

**PROTECTING THE PROTECTORS: EXAMINING THE  
PERSONNEL CHALLENGES FACING THE FEDERAL  
AIR MARSHAL SERVICE**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON MANAGEMENT,  
INVESTIGATIONS, AND OVERSIGHT  
OF THE

COMMITTEE ON HOMELAND SECURITY  
HOUSE OF REPRESENTATIVES

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THE PERSONNEL CHALLENGES FACING  
THE FEDERAL AIR MARSHAL SERVICE**

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**Thursday, July 23, 2009**

U.S. HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON MANAGEMENT, INVESTIGATIONS,  
AND OVERSIGHT,  
COMMITTEE ON HOMELAND SECURITY,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:12 a.m., in Room 311, Cannon House Office Building, Hon. Christopher Carney [chairman of the subcommittee] presiding.

Present: Representatives Carney, Pascrell, Green, Kilroy, and Bilirakis.

Also present: Representative Dent.

Mr. CARNEY. [Presiding.] The Subcommittee on Management, Investigations, and Oversight will come to order.

The subcommittee is meeting today to receive testimony on protecting the protectors, examining the personnel challenges facing the Federal Air Marshal Service.

And before I give my opening comments, I do want to acknowledge that Mr. Adler is not with us at the current time. He will be here shortly. There was a clerical error in a letter, an invitation letter, that had the wrong time. You guys are here at the intended time. To no fault of Mr. Adler's, he will be here as soon as he can. We are going to get started then.

All right. The purpose of this hearing is to examine personnel and workforce issues within the Federal Air Marshal Service, or the FAMS. And before I go any further, I want to point out that, in 2008, 37 percent of all new hires of the Federal Air Marshal Service were veterans. I would like to commend you for this accomplishment.

As a veteran myself, I am glad to see you value the skills of our men and women in uniform. I would encourage you to continue seeking qualified air marshals from their ranks.

Federal air marshals are deployed on domestic and international flights to protect passengers and crew from harm. In the past, the FAM organization has struggled with numerous personnel issues that have impacted morale and caused the agency public embarrassment.

Recently, it appears, improvements have been made. And that said, I am interested in learning about what has been done to overcome past challenges. Also, I am particularly interested in hearing

your thoughts as to whether or not there is room for further improvement.

I know that members have questions on a number of topics today, including polices aimed at improving air marshal anonymity, steps that have been put in place to foster better communication between line-level air marshals and management, and the need to implement consistent guidance on disciplinary actions that the entire FAMS, including field officers, are to follow.

Lastly, on July 9, 2009, the full committee marked up and approved H.R. 1881, the Transportation Security Workforce Enhancement Act of 2009. This bill will bring all TSA employees, including air marshals, under Title 5 of the U.S. code.

What that means is that their pay structure will eventually be the same as General Service, or G.S., and the G.S. structure that exists in other federal agencies. And I will be interested in hearing how this legislation brings more fairness and equity into the FAMS system.

I thank the witnesses for their participation in today's hearing, and I look forward to hearing Mr. Bray, Mr. Lord, and Mr. Adler.

I now turn it over to my ranking member, Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman. I appreciate it very much.

I would like to welcome our witnesses here today. I am pleased the subcommittee is meeting to consider personnel issues at the Federal Air Marshal Service. Air marshals provide a vital layer of defense in our transportation security amid challenging circumstances.

I appreciated the opportunity to meet with both Director Bray and Mr. Adler last week. And I am impressed with the efforts taken by the Federal Air Marshal Service to address employee concerns and further enhance security.

I think many of the initiatives instituted by the Federal Air Marshal Service, such as the listening sessions and the Web site for anonymous employee feedback, should be considered as best practices for other Department of Homeland Security components.

I look forward to our witnesses' testimony today. I am specifically interested in hearing about the initiatives that FAMS plans to implement in fiscal year 2010 to further enhance the service.

I would also like to hear our witnesses' thoughts on providing criminal investigative training to air marshals. I believe that providing this training, which used to be provided to air marshals prior to September 11th to the attacks, will have the dual effect of enhancing both the skills and morale of air marshals.

That is why I supported Congressman Lungren's amendment to the Transportation Security Authorization Act that would have required this training for all air marshals and provided funding for the FAMS in fiscal years 2010 and 2011 to implement the requirements.

I was disappointed that this important amendment was defeated on a party-line vote. I hope our witnesses can convince my Democratic colleagues of the importance of this training and we can work together to authorize it.

And I thank you, Mr. Chairman. I yield back the balance of my time.

Mr. CARNEY. Thank you. Okay, since the full committee chairman is not here, I will move on.

Other members of this subcommittee are reminded that, under committee rules, opening statements may be submitted for the record.

I welcome our witnesses. Our first witness is Director Robert S. Bray. Mr. Bray became TSA's assistant administrator for law enforcement and director of the Federal Air Marshal Service in June of 2008. He began his career with the Federal Air Marshal Service on May 5, 2003, as the assistant special agent in charge of the mission operations center at the FAA Technical Center in Atlantic City, New Jersey.

In November of 2003, Mr. Bray was appointed as the deputy assistant director for the Office of Training and Development and subsequently selected as the assistant director, Office of Security Services and Assessments, in March of 2006.

During his 20-year career with the United States Secret Service, he was assigned to offices in Denver, Colorado, Palm Springs, California, Tulsa, Oklahoma, and Washington, D.C. Mr. Bray served as supervisor of the Vice Presidential Protective Division under Vice President Gore and as a supervisor on the Presidential Protective Division under President Clinton and President Bush.

Mr. Bray, as a special agent in charge of the Office of Administration, United States Secret Service, supervised the development and execution of the annual budget for the Secret Service. Mr. Bray began his law enforcement career as a police officer for the metro Dade police department in Miami, Florida. He then worked as a police agent for the Lakewood, Colorado, police department prior to his appointment to the United States Secret Service. He holds a bachelor's of science degree in criminology from Florida State University.

Our second witness is Mr. Stephen Lord, a director in the Government Accountability Office, homeland security and justice team. Mr. Lord is responsible for directing numerous GAO engagements on aviation and surface transportation issues.

In September of 2008, while completing GAO's executive development program, Mr. Lord testified before a House homeland security subcommittee on TSA's progress in introducing the TWIC biometric identification card in the maritime sector.

In March 2009, he also testified before a House homeland security subcommittee on TSA's progress and challenges in meeting the statutory mandate for screening air cargo on passenger aircraft.

Before his appointment to the SES, he led GAO's work on Iraq reconstruction and was a key member of a 2007 Iraq benchmarks assessment team and received a GAO integrity award for exceptional analysis of the Iraq governance progress and meeting 18 legislative, security and economic benchmarks.

Mr. Lord is a recipient of multiple GAO awards for meritorious service, outstanding achievement, and teamwork. He holds a B.A. in foreign affairs from the University of Virginia and MBA from George Mason University and an M.S. in national security studies from the National War College. He also completed his senior executive fellows program at Harvard University's John F. Kennedy School of Government in May 2008.

Our third and final witness is Mr. Jon Adler.

And, Mr. Adler, thank you for being here. We had a mix up with the letters, the wrong time. The invitation letter actually had the wrong starting time on it that went out. I appreciate you coming and making it here. So thank you so much for being here.

Mr. Adler is the national president of the Federal Law Enforcement Officers Association. Mr. Adler began his law enforcement career as a revenue officer in 1991 and became a special agent with the IRS criminal investigation division shortly thereafter.

He has spent most of his career in the southern district of New York working a variety of criminal investigations. At the end of 1999, he was selected as a resident lead instructor for use-of-force training at the Federal Law Enforcement Training Center.

After serving as an acting use-of-force program manager, Mr. Adler joined the United States attorney's office in the southern division of New York as a criminal investigator. He is presently assigned to the major crimes unit.

Mr. Adler has been an active member of FLEOA for over 14 years and also a member of the International Law Enforcement Educators and Trainers Association. Prior to his election as the national president, Mr. Adler served as FLEOA's national board as executive vice president, first vice president, and secretary.

Jon also served as an officer in the Glyrico chapter, as well as the agency president for the United States attorney's office members. In addition to his investigative duties, Mr. Adler continues to serve as the use-of-force coordinator for the U.S. attorney's office criminal investigators in the southern division of New York.

And without objection, the full witnesses—the witnesses' full statements will be inserted into the record.

And I now ask each witness to summarize.

Mr. BILIRAKIS. Mr. Chairman?

Mr. CARNEY. Yes? Yes, Mr. Bilirakis?

Mr. BILIRAKIS. Mr. Chairman, yes. I would like to ask unanimous consent for Congressman Dent, ranking member of the Transportation Security and Infrastructure Protection Subcommittee, to join us to question the witnesses today.

Mr. CARNEY. Without objection, so ordered.

Mr. BILIRAKIS. Thank you.

Mr. CARNEY. Mr. Bray, if you would like to start, please.

**STATEMENT OF ROBERT BRAY, DIRECTOR, FEDERAL AIR MARSHAL SERVICE, TRANSPORTATION SECURITY ADMINISTRATION, DEPARTMENT OF HOMELAND SECURITY**

Mr. BRAY. Thank you.

Good morning, Chairman Carney, Representative Bilirakis, and distinguished members of the subcommittee. I am privileged to appear before you today to discuss the role of the Federal Air Marshal Service, FAMS, within TSA and DHS.

I would like to thank the subcommittee for this opportunity. I appreciate your support and the support of the full committee, and I look forward to continuing our partnership in the future.

No one who remembers 9/11 disputes the importance of our mission. Mr. Chairman, we can only accomplish this mission because of the outstanding men and women of the Federal Air Marshal



Service. The stand-up of the FAMS was an unprecedented undertaking. The Federal Air Marshal Service grew from 33 people under the FAA to a full-fledged federal law enforcement organization at TSA, with thousands of men and women deployed now as we speak on flights across the United States and around the world.

We have come a long way in a few short years, and we are fully committed to further progress. The millions of passengers who fly safely each year benefit from the robust flight coverage that FAMS provide.

FAMS provide this flight coverage on a 24/7 basis. In addition to active participation, an FBI-led joint terrorism task force and detail assignments at the National Counterterrorism Center, federal air marshals are also part of visible intermodal prevention and response teams, a TSA program specifically authorized by the 9/11 Commission Act.

VIPR teams move around in any part of the transportation sector and show up without being announced. They are a good example of security activity that brings together assets from a variety of states, local and federal entities and coordinate action to protect the homeland.

I would like to thank—I would like to especially acknowledge the support of the Federal Law Enforcement Officers Association, which is helping us build the FAMS organization for the future. Without the support of FLEOA, we could not be this successful organization we are today.

We are now in a maturation period for FAMS. And my goal is to work with all employees to continue to build the institutions, create a more open, inclusive, and responsive organization, and continue the blueprint for the future.

As part of that process, we have developed 36 working groups representing personnel in all workforce categories. All employees have great ideas on a myriad of issues, including quality of life, mission scheduling, performance and personnel standards, voluntary lateral transfers, and medical issues.

The contributions of these 300 field and non-headquarters personnel have led to major policy changes and significantly improved the quality of life for our workforce. I am very proud of their work.

The progress we have made is validated by the GAO's recent report. The GAO recognized the FAMS operational approach to achieving our core mission and our positive actions to address issues affecting our workforce. I believe we are succeeding in changing our culture for the better for our workforce.

The feedback I receive from the FAMS I speak with in listening sessions, working groups, our FAM adviser council, and in the many meals I have shared with transiting FAMS provides the best validation of our program.

Mr. Chairman, any organization is only as good as its people. The men and women of the FAMS are our most valuable asset. I am committed to continuing to seek out the views of our people at all levels. Their involvement is critical to helping us achieve our goals and sustain our forward progress.

I would like to reiterate my desire to work with this subcommittee as policy and personnel matters are discussed, and I will

be happy to respond to any questions you and the members of the subcommittee may have.

Thank you.

[The statement of Mr. Bray follows:]

PREPARED STATEMENT OF ROBERT BRAY

Good morning Chairman Carney, Representative Bilirakas, and distinguished members of the Subcommittee. It is my privilege to appear before you today to discuss the recent progress in workforce issues of the Federal Air Marshal Service (FAMS), within the Transportation Security Administration (TSA), Department of Homeland Security (DHS).

I would like to thank the Subcommittee for this opportunity to discuss the Federal Air Marshal Service. We look forward to continuing our partnership on this and other issues in the coming year.

In the hectic days after 9/11, the FAMS was reorganized and grew significantly. Standing up the FAMS—from the 33 marshals under the Federal Aviation Administration (FAA) to thousands under TSA—was an unprecedented undertaking. We have come a long way since then in maturing our organization, and we are committed to further progress. The millions of people who fly safely each year are the beneficiaries of the robust flight coverage that FAMS provides.

I was honored to be named as Director of the Federal Air Marshal Service just over one year ago. Today's Federal Air Marshal Service is a full-fledged Federal law enforcement organization with men and women deployed throughout the United States and on U.S.-flagged commercial air carriers throughout the world. The FAMS have state-of-the-art training facilities to provide an intense training experience for our air marshals. In addition, the FAMS is a vital partner with other TSA offices and local law enforcement agencies in the Visible Intermodal Prevention and Response (VIPR) program, which was specifically authorized by the Implementing Recommendations of the 9/11 Commission Act.

