again and again we can bring in examples of leadership breaking down, leadership not being accountable of folks not being able to fire people. You could have a hearing here every single day on how poorly the VA is run for the very same reasons.

You mentioned one of the challenges that the agency faces is personnel.

Mr. LIVINGSTON. Yes, sir.

Mr. MULVANEY. And then I think you said that it was staffing and that it was money, but I feel it is incumbent upon me to point out that we haven't cut your budgets. Your budgets have been fairly flat for the last couple of years. So when you tell me that every day this summer is going to be like the day after Thanksgiving is, why is that? It can't just be money. In fact, it can't be money because we really haven't changed the money that much. And I will give both you —

Mr. LIVINGSTON. Sir —

Mr. MULVANEY.—a chance to answer that.

Mr. LIVINGSTON.—we are in a perpetual human resource model where we are always recruiting and losing people. We don't have a sustainable model where we recruit and retain and promote the best workforce. If you don't sustain top quality people, then you're not going to get the best workforce. If we're always recruiting because we're always losing, you're not going to get the best people. If you don't take care of the people that you hire, they're not going to stay. If you don't take care of the people that you hire and get them into a career development, leadership program and if you

don't take your best people and groom them for bigger, better positions, if you don't send them to the top level schools and if you don't invest in them and if you don't make people feel important and if you don't make people feel like you care about them, they're not going to stay no matter where they are.

Mr. MULVANEY. I tend to agree with that. In fact, I agree with that wholeheartedly. In fact, anybody here who has ever had to hire or fire people or run an organization, public or private, probably agrees with that statement.

Mr. LIVINGSTON. It's not money, sir; it's concerned, caring leadership. If people think you care about them, they'll take a bullet for you.

Mr. MULVANEY. I absolutely agree, which leads me to my real question here. Why are we doing this? You have just described the same challenge that a private entity has in running its operation. You have described some of the same frustrations that we have with so many bureaucracies. The stories that you guys have told about whistleblowers getting fired, about not being able to deal with mal-performing employees, about unaccountable leadership, we hear that in here every single day from every single agency that we bring in.

So my question is why are we doing this? Why wouldn't it be better to let private services serve this function? Why are we doing this? Can you defend the agency as to why the Federal Government needs to be doing this? Because it strikes me that if you all were contractors—because we have had contractors come in here before, Mr. Chairman, and there is always the threat hanging over a contractor which is we just fire him, we don't renew the contract. We don't have that with the TSA.

So I guess I ask you to defend the Federal role here. Why are we doing this as a Federal Government as opposed to letting the private sector serve this need? Mr. Rhoades?

Mr. RHOADES. I'd like to take a stab at that, sir.

Mr. MULVANEY. Sure.

Mr. RHOADES. I think the essential—one of the essential elements of a government is to protect its people. That's why you have a standing Army. I grew up as an Army ranger, and ranger lives and breathes a leader is responsible for his or her unit. He or she is responsible for everything that unit does or fails to do. And when there are failures, there must be consequences to those failures.

We don't have consequences to our failures in TSA. If this have happened in the military, entire people in the chain of command would have been relieved of command.

Mr. MULVANEY. And if a private sector company came to us with a 90 percent failure rate, we would fire them and replace them with somebody else.

Mr. RHOADES. Absolutely. Yes, sir. But I'm just—suggest that whether it's private, whether we're title 5, whether we stay under ATSA, in my view, is irrelevant. It requires the most essential ingredient, and a private company—and I've worked for Kraft Foods in marketing—and that's leadership. I know it's the intangibles, but that's why we're all here because there's failures in leadership. It's failures of accountability, failures of a performance, but there's been nothing done. And that's why we're here.

Mr. MULVANEY. And maybe my frustration—I will cut you off, Mr. Brainard, because I am over time and I don't want to take away from Mr. Grothman, but that frustration is embodied in experience in this committee every single day.

Mr. RHOADES. Yes, sir.

Mr. MULVANEY. So thank you, Mr. Chairman. I appreciate the indulgence.

Mr. MICA. I thank the gentleman.

Mr. Grothman, you are recognized.

Mr. GROTHMAN. I will start with Mr. Livingston. Here on the sheet they give us they call you Dr. Livingston.

Mr. LIVINGSTON. Thank you. Yes, sir.

Mr. GROTHMAN. Are you aware of examples of an OI investigation that you believe was used specifically to remove anybody from the agency, any specific examples?

Mr. LIVINGSTON. Well, I know that the morale survey that was used against me was tainted. I know that the OI investigation that was used against an FSD in Miami was used as an instrument to thwart a complaint. I know those are two examples.

Mr. GROTHMAN. And what do you do that you get yourself in trouble that they go after you?

Mr. LIVINGSTON. Any time you go against the grain or you report misconduct or you tell on certain favored people, if you do anything that goes against the favored people, if you report misconduct, if you report sexual harassment, if you report security violations, if you do anything against the top tier or anything of that nature, it just seems to go against the grain, you identify yourself as a non-player. If you don't shut up, you don't move up.

