

**Testimony of
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Department of Homeland Security Office of Inspector General
before the
House Committee on Homeland Security
Subcommittee on Transportation Security**

“Last Line of Defense: the Federal Air Marshal Service 10 Years After 9/11”

February 16, 2012

Good afternoon Chairman Rogers, Congresswoman Jackson Lee and distinguished members of the Subcommittee. Thank you for the opportunity to testify on allegations of misconduct and illegal discrimination and retaliation in the Transportation Security Administration’s (TSA) Federal Air Marshal Service (FAMS).

In January 2010, CNN reported allegations of misconduct and illegal employment discrimination and retaliation in the FAMS Orlando field office. The reports described an agency rife with cronyism; age, gender, and racial discrimination; and unfair treatment in promotions, assignments, and discipline. Also included were photographs of a game board modeled after the television show “Jeopardy!” created and displayed by supervisors there, with categories containing derogatory nicknames referring to veterans, females, African-Americans, Hispanics, and lesbians and gays. We reviewed the allegations in Orlando and throughout the agency as well as the circumstances surrounding the game board.

In January 2012, we issued an inspection report, *Allegations of Misconduct and Illegal Discrimination and Retaliation in the Federal Air Marshal Service* (OIG-12-28). The purpose of our review was to evaluate allegations of misconduct and illegal discrimination and retaliation in FAMS. Our goal was to determine whether the facts confirmed the allegations in the FAMS Orlando field office and the extent to which the alleged conditions existed nationwide. We made 12 recommendations to help TSA mitigate the issues we identified, strengthen communication, and increase transparency. It is important to point out that these issues do not appear to have compromised the FAMS mission. TSA and FAMS senior leadership are committed to addressing these issues and have implemented several proactive initiatives.

Although individual employees may have experienced discrimination or retaliation, our review does not support a finding of widespread discrimination and retaliation within FAMS. However, employees’ perceptions of discrimination, retaliation, and favoritism are extensive, and we heard too many negative and conflicting accounts of events in certain locations to dismiss them. Tension and limited trust between non-supervisory and supervisory personnel, poor communication, and limited transparency are not only

damaging morale, but also are at the center of fears of retaliation and perceptions that management is mistreating its workforce.

Although we spent a great deal of time talking to non-supervisory Federal Air Marshals about their individual concerns or situations, we did not conduct investigations of their specific allegations against supervisors. Determining whether one employee retaliated or discriminated against another is a complex matter that may not be resolved until reviewed by the Equal Employment Opportunity Commission, the Merit Systems Protection Board, or a court of law. Beginning in the Orlando field office, we engaged FAMS employees at all levels and at multiple locations around the country to gain a better understanding of how the organization operates and obtain their insights into incidents that have fueled the allegations. One of our challenges was discerning the views of non-supervisory and supervisory Federal Air Marshals and FAMS' senior leadership.

We assessed the circumstances surrounding the game board styled after the television game show "Jeopardy!" and the FAMS Orlando field office's response. The game board existed in Orlando only, and was not the source of allegations of retaliation and discrimination in other field offices. The game board was created by a Supervisory Federal Air Marshal, a Federal Air Marshal, and a civilian training officer in the training office. All three of these individuals have since left FAMS. A former Federal Air Marshal who photographed the game board while it hung in the training office did not show it to members of Congress or the media until after FAMS removed him in December 2009. He said he drew a second game board, which contained more patently offensive categories, to help the congressional staff better understand the original game board's categories. Images of both game boards were distributed to several Federal Air Marshals in Orlando and Tampa. The recreated game board generated outrage, anger, and sadness.

We asked personnel in the Orlando field office how management responded to the situation. The Supervisory Air Marshal in Charge (SAC) and the Assistant Supervisory Air Marshals in Charge held a series of briefings describing the game board as an improper, sophomoric joke by training staff. Accounts of managers' attitudes while addressing the matter varied. Managers felt they had responded appropriately. Non-supervisory Federal Air Marshals recalled being disappointed by the briefings because managers came across as insensitive for not expressing accountability, contrition, or appropriate outrage. While we were conducting our site visit, FAMS leadership met with the Orlando SAC at headquarters. In July 2010, the Orlando field office underwent some personnel changes. These included the SAC being reassigned to a position in headquarters. In August 2010, Director Bray met with the entire Orlando field office to address workforce issues. In January 2011, the former Orlando SAC retired from FAMS.