The FAMS that participate in TSA's VIPR Team activities are a key part of TSA's strategy to help prevent a terrorist attack, similar to the attacks on mass transit in Madrid and London, through risk-based, targeted deployment of integrated TSA assets in coordination with Federal, State and local officials. Recent partner and public feed-back has been positive regarding the VIPR program's effect on promoting public confidence in the transportation system and improving security across all U.S. modes of transportation. VIPR Teams are deployed throughout the United States hundreds of times each year across multiple transportation modes, and we expect to more than double the number of operational VIPR teams in the coming years.

The FAMS daily mission is an inherently difficult one. Federal Air Marshals frequently fly long-haul domestic and international routes, constantly experiencing the consequences of consistently changing duty hours and frequent adjustments to circadian rhythms. This, along with uncontrollable flight delays, impacts the FAMS' quality of life and ultimately, what it means to be a Federal Air Marshal.

We can meet these workforce challenges and still perform at a high caliber. FAMS has improved its operating procedures to better retain Federal Air Marshals, and at the same time has enhanced TSA's ability to respond to emergent situations around the world. For example, in the aftermath of Hurricane Katrina, the FAMS moved in to secure the airport in New Orleans and was instrumental in evacuating hundreds of victims. Or, as another example, in response to the discovery in the United Kingdom of a plot to use liquid explosives to take down passenger aircraft bound for the United States, the FAMS, in coordination with other TSA units, responded with unprecedented speed to conduct a range of new missions to combat the threat and help instill confidence in the security of commercial aviation.

In order to continue to support our air marshals in a stressful and ever-evolving workplace environment, we have committed to fostering an open and responsive environment for our employees, and to providing them with the best possible tools and communication channels. The FAMS has assembled employee working groups, increased human resource (HR) efficiencies, and enhanced career advancement opportunities.

Our employee working groups have been particularly successful. These groups, made up of personnel in all workforce categories throughout the FAMS organization, were asked to evaluate concerns and propose solutions on a myriad of issues including quality of life, mission scheduling, performance and on-duty personal appearance guidelines, use of hotels while on mission status, voluntary lateral transfers, and medical issues. To date, the contribution of these 36 working groups and ap-

proximately 300 field and non-headquarters personnel have led to some very positive policy changes. For example, to address mission scheduling issues, we have improved scheduling consistency, instituted more consistent start times, limited the number of flight days per roster period, and increased rest following extended international missions. To address some of the performance and quality of life issues, we have eliminated the dress code policy, allowed for hotel self-selection, and created the FAMS Voluntary Lateral Transfer Program, which has allowed 200 FAMS to voluntarily transfer to the field office of their choosing. In the medical arena, we are developing a proposal to conduct large scale research on the implications of FAM scheduling practices on fatigue, mental acuity, and risk for sleep disorders. The study will include a wellness education component along with the development of a risk assessment tool to identify personnel at risk for sleep disorders. These changes have significantly improved the quality of life for our workforce and their families.

Our efforts have been validated by the Government Accountability Office (GAO) in a recent report (GAO-09-273). In particular, the GAO recognized the successful FAMS operational approach to achieving its core mission and the positive actions taken to address policies and practices in its workforce. As part of its research, GAO visited 11 field offices, interviewed large numbers of rank-and-file FAMS employees, and conducted a comprehensive review of all operations and administrative services over the course of 20 months. The GAO's findings were encouraging. In addition, more anecdotally but nevertheless encouragingly, the feedback I have personally received from Air Marshals in listening sessions, working groups, our FAM Advisory Council and even via our anonymous mailbox all confirms that our organization has made progress in boosting employee morale. I believe we are succeeding in improving the culture for our workforce.

TSA has implemented a new human resources service provider to promote more efficient and streamlined business practices. Specifically, all recruitment, hiring and staffing, personnel and payroll processing, employee benefits, and personnel-related help desk functions are now administered by TSA's Office of Human Capital. Previously, these human resource functions were administered through a separate staff within TSA's Office of Law Enforcement in conjunction with a private contractor. In an effort to further enhance workforce satisfaction, the FAMS has also established a successful internal promotion process to select the best and brightest candidates for J-band (supervisory) Federal Air Marshal career opportunities. We also encourage qualified Transportation Security Officers and TSA Security Inspectors to apply for FAMS positions, and I am pleased that a number of them have been selected to join the FAMS ranks.

The men and women of the FAMS are our most valuable asset. I am committed to continuing to seek out the views of our employees at all levels. Their direct and candid involvement is critical to help us achieve our goals and objectives to detect, deter and defeat terrorism.

Mr. Chairman, thank you again for scheduling this hearing and for the opportunity to testify. I would like to reiterate my desire to work with this Subcommittee as policy and personnel matters are discussed, and I will be happy to respond to any questions you and the members of the Subcommittee may have.

Mr. CARNEY. Thank you, Mr. Bray.

I now recognize Mr. Lord to summarize his statement for 5 minutes.

**STATEMENT OF STEPHEN LORD, DIRECTOR, HOMELAND SECURITY AND JUSTICE ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE**

Mr. LORD. Mr. Chairman and members of the committee, thank you for inviting me here today to this important hearing on the Federal Air Marshal Service, or FAMS. My statement highlights the findings of our January 2009 report with some selective updates. I would now like to discuss some of the key points.

First, our January 2009 report discussed FAMS's operational approach, its so-called concept of operations for deploying air marshals on flights considered higher risk. Since it is not feasible for FAMS to cover the almost 29,000 daily flights operated by U.S. air-

lines, FAMS uses a risk-based approach for assigning air marshals to higher-risk flights.

And these flights include those in and out of the National Capital Region and nonstop long-distance flights, such as those targeted by the 9/11 hijackers.

It is important to note that federal air marshals also have ground-based responsibilities. For example, they participate in the so-called VIPR teams, visible intermodal prevention and response teams, that provide ground-based security. In the first quarter of this fiscal year, about 40 percent of these VIPR deployments were conducted in non-aviation areas, such as mass transit and maritime facilities.

Second, we found that FAMS's previous director undertook a number of efforts to address workforce-related issues, and these improvement efforts produced some positive results. For example, to help ensure anonymity of its air marshals, FAMS amended its check-in boarding procedures.

To help address health concerns, FAMS now allows more flexibility in scheduling work dates and rest breaks. And to help improve workforce quality of life, FAMS implemented a lateral transfer program.

Third, FAMS's plans to conduct a workforce survey every 2 years, building on the survey that it conducted in 2007. We reviewed the results of the survey and found that a majority of respondents indicated there had been positive changes undertaken from their prior year.

However, the overall response rate was 46 percent. This is substantially less than the 80 percent response rate encouraged by the Office of Management and Budget in its federal survey.

Our report also found that the potential usefulness of future surveys could be enhanced by ensuring that the survey questions and the answer options are clear and unambiguous. In a few cases, they combine multiple questions into a single survey question, making it difficult to answer it clear.

Today's hearing is an opportunity to clarify FAMS's plans for conducting an additional workforce survey. Will it be this year or later? And what steps will FAMS take to ensure a higher response rate?

Finally, it is clear that FAMS has made progress in addressing various operational and quality-of-life issues that affect the ability of its air marshals to perform their mission. In addition, Mr. Bray has expressed a commitment to continue these improvement efforts.

However, today's hearing also provides an opportunity to discuss other related oversight issues related to FAMS. First, how can FAMS strike the proper balance between meeting its in-flight responsibilities and supporting new ground-based responsibilities, such as VIPR?

And, second, how do you really measure FAMS's success? What performance measure is being used to gauge their effectiveness? Because to be most effective, as you know, FAMS operate—they are largely invisible to the flying public.

And, third, what is the best way to balance operational needs with a healthy work-life balance? You have to consider both factors when assessing these improvements initiatives.

And, Mr. Chairman, that concludes my statement. I look forward to any questions that you or any other members of the committee may have.

Thank you.

[The statement of Mr. Lord follows:]

PREPARED STATEMENT OF STEVE LORD

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the Federal Air Marshal Service (FAMS), which has a core mission of deploying trained and armed federal air marshals to provide an onboard security presence on selected flights operated by U.S. commercial passenger air carriers. The agency's cadre of air marshals grew significantly in response to the terrorist attacks of September 11, 2001 (9/11), and pursuant to the Aviation and Transportation Security Act.<sup>1</sup> Nonetheless, as noted in our January 2009 report,<sup>2</sup> because the total number of air marshals is less than the approximately 29,000 domestic and international flights operated daily by U.S. commercial passenger air carriers,<sup>3</sup> FAMS routinely must determine which flights are to be provided an onboard security presence. To facilitate making these decisions, FAMS developed an operational approach—commonly referred to as the agency's concept of operations—for deploying air marshals on selected flights. As further noted in our January 2009 report, FAMS also faces challenges in addressing various operational and quality-of-life issues that affect the ability of air marshals to carry out the agency's mission. Such issues range, for example, from maintaining anonymity during aircraft boarding procedures to mitigating the various health concerns associated with frequent flying.

With selected updates as of July 2009, this statement summarizes information presented in our January 2009 report, which addressed the following questions:

- What is FAMS's operational approach for achieving its core mission of providing an onboard security presence for flights operated by U.S. commercial passenger air carriers?
- To what extent has FAMS's operational approach for achieving its core mission been independently assessed?
- To what extent does FAMS have processes and initiatives in place to address issues that affect the ability of its workforce to carry out its mission?

Also, as you further requested, this statement presents information on possible oversight issues related to FAMS.

To address the questions, we reviewed (1) relevant legislation regarding FAMS's mission, (2) the agency's policies and other documentation regarding the strategy and concept of operations for carrying out that mission, (3) a July 2006 classified report prepared by the Homeland Security Institute based on its independent evaluation of FAMS's concept of operations,<sup>4</sup> and (4) documentation regarding various working groups and other initiatives that FAMS had established to address issues that affect the ability of air marshals to carry out the agency's mission. Also, we interviewed FAMS headquarters officials and visited 11 of the agency's 21 field offices, where we interviewed managers and a total of 67 air marshals. We selected the 11 field offices and the 67 air marshals based on nonprobability sampling, which is a method of sampling where observations are selected in a manner that is not completely random, generally using specific characteristics of the population as criteria. Results from a nonprobability sample cannot be used to make inferences

<sup>1</sup>See Pub. L. No. 107-71, § 105, 115 Stat. 597, 606-08 (2001) (codified as amended at 49 U.S.C. § 44917).

<sup>2</sup>GAO, *Aviation Security: Federal Air Marshal Service Has Taken Actions to Fulfill Its Core Mission and Address Workforce Issues, but Additional Actions Are Needed to Improve Workforce Survey*, GAO-09-273 (Washington, DC.: Jan. 14, 2009).

<sup>3</sup>The specific number of federal air marshals is classified.

<sup>4</sup>The Homeland Security Institute is a federally funded research and development center established pursuant to the Homeland Security Act of 2002. See Pub. L. No. 107-296, § 312, 116 Stat. 2135, 2176, as amended. The institute's mission is to assist the Department of Homeland Security in addressing relevant issues requiring scientific, technical, and analytical expertise. In March 2009, the institute's name was changed to Homeland Security studies and analysis Institute (with a logo expressed as HSsAI). In this testimony, we use the former name, which was applicable at the time of our review of FAMS.

about an entire population because some elements of the population being studied had no chance or an unknown chance of being selected as part of the sample. However, the interviews provided a broad overview of issues important to air marshals. More details about the scope and methodology of our work to address the questions are presented in appendix I of our January 2009 report.<sup>5</sup> In conducting work in July 2009 for this statement, we requested updated information from the Transportation Security Administration (TSA), contacted the Department of Homeland Security (DHS) Office of Inspector General to discuss its FAMS-related audits or inspections, and (3) reviewed FAMS budget data for fiscal years 2009 and 2010.

We conducted the work for this statement in July 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

### Background

FAMS was originally established as the Sky Marshal program in the 1970s to counter hijackers. In response to 9/11, the Aviation and Transportation Security Act expanded FAMS's mission and workforce and mandated the deployment of federal air marshals on high-security risk flights. Within the 10-month period immediately following 9/11, the number of air marshals grew significantly. Also, during subsequent years, FAMS underwent various organizational transfers. Initially, FAMS was transferred within the Department of Transportation from the Federal Aviation Administration to the newly created TSA. In March 2003, FAMS moved, along with TSA, to the newly established DHS. In November 2003, FAMS was transferred to U.S. Immigration and Customs Enforcement (ICE). Then, about 2 years later, FAMS was transferred back to TSA in the fall of 2005.<sup>6</sup>

FAMS deploys thousands of federal air marshals to a significant number of daily domestic and international flights. In carrying out this core mission of FAMS, air marshals are deployed in teams to various passenger flights.<sup>7</sup> Such deployments are based on FAMS's concept of operations, which guides the agency in its selection of flights to cover. Once flights are selected for coverage, FAMS officials stated that they must schedule air marshals based on their availability,<sup>8</sup> the logistics of getting individual air marshals in position to make a flight, and applicable workday rules.<sup>9</sup>

At times, air marshals may have ground-based assignments. On a short-term basis, for example, air marshals participate in Visible Intermodal Prevention and Response (VIPR) teams, which provide security nationwide for all modes of transportation. After the March 2004 train bombings in Madrid, TSA created and deployed VIPR teams to enhance security on U.S. rail and mass transit systems nationwide. Comprised of TSA personnel that include federal air marshals—as well as transportation security inspectors, transportation security officers, behavioral detection officers, and explosives detection canines—the VIPR teams are intended to work with local security and law enforcement officials to supplement existing security resources, provide a deterrent presence and detection capabilities, and introduce an element of unpredictability to disrupt potential terrorist activities.

