

Testimony of
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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.¹ 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.²

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.³ Simply put we violate Jack Welch’s principle of picking

¹ 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.

² 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/>

³ 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.⁴ 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.⁵ 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.⁶ I was

⁴ Kip Hawley was the administrator while Gail Rossides was the deputy TSA administrator.

⁵ 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.

⁶ 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

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.⁷

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.⁸

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.”⁹ 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]

⁷ 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.

⁸ This statement was discussed with Andrew Rhoades by Mark Haught.

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

¹⁰ [REDACTED]

By comparison, Alyssa Bermudez was removed from service after she submitted a sexual harassment complaint against a male TSA colleague.¹¹ 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.¹² 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

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

¹² 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.¹³ 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.¹⁴ 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.¹⁵ 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

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

¹⁴ 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.

¹⁵ 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.¹⁶ 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.

¹⁶ 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).