Mr. GROTHMAN. Okay. So in other words, the mentality is not to do the best job that they can, what TSA should be doing. The idea is to establish kind of a respect for the people at the top?

Mr. LIVINGSTON. Yes, sir. And I come from a DOD background where everything is a learning opportunity. We always do a hot wash after we have an exercise or an incident or a crisis. We always learn from that mistake. And everything is integrity-based. If you don't say something, you're considered a weak leader. And I think the opposite in TSA, if you say something, you're considered an outsider.

When I reported sexual harassment, I had another SES say, hey, if she files a complaint, it's our word against hers. And I said no, I'm not going to lie. And he says, well, if you don't, we can't work with you, and if you're going to be a boy scout, you'll be on my blank list. So obviously I was on the outside from the get-go. I was stunned that another SES would ask me to lie. And then when I didn't I was an outcast.

Mr. GROTHMAN. Because you saw something happen and were going to report it?

Mr. LIVINGSTON. Absolutely. And I did.

Mr. GROTHMAN. Just a horrible mentality. Okay. We'll give Mr. Brainard and Mr. Rhoades a question. Could one of you give a background kind of on how integrity tests are conducted at the airports?

Mr. BRAINARD. So I can give you some insight. Integrity testing in TSA when into high gear shortly after a media story about iPads

were taking place. And our TSA Office of Inspection, otherwise known as Internal Affairs, will come out and they will run test items through, cash cards, money, DVDs, colognes, and things like that.

And so the testing items, they come out, they conduct the integrity tests. When they conduct the integrity test, they'll come through with these items, and then the Federal security director will get a call and we will be notified of the outcome. Generally speaking, they'll say we came through with X, Y, and Z items. Can you recover them for us, whether they're turned into the lost and found?

I will give you an example, which I think that you certainly will appreciate. One of the items that they're notorious for planting in an airport are pens. They'll throw a pen on the floor, let's say, in queue and a TSO picks it up and doesn't turn it in, they'll fly back out a couple of investigators and they'll literally interrogate them and push for a resignation or they'll propose removal for theft for a pen.

And it—I know this because they've done it in my airports. I know this because they've joked about the fact that it's the most successful test they had. There was a TSO at an airport in the Midwest who, when he picked up the pen, threw it in the garbage because he didn't put any intrinsic value with a pen, didn't think it was worth any money. It's a \$200 Montblanc pen. In my operation I happen to be one of the worst offenders of picking up pens that people are using.

But the irony in all this when you're talking about testing is that you hold the people in the field to the highest standard, the people at headquarters to the lowest standard. We've got people who are picking up pens, pens, and they're sending out these criminal investigators for noncriminal matters.

And, oh, by the way, it's commonplace for them to come out and threaten people with criminal prosecution. As a matter of fact, they'll take a noncriminal case to a local prosecutor as part of the TSA Fairness Act to say that they're spending 50 percent of their time on criminal investigations so they can check that box. And they take and hold the field to a much different standard of accountability. They're doing people for pens while you've got people at our headquarters that are abusing their staff members.

Mr. GROTHMAN. So in other words, just kind of for kicks they put a stupid plastic pen on the ground, and if somebody —

Mr. BRAINARD. It's a Montblanc pen. It's a metal pen. I mean, I can go to CVS and get something that looks just like it, and I couldn't tell the difference between that and a \$7 pen. I don't—I've never in my 13 years seen a passenger go and turn a pen in to lost and found at an airport. I'm sure it may have happened at some point, but if that's not just the most ridiculous use of the taxpayers' money, I don't know what is.

Mr. GROTHMAN. Okay. And do you think when they do these tests, do you think they ever target individual employees or individual airports or is there —

Mr. BRAINARD. No, I believe that the tests—I've never seen any indication that the tests are conducted for any particular reason.

Mr. GROTHMAN. Okay. Just kind of a general waste of time.

Mr. BRAINARD. I think that that portion of the test is.

Mr. GROTHMAN. Yes.

Mr. BRAINARD. I think that the integrity testing is absolutely essential. You know, one of the things—and I know you know this. The only people that hate to see thefts in the workplace more than the American public are our own employees. We don't want them working for us —

Mr. GROTHMAN. Yes.

Mr. BRAINARD.—any more than the public does.

Mr. GROTHMAN. Okay. Thanks for the extra time.

Mr. MICA. Thank you. Let me yield to Ms. Norton—or let me yield to Mr. Cummings, and then he is going to yield to Ms. Norton.

Mr. CUMMINGS. First of all, I am going to have to go to another meeting, but I wanted to thank you all for being here. You have provided some very significant testimony. You know, as I said earlier, I think we need to see the entire picture. But we certainly cannot have a situation where whistleblowers even worry about retaliation let alone be the victims of it. And I think you will get that concern from both sides of the aisle. And so, again, I want to thank you all.

And we have got to find a way to cut out that layer that you are talking about, those people who seem to want things to go on the way they have been going on, and the way they have been going on is not healthy. And it takes away from the morale of the agency and it takes away from its effectiveness and efficiency.

And this whole idea—I know Ms. Norton is going to explore this—but this whole idea of people being sent from one part of the country to another and if that is about retaliation, I am going to tell you something, to me that is criminal.