FAMS's budget request for fiscal year 2010 is \$860.1 million, which is an increase of \$40.6 million (or about 5 percent) over the \$819.5 million appropriated in fiscal year 2009. The majority of the agency's budget provides for the salaries of federal air marshals and supports maintenance of infrastructure that includes 21 field offices.

<sup>5</sup>See GAO-09-273.

<sup>6</sup>The transfer of FAMS to ICE was based partly on the assumptions that (1) air marshals would be afforded a broader career path by cross-training with ICE's investigative division and (2) ICE's special agents could provide a surge capability by serving as supplemental air marshals, if needed. See GAO, *Aviation Security: Federal Air Marshal Service Is Addressing Challenges of Its Expanded Mission and Workforce, but Additional Actions Needed*, GAO-04-242 (Washington, D.C.: Nov. 19, 2003).

<sup>7</sup>The specific number of air marshals assigned to an onboard team, whether for a domestic flight or an international flight, may vary depending on such factors as duration of the flight, the type of aircraft, the departure and destination cities, and awareness of specific threat information.

<sup>8</sup>In determining air marshals' availability, FAMS officials stated that they must consider such factors as training requirements, other ground-based duties, and annual leave plans.

<sup>9</sup>"Workday rules" refer to the parameters that FAMS uses for assigning air marshals to flights. As applicable to nonovernight missions, for example, FAMS tries to assign air marshals to flights (or combinations of flights) that will return the air marshals home during a scheduled 10-hour workday.

### **FAMS's Operational Approach to Achieving Its Core Mission Is Based on Risk-Related Factors**

FAMS's operational approach (concept of operations) for achieving its core mission is based on assessments of risk-related factors, since it is not feasible for federal air marshals to cover all of the approximately 29,000 domestic and international flights operated daily by U.S. commercial passenger air carriers. Specifically, FAMS considers the following risk-related factors to help ensure that high-risk flights operated by U.S. commercial carriers—such as the nonstop, long-distance flights targeted on 9/11—are given priority coverage by federal air marshals:<sup>10</sup>

- Threat (intelligence): Available strategic or tactical information affecting aviation security is considered.<sup>11</sup>
- Vulnerabilities: Although FAMS's specific definition is designated sensitive security information, DHS defines vulnerability as a physical feature or operational attribute that renders an entity open to exploitation or susceptible to a given hazard.
- Consequences: FAMS recognizes that flight routes over certain geographic locations involve more potential consequences than other routes.

FAMS attempts to assign air marshals to provide an onboard security presence on as many of the flights in the high-risk category as possible.<sup>12</sup> FAMS seeks to maximize coverage of high-risk flights by establishing coverage goals for 10 targeted critical flight categories. In order to reach these coverage goals, FAMS uses a scheduling process to determine the most efficient flight combinations that will allow air marshals to cover the desired flights. FAMS management officials stressed that the overall coverage goals and the corresponding flight schedules of air marshals are subject to modification at any time based on changing threat information and intelligence. For example, in August 2006, FAMS increased its coverage of international flights in response to the discovery, by authorities in the United Kingdom, of specific terrorist threats directed at flights from Europe to the United States. FAMS officials noted that a shift in resources of this type can have consequences because of the limited number of air marshals. The officials explained that international missions require more resources than domestic missions partly because the trips are of longer duration.

In addition to the core mission of providing an onboard security presence on selected flights, FAMS also assigns air marshals to VIPR teams on an as-needed basis to provide a ground-based security presence. For the first quarter of fiscal year 2009, TSA reported conducting 483 VIPR operations, with about 60 percent of these dedicated to ground-based facilities of the aviation domain (including air cargo, commercial aviation, and general aviation) and the remaining VIPR operations dedicated to the surface domain (including highways, freight rail, pipelines, mass transit, and maritime). TSA's budget for fiscal year 2009 reflects support for 225 VIPR positions at a cost of \$30 million. TSA plans to significantly expand the VIPR program in fiscal year 2010 by adding 15 teams consisting of 338 positions at a cost of \$50 million. However, questions have been raised about the effectiveness of the VIPR program. In June 2008, for example, the DHS Office of Inspector General reported that although TSA has made progress in addressing problems with early VIPR deployments, it needs to develop a more collaborative relationship with local transit officials if VIPR exercises are to enhance mass transit security.<sup>13</sup>

### **An Independent Assessment Concluded That FAMS's Approach for Achieving Its Core Mission Was Reasonable; Recommendations for Enhancing the Approach Are Being Implemented**

After evaluating FAMS's operational approach for providing an onboard security presence on high-risk flights, the Homeland Security Institute, a federally funded research and development center, reported in July 2006 that the approach was reasonable.<sup>14</sup> In its report, the Homeland Security Institute noted the following regarding FAMS's overall approach to flight coverage:

- FAMS applies a structured, rigorous approach to analyzing risk and allocating resources.

<sup>10</sup> Under this approach, FAMS categorizes each of the approximately 29,000 daily flights into risk categories—high risk or lower risk.

<sup>11</sup> FAMS considers "threat" and "intelligence" as separate risk-related factors.

<sup>12</sup> FAMS's criteria for determining high-risk flights are classified. In part, FAMS's determinations are guided by the provisions of the Aviation and Transportation Security Act that specify the deployment of federal air marshals on flights presenting high security risks, such as the nonstop, long-distance flights targeted on 9/11.

<sup>13</sup> Department of Homeland Security, Office of Inspector General, *TSA's Administration and Coordination of Mass Transit Security Programs*, OIG-08-66 (Washington, D.C.: June 12, 2008).

<sup>14</sup> Much of the specific information in the report is classified.

- The approach is reasonable and valid.
- No other organizations facing comparable risk-management challenges apply notably better methodologies or tools.

As part of its evaluation methodology, the Homeland Security Institute examined the conceptual basis for FAMS's approach to risk analysis. Also, the institute examined FAMS's scheduling processes and analyzed outputs in the form of "coverage" data reflecting when and where air marshals were deployed on flights. Further, the Homeland Security Institute developed and used a model to study the implications of alternative strategies for assigning resources. We reviewed the institute's evaluation methodology and generally found it to be reasonable.

Although the institute's July 2006 report concluded that FAMS's operational approach was reasonable and valid, the report also noted that certain types of flights were covered less often than others. Accordingly, the institute made recommendations for enhancing the operational approach. For example, the institute recommended that FAMS increase randomness or unpredictability in selecting flights and otherwise diversify the coverage of flights.

To address the Homeland Security Institute's recommendations, FAMS officials stated that a broader approach for determining which flights to cover has been implemented—an approach that opens up more flights for potential coverage, provides more diversity and randomness in flight coverage, and extends flight coverage to a variety of airports. Our January 2009 report noted that FAMS had implemented or had ongoing efforts to implement the institute's recommendations. We reported, for example, that FAMS is developing an automated decision-support tool for selecting flights and that this effort is expected to be completed by December 2009.

**FAMS Has Taken Positive Actions to Address Issues Affecting Its Workforce and to Help Ensure Continued Progress**

To better understand and address operational and quality-of-life issues affecting the FAMS workforce, the agency's previous Director—who served in that capacity from March 2006 to June 2008—established various processes and initiatives. Chief among these were 36 issue-specific working groups to address a variety of topics, such as tactical policies and procedures, medical or health concerns, recruitment and retention practices, and organizational culture. Each working group typically included a special agent-in-charge, a subject matter expert, air marshals, and mission support personnel from the field and headquarters. According to FAMS management, the working groups typically disband after submitting a final report, but applicable groups could be reconvened or new groups established as needed to address relevant issues. The previous Director also established listening sessions that provided a forum for employees to communicate directly with senior management and an internal Web site for agency personnel to provide anonymous feedback to management. Another initiative implemented was assigning an air marshal to the position of Ombudsman in October 2006 to provide confidential, informal, and neutral assistance to employees to address workplace-related problems, issues, and concerns.

These efforts have produced some positive results. For example, as noted in our January 2009 report, FAMS amended its policy for airport check-in and flight boarding procedures (effective May 15, 2008) to better ensure the anonymity of air marshals in mission status.<sup>15</sup> In addition, FAMS modified its mission scheduling processes and implemented a voluntary lateral transfer program to address certain issues regarding air marshals' quality of life—and has plans to further address health issues associated with varying work schedules and frequent flying. Also, our January 2009 report noted that FAMS was taking steps to procure new personal digital assistant communication devices—to replace the current, unreliable devices—and distribute them to air marshals to improve their ability to communicate effectively with management while in mission status.<sup>16</sup>

All of the 67 air marshals we interviewed in 11 field offices commented favorably about the various processes and initiatives for addressing operational and quality-of-life issues, and the air marshals credited the leadership of the previous FAMS Director. The current FAMS Director, as noted in our January 2009 report, has expressed a commitment to sustain progress and reinforce a shared vision for workforce improvements by continuing applicable processes and initiatives.

<sup>15</sup> FAMS's changes to check-in and boarding procedures concern air marshals' interactions with airline personnel. FAMS's policy continues to require air marshals to adhere to established TSA regulations and locally established airport procedures.

<sup>16</sup> In July 2009, the DHS Office of Inspector General informed us that it was initiating a review with objectives that include determining whether TSA is pursuing communication capabilities to ensure that federal air marshals in mission status can receive and send time-sensitive, mission-related information through secure communication while in flight.



In our January 2009 report, we also noted that FAMS plans to conduct a workforce satisfaction survey of all employees every 2 years, building upon an initial survey conducted in fiscal year 2007, to help identify issues affecting the ability of its workforce to carry out its mission. We reported that a majority (79 percent) of the respondents to the 2007 survey indicated that there had been positive changes from the prior year, although the overall response rate (46 percent) constituted less than half of the workforce. The 46 percent response rate was substantially less than the 80 percent rate encouraged by the Office of Management and Budget (OMB) in its guidance for federal surveys that require its approval.<sup>17</sup> According to the OMB guidance, a high response rate increases the likelihood that the views of the target population are reflected in the survey results. We also reported that the 2007 survey's results may not provide a complete assessment of employees' satisfaction because

- 7 of the 60 questions in the 2007 survey questionnaire combined two or more issues, which could cause respondents to be unclear on what issue to address and result in potentially misleading responses, and

- none of the 60 questions in the 2007 survey questionnaire provided for response options such as "not applicable" or "no basis to judge"—responses that would be appropriate when respondents had little or no familiarity with the topic in question.

In summary, our January 2009 report noted that obtaining a higher response rate to FAMS's future surveys and modifying the structure of some questions could enhance the surveys' potential usefulness by, for instance, providing a more comprehensive basis for assessing employees' attitudes and perspectives. Thus, to increase the usefulness of the agency's biennial workforce satisfaction surveys, we recommended that the FAMS Director take steps to ensure that the surveys are well designed and that additional efforts are considered for obtaining the highest possible response rates. Our January 2009 report recognized that DHS and TSA agreed with our recommendation and noted that FAMS was in the initial stages of formulating the next workforce satisfaction survey. More recently, by letter dated July 2, 2009, DHS informed applicable congressional committees and OMB of actions taken in response to our recommendation.<sup>18</sup> The response letter noted that agency plans include (1) ensuring that questions in the 2009 survey are clearly structured and unambiguous, (2) conducting a pretest of the 2009 survey questions, and (3) developing and executing a detailed communication plan.

### **Congressional Oversight Issues**

Federal air marshals are an important layer of aviation security. FAMS, to its credit, has established a number of processes and initiatives to address various operational and quality-of-life issues that affect the ability of air marshals and other FAMS personnel to perform their aviation security mission. The current FAMS Director has expressed a commitment to continue relevant processes and initiatives for identifying and addressing workforce concerns, maintaining open lines of communications, and sustaining progress.

Similarly, this hearing provides an opportunity for congressional stakeholders to focus a dialogue on how to sustain progress at FAMS. For example, relevant questions that could be raised include the following:

- In implementing the agency's concept of operations, how effectively does FAMS use new threat information and intelligence to modify flight coverage goals and the corresponding flight schedules of air marshals?
- In managing limited resources to mitigate a potentially unlimited range of security threats, how does FAMS ensure that federal air marshals are allocated appropriately for meeting in-flight security responsibilities as well as supporting new ground-based security responsibilities, such as VIPR team assignments? What cost-benefit analyses, if any, are being used to guide FAMS decision makers?

<sup>17</sup>The OMB guidance governs federal agency surveys of the public at large or outside individuals, groups, or organizations, such as local government entities. The FAMS workforce survey was administered internally to gather information from the agency's employees. Although internal workforce surveys such as the one conducted by FAMS do not require OMB approval, we believe the OMB standards and guidance provide relevant direction on planning, designing, and implementing high-quality surveys—including the need to obtain a high response rate to increase the potential that survey responses will accurately represent the views of the survey population.

