

TESTIMONY OF

ROBERT J. MACLEAN
Federal Air Marshal
Office of Law Enforcement
Federal Air Marshal Service

U.S. Transportation Security Administration
Department of Homeland Security

BEFORE

Senate Committee on Homeland Security and Governmental Affairs

ON

“Oversight of the Transportation Security Administration: First-Hand and Government
Watchdog Accounts of Agency Challenges”

June 9, 2015
Washington, DC

Chairman Johnson, Ranking Member Carper, and distinguished Members of the Committee. It is a pleasure and an honor to appear before you today to speak about the serious concerns of dozens of former and current Federal Air Marshals (FAMs) who cannot risk their privacy or careers by bringing unwanted attention to themselves, and trusted me in private with concerns they believe need to be brought to the attention of their executive leadership, Congress, and the general public. I relay FAMs' concerns to you with great responsibility because I have not flown a single mission in 10 years.

The Federal Air Marshal Service promotes confidence in the nation's civil aviation system through the effective deployment of FAMs to detect, deter, and defeat hostile acts targeting U.S. air carriers, airports, passengers, and crews.

Federal Air Marshals must operate independently without backup, and rank among those federal law enforcement officers that hold the highest standard for handgun accuracy. They blend in with passengers and rely on their training, including investigative techniques, criminal terrorist behavior recognition, firearms proficiency, aircraft specific tactics, and close quarters self-defense measures to protect the flying public.

Federal Air Marshals have an ever expanding role in homeland security and work closely with other law enforcement agencies to accomplish their mission. Federal Air Marshals are assigned as Assistant Federal Security Directors for Law Enforcement at many airports nationwide to provide law enforcement coordination with airport stakeholders and other TSA components. Currently, air marshals are also staff several positions at different organizations such as the National Counterterrorism Center, the National Targeting Center, and on the Federal Bureau of Investigation's Joint Terrorism Task Forces. In addition, they are distributed among other law enforcement and homeland security liaison assignments during times of heightened alert or special national events.

Successful accomplishment of the FAM's mission is critical to civil aviation and homeland security.

Background on my whistleblower case that was decided on by the Supreme Court of the United States

On October 14, 2001, I was appointed into the first Department of Transportation / Federal Aviation Administration (FAA) Federal Air Marshal (FAM) class of 35 Federal Air Marshals (FAMs) to graduate after the September 11, 2001 attacks. Now the air marshal program is under the purview of the Department of Homeland Security (DHS) / Transportation Security Administration (TSA) / Office of Law Enforcement/Federal Air Marshal Service (FAMS). Prior to joining I was a Border Patrol Agent and a Missile and Space Systems Specialist in the Air Force.

I was removed on April 11, 2006, for the single charge of “Unauthorized Release of Sensitive Security Information (SSI).” My oral disclosure stemmed from a July 2003 unsecured, unmarked, unclassified text message sent to all FAMs government issued Nokia 3360 — instead of to their encrypted \$22 million Datamaxx Group Palm Tungsten W smartphones — informing all FAMs to immediately cancel hotel reservations and call their respective field offices for new schedules. After exhausting “proper channels,” I chose to make my disclosure to the most reliable, credible, and responsible journalist covering TSA and air marshal issues, Former MSNBC Chief Washington Correspondent, Brock M. Meeks. Mr. Meeks told me he was in touch with bipartisan members of Congress such as Representative Hal Rogers (KY), Senator Chuck Schumer (NY), then-Senators Hillary Clinton (NY) and John Kerry (MA), and eight others who appeared on the public record to protest plans for removal of FAM protection for all flight missions that required a hotel room. All FAMs in the country received the order just two days after an emergency training in response to a confirm an Al-Qaeda terrorist group suicidal hijacking plan to crash jets into U.S. east coast and European capitals. My disclosure was retroactively marked as SSI on August 31, 2006 — three years after the fact and four months after my removal. Several weeks after my disclosure I co-founded the first Federal Air Marshal unit of the Federal Law Enforcement Officers Association (FLEOA). FLEOA is not a bargaining unit nor a union.

Part of my work with FLEOA was working with the House Committee on the Judiciary regarding the unnecessary danger placed on flying FAMs by TSA senior executives. Hazards such as mandating FAMs to wear suits and ties on all flights, exposing them boarding before the general public, and grouping them into hotels that would later advertise on their electronic marquee that they had them staying. In 2005, the Committee confronted TSA with its findings and the FAMS director later went back into retirement. The final report was released to the public in May 2006 and titled, ***“In Plane [sic] Sight: Lack Of Anonymity At The Federal Air Marshal Service Compromises Aviation and National Security”***:

<https://goo.gl/t60Czk>

Affirming two unanimous decisions by the U.S. Court of Appeals for the Federal Circuit (Docket No. 2011-3231), on January 21, 2015, the Supreme Court (Docket No. 13-894) ruled that my disclosure was lawful under the Whistleblower Protection Act of 1989. Six associate justices joined Chief Justice John Roberts’ decision. My case is still pending before the U.S. Merit Systems Protection Board (MSPB) (Docket No. SF-0752-06-0611-M-1) Western Regional Office Administrative Judge. On April 14, 2015, administrative judge Franklin M. Kang issued an order informing DHS that he may not sustain “the sole charge and specification” in his court, and “a continuation of the hearing does not appear to be necessary.” Afterwards, DHS later unconditionally rescinded my removal and retroactively reinstated me. I’m currently in settlement negotiations with DHS.