Mr. RHOADES. I agree.

Mr. CUMMINGS. Because families are so important, and those families who have to go through that hell, you know, your wife is on one end and the husband is on the other, life is short. But anyway, I will yield to Ms. Norton. And thank you.

Mr. RHOADES. Yes, sir.

Ms. NORTON. I thank the ranking member for those comments.

I just wanted to make sure I understand the difference between the legitimate use of a tool for management and its abuse. And I had asked you before about these directed reassignments, and I can see how it opens itself hugely for abuse and noted that apparently—and it is interesting. We passed the bill, but it looks like internally the agency has begun to take some action because it became apparently so open and such a problem within the agencies.

I want to ask—particularly, I asked about directed reassignments. Now, here is a legitimate tool. I just want to know if it has been misused because we see this tool all across the government, and this is the capacity of the agency to ask the employee to move every 4 years. Now, we see that, I mean, the State Department, we see it in the armed services of the United States. I am sure I see it because I see very often a different person from the National Park Service, but I note that a former—I think this is a former administrator of TSA, suspended with tour of duty initiative whereby the FSDs would be moved every 4 years. Why would he do that?

Mr. BRAINARD. So if I can take that, you're speaking of Mr. Mel Carraway. Mr. Carraway was the acting administrator for about a minute in between the transitions. Mr. Carraway not only saw the detrimental effect that it had on the culture of our workforce, he'd also been subjected to it himself. So he'd walked that mile. Mel was a good man. And Mel suspended that practice. And when Mr. Neffenger came in, during his October Leadership Summit of 2015, he reaffirmed to hold what Mr. Carraway had done.

So I'm not sure if they've tried to do it since Mr. Carraway put a freeze on it because sometimes there are things that go on you don't find out about until the bell's been rung. But Mr. Carraway did freeze that process. He saw the problem with it, and anybody would. When you sit down and look at the information, it is crystal clear, it's blatant, it's obvious.

Ms. NORTON. So it was a problem in that agency. I indicated that TSA is not unusual in having this tour-of-duty —

Mr. BRAINARD. It actually is.

Ms. NORTON.—notion.

Mr. BRAINARD. It actually is. Last year—when I hired in as a Federal security director right after 9/11, I did not sign a mobility agreement, okay? Just so you —

Ms. NORTON. What kind of agreement? I'm sorry.

Mr. BRAINARD. Mobility agreement. So —

Ms. NORTON. Mobility agreement.

Mr. BRAINARD.—SES—mobility agreement. The SES —

Ms. NORTON. So you don't have to sign?

Mr. BRAINARD. You do not. The SES signs a mobility agreement. The TSA Office of Law Enforcement signs a mobility agreement. The Senior Leadership Development Program, if you want to be a candidate, you sign a mobility agreement. But there is no tour of duty on that. What they did is they established a mobility process with the Federal security directors and then just started moving them around. And they didn't have a business reason to do it regardless of what was put in there. And that's certainly—we're certainly able to articulate that.

Ms. NORTON. Mr. Rhoades?

Mr. RHOADES. Ma'am, Mr. Brainard had talked how Mel Carraway suspended tour-of-duty lengths initiative. That happened in November of 2014. I received my directed reassignment February 19 —

Ms. NORTON. So that is different from tour of duty?

Mr. RHOADES. You're just calling the same thing a directed reassignment. What's probably important for the committee to understand, on the night of February 19, 2015, my former Federal security director Ken Kasprisin called Mel Carraway on his cell phone. I was in his house. I heard every word Mel Carraway said. "Rhoades shouldn't have gotten that directed reassignment. I suspended that action." That did not go through what's called the Executive Resources Council.

So it goes back to the point that I want to reinforce here. We can have all the policies we want written down, but if we're going to ignore them or work around them or lie about them, then it's ineffective.

Ms. NORTON. So you can call it a tour-of-duty reassignment, you can call it a directed reassignment. Look, I am pleased that my friends and colleagues on the other side have the same view about the kind of minimal protections and even at your level that civil servants have.

I do note that we passed and I am so pleased we passed a bill ourselves, which is waiting for the Senate. You know, it didn't take a bill to do something about this. I noted that on March 24 of this year, apparently the present administrator—a detailed explanation of why this employee must be reassigned involuntarily versus any other options—any other options, it seems to me, is important—for this employee and/or the new position. Does that help this situation?

Mr. BRAINARD. I think—you know, this is a question of using policy in such a way that you can push an agenda that's not healthy for the organization. There would be legitimate reasons why you might do a directed reassignment. You may have somebody who is not performing well, you have hired the wrong person for the position, you may have somebody who's abusive to the workforce, you may not be able to terminate somebody, they may not have reached that level, but you are prepared to sit down and have an options meeting and say, look, we need to talk about the road ahead, and you being at this location is not going to work.