<sup>18</sup>Pursuant to 31 U.S.C. § 720, the head of a federal agency must submit a written statement of the actions taken on our recommendations to the Senate Committee on Homeland Security and Governmental Affairs and to the House Committee on Oversight and Government Reform not later than 60 days from the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

- To what extent have appropriate performance measures been developed for gauging the effectiveness and results of resource allocations and utilization?
- How does FAMS foster career sustainability for federal air marshals given that maintaining an effective operational tempo is not necessarily compatible with supporting a better work-life balance?

These types of questions warrant ongoing consideration by FAMS management and continued oversight by congressional stakeholders.

Mr. Chairman, this completes my prepared statement. I look forward to answering any questions that you or other members of the subcommittee may have.

Mr. CARNEY. Thank you, Mr. Lord, for your testimony.

And I now recognize Mr. Adler to summarize his statement for 5 minutes.

**STATEMENT OF JON ADLER, NATIONAL PRESIDENT, FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION**

Mr. ADLER. Chairman Carney, Ranking Member Bilirakis, and distinguished members of the committee, on behalf of the membership of the Federal Law Enforcement Officers Association, I thank you for the opportunity to appear before you today.

My name is Jon Adler, and I am the national president of FLEOA. I am proud to represent approximately 1,300 federal air marshals and share their views with you regarding personnel and workforce issues. As the “boots on the plane,” the flying air marshals’ perspective and insight are paramount to the success and effectiveness of the agency.

Since the horrific events of September 11, 2001, the Federal Air Marshals Service has struggled to grow beyond its tumultuous past. Furthermore, after enduring an executive management staff that was more fixated on dress codes than air marshal safety, the agency is beginning to come together under the strong leadership of Director Bob Bray.

The emotional wounds inflicted by the FAMS’s executive staff during the 2003 to 2006 period, all of which predates Director Bray, still, unfortunately, lingers. Nonetheless, our air marshals are valiantly trying to regain their agency’s credibility and reassemble a splintered workforce that plays a vital role in our homeland security.

To their credit, they are succeeding. We can see this success by examining the progress Director Bray and the air marshals have made with the visible intermodal protection and response program, otherwise known as VIPR. While it was initially rolled out with many flaws, it has ultimately evolved into a viable program.

On August 9, 2007, FLEOA met with Secretary Chertoff to discuss the flaws in the program. Subsequent to the meeting, Secretary Chertoff directed then-TSA Administrator Edmund “Kip” Hawley to ensure that the air marshals’ safety would not be compromised working ground-based missions.

After being appointed the FAMS director, Mr. Bray embraced this and instituted a policy that corrected the operational and safety issues.

Intelligence reports continue to indicate that subversive groups are still searching for vulnerabilities in our public transportation system. It is important that Congress recognizes this and provides the FAMS with the necessary funding to operate this important program.

Our allies in Israel who run the El Al airline have succeeded by running a similar proactive program geared towards ground-based missions. We should learn by their example.

While Director Bray has done an admirable job elevating morale in the FAMS, the attrition rate continues to be high. Anecdotal feedback from our membership indicates that this is largely a result of the FAMS being trapped in a 2004 interim TSA pay-for-performance scale.

Unlike all their DHS counterparts, such as ICE, CBP, and the Secret Service, air marshals do not get in-step pay increases. The logical solution to this problem is to place the FAMS on the same G.S., which is General Schedule, pay scale that their counterparts are on.

Another factor that impacts attrition is the limitation of their training. Air marshals carry out a mission that entails more than just security functions. Specifically, air marshals should go through the Criminal Investigator Training Program like their counterparts in DHS.

So what value does this bring? First, it would provide them with the right training to perform ground-based assignments. The training places heavy emphasis on interviewing skills, report-writing, surveillance, legal procedure, and working crime scenes.

It will also empower the force multiplier concept within DHS. This means that the DHS could use the air marshals to augment their law enforcement efforts in a variety of ways. An example: the southwest border initiative, U.N. General Assembly protection details, national emergencies, such as Hurricane Katrina, et cetera.

Last, in an effort to remedy some of the personnel hardships brought on by those who spoke out in the past, FLEOA recommends that TSA conduct retroactive case reviews of past whistleblower cases within the agency.

Brave air marshals such as Frank Terreri, who is here today, as well as Robert MacLean and others, were punished in 2005 and 2006, prior to Director Bray coming on, for blowing the whistle on past FAMS policies that endangered the public.

At the same time, FLEOA executive management, in the height of its hypocrisy, continued to televise false bravado news segments that publicized air marshal operational protocol. I appeal to this committee to support all efforts to review these cases and return them, those who were victimized, to full flying duty.

In closing, I would like to leave this committee with one point to consider. If you look at the TSA organization chart, you will see that the FAMS are placed on the fourth row.

There isn't a person within TSA that has more credible law enforcement and security experience than Director Bob Bray. Furthermore, no other box on that chart represents the wealth of law enforcement and security experience that the air marshal workforce embodies. Shouldn't they be at the top of the chart, leading TSA?

I thank you for taking the time to consider the viewpoint of the flying air marshals.

And as the others, I am available and happy to answer any questions you may have.

[The statement of Mr. Adler follows:]

## PREPARED STATEMENT OF JOHN ADLER

Chairman Carney, Ranking Member Bilirakis, and Distinguished Members of the committee, on behalf of the membership of the Federal Law Enforcement Officers Association, I thank you for the opportunity to appear before you today. My name is Jon Adler and I am the National President of F.L.E.O.A. I am proud to represent approximately 1,300 Federal Air Marshals, and share their views with you regarding personnel and work-force issues. As the "Boots on the Plane," the flying Air Marshal's perspective and insight are paramount to the success and effectiveness of the agency.

Since the horrific events of September 11th, 2001, the Federal Air Marshals Service has struggled to grow beyond its tumultuous past. Furthermore, after enduring an executive management staff that was more fixated on dress codes than Air Marshal safety, the agency is beginning to come together under the strong leadership of Director Bob Bray.

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We can see this success by examining the progress Director Bray and the Air Marshals have made with the Visible Intermodal Protection and Response (VIPR) program. While it was initially rolled out with many flaws, it has ultimately evolved into a viable program.

On August 9th, 2007, FLEOA met with Secretary Michael Chertoff to discuss the flaws in the program. Subsequent to the meeting, Secretary Chertoff directed then TSA Administrator Edmund "Kip" Hawley to ensure that the Air Marshals' safety would not be compromised working ground based missions. After being appointed the FAMS Director, Mr. Bray embraced this, and instituted a policy that corrected the operational and safety issues.

Intelligence reports continue to indicate that subversive groups are still searching for vulnerabilities in our public transportation system. It is important that Congress recognizes this and provides the FAMS with the necessary funding to operate this important program. Our allies in Israel who run the El Al airline have succeeded by running a similar proactive program geared towards ground based missions. We should learn by their example.

While Director Bray has done an admirable job elevating moral in the FAMS, the attrition rate continues to be high. Anecdotal feedback from our membership indicates that this is largely a result of the FAMS being trapped in the 2004 TSA pay for performance scale. Unlike all their DHS counterparts, such as ICE, CBP and the Secret Service, Air Marshals do not get "in-step" pay increases. The logical solution to this problem is to place the FAMS on the same GS (General Schedule) pay scale that their counterparts are on.

Another factor that impacts attrition is the limitation of their training. Air Marshals' carry out a mission that entails more than security functions. Specifically, Air Marshals should go through the Criminal Investigator Training Program (CITP) like their counterparts in DHS. What value does this bring? First, it would provide them with the right training to perform ground based assignments. The training places heavy emphasis on interviewing skills, report writing, surveillance, legal procedure, and working crime scenes. It will also empower the force multiplier concept within DHS. This means that the DHS could use the Air Marshals to augment their law enforcement efforts in a variety of ways, i.e., Southwest border initiative, UN General Assembly protection details, national emergencies such as Hurricane Katrina, etc.

Last, in an effort to remedy some of the personnel hardships brought on those who spoke out in the past, FLEOA recommends that TSA conduct retroactive case reviews of past Whistleblower cases within the agency. Brave Air Marshals such as Frank Terreri who sits with me today, and Robert MacLean were punished in 2005 and 2006 for blowing the whistle on past FAMS policies that endangered the public. At the same time, FAMS executive management, in the height of its hypocrisy, continued to televise false bravado news segments that publicized Air Marshal operational protocol. I appeal to this committee to support all efforts to review these cases and return those who were victimized to full flying duty.

In closing, I would like to leave this committee with one point to consider. If you look at the TSA Organization chart, you will see that the FAMS are placed on the fourth row. There isn't a person within TSA that has more credible law enforcement and security experience than Director Bob Bray. Furthermore, no other box on that chart represents the wealth of law enforcement and security experience that the Air Marshal workforce embodies. Shouldn't they be at the top of the chart, leading

TSA—I thank you for taking the time to consider the viewpoint of the flying Air Marshal.

Mr. CARNEY. Thank you, Mr. Adler.

And thank you all for your testimony.

And I remind each member that he or she will have 5 minutes to question the panel. And I will now recognize myself for 5 minutes.

Mr. Bray, I want to kind of dig into the VIPR issue real quick. Can you describe some of the potential problems you saw with a public face to FAMS? How is the anonymity protected, *et cetera*?

Mr. BRAY. The anonymity of the FAMS is protected now by basing on where we deploy the FAMS. If a FAM is based in one city and we have a VIPR program—we just had a large VIPR operation in Seattle when they opened a new rail transport system there. So we would send FAMS from the other cities—from other cities other than Seattle so it is not their home city.

We send a large group of FAMS who are trained in VIPR missions up there who are dedicated to VIPR missions. That is one way we take care of the anonymity issues.

We also have the ability the FAMS in their hometown, dressed in clothing that doesn't—they could be covert. They could be overt. If they are overt, we address them in clothing that says "DHS." It doesn't say "FAMS." It doesn't say "TSA." So no one is really sure who they are.

And we worked with FLEOA to develop all those processes and procedures, so I think we have a strong program now for protecting the anonymity of the FAMS.

Mr. CARNEY. Okay. Mr. Adler, you would agree with that, that things have improved?

Mr. ADLER. Yes, I do. And I had referenced our meeting with Secretary Chertoff. After that time, he embraced everything which Director Bray just said. We have met with Director Bray. We have opened lines of communication with him. We expressed the views of the flying FAMS, and he immediately acted upon it. And I think he is doing a great job putting all efforts towards protecting the anonymity of the FAMS while engaging in this important program.

Mr. CARNEY. Okay. Mr. Lord, what challenges remain?

Mr. LORD. I had a more fundamental question about these VIPR operations, Mr. Chairman. First of all, I think you need to ask whether these activities are compatible with the core mission of FAMS, especially since about half of them are conducted on non-aviation facilities. This is totally outside the context of protecting passengers, protecting air crews. That is the first question. To what extent does this represent mission creep?

The second issue I have is, how do you actually measure the effectiveness of the VIPR deployments conducted to date? We have had some discussions with TSA on this, and they recognize the importance of this, yet these performance measures are still being rolled out. Yet, at the same time, TSA is seeking \$50 million to fund these activities.

From a GAO perspective, we would argue it is important to have these measures in place first, before a grow in the program.

Mr. CARNEY. Mr. Bray, how do you address that? Is it true that we have mission creep here with the VIPR team or the FAMS?

Mr. ADLER. I think, in referencing the organization chart, it would be something, a matter of modifying an acronym. I am more concerned with the threats and how we are prepared to respond to them than being overly fixated on the fact that the FAMS, the “A” stands for “air.” I think they are the law enforcement component within TSA, and they are responsible.

I mean, there is no other law enforcement component there. And if something were to happen on the airport grounds, which is not up in the air, there is no federal presence in any of our airports that can respond as a first responder, and set up a crime scene, and deal with a crime, which is a federal violation, other than the federal air marshals.

So I don’t see it as mission creep. I see it as long overdue, responding to real threats, and getting out there in a proactive manner to deal with it.

Mr. CARNEY. So local law enforcement doesn’t fulfill that mission?

Mr. ADLER. I don’t think so. In fact, in airports, you may find one officer there, and it seems their primary function is to just—to deal with law enforcement officers flying armed. And should something happen that is a federal violation, they don’t have the jurisdiction.

And they are not the appropriate person to immediately deal with the situation, whether it is a pursuit, apprehension, set up the crime scene, interview witnesses. It is not their jurisdiction.

Mr. CARNEY. Mr. Bray, first?

Mr. BRAY. Thank you, Mr. Chairman.

With regard to the statement about mission creep, when Congress authorized the VIPR program as part of the fulfilling the obligations of the 9/11 Act, they specifically authorized the Federal Air Marshal Service and TSA more full-time employees to fulfill that role.

So when we put a FAM into a VIPR program, there is no mission degradation regarding our coverage of flights in the air. We still have a robust coverage of those flights, but the FAM that is dedicated to the VIPR team is assigned to the VIPR team, and they do work—the VIPR program is part of TSA’s core element, with regard to our focus on the entire transportation venue.

If you recall, after the train bombings in Madrid and London, there was an emphasis on TSA to focus on areas in addition to aviation. And this was our response to the strategic development of assets, and it does include TSA, it does include other federal agencies, it does include local law enforcement and the transit systems, when we have a VIPR team go into that program. So it is a very good—very well collaborated program now.

Mr. CARNEY. Okay. Mr. Lord, quickly?