[Introduction](#)

It was a sensible reaction to September 11, 2001 attacks to hire thousands of Federal Air Marshals (FAMs) and arm pilots to avert more hijackings immediately after the 9/11 attacks. Now trying to sustain a permanent tempo of armed FAMs, armed transiting non-FAM law enforcement officers, and armed Federal Flight Deck Officers (FFDOs) pilots, needs to be reevaluated. Some of the new threats we face may come from lone-wolf attackers with suicidal motives.

It's now time to implement inexpensive, yet highly effective physical security measures, then take more Transportation Security Officers (TSOs) out of the screening checkpoints and deploy more FAMS on the ground to area familiarize themselves and gather human intelligence deep inside the bowels of train stations and airports.

When a thin-lined aluminum jetliner is 40,000 feet in the sky, zooming 500 miles per hour, and crowded with fuel and passengers, flight crews and their passengers are on a potential life or death battlefield. Jetliners can become weapons of mass destruction. Flying in a commercial jetliner is a very special privilege, not a right, flight crews and passengers have a right to use all means necessary to protect their lives.

PART I: LATEST EMERGING THREATS TO AVIATION SECURITY

1. **THREAT:** Miniature Improvised Explosive Devices (IEDs) smuggled onto and hidden on aircraft

REMEDY: Reprioritize flying-Federal Air Marshal corps resources to for more of the following: Visible Intermodal Prevention and Response (VIPR) teams with local police to gather more human intelligence, Canine IED-sniff teams, and U.S. and overseas RED TEAMS

Implement and advertise cash and immigration incentives for airport workers to report suspicious activity that may save innocent lives

TSA Pre-Check expansion and implementation of biometric identification systems with it

TSA Pre-Check program is great program that allows TSA Transportation Security Officers (TSOs) to spend more time and resources searching higher threat passengers and their luggage. The program should continue to be vastly expanded, and improved by incorporating biometric identification systems so that attackers cannot circumvent the process.

TSA must stop charging fees for such an effective program in order to encourage more applicants. I would even go so far as to have a mobile application kits for TSA officials to roam the airports in order to solicit passengers to apply for free during long layovers or delays.

More participants means less money time wasted searching low-threat passengers.

Too much focus on firearms — a distraction from looking for IEDs

Terrorist organizations, plotting mass destruction, are highly unlikely to take the risk of smuggling firearms. A terrorist organization with any common sense should have very little ambition to sneak firearms into the cabin. Reasons why:

Let's say for instance an attacker lucky enough to smuggle a semiautomatic with a 13-round magazine with a chambered round for 14 shots: an exceptionally unlikely perfect and unhindered shooter will murder 14 passengers. Once that magazine is exhausted, the weapon is useless. In comparison, an attacker armed with two 3.99-inch no-slip grip-handle blades made from a pair of TSA-approved scissors can murder a significant more amount of passengers as they never become expended like a firearm:

Scissors – metal with pointed tips and blades shorter than 4 inches
are allowed, but blades longer than 4 inches are prohibited

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NO OK

[<http://www.tsa.gov/traveler-information/prohibited-items>

]



<http://www.shopscissors.com/chef-shear-detachable-p-294.html>

Given all of the orifices in a firearm and its ammunition, it is too risky to have the gunpowder — from the ammunition — being traced by TSA officers and their machines in security. A specially made IED will most likely be hermetically sealed, more easily undetectable, and much more deadly.

A terrorist may be able to kill a handful of passengers until either he runs out of ammunition or is tackled by passengers who finally realized there were no law enforcement officers on the flight, another reason why we need a “hero passenger deputization and indemnification” law (SEE THREAT #8).

Suicide mission not necessary with current smartphone technology

With a smuggled IED and a smartphone, the need for a suicidal mission **with a firearm** is almost nonexistent. To give you an idea of how easy it is to use solid state digital devices to detonate an in-flight IED, the 20-year old Bojinka cross-Pacific Ocean commercial airliners plot was going to have IEDs detonated with common light-emitting diode alarm wrist watches.

Today, an attacker can smuggle on an IED and its state-of-the-art delay-programmed smartphone detonator, hide it, disembark, and have it explode during another flight where the attacker is safe and far away.

Uniformed VIPR teams with local police as members

Like very traditional yet very effective police foot-patrols, more FAMs are needed on the ground, TSOs should spend less time searching every single passenger, and together roam individually or in teams around airport and train station properties getting familiarized with the routine operations and workers. This is where I believe uniformed VIPR teams can be very effective in area familiarization deep inside airports and train

stations, and developing rapport with transportation private sector and government workers.

Having local police officers on these teams will greatly increase their effectiveness because they act as ambassadors for their own departments. A concern relayed to me is VIPR teams run into chest-thumping turf wars with local authorities. Such a harmonious federal/local police team-relationship further helps with that essential need to build rapport with the local everyday workers and authorities.

It's extremely important that VIPR members have very congenial and easygoing personalities to build trusting and long relationships with workers and authorities.

Overseas RED TEAMS with canine IED-sniffers

More RED TEAM operations both in the U.S. and abroad are needed for advance searches of U.S.-flagged aircraft that overnights in foreign countries. These undercover Top Secret operatives are experienced flying FAMS who are highly trained in IED detection and disposal, and know how to test the efficiency and integrity of airport security. These teams should only report to the highest authorities.