There are circumstances where you would do a directed reassignment, and I think that there is some legitimacy to that. And this goes back to do you have a policy in place that governs this, and if there is, are people manipulating the policy? I'll tell you a comment that I heard and I'll say it in this hearing because there are about 300 witnesses to it on a conference call from the previous deputy administrator Mr. Halinski when they were talking about ethics and accountability. And he said to take action and let them file a lawsuit. "I've got 300 attorneys and I'll tie him up forever in court."

That's the mentality that these people have. They feel that they're bankrolled by the Federal Government to make these decisions. They don't care if you're going to file an EEO, they don't care if you contact the OIG. It's very difficult to get the OIG or OSC to accept a complaint. There needs to be legitimacy with this, and that's what these types of moves are absent.

Mr. LIVINGSTON. In my case when they ended my probationary, the argument was made they had no proof, and they said don't worry about it. Let him file a complaint. We'll outlast him.

Ms. NORTON. I certainly hope—Mr. Chairman, I very much appreciate your indulgence because I certainly—as I said, our committee moved unanimously and the House moved unanimously on this. Of course, the nuances are quite different. This is where the agency itself, with this detailed explanation, if you really hold people accountable, yes, let's put it in writing of why the employee must be reassigned. I particularly like the part that says let's go over what the options are. Instead of uprooting you, let's see what the options are. And there may be no option.

I must say, Mr. Brainard, I particularly appreciated your explanation because you seem to understand that there are some reasons for these policies and that what we are here discussing are

not the reasons that are used across the government but the abuse of these policies in TSA in particular.

And I thank you very much for your testimony.

Mr. MICA. I thank the gentlelady.

I want to conclude, and I thank all the members for their participation, particularly grateful for you all coming forward.

As I said earlier, I think you have confirmed some of our worst suspicions of what we have heard was going on, and it takes some brave people to come forward, especially from an agency that is renowned for retaliation, has grown renowned for gagging its employees. And those who step forward and have reported some of the problems are paying some pretty high penalties. It is abusive to you, it is abusive to the system.

I was one of the people who created TSA way back after 9/11 as the chair of Aviation Subcommittee. The President wanted it on his desk by Thanksgiving and we did that. We tried to structure something that would replace what we had. First of all, I think that there should be a Federal responsibility, and all of you agree to that. We changed from having the airlines and the private sector just do—well, there weren't Federal guidelines in place, and they failed to put them in place. So I think that is important. I have never said do away with it. I have said change the role.

The most shocking testimony or thing I heard today was the abuses and what they have done to you all is uncalled for, horrible, but one of you—was it Mr. Livingston—talked about the intel and analysis capability?

Mr. LIVINGSTON. Yes, sir.

Mr. MICA. That really scares me. The most important responsibility of that agency is to connect the dots. The intel and analysis is all that is going to save us in my opinion. I will probably call—I am going to ask the administrator to take action to revamp that activity. That is the most important government responsibility, the intelligence-gathering, the information, all the stuff we need to keep people from doing damage to us. And when you come and testify to me and you are familiar with it, that that is one of our weak spots, is that correct again, Mr. Livingston?

Mr. LIVINGSTON. Yes, sir.

Mr. MICA. That to me is absolutely scary. I helped put this system together. I have tried to help TSA when it failed. I mean, we did everything from Washington. That was a disaster. We have tried to localize some of the hiring and other activities. The problem is it is so big they can't think out of the box. And you have people who you identified today in control. You can have the administrator but you have got other people in control who are revengeful, who have taken actions that are just unacceptable.

I can see replacing—if there is a vacancy and you have to move somebody to fill that vacancy, if we have got to secure that important FSD position, so be it, and if there is compensation needed to move that person. But what you have described is just an abuse of authority today. And then the cost is, you said, \$197,000 on one of them. It is just unbelievable.

So the intel bothers me. I will be writing Neffenger. He is coming in. We have got to get that piece of the puzzle there.



I don't care who you put there, private screeners, public screeners, whatever it is, things will get through, okay? The system is human beings. But when you fail—well, if we spent some of that money in looking at people who pose a risk, whether they are—even screening people who are working behind the scenes, we had a hearing on that. There are hundreds of people. They don't have a passport number, they don't have Social Security numbers for folks, not all TSA folks but even with TSA they haven't screened some of those people.

The Miami and Orlando and there is one more airport where they are screening the workers, that is a waste of money. That is not the way you do it. They check them and they can go through, as you know. And once they are into the secure area, they have hammers, they have knives, they have all kinds of things that are not allowed, and they have chemicals and everything else, plus they have access to the aircraft, which they could do a lot of damage to.

So we waste money. That is congressionally imposed, some of that where it could be better spent. Would you agree with that?

Mr. RHOADES. Yes, sir.

Mr. LIVINGSTON. Yes, sir. I would agree.

Mr. BRAINARD. Absolutely.

Mr. MICA. Let me just say one thing, too, and I am glad that some of the union folks came. I am a Republican. When I wrote the bill, I made certain that the TSA and TSOs had the ability to belong to a union. I strongly believe in that right of every American worker. I don't think anyone should be forced to join a union on the other hand.

But we put that in the provision, the five private screening under Federal supervision operations that we set up. San Francisco was private, has been union from the beginning long before the rest of the crowd got that.