Mr. LORD. I would like to respond to Mr. Adler’s comments on the operations. I have a lot of respect for Mr. Adler, but I think it is important to point out, in fact, we have a report coming out tomorrow. We focused on VIPR operations in a mass transit mode.

Some of the transit officials we met with raised this question about additionality. They said, “We already have a security force,” so they wondered out loud about what these additional VIPR deployments really provided.

So, anyway, I think it is important to get the question on the table. And you can probably argue it both ways.

Mr. CARNEY. All right. Thank you.

I now recognize Mr. Bilirakis for 5 minutes.

Mr. BILIRAKIS. Thank you, Mr. Chairman.

Question for Director Bray and Mr. Adler. As I mentioned before, when this committee considered H.R. 2200, the TSA Authorization Act, Congressman Lungren offered an amendment that would have restored the Criminal Investigator Training Program to the Federal Air Marshal Service. Are you in support of this effort? And if you are, can you please tell me why?

Mr. ADLER. We are definitely in support of it. And my membership, the air marshals we represent, are very much in support of it.

I think it is important to look at the actual program to understand the value it would bring to the air marshals and its flying air marshals. The Criminal Investigator Training Program is not as glorious as maybe Hollywood might suggest, in terms of what actually goes on in the academy. They emphasize a lot of things like interviewing skills, legal procedure, report writing, even surveillance, and also setting up and establishing a crime scene.

And I think these things are very important. You know, we have some guys within the law enforcement community who go out and do great work. And then, when it comes down to documenting what they have done, the whole thing just goes belly up.

I think the value that you get out of CITP would transform into real meaningful training experience or ultimately into real viable experience that the FAs can really build on as they engage in these VIPR missions.

Mr. BILIRAKIS. Mr. Bray, please?

Mr. BRAY. Thank you. I think it is important to give our federal air marshals all the tools they can possess to do their jobs, to detect, deter and defeat terrorism.

And I strongly believe that the addition of the Criminal Investigator Training Program to our arsenal of weapons, if you want to put it that way, to provide our people with that, as Jon said, the enhanced interview and interrogation skills, the behavior detection skills, and the report-writing skills.

And it really gives them—the training they receive now is training that is really basic police officer training. This will allow them to be proactive in their interdiction capabilities. The training they receive now, if you could change the paradigm of thinking, is to respond to after the event occurs.

I want to change that thinking to be able—and give them the tools in their arsenals to be able to go forward and interdict before the event occurs, when they see something that is suspicious, and have that repertoire of knowledge in their capacity to move forward with that.

So I think it is very important that we move the CITP training. And I have no desire to have them become 1811s or criminal investigators. We are happy to stay as 1801s, federal air marshals, and we don't want to change their titles or anything else. We just want to give them that tool in their arsenal.

Mr. BILIRAKIS. Thank you very much.

A question for Director Bray again. What new initiatives is the FAMS planning for fiscal year 2010? I know you touched on it a little bit, if you can elaborate.

Mr. BRAY. The initiatives that we have underway that are underway right now is a program called the senior federal air marshal program that recognizes those people who have approximately 4–1/2 years of flying time. It equals out to about 800 hours of flying time per year. I am sorry, 4–1/2 years.

And that recognizes the people that have been doing the job, the daily job, and then going out there in their quiet professionalism. And it gives them another award and recognition. And we are going to change their commission book so it says “senior federal air marshal.” And it is a recognition of everyone who has been doing the job quietly since we stood up the organization.

We are also instituting a field training officer program. We call it a FAM mentoring program, when our new FAMS come onboard, we will have a senior FAM that will be assisting that person with their introduction, indoctrination into the Federal Air Marshal Service.

We think both those programs would help build our corporate culture, can move us forward in what I call the culture of accountability, another program that we started, to help everyone recognize that we all need to take care of each other, when we see a person that is about to get in trouble or who is going to get into trouble, to try to have them interdict that and help that person before the person makes a mistake in their life that will affect their career or their family.

Mr. BILIRAKIS. Thank you very much.

One last question for Mr. Lord. Your report notes the positive results of many of the FAMS’s initiatives to address workforce issues. In your opinion, how would you rank the Federal Air Marshal Service’s outreach to its employees on workforce issues compared to the efforts of the other federal agencies and departments? And do you believe that any of the FAMS’s initiatives could be used as the best practices for other components within the Department of Homeland Security or federal government-wide?

Mr. LORD. Let me respond to one of your latter questions. We didn’t do a comparative analysis comparing their outreach efforts with other federal agencies, but we certainly were impressed by the scale and scope of these improvement initiatives. So that would probably be—that is left to a follow-on review to compare what they are doing with other TSA components, perhaps, or other components within the Department of Homeland Security.

Mr. BILIRAKIS. Thank you very much.

Thank you, Mr. Chairman.

Mr. CARNEY. Thank you.

The chair will now recognize other members for questions they may wish to ask the witnesses. In accordance with our committee rules and practice, I will recognize members who were present at the start of the hearing based on seniority on the subcommittee, alternating between majority and minority. Those members coming in later will be recognized in order of their arrival.

The chair now recognizes for 5 minutes the gentleman from New York, Mr. Pascrell.



Mr. PASCRELL. Thank you, Mr. Chairman.

Mr. Bray, it is my understanding that many of what I would consider positive policy and procedural changes that are going on within the Federal Air Marshal Service that deal with the workforce were brought to light by air marshals. In fact, some of those air marshals blew the whistle, voiced their concerns about past policies and past actions.

Many of these same air marshals found themselves enmeshed in legal battles following their revelations. In October of 2007, a couple years ago, in your seat sat TSA Administrator Kip Hawley, and I asked him about federal air marshal Robert MacLean's termination, because he blew the whistle. And as many other marshals, he blew the whistle, and what he blew the whistle on was implemented by TSA, but he lost his job.

Administrator Hawley promised me and this panel that he would get back to me on the case, and yet he is gone, and I never received a response. I don't like those kinds of things. That is not the way to do business here.

But I have a good memory still. What I am also very concerned about is that these officers who blew the whistle on wrongdoing still have not gotten their jobs back. I have read the pronouncements of the merit board. I have read the pronouncements of the TSA. These folks still did not get their job back. Three years after the fact, we are going on 4 years, and we are here.

In fact, according to Tom Devine, the legal director of the Government Accountability Project, FAMS has not made an attempt to restore whistleblowers that lost their jobs for bringing to light issues that were later found to be valid. In fact, in many of them, we have changed the notification either from sensitive to classified and then we have unclassified the information to—I mean, this is serious, and we need to treat it seriously.

I find this completely unacceptable, and I am sure you do, too, Director Bray, even in the face of progress you have made, and you have made progress, and I congratulate you.

After having being terminated for doing the right thing, shouldn't these folks be restored in their jobs? Can you tell me what the service intends to do in regards to restoring former whistleblowers that lost their jobs for bringing to light issues that were later found to be valid?

Director Bray?

Mr. BRAY. Sir, I think the response to you is a two-part response. But first, we have to talk about is why these people felt it was necessary to bring into light other than by going to the media and going on TV and things like that. And I think that is a problem that we have been trying to follow up for the last several years—

Mr. PASCRELL. Well, they weren't responded to by the department.

Mr. BRAY. That is what I mean, sir. I mean, when—now we are trying to engage the workforce to—I just recently established what I call the FAM advisory council, where we have representatives in each office that meet with me personally on a regular basis. I engage the people in listening sessions. I also engage people, the FAMS, in other ways, listening sessions.

We have what I call breakfast with Bob, where I regularly go out and have breakfast with transiting FAMS. And what I say when I meet with the FAMS, the first thing I open it with is that, when you tell me there is a problem in your office, you know, there is not going to be any retribution or retaliation for you bringing these issues forward. So we are trying to open that line of communication.

And if we have any whistleblowers that come forward now, we just finished a training period with all of our frontline supervisors to—with the EEO. We had—actually had the office of Equal Employment Opportunity Commission come in and provide training for all of our frontline supervisors on EEO matters, discipline matters, and whistleblower matters.

So we are trying to get—push that down from the top down to our frontline supervisors who are dealing with the FAMS every day. They are engaging everyone much more than we did in the past, so that is one thing.

As far as the whistleblowers, we fully support all the rights and privileges they have under the Whistleblower Protection Act. And once their cases now, sir, as you know, are in the legal system. So I am encumbered from making any comment on that until those cases are resolved, but I think we have really tried to outreach to our people now to solve the problem and why they felt it was so necessary to whistle blow in the first place.

Mr. PASCRELL. There is one way to get them out there, the judiciary system, and that is to give them their jobs back, pure and simple. The only reason why this is before the courts is because the department did not give them back their jobs, and they deserve to have their jobs back.

Thank you.

Mr. CARNEY. Thank you, Mr. Pascrell.

The chair now recognizes my good friend from Pennsylvania, Mr. Dent, for 5 minutes.

Mr. DENT. Thank you, Mr. Chairman.

Director Bray, over the last several years, there have been many reports of alleged misconduct by some air marshals. What processes do you have in place to address misconduct?

Mr. BRAY. When we have an initial report of misconduct by a federal air marshal, it is automatically referred to the Office of Inspection, which is a separate entity within TSA. They will normally review that case with the Department of Homeland Security inspector general to see who is going to investigate that case, and they will go out very rapidly and investigate that claim of misconduct.

And so we do not investigate it. We refer it to other people, and then, when they give us the report back, we will make a decision on the action we will take against that person. And there is a set of actions that we work with our counsel's office to make sure that all the actions are equitable as far as discipline against a person.

I have, since I took this office over, changed—through TSA, changed the policy for someone arrested for DUI. It used to be the lowest level was letter of reprimand. And now for a federal air marshal, when they are arrested for DUI, it is 30 days off, which is a significant for first offense, where 30 days off is a minimum.

It could be more than that, depending on the circumstances around the incident.

Mr. DENT. Do you think that you need to change your background check process? Do you think that is necessary?

Mr. BRAY. Sir, I don't think so. I think our background check process, it does take a little while with OPM. We go through OPM for our criminal—for our background check process, as far as the actual interviews.

But most of the incidents occur, you know, obviously well after the background check process. I think we had some issues there at the standing up of the organization, when the organization was first started. But I think now we have a very rigorous process with review of the person's background that involves a field office, office of personnel security, and others within the organization.

Mr. DENT. And, finally, what rules and policies do the federal air marshals have in place to ensure minimum rest standards for federal air marshals to ensure that we have an alert workforce?

Mr. BRAY. That is something we have worked on since I ran that program back in 2003. And that is another one of our initiatives I should have mentioned earlier, where we have now what is called a 60-hour rule, that whenever the person's Friday evening occurs, at 6 p.m., we give them at least 60 hours off before their next flight.

When they have an international flight, there are work rules for how much time they have off. On an international flight—we have all flown internationally. We realize there is jetlag, there are many issues with time change. So we try to work with them on that.

There is also—we have the mission exchange program, where if a person has a family event or some crisis that comes up and they don't want to use leave or they would rather—they have the ability within their field office to contact other federal air marshals to see if they can change that mission with someone else.

So we have been proactive on that. We are also working in the future—we are working on it now. We are working on in the future to do what we call scheduling consistency programs, where we are—if a FAM has a flight that starts at a certain time period—say, 8 a.m. on their Monday, whenever it is—obviously, we are a 24/7 organization, but we try to—the first flight of their workweek is at 8 a.m. We are working to make that schedule consistent throughout the week so it is within a 3-hour window of that time slot throughout the week. And we think that will help with the issues which we have with any sleep disturbance patterns or circadian rhythm patterns and things like that.

So we are working towards that. That is a long process. We are doing it manually now, where we dedicate an employee to do that. We want to automate it, but it is going to probably take—probably take us a few more months, probably a couple of years to finally finish that project.

Mr. DENT. Thank you.

And, Mr. Lord, your report notes the usefulness of the federal air marshals' workforce satisfaction survey and recommends some changes to enhance its future surveys. Aside from those recommendations, are there any other issues you believe that the fed-

eral air marshals should address to improve its core mission or improve its workforce?

Mr. LORD. That is an excellent question. Our latest report focused on the recommendations related to improving the usefulness of the workforce survey. We have previously looked at federal air marshals, made recommendations to improve in other areas, such as amending their policies and check-in boarding procedures. They have implemented those, as Director Bray noted.

So those are our most current recommendations, the ones related to workforce satisfaction survey.

Mr. DENT. Thank you.

Mr. Chairman, I yield back.

Mr. CARNEY. Thank you.

The chair recognizes the gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman.

And I thank the witnesses for testifying this morning. Because time is of the essence, I will move rather quickly.

Would you kindly address a piece of legislation, H.R. 1881, the Transportation Security Workforce Enhancement Act of 2009, that was passed out of this committee? Are you familiar with it, sir?

It is my belief that this will address some of the fairness and equity issues with reference to salary. Can you briefly tell me if you have a similar opinion?

Mr. BRAY. Sir, I do have a similar opinion. We are always looking for things that will enhance our workforce. I believe this will be a strong enhancement of our workforce, and I support this program, as the administration does, I believe, and I support what the administration is working for to enhance our program.

Mr. GREEN. Now, moving to another topic quickly, we talked about the downtime for marshals. In between flights, is there a downtime, or do they work an 8-hour day one hour after another? How do they receive some degree of relief in the course of a day?