RED TEAMS are needed in foreign countries where U.S.-flagged aircraft fly in and out of. The Christmas "Shoe Bomber" (2001) and "Underwear Bomber" (2009) came from Europe. RED TEAMS can spot and secondary suspicious passengers for more thorough searches. They also can search and sniff U.S. aircraft.

We cannot totally rely on foreign countries, especially third world, to conduct security for our aircraft due to corruption. I had a foreign agent ask me to smuggle handguns into his country where they are strictly forbidden.

FAMs tell me that the foreign authorities routinely love to parade them in front of the general public and it makes their missions unbearable. Ambassador-like overseas RED TEAMS may be able to smooth over such a situation.

Vendors terminal passenger-boarding areas

Megatons of cargo not screened goes into the passenger boarding areas, i.e., magazine and newspaper stack-bundles, neck-pillows, food, beverage, condiments, cooking oil, cleaning products, etc.

Cash and immigration incentives for airport workers to report suspicious activity

Most of the people who work deep in the bowels of airports are immigrants. For many, money is not much of a motivator for them, but family unity and love is. The "If You See Something, Say Something™" campaign [<http://www.dhs.gov/see-something-say-something>

] should clearly tell them the U.S. Government will immigrate their loved ones to the U.S. for stopping a commercial jet from becoming a weapon of mass destruction.

Cash motivates some people more than ethics or patriotism. The “If You See Something, Say Something™” campaign should clearly tell people that million-dollar awards are available to you for not causing the aviation security domain to collapse again like it did on 9/11/2001.

Suicide v. non-suicidal IED missions

In most of the FAMs’ — who speak with me — opinions, a non-suicidal IED smuggler is more likely than a suicidal one, as many potential attackers may not want to end up in solitary confinement for the rest of their natural life like failed suicidal IED smuggler-terrorists Richard Reid, AKA: “The Shoe Bomber” of the 2001 Christmas Day-minus 3 U.S.-flagged American Airlines Flight 63, and Umar Farouk Abdulmutallab, AKA: “The Underwear Bomber” of the 2009 Christmas Day U.S.-flagged Northwest Airlines Flight 253. Another motivator to smuggle, hide, and escape from in-flight IEDs is because the vast majority may not want to die a horrible death.

This probability is good news as IED-sniff canine teams, VIPR teams, and U.S./overseas RED TEAMS may be able to search, discover, and successfully neutralize hidden IEDs with delay-switches to be detonated by terrorists who wish to live and kill again.

2. **THREAT:** Large IEDs in carry-on luggage detonated in crowded checkpoint waiting lines.

REMEDY: Vehicle checkpoints located at airport entrances; reprioritize resources to search for IEDs; human intelligence; Canine IED-sniff teams; Cash and immigration award incentives

It’s extremely easy to pack a large carry-on luggage, wait in a crowded checkpoint line, walk away the luggage, and safely detonate it seconds later.

This is a very enlightening article about exploding an IED in a crowd of passengers waiting to be screened at Denver International Airport’s single-central security screening area -- much like Washington-Dulles (IAD). Former FAM, former U.S. Army commission officer Operation Iraqi Freedom veteran, and former police Special Weapons & Tactics (SWAT) operator, Jeffrey Denning, wrote this. Mr. Denning discusses how TSA’s policies are a danger to aviation security on the ground:

<http://jeffreydenning.blogspot.com/2009/09/terrorist-plot-prediction-airports-are.html>

FAMs would be more of a deterrent and effective by proactively stopping vehicles and handling canine IED-sniffers than seated for thousands of hours in an airline chair waiting for the attacker with a firearm or knife.

- 3. THREAT:** Lone-wolf or organizational terrorists infiltrating government or private sector transportation companies through employment.

REMEDY: Human and technological intelligence gathered by law enforcement.

This is obviously a potential problem given the rogue employees willing use their position for personal gain. An example was the group of former Houston FAMs who were arrested smuggling cocaine during missions. [<http://www.chron.com/news/houston-texas/article/2-ex-air-marshals-sent-to-prison-for-cocaine-1863569.php>]

We will never know what truly was happening in the mind of the suicidal pilot who murdered 149 passengers by crashing Germanwings Flight 9525 Airbus A320-200 into the side of a mountain. It's impossible to read a mind, but a pattern of email, cellular, and/or social media communications may early detect an attacker's intentions. This is an argument for the Intelligence Community to responsibly analyze such digital chatter.

- 4. THREAT:** Attacker dives into flight deck after unlocked to serve pilots or when pilots need to use the lavatory

REMEDY: Secondary barrier gates installed in front galleys to protect the flight decks of all commercial aircraft.

These lightweight and inexpensive secondary barrier systems should be installed on all aircraft to prevent an intruder from entering the front galley when the flight deck door is opened during flight. I initially saw these ingenious devices in operation on United Airlines Premium Service Boeing 757 aircraft providing service between Los Angeles International (LAX) and San Francisco International (SFO), and New York JFK.

The device consists of a set of approximately a dozen 1/4" thick horizontal cables that quickly stretch across the entry point into the front galley. The device allows the pilots and/or flight crew enough time to secure the flight deck before a possible breach.