So it is not a question of union representation, and I don't think people should fear public versus private, even the TSA folks. I know some of them fear that. But it does involve some competition. And I heard you all speak to that. And Mr. Lynch isn't here. But again, we need to protect that right.

We exempted them from title 5. Some can get fired because that is the way we set it up. It sounds like some of the wrong people are getting removed, and the money is going to the wrong folks. In the private screening, they have actually increased some of the compensations for the TSO to retain better people and be more flexible and scheduling and things like that that can be adapted. That is one reason I favored that model under Federal supervision.

What you described today is very scary. I cited all the history of what has been going on with the delays, but for you to come here, you said, Mr. Rhoades, Mr. Livingston, Mr. Brainard, that there was no plan B and that we expect a meltdown this summer, is that correct?

Mr. BRAINARD. Yes, sir.

Mr. MICA. Yes.

Mr. LIVINGSTON. Yes, sir.

Mr. MICA. Yes.

Mr. RHOADES. Yes, sir.

Mr. MICA. Mr. Rhoades?

Mr. BRAINARD. Yes, if I can say something with that.

Mr. MICA. Go ahead.

Mr. BRAINARD. You know, Federal security directors are working with their staff, are working with the airports, are working with the airlines. We have faced tougher challenges in our history standing up, as you well know as one of the founders of our agency. I'm confident that we're going to be able to find workable solutions as long as we're keeping partnerships with our stakeholders so —

Mr. MICA. And you have had a lot of good workers out there, too

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Mr. BRAINARD. Absolutely.

Mr. MICA.—who should be rewarded. We need a better way of rewarding and retaining the good TSO workers, get rid of some of the bureaucrats at the top who are causing most of the problems. And I guess over the years they felt threatened, particularly by me because I keep saying, my goodness, we have got this huge bureaucracy, many of them just a few miles from here, and they are very domineering over the bureaucracy and anyone who gets in their way.

I dealt with them in privatizing one of my airports. I have always left that option open. One of my local airports requested to opt out, and then they came down and he told me he had never been so intimidated, so threatened. It took 2 years to just get us to get consideration of the opt-out, and then I had to change the law where they must accept the application rather than when we set it up it was left permissive with the language "shall." So that is the reason that we got into that situation.

But then it took 2 years more while they thwarted our Congress's intent. And again, we have 450 airports. We need different models. Alaska is different from Wyoming is different from JFK, et cetera, and the flexibility to do that with the right balance of public-private operations. But I would never take the Federal Government out.

And again, the people—there are a lot of junior Members here. Nobody understands the significance of what you confirmed today on this intel and analysis situation because that is the only thing, I think, that will save us. Maybe you have a different opinion, Mr. Livingston.

Mr. LIVINGSTON. No, sir. I just want to go on the record saying while you don't have intel leadership, you do have some top-quality

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Mr. MICA. Yes.

Mr. LIVINGSTON.—intel professionals —

Mr. MICA. Yes.

Mr. LIVINGSTON.—working in that office. The advanced analytic part that I brought in is still functioning very effectively, and I think Mr. Neffenger is going to tell you that he's getting some great intel support from them.

Mr. MICA. Great.

Mr. LIVINGSTON. But with the right intel leadership, it'll continue to function —

Mr. MICA. Yes.

Mr. LIVINGSTON.—even better.

Mr. MICA. Well, I would put the resources there. The BDOs have been—we have suggested it. It hasn't worked out well, as you know. And then the other thing, too, is you have these lines that extend out from the airports. We saw what happened in Brussels. It was an attack on the American Airlines and the passengers. Their intent was to kill as many as they can. You cited the attack in Los Angeles. So they are looking for the easiest targets.

TSA provides a layer of protection. Once they get past that, then we have got secure cockpit doors, we have got air marshals, we have got pilots who are armed. The biggest thing we have, and they have always come to rescue since that hour of 9/11 when the passengers on Flight 93 found out what was going on, the passengers will beat the living hell out of anyone who poses a true risk. And they have saved the day. And also the airline staff, I have to give them credit. They have been there, too.

So, again, my concern, we built this huge bureaucracy. We have got these bureaucrats in charge. They have their revengeful way of controlling the agency, which it shouldn't be. So I am glad to hear the confidence everybody has in Neffenger. I am not happy to hear there is no plan B. That is essential. And we have got to make certain—I mean, we cast a lot of responsibility for the FSDs and making it work, and they are going to catch holy heck when those lines continue to back up.

But some commonsense things, the pre-check, advancing that. I have gone to National, and I will say it has improved because I have thrown a couple of fits, but there are more people in pre-check than there are in the other lines and nobody moves them to accommodate people.

I saw the dogs the other day, and they are using the dogs and people in line to get into TSA. I think we need to move a few dogs to the front doorway like the Israelis do. They are checking people as they come in before they can get to the line to take out the people like they did in Brussels. So just some suggestions, again, the common sense that I hope you all can take back. I know you have tried to make positive suggestions and been—and also I don't think any of you did it to be mean or vengeful to anybody above, but you have the best interest, I think, of the public and those who work for us.