Mr. BRAY. It depends on the flights. We generally try to—they do work a little more than an 8-hour day on average. Their flight time average was about 5 hours a day, so they will have a little downtime within the airport.

But as we all know, when you travel, you know, with weather and other issues with airplanes, sometimes it is hectic. But we do work with them very assiduously to make sure they have the downtime on their days off.

We have a certain amount of training days scheduled every quarter. We have a certain amount of what we call non-mission status days. So they don't fly all the time. We try to get them in the office to help with their training. We are very strong advocates of training, so we have a number of initiatives to help with their downtime.

Mr. GREEN. Are you receiving—without getting into a specific complaint—complaints about downtime still?

Mr. BRAY. Sir, I don't believe—I am not. I don't hear much of that when I engage with the FAMs on—either at the breakfasts or in the advisory councils.

Mr. GREEN. Are marshals permitted to identify themselves to members of Congress?

Mr. BRAY. That is up to them, sir. I mean, certainly.

Mr. GREEN. Is it a violation of any rule to do so?

Mr. BRAY. Not that I am aware of, sir.

Mr. GREEN. I ask, because a person has identified himself as a marshal to me. I have talked to more than one, I think. And perhaps it is just the way that I look that causes people to tell me their woes, but I will tell you that that is a concern that has been expressed to me by a person who represented himself to be a marshal.

I will tell you, I did not check the ID of the person, but, you know, if you can look like a marshal, this person looked like a marshal, okay? So there are concerns about the downtime.

Let me move quickly to something else. Protecting the protectors is the style of this hearing. We have had recent applications for positions. Is it true that you had about 17,000 applications?

Mr. BRAY. Yes, sir, it is true.

Mr. GREEN. And my assumption is that you had a great deal of diversity within the applications. Tell me what—currently, what is the breakdown statistically with reference to ethnicities within the force?

Mr. BRAY. Sir, I don't have that in front of me, but it is not as good as we would hope.

Mr. GREEN. Is it true that we have about 4.7 percent women?

Mr. BRAY. I believe that is true. Yes, sir.

Mr. GREEN. Can you go on and give me any additional intelligence?

Mr. BRAY. I don't have it in front of me. We will certainly get that back to you. We can get that back to you today, I believe.

Mr. GREEN. Is it true that about 73 percent of the workforce is Anglo?

Mr. BRAY. I think that sounds about right, sir.

Mr. GREEN. Is it true that you do not have an African-American, Hispanic, nor do we have an Asian that is an SES?

Mr. BRAY. That is not true, sir.

Mr. GREEN. Help me.

Mr. BRAY. We do have—several African-Americans are SES, either as field office supervisors or in the headquarters staff as assistant directors.

Mr. GREEN. And how many do we have totally SES?

Mr. BRAY. African-Americans?

Mr. GREEN. No, no, total positions.

Mr. BRAY. Total within the Federal Air Marshal Service?

Mr. GREEN. Yes, yes.

Mr. BRAY. I believe there are 21.

Mr. GREEN. Twenty-one? All right, well, would you be kind enough to give me a written response that will include the statistical breakdown on positions and various ethnicities?

By the way, I don't ask this question because I think that you have to be of a certain ethnicity to serve. I think all capable, competent and qualified persons should serve, if given—if they desire to and they apply.

So what I am interested in is making sure that all capable, competent and qualified persons will have the opportunity to serve. And we want the numbers to reflect it. We live in a world where it is not enough for things to be right; they must also look right.

And we want to make sure that, notwithstanding stats being right, that we have the proper appearance for work purposes to getting the job done, capable, competent, qualified persons.

I thank you for your responses.

Mr. BRAY. Thank you.

Mr. CARNEY. Thank you, Mr. Green.

I think we will start a second round here.

Mr. Bray, I want to follow up on something Mr. Dent was talking about, in terms of disciplinary actions. You mentioned, for example, a DUI would elicit a 30-day time off. Is that without pay?

Mr. BRAY. Correct. Without pay, without law enforcement privileges.

Mr. CARNEY. Okay. Now, how consistent across the various offices are our policies promulgated? And, actually, how consistent are they, in terms of time off, in terms of disciplinary, in terms of promotion, that sort of thing?

Mr. BRAY. To answer the first part of your question—because it is the difference between policy and promotion—but the policy, we actually have a unit called policy compliance unit that looks at that very issue with regards to time off, discipline actions, and those certain manners, where we work with the policy compliance unit and with the TSA office of inspection and TSA office of chief counsel to try to ensure that we do have equity across the entire spectrum of our offices for discipline matters.

As far as promotion, it is a competitive promotion process that we go through. And the persons that are interested in that do bid on their promotion. There is a panel that we get together of level of supervisors that review the applications, and then we go through that. There is a long process for that.

Mr. CARNEY. Is there a written guidance that goes out to all the offices, field offices for disciplinary administrative procedures?

Mr. BRAY. There is a general written guidance, yes, sir.

Mr. CARNEY. Okay. All right. And how you—your breakfasts with Bob, I guess, are how you kind of take the temperature in making sure that the—you know, the morale issue, I think, is being addressed, that that is one of the things certainly. And I really applaud your lines of communication there.

But what stuff do you take beyond that to make sure that these field offices are run effectively, you know, that they are following the procedures? And by the way, you might want to follow up with how much latitude does a district or a field director have?

Mr. BRAY. They do have a certain amount of latitude, but each office is inspected on a regular basis by the TSA office of inspection. They look at morale. They look at compliance to the rules. They look at compliance to the administrative standards. They are looking to make sure everybody is performing to their physical fitness standards and their re-qualification scores on a regular basis.

They go through the office on a pretty thorough basis, and it is done on a regular basis. And we can also—they have been very helpful to us whenever we had an issue in their office where we wanted them to go out and look at a—do a special inspection. They respond to us. We get a report on that, and we will go over that report at my level with the various assistant directors to see what is going on in the office to make sure we are up to standard.

Mr. CARNEY. Okay.

Mr. Lord, how consistent are these rules applied, do you think?

Mr. LORD. That is a great question. Unfortunately, that was outside the scope of the review we undertook and issued in 2009. We focused on what processes, rules, procedures were enacted in response to the concerns raised by the air marshals. That would be the logical next step. To what extent are the procedures that were put in place? To what extent are they being adhered to? But that was outside the scope of the last assignment we did.

Mr. CARNEY. Mr. Adler, do you hear any problems of favoritism or discrepancies in terms of how folks are treated in various offices? Have you ever heard instances of that?

Mr. ADLER. Unfortunately, we have that in every agency. There isn't anything out of the ordinary or exclusive to the air marshals. You know, my membership consists of federal law enforcement officers that come from over 65 different agencies. And I will have one member from every agency who will assert that, will assert there is an inconsistent application of policies and procedures and favoritism.

Any time you involve people and egos and personalities, you are going to come across it. But there isn't anything that I have seen—and having my agency president here with me, who is my liaison with the air marshals—that was brought to my attention to say there was anything that we needed to address or discuss with Director Bray along those lines.

Mr. CARNEY. Okay.

I just kind of want to change the direction slightly, Mr. Adler. As you may know, the full committee held a markup a couple of weeks ago for H.R. 1881, the Transportation Security Workforce Enhancement Act. The focus of the act was not only TSOs, but all TSA personnel, including FAMS.

Could you please elaborate on your thoughts about providing the workforce a voice through employee representatives and collective bargaining?

Mr. ADLER. Yes. We previously opposed the position put forth—I think it was both by President Bush and Senator McConnell—in terms of the impact, giving TSA employees collective bargaining rights. In particular, it would somehow impact the president's ability to deploy these folks in a national crisis.

And we were offended by that commentary. You know, we consider union employees—and I grew up in a union family—as some of the most patriotic people in this country. Look at the military rolls. You know, who enlists in the service? Who are the first people to step up?

So I think allowing them collective bargaining rights is reasonable. It is what our country is about. It is about due process. It is about transparency and open dialogue. It is nothing to be intimidated by. It is nothing to suggest that there is going to be some sort of secret coup among the TSA screeners, to usurp the authority of the administration.

We support any vehicle that allows for this open communication, reasonable discussion on important issues that impact the workforce.

Mr. CARNEY. But what will this do for morale, giving them the same rights and lists more protections and compensation?

Mr. ADLER. I think it would be a tremendous elevation of morale. Now, in my situation, we are not a union. We are a professional association. Our membership and the air marshals who we represent are precluded from engaging in collective bargaining.

Some of what we do may seem to be similar to the function of a union, such as engaging elected officials, coming to hearings such as this, providing legal representation for our members. I think that vehicle in and of itself has been very important and very supportive to the air marshals.

So although not necessarily a collective bargaining situation, when you have a director like Director Bray, who has a real open door, things are great, and the membership feels as though their voice is being heard. Unfortunately, other directors aren't necessarily as receptive as Director Bray is to getting that stakeholder input, so that is where collective bargaining kind of makes it more of a formal setting, where they are somewhat required to engage, I guess, the collective voice of their workforce.

Mr. CARNEY. All right. Thank you.

Mr. BILIRAKIS. Thank you. Thank you, Mr. Chairman.

This question is for Director Bray and Mr. Adler. Could some quality-of-life issues and challenges faced by air marshals be addressed simply by increasing the number of air marshals?

Mr. BRAY. Clearly that would increase the quality of life. We would have to work with the Congress, because the Congress does have an interest in the amount of missions that the FAMS fly.

But, yes, that would be a definite benefit to our force. I mean, we do operate pretty much at maximum capacity for what they can do. And it would allow us more time for training and employee development and other areas. So, yes, I would be very strongly in favor of that.

Mr. BILIRAKIS. Mr. Adler?

Mr. ADLER. Yes, we completely agree. I think a lot of the issues that have been raised and that Director Bray and myself and FLEOA have been working on to address really are the result of a workforce that should be larger. You know, whether it is a health issue, it is a scheduling issue that we already hit upon, we would have more air marshals, better coverage.

Then they will be in a situation where they can take their annual leave, vacation time. The number of health and medical issues would be reduced. And, obviously, we would have more people to better protect air travel and airplanes and other modes of transportation.

So we fully support and recognize the real value to getting more air marshals within the service.

Mr. BILIRAKIS. Thank you.

One more question for you, Mr. Adler. How does the outreach conducted by the FAMS's leadership compare with outreach conducted by other agencies and departments in which you have members?

Mr. ADLER. Top-notch. You know, as I mentioned, we have 65—over 65 different agencies. We have come a long way. And I have touched upon it in my statement.



And not to reopen old wounds, but it wasn't the case back in 2003, 2004, 2005, where the director at the time wouldn't engage us, referred through the acronym for our organization as "fleas," and we have gone from that, you know, from the ridiculous to the sublime sort of thing and moved way past it, and now we have a great working relationship with the director.

Comparatively speaking, we generally have open-door access with most other agency directors. The difference is, I don't think—I think what really distinguishes Director Bray and puts him in a top category with maybe three other directors is the sincerity, the ability to listen and act upon what is recommended, and the follow-through. I think he takes the recommendations that we bring to him.

And, again, you know, every agency says they have their internal process to bring recommendations and raise them up through the ranks. They all have this process, this idea box, if you will. But the problem is, employees generally are reluctant to express their real views for fear of reprisal. If the supervisor doesn't like them, they are considered a troublemaker. And I think Director Bray had done a tremendous job getting past that, you know, that whole, "Oh, maybe I shouldn't say something. It could hurt me."

I think the environment has changed, and greatly to his credit. And I think that is what really distinguishes him, whereas some of the other directors, it is more of a smoke-and-mirrors relationship.

Mr. BILIRAKIS. Very good. Thank you, sirs, for your testimony. And thank you for your service. And I also want to commend you for hiring veterans. And we can even push it up a little higher. Thank you.

Mr. ADLER. Thank you, sir.

Mr. CARNEY. Thank you, Mr. Bilirakis.

Just a quick question. Mr. Adler, are you related to Mr. Bray? [Laughter.]

Mr. ADLER. We are about the same height.

Mr. CARNEY. I see. All right. All right. You know, it is not often we have somebody speak so favorably of a director. And that is to your credit, Mr. Bray, and it is—just struck me, frankly, from this position, because we don't see it very often.

All right. Mr. Pascrell, for 5 minutes.

Mr. PASCRELL. We sure don't see it very frequently, but it is a good feeling to know that. I mean, I hope we can say that a year from now, and then it will be really good to say.

Director Bray, who determines whether information is going to be categorized as sensitive security information or classified information? Who makes that determination? Just give me a brief answer, if you would.

Mr. BRAY. Sir, if there are any questions like that, TSA has an office. It is called the SSI office. They make that determination.

Mr. PASCRELL. So the sensitive security information is determined by the sensitive security office?

Mr. BRAY. Yes, sir. And there are some that is obvious. Our mission status, our flights that we are on, things like that, that is classified. And then there are others, as you say, at the SSI. And if

there is any question about that, it would be referred to—for an opinion from the SSI.

Mr. PASCARELL. They have ultimate authority? In other words, that doesn't have to be certified by the director of TSA, the administrator?

Mr. BRAY. My understanding is no. I will get back to you on that.

Mr. PASCARELL. Let me ask you this question. You mentioned in your testimony the fact that check-in and boarding procedures have been modified to help preserve air marshal anonymity. Is that correct?