Every time a pilot has to open the flight deck door for food, drink, or use the lavatory, he/she risks a hijacker diving inside and recklessly taking control of the aircraft. Sometimes a flight attendant will take a drink-cart and set up a blockade of the forward area, but amped-up suicidal hijackers will just dive over unafraid of injury or death. It is worth noting that Southwest Airlines does not equip its aircraft with drink-carts.

My sources tell me that they hardly ever see these very effective cable devices on aircraft they fly on.

Here is a link to a “white paper” drafted by the Airline Pilots Association (ALPA) describing the cable secondary barrier system and recommending every aircraft be installed with one of them:

<http://www.alpa.org/~media/ALPA/Files/pdfs/news-events/white-papers/secondary-barriers.pdf>

5. **THREAT:** In-flight knife attacker

REMEDY: Equip every cabin with electric Taser devices, beanbag guns, and other non-lethal tools and assign FAMs to train flight crew members with in order to subdue attackers and defend the flight deck; equip cabin with loud high-pitched alarms; give flight deck the ability to turn off all lights; give flight deck the availability to depressurize the cabin

If I am a lone-wolf suicidal terrorist and wanted to create chaos on a plane or force it down into the ground, I would take steroids, pump iron nonstop, book a seat in first class, and board a flight with a pair of TSA-approved scissors (SEE THREAT #1)

Electrical Taser projectile weapons, rubber-bullet, and/or beanbag guns — such as the equipment used in prisons can be secured in the front galley area in the case the super-strength knife-wielding attacker tries slashing his way into the flight deck. The non-lethal weapons can be used by the flight crew or deputized passengers (SEE THREAT #7), and can be unlocked with a combination code for subsequent use. In the rare case of having a FAM team, it is dangerous have FAMs leave the “Place of Dominance” near the flight deck and walk toward the back of the aircraft, subjecting themselves to an ambush, and having their firearms and ammunition taken away from them.

The flight deck should have the capability to completely shut off all lights in the cabin to make it more difficult for attackers to cause more chaos.

Install very loud and high-pitched alarms and blinding strobe-lights in the cabin that can be turned on in order to disorient attackers or make it more difficult to communicate with other attackers.

The Captain and his First Officer can don oxygen masks and depressurize the aircraft by engaging circuit breakers located inside the flight deck. The lack of oxygen will most likely cause the terrorists to lose consciousness first as their adrenaline, breathing, and heart rates will be maximized as they carry out a suicide mission. There is the possibility that sick, elderly, or infant passengers may be left with long-term problems or death, but it is better than a gunfight between terrorists and law enforcement officers mid-flight, and/or an entire aircraft being used as another dangerous September 11, 2001 attacks missile.

6. **THREAT:** The flight deck can be penetrated, pilots attacked, and aircraft commandeered.

REMEDY: Equip every flight deck with specially modified firearms

Every flight deck should be equipped with a pre-loaded shotgun and 12-gauge small-diameter pellet ammunition. The shotgun should be a modified pistol-gripped 12-gauge shotgun with a shortened barrel. The 12-gauge shotgun rounds should be comprised of small-diameter pellets. At close-contact range, birdshot can quickly neutralize someone trying to penetrate the flight deck. A close-contact shot can neutralize an intruder's head, heart, and/or remove a limb; a miss or partial miss will only send birdshot pellets harmlessly down the aircraft as opposed to the .40 caliber or Sig Sauer .357 ballistic rounds used by FFDOs and FAMs respectively. The shotgun should be secured with an electrical quick-release solenoid mechanism similar to the ones used in standard police patrol vehicles. A remote button or switch for the shotgun rack lock bracket can be located in a position only accessible to the Captain or First Officer.

Armed pilots are not allowed to carry their pistols on international flights due to very restrictive handgun laws, but a shotgun modified to stop one or two attackers from one foot away would be inane for a host country to deny, and risk another 9/11-style attack.

During my tenure as a U.S. Air Force Missiles & Space Systems specialist for Intercontinental Ballistic Missiles, shotgun and pellet ammunition systems were stored inside the missile silos to counter a possible attack. The shotguns would be used to defend the missiles from the attack because their pellets would not penetrate the skin of the missile and possibly ignite the rocket propellant and cause a disaster.

FAMs can provide an eight-hour or shorter course for pilots on how to ammunition-check, chamber, disengage safety, and fire the pump-action shotguns.

Russia-flagged commercial airliners have a firearm in every flight deck.

7. **THREAT:** Highly trained FAMs sitting in chairs waiting for a gun or knife attacker is a waste of valuable resources.

REMEDY: Air Marshal program should spend the vast majority of resources on training flight crews to neutralize critical incidents and local and federal law enforcement officers to be reserve/augmentee FAMs

Streamline the FAMS into a rapid response force; and a training program for flight crewmembers and a reserve/augmentee air marshal program available to all federal AND LOCAL law enforcement officers.

Very few sharp, ambitious, and aggressive young adults aspire to sit in a chair for 25 years as an anti-terrorist law enforcement officer. I knew I would not want to do that,

and the weeks after the 9/11 attacks FAA senior executives told me and other FAM applicants there's no way it would expect us to be flying FAMs 90% of our law enforcement careers. Prior to the attacks FAA FAMs spent more time training, and investigating potential aviation safety security problems than flying.

Flying air marshal duties should have been a temporary detail, not a law enforcement career: 1) The job is extremely boring and uneventful thus making FAMs lose motivation and becoming too complacent 2) The duty requiring FAMs to constantly sit idle is hard on a FAM's health 3) The constant change in time zones causes jet-lag which makes FAMs less effective.