Not as many questions as comments. Very helpful hearing. We will have the administrator in in a couple of weeks here. Any last remarks, Mr. Brainard?

Mr. BRAINARD. You know, one of the things they talked about, and I guess because this committee certainly has some level of influence, when you talk about our workforce and the wonderful people that come to work every day, if I could just kind of pose it like this. Imagine if every year you had to run for reelection. I mean, you'd almost never get —

Mr. MICA. I do it every two.

Mr. BRAINARD. Well, imagine doing it every year.

Mr. MICA. My contract expires every 24 months.

Mr. BRAINARD. Well, with our people it expires every year —

Mr. MICA. Yes.

Mr. BRAINARD.—and they've got to recertify for their job, and I would hope that at least in looking forward, one of the things that

we could certainly do better with our people is find another option. Our people get incredibly stressed out every year. They do a very stressful job as it is. They do it very well. What you don't hear about in the media a lot of times are the success stories that do happen every day, the amount of dangerous items they are preventing to get on aircraft. And I know that our people in some cases could certainly find other opportunities. We're very grateful to have the wonderful team that we do. But if there's a way to take that stress off our workforce —

Mr. MICA. Yes.

Mr. BRAINARD.—we would really appreciate it.

Mr. MICA. Well, again, it starts from up here, and you all, the FSDs work at certain constraints from what comes from—you know, it flows downhill as the saying goes.

Mr. Livingston?

Mr. LIVINGSTON. Sir, we have brought up some very serious issues here today. Some were new, some were reported back in the original GAO summary that went to you in October 2009. But if we can agree that some of these need to be addressed now —

Mr. MICA. Absolutely.

Mr. LIVINGSTON.—and to support the administrator, this is a prime opportunity to advance the operational success —

Mr. MICA. Yes.

Mr. LIVINGSTON.—of TSA. None of the things said today here were personal or specifically —

Mr. MICA. No. No. And you are —

Mr. LIVINGSTON. Yes, sir.

Mr. MICA.—speaking in the betterment of TSA.

Mr. LIVINGSTON. And the last two points, sir, is if we could take a look at how the ERC or the Executive Resource Council appoints these SESs at TSA. That might be a way for you to exert your most control over TSA because that's where the pay —

Mr. MICA. Right.

Mr. LIVINGSTON.—the assignments, the selections, the—that's where—that's the nucleus for everything. And I'm just not sure that it isn't effective in the best interest because I've heard you speak several times, both here and on the committees and to the administrator. And several things you've said over and over but I haven't seen the actual actions that you've —

Mr. MICA. Well, you can't imagine my frustration.

Mr. LIVINGSTON. Yes, sir.

Mr. MICA. And sometimes, they have ignored me. They have tried to do everything that they can to divert, to —

Mr. LIVINGSTON. Yes, sir. But I think if you —

Mr. MICA.—other —

Mr. LIVINGSTON.—exerted control —

Mr. MICA. Well, I think, again, you saw sort of bipartisan support. Again, I have never, since we created TSA have never seen anyone come forward. Most people have been afraid to come forward. I remember we offered some people to even put bags over their heads. I think we have done it in the past with some witnesses to come in and testify. But you all are very brave. You have stood up to it, and I think you do it, again, not to be mean towards

anyone or vindictive towards anyone but to better the operations which you see.

Mr. Rhoades, you wanted to conclude?

Mr. RHOADES. Yes, sir. I want to thank you for the opportunity to speak before the committee. It's very important to me. I hope I've communicated issues along with resolutions after reflective thought, and I'm very humbled that—to be asked here.

I appreciate the opportunity to be heard. If there is one thing that I wish the committee would have oversight on is the directed reassignments policy. It is absolutely abysmal.

Mr. MICA. Yes.

Mr. RHOADES. And this is not personal. It's professional to me. As a parting suggestion, I would do an audit of all the TSA programs, awards, hiring, external to TSA because you cannot fix a problem unless you diagnose it correctly. And the TSA has a history and has certainly demonstrated that the responsiveness at times has not been there, however embarrassing it is. But in order for us to get healthier, we have to diagnose the problem and we have to take our medicine.

Thank you very much, sir.

Mr. MICA. Well, I appreciate, again, all three of you stepping forward. I think, again, this can be a constructive hearing and hopefully constructive path forward that you all have helped lay out.

So there being no further business before the committee, this meeting is adjourned.

[Whereupon, at 12:36 p.m., the committee was adjourned.]



## **APPENDIX**

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MATERIAL SUBMITTED FOR THE HEARING RECORD

**Opening Statement**

Chairman Jason Chaffetz

*Examining Management Practices and Misconduct at TSA: Part I*

April 27, 2016

As we enter the summer travel season, many Americans are heading to the airport.

And when they get there, they are finding long lines at the security check.

During one week in mid-March, nearly 6,800 passengers missed their flights due to long waits at TSA check points.

At the Charlotte airport, passengers waited more than three hours just to get through security.

And many airports are complaining TSA is only getting worse, not better.

We hope these long wait times result in us being safer.

Last summer the DHS Inspector General performed covert testing of TSA's airport security screening and found "failures in the technology, failures in TSA procedures, and human error."