Mr. BRAY. That is correct. Yes, sir.

Mr. PASCARELL. The majority of those changes, though, require action on the part of the air carrier. Is that not correct?

Mr. BRAY. That is correct, sir.

Mr. PASCARELL. So that is out of your hands, basically, is it not?

Mr. BRAY. We work in concert with the air carriers through the aircraft operators security plan to set that up. And there was a long process to change it. That is why it took us a while to change the boarding procedures, because we had to work with all of our stakeholders in that plan.

But, sir, yes, you are correct.

Mr. PASCARELL. What is being done to ensure that airline personnel are fully aware of these new procedures and are training their employees—are they training their employees on how to interact with air marshals in an appropriate manner? What is being done to get to the goal line?

Mr. BRAY. Sir, initially, we issued a security directive on this program. And then we also have aggressive outreach with the various airlines, as far as—and then we have feedback from the FAMS. If they have an issue, they can call our liaison section immediately and bring this up to our liaison section, who reaches out to their points of contact from the various airlines.

But the issue we do see is the amount of turnover at the various gate agents that we deal with.

Mr. PASCARELL. On a scale of one to five, how would you say all, you know, the airlines are cooperating or not cooperating, five being the highest form of cooperation?

Mr. BRAY. I would say very close to five, sir.

Mr. PASCARELL. Very close to five?

Would you agree with that, Mr. Adler?

Mr. ADLER. In terms of airline cooperation with not just the air marshals, but with the total law enforcement workforce, I would give them a lower rating.

Mr. PASCARELL. What rating would you give them?

Mr. ADLER. You know, it is a very frustrating point, because every airline and every airport is different in terms of how they engage us and interact with us. So one may get one—get a number one rating at one particular airport. One airline may get a two or a three.

Mr. PASCARELL. Are they consistent?

Mr. ADLER. No, they are not.

Mr. PASCARELL. So, in other words, it depends on which airport you go out of or come into, it is going to determine whether the—part of the determination of cooperation?

Mr. ADLER. Yes.

Mr. PASCRELL. Do you ever get any hostility from the carriers?

Mr. ADLER. Absolutely.

Mr. PASCRELL. Well, give me an idea of what kind of hostility. You know, you are providing service to the airlines. Some are going back to one we got rid of, rent-a-cop, you know? So you are giving service to the airlines. And what is the reaction at some of the airports?

Mr. ADLER. The reaction is, while they may publicize their intent where a passenger's safety comes first—and we all hear those announcements in the airport and on the planes—I think sometimes the reality tends to be different.

And an example, to address your question, we have to interact with the gate. You know, there is obviously a showing of identification. They are required to indicate if other people are on the plane.

And the thing is, in going through this process, and without my getting too specific on it, what happens is that, when they engage us, if we show identification, they may make a ridiculous display, hold up our credentials. Obviously, it is not the greatest environment, whether you are at the ticket counter—

Mr. PASCRELL. They hold up your credentials?

Mr. ADLER. They will hold them up—

Mr. PASCRELL. Do they make an announcement that there is an air marshal going onto the airplane and where he is seated?

Mr. ADLER. What they will do sometimes, they will—I will ask them, well, you know, about the boarding process and that has all been changed? They will sometimes call you on a P.A. system. They will say, "Mr. Adler, please come to the counter." So everyone now obviously is looking, and now I sometimes think, "Maybe I should start limping," as though I need pre-boarding, you know, help or something.

Mr. PASCRELL. And you have still got fellows that have not gotten their jobs back because they told us about certain situations? And here the airline is calling you out? Oh, okay.

Thank you, Mr. Chairman.

Mr. CARNEY. Thank you, Mr. Pascrell.

Mr. Green for 5 minutes, please.

Mr. GREEN. Thank you.

Let's continue with something that was broached briefly, and that has to do with disciplinary action. It is generally perceived that, if you ought to have consistent disciplinary action, you have to have some codification of policies and procedures with reference to disciplinary actions or persons will perceive the actions taken with reference to discipline as unfair, because it can be argued that one person breached one rule and received a certain act of discipline and another received a different act of discipline.

So can you tell me, do we have codified rules with reference the disciplinary actions and policies and procedures?

Mr. BRAY. We don't have specific codified rules that says, "If you do this, you will get this," because we engage what I call the whole person concept within the FAMS and TSA, to look at—if you have been in one airport, you have been in one airport. Everything is different. You can't put a set of rules in for each action.

But we have general parameters that we view. And, as I said, we have the policy compliance unit and the office of inspection that review the action. And they make the recommendation on the proposed discipline. And then it is reviewed by these supervisors in the offices and the office supervisors at headquarters to look at that, as I said earlier.

But we do have certain rules, like I said, when a person is arrested for DUI, it is normally, barring exigent circumstances, would be 30 days off—

Mr. GREEN. If I may, is it your opinion that the disciplinary actions are consistent across the force with this paradigm that you have?

Mr. BRAY. Sir, I believe it is as consistent as an organization our size can make it and with the number of officers we have across the country. I meet with the people that run the policy compliance unit on a very regular basis to go over just what you are talking about, to ensure that the discipline that has been meted out under my watch is consistent.

So we are making strides on that. We constantly look at that. And we discuss—and as I said earlier, we had a 3-day training session for all of our frontline supervisors, just on that—one of the topics covered was that very issue, to make sure that the discipline for one person who say they have missed a flight was equivalent to the person that—another person that missed a flight.

And we try—there are always exigent circumstances. The reason why we have to look at on a very case-by-case basis, because there are always exigent circumstances.

Mr. GREEN. Would it surprise you to know that police departments do codify these things and that they probably get fairly good results as a result of codification? Would it surprise you to know this?

Mr. BRAY. No, sir. That would not surprise me.

Mr. GREEN. Let me move quickly to another area. We talked briefly about the stats. And I have been accorded some information that I would like to just go over with you.

We talked about the SES positions. And I would like to ask you now about females who are in the SES positions. How many females do we have?

Mr. BRAY. Off the top of my head, two, sir.

Mr. GREEN. Two?

Mr. BRAY. Sorry. Off the top of my head, two, sir.

Mr. GREEN. And when were they hired, please?

Mr. BRAY. Both were at the beginning of the organization.

Mr. GREEN. At the beginning? Would that be prior to April 19, 2009?

Mr. BRAY. I am sorry, sir. I believe it is three now.

Mr. GREEN. Three?

Mr. BRAY. Yes, sir.

Mr. GREEN. And were they hired prior to April 19, 2009?

Mr. BRAY. Yes, sir, they were.

Mr. GREEN. Okay. Are you allowed to give their names and not—I don't want you to give them out here, but after the hearing? Are you allowed to give their names?

Mr. BRAY. Absolutely, sir.

Mr. GREEN. I ask because there may be some incorrect information that I would like to have an opportunity to correct that connotes that, with reference to females, yes, you have some. But let me go even further and ask you about minority females. How many do you have?

Mr. BRAY. Sir, I don't know that off the top of my head. I have some data in front of me that shows minority—that shows that we have—of all FAMS, 167 females within the organization.

Mr. GREEN. Would it surprise you to know that you have zero?

Mr. BRAY. Zero supervisors?

Mr. GREEN. SES, minority females.

Mr. BRAY. No.

Mr. GREEN. Would it surprise you to know that you have zero Hispanic females, zero Pacific Islanders, zero Alaskan natives?

Mr. BRAY. Sir, no, but if I could comment for a minute on that—we do have a diversity program within our organization. I attended and we did work with the women in federal law enforcement to do a barrier analysis on why that very—on those issues that you are rising, have arisen within the organization and as—and we would be happy to deliver that very analysis study to you.

Mr. GREEN. Because my time is almost up, would it surprise you to know that you have zero African-American?

Mr. BRAY. SES, sir?

Mr. GREEN. Yes, sir, SES.

Mr. BRAY. That is not correct, sir.

Mr. GREEN. All right. Okay. Well, I would like to, at the end of the hearing, get that information.

Mr. BRAY. We will provide you with the great statistics.

Mr. GREEN. Thank you. Thank you.

Mr. CARNEY. Okay, the chair now recognizes the gentlelady from Ohio, Ms. Kilroy, for 5 minutes.

Ms. KILROY. Thank you, Mr. Chair.

Mr. Director, I would like to follow up on some of these questions with respect to the hiring practices and diversity in the ranks of the air marshal service. Do you have hiring and retention goals for retaining a diverse employment in the air marshal services, to receive employment in the air marshal services?

Mr. BRAY. First, it is necessary for me—our hiring is managed by the TSA office of human capital, so they manage our initial hiring or recruitment and our personnel, as far as pay and those kind of matters. But we do have a very strong, I think, diversity outreach program.

I attended, as I said earlier, the women in federal law enforcement conference in Tucson, Arizona, recently. Sunday, I leave to attend the National Organization of Black Law Enforcement Executives down in Norfolk. We have a very large contingent that attends. I think we have almost the largest contingent from any law enforcement agency that attends these diversity conferences.

We do that to recruit people. We do that to let everybody know that we think we have a great organization, that you would be valued if you work here. So we do a great deal of outreach.

We have worked with the White House initiative on historically black colleges and universities for recruiting. And we do have an active recruiting program.

Our issue that you are referring to as far as statistics is the way the agency was stood up. When the agency was stood up in 2002, we were under a mandate to quickly hire a large number of people. And at that time, the direction that was taken was to hire a large—was to focus on people with former law enforcement experience. That really narrowed the pool of people that were—who were eligible for that—our jobs.

So now we have greatly expanded our pool. So like I said, last year, we hired 38 percent veterans. We do recruit actively in minority programs. And so we are trying to make progress, but we don't have that much turnover.

Ms. KILROY. Can you explain to me quickly what your hiring authority is vis-a-vis TSA and how that works?

Mr. BRAY. Well, we are an integral part of TSA, so TSA—last year, we used to do our own hiring under a private contractor. Now, for efficiency of government, to enable us to focus on our mission more fully, that was assumed by the TSA office of human capital under another private contract, where they recruit nationwide.

Ms. KILROY. And who is the private contractor?

Mr. BRAY. The private contractor now is Lockheed Martin.

Ms. KILROY. In implementing the agency's operations, how are you utilizing new threat information to modify flight coverage goals and the flight schedules of the air marshals?

Mr. BRAY. Every day, we have either in person or a teleconference with other senior leaders throughout the federal government to go over that very information.

And based on that, we have a transportation security operations center who does our flight scheduling, and they also are a 24/7 domain awareness center for all of TSA. They monitor the aviation environment and many other environments, the national infrastructure protection of the organization, and they focus on the mission scheduling.

As you saw in 2006, when we had the London liquid aerosol gel threat, on American carriers that were destined for the United States, there was a plot to blow up airlines en route to the United States. At that time, we had a very small handful of federal air marshals in Great Britain.

And overnight, through the flexibility we have in our scheduling program and the people we have out at the freedom center, we were able to get a large number of federal air marshals to handle all the flights from Great Britain to the United States for a period of time until the threat subsided with a number of arrests over there.

And we do have that flexibility. We are an intel-driven, risk-based operation, so we do routinely, on a very routine basis, examine where we are flying and go over our flights with the intel community to see what areas we should be covering, whether it is domestically or internationally.

Ms. KILROY. And that information gets out to the air marshals that are on the front lines?

Mr. BRAY. Yes, especially for the air marshals flying internationally, we have threat briefings for them.

Ms. KILROY. Okay. I think my time—I yield back.

Mr. CARNEY. Okay.

I think we will do one quick round of questions. Votes will be called in about 15 minutes or so; that is the last word.

And, Mr. Bray and Mr. Lord, what would you say would be the optimal number of FAMS to have across the system?

Mr. BRAY. I think in the studies—I think in the studies we have done, it would be approximately double what we have right now.

Mr. CARNEY. Approximately double? Approximately double? Mr. Lord?

Mr. LORD. First of all, I don't have a number, but I think, in answering that question, you have to evaluate FAMS's contribution to providing security relative to other related protective measures, such as hardening of cockpit doors and arming flight crews. I don't think you can answer that question in isolation without taking a more holistic approach to this.

Also, I always pose the question—the FAMS are really doing their job. They are invisible to the flying public. So the question I have is, obviously, people know they are out there. They don't know who they are provides a deterrent value.

Could you achieve the same deterrence level, yet reduce numbers? Kind of a different question. You know, if—since they are invisible to the flying public, could you achieve the same level of deterrence with a different level, whatever it is?

Mr. CARNEY. That was actually my next question.

What do you think, Mr. Bray? And I know you would probably say no, but—

Mr. BRAY. I would oppose that. I think that would decrease our flexibility to be able to respond to incidents such as either Hurricane Katrina, where the New Orleans airport was shut down. We had to restore order down there. And when you saw all the people that were being airlifted off the roofs and deposited at the airport, there was no plan.

Several hundred FAMS went down there, restored order. They also helped all these people who were either injured or infirm get on flights out of the area so they could be helped medically or otherwise in other areas. We would lose that flexibility.

And I think the enhancement that you have talked about here with the number of FAMS and our possible changes to our pay would greatly enhance this organization.

Mr. CARNEY. Okay.

Mr. Adler, I was kind of struck by your narrative about you getting called to the gate, that sort of thing, to show your credentials. Obviously, that is horrible and it shouldn't happen.