A federal or local law enforcement officer should be able to apply for a one-year or longer temporary detail, attend a training course, finish the detail, and return to his/her prior position. The FAM overseen by the TSA should be a smaller more mobile force that only flies missions on genuine high threat flights, similar to the local police SWAT teams: FAMs should be tactically deployed on specifically threatened flights, not strategically scheduled on a large category of routes and cities threatened.

Suicidal hijackers train everyday for their single moment to simply disarm one armed passenger mid-flight; it is only a matter of time before a hijacker rushes a flight deck when its door opens mid-flight; or before a jet-lagged and unbeknownst seated FAM — experiencing inevitable complacency in his mundane profession — is ambushed, disarmed, and his/her weapon is used cause deadly chaos. FAMs experienced tremendous boredom and jet-lag, a dangerous combination. Many other dangers exists associated with traveling non-FAM armed law enforcement officers, such as not being in communication with FAMs.

Unruly passengers who do not endanger the flight deck

In a potential terrorist ruse, the routine of responding to unruly passengers encourages eager FAMs to impulsively engage a covert terrorist in a remote portion of an aircraft, come under attack, become disarmed, and a victim. The TSA SV Pay Band system encourages such impulsiveness because a young and eager FAM may fly hundreds of missions without incident and is overly committed to finally getting a within SV Pay Band increase. If everyone expects the FAMs — not the passengers — to subdue unruly passengers with non-lethal force, the attacker may make his way to the flight deck. If a group of would-be attackers want to create a ruse to compel a FAM toward the back of the plane, they just need to act like unruly passengers to compel a FAM to walk into their trap and take his/her handgun away. FAMs do not lock-up their handguns someplace in the front of the plane before proceeding to subdue an unruly passenger. Despite risking punishment, poor evaluations, and/or getting black-balled from ground assignments, it is certain that some FAMs have the common sense to not follow this ridiculous expectation; but given the fact that FAMs are under a "Pay for Performance" (PFP) compensation plan, in a job they almost never effect arrests or conduct investigations, and they are trained to use these non-lethal force tools -- the temptation to

finally get that increase in pay may override any common sense for an officer waiting months or years to finally make an arrest.

SV Pay Banding system is counterproductive to the FAM team thwarting threats to aviation

FAMs have a very single-dimensional job. FAMs cannot compete for PFP when they very rarely generate investigations or effect arrests. PFP has turned FAMs against each other by them filing complaints on each other for frivolous violations such as showing up the airport late, accidentally nodding off during the flight, flirting with a flight attendant, or getting into a disagreement with an airline employee, etc. FAMs are supposed to rely on each other in a team environment, but given their uneventful duties, they are only able to out-shine someone else who has petty complaints on file — this effectively disrupts the “warrior team spirit” and endangers public and national security. FAMs tell me that “FAM on FAM backstabbing” is pervasive given the fact that many of the new recruits being hired have no military or law enforcement experience.

New FAM recruits need more real-world experience

New FAM hires should have at least five years or more of combat military or law enforcement experience given they will rarely make arrests. A FAM recruit cannot have field training unit experience in this position like a municipal police officer trainee does. A municipal local police trainee rides with a highly experienced senior police officer effecting arrests all day and night long. 99% of senior FAMs have never made an arrest as a FAM.

8. **THREAT:** Passengers do not attempt to restrain unruly or deadly passenger incidents as they are conditioned to believe flight crews or FAMs have to respond

REMEDY: Congress and the President should pass and well publicize a law that gives flight crews and law enforcement officers the authority to deputize general passengers as Federal Air Marshals; equip every aircraft with non-lethal restraining devices; no one in the aircraft should know FAMs or any other law enforcement officers are on board, with the exception of the Captain or ground control.

Hero passenger deputization indemnification law

An unarmed 100 lbs flight attendant will not restrain a 250 lbs angry drunk or amped-up suicidal attacker. Due to a potential attacker’s ruse, FAMs should no longer risk an ambush and endanger the public by walking deep into a cabin — away from the flight deck — to subdue unruly passengers. The routine of responding to unruly passengers encourages FAMs to become distracted away from the flight deck. The law needs to specifically declare that deputized passenger will be exempt from prosecution and civil liability. The flight crew can arm a deputized passenger or a group of deputized

passengers with a Taser device, a non-lethal firearm, duct-tap, and/or restraints that should be standard equipment on every aircraft.

Such a law needs to be well publicized so that terrorists know FAMs will **never** leave the flight deck unprotected. The flying public also needs to know they may not be brought on criminal charges or held civilly liable for seriously injuring or killing a passenger.

When I participated in FAM training, we routinely had training scenarios with role-players. In scenarios in which the flight crew asked me to respond to an unruly passenger near the back of the plane: I did not want to endanger myself and the rest of the passengers and subject myself or my team to an ambush during a potential terrorists' ruse, I would then deputize several passengers, and give them my hand-cuffs to subdue the unruly passenger themselves while I remain close to the flight deck. I never failed these training scenarios using this technique. It would be deemed illegal for me to deputize passengers although it was the safest action to take.