In the past several years, numerous workforce issues have undermined relationships between managers and Federal Air Marshals, created tension and mistrust within the work environment, and led to many complaints and allegations against managers. These issues spawned an "us versus them" mentality among non-managers, immediate managers, and senior managers. We noted different leadership styles and attitudes

among managers and supervisors in the field offices we visited, but most acknowledged that relationships could be better and said they are trying to improve communication with the workforce to address these issues. At the same time, many Federal Air Marshals seemed unwilling or unable to adapt to changes or recognize that senior management has made efforts to address work-life issues brought to their attention. The inability of both supervisors and Federal Air Marshals to “let go” of past incidents that were previously addressed was a recurring theme during our review.

We identified other numerous factors that contributed to strained relations and became the basis for many allegations of management misconduct. Due to the nature of the agency’s mission, Federal Air Marshals have limited interaction with their supervisors. Evaluating Federal Air Marshals based on such limited interaction is difficult and may lead to disagreements. We noted inconsistency and the need for greater transparency and expediency in the agency’s handling of employee misconduct. Discipline was perceived as unfair, inconsistently applied, not at the appropriate severity level for the offense, and as being used for retaliatory purposes. Everyone agreed the process takes too long. In addition, several other operational and administrative aspects of FAMS, such as how it administers ground-based assignments, promotions, and restriction from flying international missions, need more clarity.

We also conducted a survey of the FAMS workforce. Approximately 50% of the workforce completed the survey. The survey results echoed what we observed during our site visits. One-quarter of respondents feel they have been discriminated against, 47% of respondents fear retaliation, and 55% believe favoritism is tolerated. The survey also revealed that most, but not all, supervisors disagree with non-supervisory Federal Air Marshals’ perceptions of these issues. Negative perceptions are also prevalent regarding discipline and favoritism, even among managers and respondents who do not believe they are victims of discrimination, retaliation, or unfavorable treatment. Employees who fear retaliation are also less likely to report misconduct or illegal activity.

These issues do not appear to have compromised the FAMS mission. Despite the concerns expressed in field offices, 76% of survey respondents either agreed or strongly agreed that the people they work with cooperate to get the job done. However, these allegations add unnecessary distraction at all levels at a time when mission tempo is high and many in the agency are becoming increasingly concerned about workforce burnout and fatigue.

Management has been addressing workforce issues for several years, and continues to address them. Initiatives include the creation of the SAC Advisory Council, FAMS Advisory Council, and several working groups. In addition, all-hands meetings were held to discuss and identify workplace issues, develop recommended courses of action, and designate committees to plan for implementation of the agreed course of action based on operational requirements. These initiatives have provided useful forums for increasing communication and collaboration between senior leadership and the workforce, particularly the field offices, and addressing workplace issues. To promote a common culture within FAMS and address the “us versus them” perceptions, the Director

accepted and implemented many of the FAMS Advisory Council's recommendations. In addition, the Director met with headquarters personnel to discuss changing the cultural mindset at all levels of the organization from one of a top-down management structure to one of solving problems for Federal Air Marshals who protect flights worldwide every day.

The report contained 12 recommendations aimed at strengthening communication, increasing transparency, and mitigating the issues identified in our review. TSA concurred with the recommendations. We recommended that TSA:

- identify other means to obtain information on Federal Air Marshals' performance that could assist supervisors when preparing evaluations;
- provide guidance regarding the types of incidents FAMS should and should not report to the Office of Inspection in an incident tracking report;
- provide additional guidance and clarification regarding employee ineligibility for favorable personnel actions when there is a pending disciplinary matter that spans performance cycles;
- provide guidance and clarification regarding how long prior corrective or discipline actions should be considered and for which types of incidents;
- develop a comprehensive system to track all stages of the discipline process;
- establish additional guidelines that set forth selection criteria for Federal Air Marshal ground-based positions;
- provide additional guidance and clarification for awards and in-position increases, including whether they can be rotated among staff and given to the same employee in back-to-back years, and to what extent managers should consider discipline issues;
- evaluate whether FAMS should remove specific limits on the number of Senior Federal Air Marshals allowed in each office and establish eligibility criteria for designation as a Senior Federal Air Marshal based on specific mission and length-of-service achievements, in addition to the performance requirements already in place;
- communicate specific application criteria to all J-band promotion applicants at the beginning of each promotion cycle;
- review evaluation and assessment procedures for the J-band promotion process and revise as necessary to ensure that certification lists contain the best qualified candidates;
- develop guidelines to define when Federal Air Marshals can be removed from international flight schedules, including what performance and conduct issues can cause a Federal Air Marshal to be removed and the duration of the restriction; and
- create and implement an action plan to address workplace issues identified in our survey.

The Office of Inspector General looks forward to continuing to work with the Department to identify ways to strengthen communication and increase transparency through our audit and inspection work.

Mr. Chairman, this concludes my prepared statement. Thank you for the opportunity to testify and I welcome any questions from you or Members of the Subcommittee.