The IG testified before this Committee that "layers of security [were] simply missing."

I understand that some recommendations are still outstanding, although I appreciate that TSA has taken steps to address many of the IG's findings.

**As TSA works to improve security and reduce wait times to reasonable levels, the agency's staffing problem threatens to undermine its progress.**

Currently, the agency is losing around 103 screeners each week through attrition.

TSA recently ranked one of the worst places to work in the federal government.

Out of 320 agencies, TSA ranked number 313.



This Committee has been contacted by a large number of whistleblowers who have given us some insights into why that might be.

One of the biggest causes they have attributed it to is TSA's challenges in leadership and management.

**Strong, effective leadership could not be more important to an agency fraught with problems.**

Instead, whistleblowers allege that TSA has developed a highly retaliatory culture that discourages speaking-up about problems.

They have also raised concerns about leadership failing to punish high-level managers who commit misconduct.

When hard-working rank-and-file men and women are severely punished, yet their managers get off easy, it creates a morale problem.

Allowing such a culture to fester has a highly detrimental effect on the mission of the agency: keeping our airways safe.

So does any perception of a double standard for senior leaders.

Whistleblowers brought to the Committee's attention that in one eight-month period, Assistant Administrator Kelly Hoggan [*read "hogan"*] received six \$10,000 cash awards, four of which were recommended by a direct subordinate.

The IG investigated in mid-2015, finding TSA had no clear policies prohibiting such an arrangement and only "loose internal oversight of the awards process."

TSA didn't change its cash award policy until earlier this year.

**Today's hearing is intended to focus on the toll management challenges like this take on TSA's employees, those tasked with protecting American's transportation security.**

This brings us to our witnesses today, who are here to discuss their own experiences with systemic management and leadership challenges at TSA.

Their testimony before this Committee, like all of their interactions with this Committee, is protected.

It is against the law to retaliate against individuals for engaging in protected activity.

It doesn't matter if we reach out to them or they reach out to us, they are protected from retaliation.

And communications to the press about waste, fraud, abuse or mismanagement are also protected communications.

These important disclosures are often an effective way to bring waste, fraud, abuse or mismanagement to the attention of those who are in a position to remedy it.

**But sometimes it doesn't matter how many protections you have in place.**

Management and leadership in federal agencies find subtle ways to marginalize or demean those who do nothing more than speak the uncomfortable truth.

I want to be clear that this Committee will not stand for reprisal against individuals for cooperating in Congressional investigations.

That is especially true for today's witnesses.

They come before us at great risk, and I appreciate their courage in coming before this Committee to testify.

I hope everyone will keep an open mind and give these witnesses the respect of hearing them out.

I believe what they have to say serves as a wake-up call.

**Chairman John L. Mica**  
**Subcommittee on Transportation and Public Assets**  
**Examining Management Practices and Misconduct at TSA: Part I**  
**10:00 a.m., Wednesday, April 27, 2016**

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- 1) TSA employees report that internal investigations and reassignments have been used to intimidate, retaliate, and harass lower-level employees.
- 2) Mismanagement and abuses have created an atmosphere of fear that impedes the free flow of information, honest criticism, and high performance.
- 3) TSA employees report that new TSA Administrator Peter Neffenger is seeking change, but accountability and transparency within senior management remains to be seen.
- 4) DHS ranks an abysmal 53/100 on OPM's Federal Employee Viewpoint Survey for 2015 in Employee Engagement- **38/100 for Effective Leadership, and dead last – 19 out of 19 – in the 2015 Best Places to Work rankings. TSA specifically ranked 313 out of 318 across agency subcomponents.**
- 5) Wait times continue to plague the agency and the American public
  - a. During spring break week, **6,800 American Airlines passengers missed flights** because of checkpoint delays.
  - b. Wait times exceeded **one hour** in Los Angeles, Miami, Atlanta, Dallas and Philadelphia.
  - c. In March, Charlotte-Douglass International Airport reported wait times of **three hours**.
  - d. This year, the maximum wait time to get through security in Orlando was **50 minutes**.
- 6) Security checkpoint lines are long partly because airports are understaffed.
  - a. Orlando International Airport has hired 27 private security personnel to help move lines more quickly at check points.
  - b. **TSA leadership doesn't know which airports are understaffed.**