This incident involved a delusional person who concerned passengers accidentally killed as he tried to break down the flight deck door. The deceased's family sued the passengers, but the lawsuits were dismissed in light after the September 11, 2001 attacks:

http://en.wikipedia.org/wiki/Jonathan_Burton

Articles about U.S. FAMs exposing themselves mid-flight to unruly passengers as recent as last year:

<http://www.csnphilly.com/article/unruly-passenger-threatens-air-marshal-flight-officials>

<http://www.fbi.gov/boston/press-releases/2015/haitian-national-sentenced-for-disrupting-transatlantic-flight>

<http://www.komonews.com/news/12934217.html>

<http://www.foxnews.com/story/0,2933,45298,00.html>

<http://www.cnn.com/2006/US/12/28/unruly.passenger/index.html>

<http://www.cnn.com/2008/CRIME/06/19/tsa.drunk.passenger/index.html>

<http://www.wtvnews4.com/news/headlines/561017.html>

No one in the aircraft should know FAMs or any other law enforcement officers are on board, with the exception of the Captain or U.S. ground control

FAMs and law enforcement officers need to stop being required to informing non-essential personnel who they are, only the Captain or U.S. ground control should know.

An attacker can either view the identification procedure and ambush the FAMs or other law enforcement officers, or the attacker can threaten the life of a flight crew member to identify them.

FAMs and law enforcement officers should always be allowed to remain unidentified and board along with the passengers. FAMs in the waiting/boarding area may be able to spot suspicious activity before boarding and or take-off.

9. THREAT: Security Identification Display Area (SIDA) badge impostors

REMEDY: Implement biometric systems to positively identify holders; notify all employees of problem or former employees denied access to sensitive areas

When I managed the Border Patrol San Clemente, CA station northbound Interstate 5 Pre-enrolled Access Lane program (just like the Custom and Border Protection's SENTRI program at land-port entries), we not only issued applicants ID cards, but we registered applicants into an electronic fingerprint-reader and palm-reader machine databases. We were using this technology over 15 years ago, so I'm certain it has vastly improved since the 9/11 attacks. When someone quits or gets fired, all you do is click a button to deny access.

TSOs and FAMs need to be quickly informed about TSA employees being denied access to the field office or airport sterile areas. It is a problem when a distraught, disgruntled, and rogue TSA employee goes unnoticed in a sensitive area.

10. THREAT: "Passenger 57" movie scenario with multiple armed hijackers

REMEDY: The pilots in the flight deck can depressurize the cabin until the flight crew and passengers can take control again

In the exceptional odds of this fictional movie scenario in which a terrorist team enters the aircraft with a large cache of weapons, see **THREAT #5**.

Conclusion with regards to aviation security threats

In light of the December 22, 2001 Richard Reid IED attack on American Airlines 63, the Umar Farouk Abdulmutallab attack on Northwest flight 253, and terrorists' evolving ability to assemble miniature IEDs remotely detonated with existing handheld mobile technology, it is dangerous to not implement these relatively inexpensive but highly effective physical security measures, and put more FAMs on the ground to prevent hijackers and IEDs from boarding aircraft, instead of deploying jet-lagged FAMs to

dangerously sit and wait for hijackers to attack and/or discover an in-flight IED mid-flight — when it's too late. A team of bored and sleepy FAMs sitting on **one plane** waiting for something to happen is a waste of great resources, and dangerous with current policies. More VIPR teams need to be deployed deep inside airports familiarizing themselves with the daily activity and gathering human intelligence. FAMs need to be on the ground in VIPR and U.S./overseas RED TEAMS proactively gathering and analyzing intelligence, conducting behavior detection, investigating leads, interviewing informants, and building casework that could save us from another 9/11.

Flight crews and passengers are mostly all alone high in the sky. They need to protect themselves and their flights, and the airlines and our government should seriously consider giving them indemnity laws, equipment, and training to stay alive. Flying commercial jetliners is not a right, but an **EXCEPTIONALLY SPECIAL** privilege:

<https://youtu.be/uEY58fiSK8E>

PART II: PERSONNEL ISSUES THAT EFFECT AVIATION SECURITY

A. PROBLEM: Potential whistleblowers lack of confidence in the overburdened U.S. Merit Systems Protection Board (MSPB) and its administrative judges.

REMEDY: One option: Pass a law that allows non-Intelligence Community whistleblowers to try their cases before a U.S. District Court jury.

Right now only the MSPB can review and rule on a federal whistleblower reprisal claim. This means that only three to four administrative judges and full Board Members review a claim. One of these administrative judges is an executive agency middle manager, and the other two or three of the full Board Members are political appointees with term limits.

A U.S. District judge's salary is significantly more than an MSPB administrative judge or full Board Member, and is nominated by the U.S. President and confirmed by the U.S. Senate for life. Removing a U.S. District judge is the same process for removing the U.S. President: impeachment by the U.S. House of Representatives, and removal by the U.S. Senate.

The benefits derived by the federal government from whistleblower disclosures are measured in the billions of dollars and in other unmeasured benefits such as public safety. If a case goes to trial, there is the potential for a jury of taxpayers to determine that someone is a whistleblower or not. The MSPB does not have the resources or political independence to provide timely justice in cases where the Whistleblower Protection Act is needed most. In my own case, I would have won in 2009 instead of 2015 if I had the right to seek justice from a jury of taxpaying citizens who enjoy the privilege of flying on commercial jetliners. I risked my professional life to protect a common juror. This would have saved me some five and a half years of unnecessary emotional pain and financial desperation. As long as remedies are restricted to the administrative law system, the Whistleblower Protection Act will not be a factor when the country needs it most.