- i. In March, Administrator Neffenger visited Minneapolis-St. Paul International Airport (MSP) and stated that the 70-minute wait times were caused by understaffing. MSP was actually 30 FTE *overstaffed*.
- 7) Administrator Neffenger asserts budgetary constraints hinder TSA's ability to keep up with passenger growth, yet TSA employees report lost resources in failing to address systemic problems with senior executive leadership.
- o **In 2014, TSO average pay was \$35,000, with starting salary of \$25,773. In contrast, the base rate of pay for Senior Executive Service staff for 2014 began at \$147,200.**
  - o The head of Security Operations at TSA had received **six \$10,000 cash awards in a one year period – four of them had been recommended by his own subordinate.**
  - o Directed Reassignments used to involuntarily move Federal Security Directors from airport to airport appears no small expense [NOTE: the Committee requested this information in its March 15, 2016 letter]:
    - Mr. Brainard was allocated **\$113,000** for his Directed Reassignment from Iowa to Maine.
    - Another Federal Security Director was allocated **\$197,000** for his Directed Reassignment from Virginia to North Carolina.
    - **In May 2014 alone, TSA leadership reassigned 24 Federal Security Directors and Deputy Federal Security Directors.**
  - o TSA Budget & Staffing
    - FY 2016 Enacted Budget: \$7.3 billion
    - FY 2017 Budget Request: \$7.6 billion
      - Security Operations – \$4.9 billion
      - TSA Intelligence – \$84 million
    - Current Employees: 51,759 (FTE)
- 8) Prohibited Personnel Practice allegations, including complaints of retaliation, are at a record high.
- a. TSA employees filed 71 Prohibited Personnel allegations in Fiscal Year 2016, and 12 disclosures.
  - b. Prior years

**i. Prohibited Personnel Practice complaints filed against TSA:**

**1. 2013: 67**

**2. 2014: 64**

**3. 2015: 87**

**ii. Corrective Actions:**

**1. 2013: 3**

**2. 2014: 1**

**3. 2015: 4**

- 9) The new TSA Academy promises improvements, but rollout is slow:
- a. Newly-hired TSOs are required to train for two weeks at the Academy, at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia.
    - o TSA began training in January of 2016 and estimates only 10 percent of its workforce has completed training.
    - o TSA aims to hire and train 5,400 new TSOs between January and September of this year. **TSA reports its own FSDs are running the training, yet this training will cost nearly \$13 million.**
    - o TSA hopes to train all 45,000 existing TSOs over the next few years.
    - o TSA Academy can train at a rate of 200 per week, 8,000 per year.
- 10) TSA rolled out the TSA Academy training requirement without consulting with its managers in the field.
- o Federal Security Directors at airports (e.g., Mr. Brainard) have suggested a Pilot Program would have been more prudent.
  - o Multiple officials in the field indicated a strong preference for having the ability to train their agents locally. In April TSA began allowing local training at airports on a case by case basis. Ten (10) airports currently have local training authority.
- 11) TSA should be focusing on Intelligence rather than Screening.
- a. Turnover: TSA Office of Intelligence and Analysis (OIA) has had eleven different Assistant Administrators and fourteen Deputy Assistant Administrators in the last 14 years.

- b. In June 2014, Sara Jane Olson, convicted of plotting to bomb LAPD squad cars, was allowed through an expedited screening lane.
- c. In 2015, 73 airport employees were “flagged” for possible ties to terrorism.
- d. In February 2016, TSA finally provided access to missing codes from Terrorist Identities Datamart Environment (TIDE).

JOHN P. SARBANES  
3RD DISTRICT, MARYLAND  
COMMITTEE ON  
ENERGY AND COMMERCE

2444 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(202) 225-4016  
FAX: (202) 225-9219

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-2003**  
[www.sarbanes.house.gov](http://www.sarbanes.house.gov)

April 22, 2016

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government  
Reform  
US House of Representatives  
Washington, DC 20515

The Honorable Elijah E. Cummings  
Ranking Member  
Committee on Oversight and Government  
Reform  
US House of Representatives  
Washington, DC 20515

Dear Chairman Chaffetz and Ranking Member Cummings:

I write to you regarding the House Committee on Oversight and Government Reform's upcoming hearing, Examining Management Practices and Misconduct at TSA.

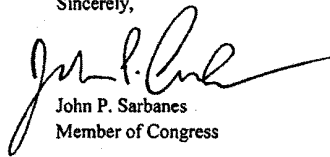
My constituent, Mark Livingston, is due to testify at the hearing. Mr. Livingston, a veteran of the United States Marine Corps and accomplished employee of the Transportation Security Administration, alleges that he was inappropriately removed from his position as retaliation for reporting misconduct by senior TSA officials. Mr. Livingston has indicated to my office that he was first informed that his removal, demotion and reassignment were due to the results of a morale survey, which would have contradicted TSA policy; that he was then told that he was removed because of allegations against him, but the Office of Professional Responsibility cleared him of wrongdoing; and finally, that he was informed his removal was due to a performance issue, though no issues had been communicated to him.

Upon receiving Mr. Livingston's correspondence, my office contacted TSA urging a review of the matter and a response to Mr. Livingston's request that he be reinstated to his previous position. My office has not yet received a final reply from TSA.

I am very concerned about the allegations Mr. Livingston has raised against TSA. I am pleased that the Committee is exercising its oversight responsibilities in this matter and I ask that the Committee thoroughly investigate Mr. Livingston's claims.

Again, I thank you for the Committee's attention to this important matter.

Sincerely,



John P. Sarbanes  
Member of Congress

600 BALTIMORE AVENUE  
SUITE 303  
TOWSON, MD 21204  
(410) 832-8890  
FAX: (410) 832-8898

44 CALVERT STREET  
SUITE 349  
ANNAPOLIS, MD 21401  
(410) 295-1679  
FAX: (410) 295-1882