Federal Aviation Administration whistleblower Kimberly Farrington is has been waiting 18 months for her MSPB administrative judge to issue a decision after two remands from the full MSPB panel in it's Washington DC. Ms. Farrington made her whistleblower disclosures over 12 years ago. [
<http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=736583&version=739180&application=ACROBAT>]

Federal whistleblower and retired U.S. Park Police Chief Teresa Chambers made two trips to the U.S. Court of Appeals for the Federal Circuit and three trips to the full MSPB Board in Washington DC in order to prevail after eight years. [
<http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=566514&version=568178&application=ACROBAT>]

I can be a W-2 employee in a restaurant and report the owner for endangering public safety using spoiled meat to save on costs. If I'm terminated, laws would allow me access to a jury.

Federal laws and the U.S. Constitution allow jury access all corporate, and local and state civil services workers except the federal workforce both inside **and outside** of The Intelligence Community. A front-line non-Intelligence Community U.S. Customs & Border Protection Officer, who inspects cargo ships for nuclear devices, to a CIA Clandestine Services Operations Officer has no access to a jury.

Civil servant jury trials in cases involving classified information

If the unauthorized disclosure of SECRET or TOP SECRET classified information is a concern, a military-type courts-marshal should be established with jury members existing of agency peers who have security clearances. A presiding judge can be a senior executive, also with a security clearance, from an agency **outside** of the whistleblower's.

B. PROBLEM: The career senior executives rely too much on the TSA Chief Counsel and the political appointees for decisions on whistleblower reprisal.

REMEDY: Career senior executives would act with more independence if whistleblowers had access to jury trials; career senior executives need to be somewhat more independent of the TSA Office of Chief Counsel and political appointees.

After I told internal affairs agents and my deciding official that I was the source of the July 2003 disclosure, had no remorse, and would do it again, my deciding official, the Office of Professional Responsibility, nor TSA headquarters took any action against me for almost **five months**. Years later, the TSA Chief Counsel's office would argue that my disclosure was reckless, and I endangered countless lives and national security.

For almost five months, my deciding official chose not limit or suspend my access to classified information or my duties. He made no attempt to revoke my badge, credentials, or firearm. He would later testify that he suspected I was a protected whistleblower, but he needed the TSA Chief Counsel to make such a decision for him.

If your children's babysitter admitted to you that he molested children in the past, had no remorse, and would do it over and over again, would you let him continue to babysit for another five months while you consulted with your attorneys? No, you wouldn't.

My deciding official knew in fact I was a protected whistleblower who acted lawfully, even going so far to declare I was an "exemplary" Federal Air Marshal. Unfortunately, he was under extreme pressure by the embarrassed political appointees not to ignore their orders. After he testified in his deposition that I "didn't cause any

problems,” “continued on doing the good work that [I] had been doing,” “didn’t cause any trouble,” and suspected I should be protected, he got **demoted twice into a non-supervisory position** outside of the Federal Air Marshal Service.

The former Federal Air Marshal Service Director — in office when I won my two unanimous U.S. Court of Appeals for the Federal Circuit decisions — recently contacted me to say he was not consulted about whether or not to file the TSA’s subsequent losing appeals. In 2010, this director made a sincere effort to have me reinstated, but was overruled by the TSA Office of Chief Counsel.

C. PROBLEM: The vast majority of Federal Air Marshals do not need expensive and time-consuming TOP SECRET security clearances.

REMEDY: Require only U.S. Office of Personnel Management suitability certifications like Customs & Border Protection Officers and Border Patrol Agents have.

The entire time I was a FAM, I never saw a SECRET or TOP SECRET document or coversheet, nor did any FAMs tell me that they saw one except for some very rare occasions. I’m told by current FAMs that this is still the case, but that a few office-based Supervisory FAMs or acting Supervisory FAMs have access to classified material.

A Border Patrol Agent has access to land border sensor maps to give easy passage for drug smugglers, terrorists, and nuclear devices. A Customs & Border Protection Officer or can turn a blind-eye to a large shipment of illegal narcotics or a container with a nuclear device, yet neither are not required to even possess a SECRET security clearance.

The consensus is that the TOP SECRET security clearance is an easy way to fire whistleblowers. A security clearance determination has no judicial review [<https://supreme.justia.com/cases/federal/us/484/518/case.html>]

Former Los Angeles Federal Air Marshal Manuel “Manny” V. Alcaraz had an honorable and unblemished law enforcement record, and was beloved by his fellow coworkers. Unfortunately FAM Alcaraz angered his managers by requesting a written policy regarding a mandate to cover his visible, uncontroversial tattoos while he was detailed to conduct recurring training for other FAMs. Before being hired, FAM Alcaraz already had visible tattoos in which he disclosed during his application process and his medical entrance exam. FAM Alcaraz subsequently resigned as a trainer, causing other trainers to resign in protest. FAM Alcaraz was later accused by his managers of lying to local police, TSA investigators, and a TSA polygraph examiner about an incident in which a woman reported to police he “hit” her arm after **“stealing [her] mall parking space”** on the Saturday afternoon before Christmas Day 2007. In the local police and TSA reports of investigation, the woman changed her story to FAM Alcaraz “slapping” her arm to **“pushing”** on her arm. Local police did not obtain a warrant or arrest FAM Alcaraz, but TSA assigned two Office of Inspection Criminal Investigators to investigate.

The TSA investigators interviewed the woman's son and only one of the two third party witnesses present who stated that FAM Alcaraz "pushed" on her arm. I later interviewed that third party witness and he stated that he no longer believed FAM Alcaraz touched the woman. TSA revoked FAM Alcaraz' security clearance due to "lack of candor," and subsequently fired him for no longer having a clearance. The MSPB refused to consider the merits of the case due to *Navy v. Egan*, 484 U.S. 518 (1988).

In an attempt to cross-examine the accuser to present new evidence for TSA to reconsider, Mr. Alcaraz for years successfully fought his case and prevailed in a Fourth District Court of Appeal of California as his accuser attempted to avoid cross-examination by invoking state Anti-Strategic Lawsuit Against Public Participation (Anti-SLAPP) laws. But after becoming indigent, unable to find work, and spending tens of thousands in attorney fees, Mr. Alcaraz lost hope and could not afford a state jury trial to simply cross examine the woman who ended his perfect 14-year law enforcement career.

This case broke my heart, being one of the worst injustices done to an honorable law enforcement officer. This was a clear case of the security clearance revocation process being abused to settle a petty score:

"The victim told police she was waiting for a spot in the JC Penney parking structure when a man driving a Toyota pickup truck swooped in and stole her spot, police said."

<http://www.ocregister.com/articles/police-95586-woman-suspect.html>

A report of investigation of Mr. Alcaraz' case by Nick Schwellenbach, formerly of the non-government organization, Project On Government Oversight, and now a manager in the U.S. Office of Special Counsel:

<http://pogoblog.typepad.com/pogo/2010/11/why-is-the-tsa-keeping-air-marshals-employment-disputes-under-a-veil-of-secrecy.html>

D. PROBLEM: The Federal Air Marshal Service has too many supervisors and managers either doing too much mundane administrative tasks or are scrounging for ways to discipline flying Federal Air Marshals (FAMs) for frivolous infractions in order to desperately justify an within SV Pay Band increase.

REMEDY: Give more administrative responsibilities to Federal Air Marshals (FAMs) and go to the General Schedule system of automatic pay increases.

FAMs are already exhausted from flying between multiple time zones. Select FAMs can be provided a secure desktop computer installed in their home and tasked with reviewing and approving travel vouchers, time and attendance sheets, special missions scheduling, and other tasks Supervisory FAMS spend much time on. Give these FAMs one or more administrative leave days a pay period to perform these duties.

Once again, there are almost no casework or arrests by FAMs, so there is very little hard positive evidence to justify within SV Pay Band increases. This motivates Supervisory FAMs to find issues to discipline jet-lagged FAMs. Place all FAMs and Supervisory FAMs on the General Schedule where they get schedules within grade increases.

This would also greatly benefit FAMs who live in high-cost of living areas as I recall a FAM who lived in Apply Valley, California and would commute up to 220 miles a day to Los Angeles International Airport. To avoid traffic, he would drive to the airport very early and sleep in his vehicle until he had to check in. This could not have been healthy for the FAM and effected his ability to thwart an attack.

Putting this solution into action and you can significantly reduce the FAMS supervisory and managerial corps.

E. PROBLEM: Field office managers have the discretion to make FAMs surrender their badge/credential and firearms if they are on office or airport light-duty status due to medical issues. Unarmed FAMs not only cannot defend themselves, but they cannot defend their fellow employees, family members, and the general public.

REMEDY: A FAM's suitability to use a firearm to defend himself or others outside of an airborne aircraft should be determined by the doctor who placed him on a medical light-duty and a TSA firearms range officer.

A FAM with a broken foot may not be able to fight a suicidal attacker inside a crowded airliner up in the sky, but he may be able to draw his firearm inside a field office or elsewhere on Earth while seated, kneeling, or in a prone position to defend himself or others.

If the manager is that concerned about the FAM's condition, the manager should allow the FAM to stay home on paid administrative leave and report to the office only when absolutely needed. We should have more confidence in a winged FAM to defend us from further soft-target attacks such as those at the New Orleans International Airport on March 20, 2015 with a knife-attacker, and the fatal firearms-attacks on the Charlie Hebdo office in Paris, France on January 7, 2015, and at the Los Angeles International Airport on both July 4, 2002 and November 1, 2013.

Conclusion with regards to personnel issues

Once again, many believe that the flying-Federal Air Marshal mission should have only been a temporary detail and not become its own agency. This leads to boredom and inevitable friction between the front-line FAMs and their managers. Things go very wrong when a FAM comes back from an overseas mission in which he may have endured a parade by his foreign escorts, tolerated a curious or belligerent passenger for most of his

flight, fought through insomnia and absorbed the stress from his spouse and children about reading about another salacious news story; only later to get a voicemail to immediately see his seated and ambitious supervisor about making a mistake on a travel voucher — this is counterproductive to what the taxpayers expected in response to the 9/11 attacks.

Again, the flying-FAM mission should be temporary duty, not a career or an agency.

I'm exceptionally committed to improving aviation security so that the public has the utmost confidence, and enjoys the miracle and wonderful privilege of commercial flying. The public has a right to protect themselves when flight crew member or law enforcement officer cannot. I'm very excited and look forward to serving with the incoming TSA Administrator, Admiral Peter V. Neffenger, U.S. Coast Guard. I would be pleased to answer any questions the Committee may have.

Respectfully Submitted.