Now, can you provide the chair at some point very soon kind of a list of those airlines that do it well and those who aren't so good at protecting your anonymity?

Now, I also sit on the Transportation Infrastructure Committee, so, you know, that really kind of steps in both of my areas of interest. So, please, provide that. I would certainly hate to see that that is kind of—either a problem within an airline's policy or perhaps it is just, you know, some desk person who doesn't really understand what is going on here.

But if there is kind of a trend in some airlines versus others, that we really need to know that if we are going to protect the flying public. So I really appreciate that.

Mr. Bray, you know, following the lines of the questions in terms of hiring minorities and females, how many, for example, female applicants do you get annually? How many minority applicants do you get annually?

Mr. BRAY. Sir, I don't have that information in front of me. We can provide it.

If I can segue for just a minute—

Mr. CARNEY. Sure.

Mr. BRAY. —there is a boarding—different boarding procedure for federal air marshals than there is for other federal law enforcement officers. So without going any further, I need to emphasize that. And we will get you the statistics on our applicants.

Mr. CARNEY. Okay. Thank you so much.

Mr. Bilirakis?

Mr. BILIRAKIS. Just one question, Mr. Chairman, for the panel, well, for Mr. Adler.

The Government Accountability Office interviewed 67 air marshals from 11 field offices while conducting its survey. GAO reported that all individuals interviewed commented favorably about the workforce enhancements made by the Federal Air Marshal Service. Please discuss the improvements your members have experienced over the last several years.

Mr. ADLER. Well, one of the issues we have been speaking about, which is just freedom of speech in and of itself, has been a tremendous, well, factor into increasing morale and has improved.

Prior to Director Bray, Director Brown was on. He did a very good job, as well. And he inherited what I have referred to earlier as the splinted workforce. He sort of got—kind of overcame that very repressed, sort of—you know, I refer to it as Dean Wormer from "Animal House" sort of environment, where you feel like you are under double-secret probation.

So, certainly, first and foremost, being valued for what you do was something that came about that was a very positive change.

I think scheduling was a big issue, and it comes back to your earlier question, in terms of, do we need more air marshals? You know, the big—the number-one issue we were wrestling with, probably even prior to Dr. Bray coming on, was the scheduling dilemma and how it impacted the air marshals in terms of their quality of life, their health issues, leave, and even just the attrition rate, how it would impact. And they would say, "Well, I am going to go to another law enforcement component within DHS, and I will work Monday to Friday, have a nice take-home car, and it is just a different lifestyle."

So I would say that their commitment to working the schedule—and some of the things that Director Bray discussed, such as implementing training or other ground-based assignments, so you don't have an air marshal flying 5 days straight and just being completely exhausted.

I mean, everyone up here knows the airlines do not run on time consistently. So I think the question—it was a question earlier that maybe Congressman Green has asked in terms of the down time.

It is such a crazy existence, because I have seen air marshals literally land and have to run to catch a flight, only to get there and then maybe find out it is delayed, or maybe the plane isn't, in fact,



in the hangar. And it is just such a kind of “fly by the seat of your pants” sometimes existence because of the nature of the airline scheduling.

So I think the improvements have been recognizing the impact that the rough schedule has and coming up with these other assignments, encouraging people to express their views, whether it is the breakfast function that Director Bray does.

He also engaged us—and Director Brown did this, as well. Director Brown set up a forum where we set up a FLEOA air marshal working group, and we have representatives from across the country come down and meet with the director. Director Bray has continued that forum. That was also a very positive improvement, in terms of the workforce there.

Mr. CARNEY. Any further questions?

Mr. BILIRAKIS. I yield back.

Mr. CARNEY. Okay, thank you.

Mr. Green?

Mr. GREEN. Surely. Thank you, Mr. Chairman.

Mr. Bray, if you find when you peruse your statistics that you have a dearth of female applicants, I would be interested in knowing why. I would be interested in knowing if there has been some conclusion that females don't want to do this type of work. I would be interested in knowing how you go about the process of publishing your applications. I would have any number of questions about why you have a dearth of female applicants.

Mr. BRAY. We will get that information to you. But as I—we did do a barrier analysis on why we don't have enough female applicants. And we—there were many interesting points in there. One of those is how the organization was stood up. Another is perception of the applicants.

Mr. GREEN. But what does that mean, how the organization was set up?

Mr. BRAY. When there was a great emphasis on law enforcement experience to be eligible for the job in 2002—

Mr. GREEN. Which would then connote a dearth of—well, fewer females, because you have more males that are already in the field? Is that what you are saying?

Mr. BRAY. With law enforcement experience, yes, sir.

Mr. GREEN. Right. So you start out with a concern, if you will, with reference to females being fairly represented in the applicant pool.

Mr. BRAY. Correct. Part of it is perception of the applicants of the agency, that it is all just flying, and it is very mundane, but we saw a great difference—a divide versus the people who were—the females who are on board and doing the job. They look upon the job very favorably. So part of it is the communication of how we advertise and recruit.

But as far as how we do advertise the job, it goes on the OPM Web site, opm.jobs, along with everyone else, so it is out there for everyone to look at.

Mr. GREEN. Thank you.

Let me ask Mr. Lord a question rather quickly. Mr. Lord, sir, do you maintain statistical information on the number of female applicants or the number of females who are currently serving?

Mr. LORD. Yes, we maintain statistics on the number of female employees currently employed at our agency at multiple levels of the organization.

Mr. GREEN. Are you familiar with the position that I called to your attention, the SES position?

Mr. LORD. I am familiar with the position, since I am one of them, but as far as how many female SES we have, I would have to get that to you.

Mr. GREEN. Do you know of any that are African-American?

Mr. LORD. Yes.

Mr. GREEN. SES?

Mr. LORD. Yes.

Mr. GREEN. Any that are Hispanic?

Mr. LORD. Yes.

Mr. GREEN. Okay. Let me go back to you, Mr. Lord, with this question. You posed the question of deterrent by virtue of the means by which the employees actually perform their service. And your question, your query is whether or not we might reduce the force because of the means. Is that correct?

Mr. LORD. Yes, I just phrased the question?

Mr. GREEN. I would like for you to answer that question, if you would.

Mr. LORD. Okay. I am sorry. Could you repeat it again, sir?

Mr. GREEN. Well, the question that you asked yourself.

[Laughter.]

Mr. LORD. What is the right level? What is the right number?

Mr. GREEN. No, you made the statement. Your basic premise was, given that they secret themselves on the plane, given that they are not readily identifiable, because of the deterrent impact of knowing that they may be on the plane, can we reduce the force? I think that accurately reflects your commentary. Is that a fair statement?

Mr. LORD. Yes, sir.

Mr. GREEN. Okay. Now, answer that question. You posed it.

Mr. LORD. My position was it is important to ask that question. I would have to think about that a little more carefully before offering any option on what is the appropriate level. I think—but I think it is important to think about when considering any proposal—

Mr. GREEN. In thinking about it, let me ask you this. If we do this—let's assume that we impact—we maintain the same level of deterrent, we will, in fact, as a matter of fact, diminish the level of response because we will have fewer people. True?

Mr. LORD. You could—that is a fair argument.

Mr. GREEN. Now, listen now. You are going to force me to ask you some other questions that will cause you to say yes to that. Now, if you have fewer people and if you have incidents that you have no way of controlling and you have no way of knowing where they will occur, you have to conclude, as a matter of fact, that you are going to reduce the opportunity to respond with a physical person who is a trained air marshal?

Mr. LORD. Yes, I will agree with that.

Mr. GREEN. Okay. All right.

I thank you, Mr. Chairman. I yield back.

Mr. CARNEY. Thank you, Mr. Green.

Ms. Kilroy?

Ms. KILROY. Thank you, Mr. Chairman. As a member of the flying public and, with this job, a rather frequently flying public, I have got to say, I have to agree with some of the poll participants in the poll that we received who indicate that they place a high value on having air marshals on the flights, and that it provides a certain measure of confidence in the air flying public knowing that we have, I hope, a fully staffed air marshal service.

And I certainly would not want to see us have to reopen the kind of debates over—of whether or not we should have armed pilots or other airline officials on planes, because they get worried because we have a decrease in the air marshal service. That is not a law enforcement opinion, just the opinion of somebody who flies and has listened to some of the debate over the years.

And I apologize if this issue has already been covered, Mr. Chair, but the issue of communication ability between the federal air marshals on flights or air and air-to-ground communications, I understand that air marshals have reported experiencing frequent failures from their personal digital assistants, their PDA communication devices.

And I wanted to know how the air marshal service is responding to that reported problem and makes sure that necessary communications in the case of an incident and request for help, that that can be there for the air marshals.

Mr. Bray?

Mr. BRAY. So we do have a contract with the carrier, and the carrier will begin issuing the new devices. And the federal air marshals in the various offices will have an option of several devices that they can choose.

So previously they only had one device, and that device was last issued in 2005. It should have been replaced in 2008 at the latest. So, for a variety of budgetary reasons, it is not being replaced until now, but the replacement is underway.

And the good news about that is, is that now, under the contract, we have devices that will be replaced by the vendor every 2 years. They will no longer have the program where a FAM is using an obsolete device.

The other ancillary portion of that is, you mentioned the air-to-ground program, which—and, you know, we all fly, and we are all aware that there is a commercial service being installed on all—on most major carriers, starting now, and it will take a couple years to be installed, but we have worked with all the carriers and the provider of that service to get what they call the FAMs priority service so that, if they have an incident on the plane, they need to report to either the federal air marshal operations center or their field office. They will be able to do that.

Because what we are concerned about is that, if we have a 9/11, we want to be able to communicate both ways, either have them report to us or we report to them. And, obviously, if there is a 9/11, that service will be overwhelmed, so we have to have an ability to cut through the chatter, if that is what you want to call it, and give our FAMs the ability to communicate.

So we think, with the new devices and with the services being rolled out that we will be subscribers to, and the priority service, that we will have a good, robust service for the federal air marshals.

Ms. KILROY. I think, mentioning 9/11, one of the lessons that I think law enforcement, public officials need to take away from that is that communications during an emergency is of the highest importance. And interoperability and, in this case, even between air marshal to air marshal on a flight, needs to have a high importance.

Mr. BRAY. I completely agree with you. And that is one purpose for our—when I talked about earlier, about our freedom center, our operations center, which is a 24/7 center in northern Virginia, they have people from the FAA, customs and Border Patrol, Secret Service, NORAD, others, the Department of Defense, so we have that environmental awareness.

If any incident occurs throughout our domain, through the aviation domain or any other domain that we are concerned with, we get very quick reporting into the operations center. And then part of the job is to get it back out to our federal air marshals, our federal security directors, and everyone that was in TSA to make them aware that something is happening in L.A. or something has happened on a plane, and we want everyone else to raise their awareness of that incident. So that is one of our core missions.

Ms. KILROY. Thank you. Appreciate that.

Yield back.

Mr. CARNEY. Thank you, Ms. Kilroy.

I will end my questions on this. This is for everybody in the panel. You guys have come a long way, Mr. Bray, and I am very pleased to say that, and you should be proud.

And I just wanted to get a sense from everyone, what do we need to do? What else is—you know, we always know we can always do more. What are your priorities? Where do you think we ought to be, Mr. Lord and Mr. Adler?

So, Mr. Bray, please?

Mr. BRAY. I think we have discussed them. We need to focus on workforce enhancement. We need to continue to focus on the ability to train our people.

Mr. CARNEY. Workforce enhancement, such as?

Mr. BRAY. Training.

Mr. CARNEY. Okay.

Mr. BRAY. Training, the administration proposal for 1881. And Jon and I—Jon Adler spoke about that, to continue to build our workforce for the future, to give them all the morale-building items, whether it is the training, the workforce, and continue to engage our workforce to build for the future.

We have made great progress, but we can't ever think that we are finished. I think, as our opposition changes, as the terrorists change their tactics, we have a training element. We need to get that out to the workforce to make sure they are aware of the new things that are occurring, whether it is the bombings in Indonesia or the assaults in Mumbai, and we had FAMs in Mumbai when that occurred.

So the first thing we do is make sure that they are okay, that they are safe, and work with the airlines to get them out of there. So those are the issues I try to focus on during my tenure.

Mr. CARNEY. Mr. Lord?

Mr. LORD. We commend Director Bray for adopting a continuous improvement philosophy and maintaining the 36 task teams devoted to various improvement areas. We think that is really important to sustain the progress that was initiated under the former director.

Mr. CARNEY. Mr. Adler?

Mr. ADLER. I think it is continuing with all the progress that we have all discussed today and all the very positive things Director Bray has done.

But in addition to it, in going back to Ranking Member Bilirakis' comment in terms of the need for more air marshals, we are going to fully support that, in terms of increasing the number of bodies and the funding. That would obviously alleviate and address some of these issues. So I think that would certainly help, as well.

And, also—and I think, coming back to Congressman Green's point, in terms of addressing Mr. Lord on the question of deterrence and so forth, I think the perspective that needs to be maintained—and I think Congressman Green hit it was, not only are air marshals providing a deterrent effect, a role, they are also a response vehicle to respond if something happens. And that needs to be considered, as well.

In terms of measuring how effective they are, it is important to keep sight on not only the scorecard in terms of how many times or how many incidents occur, but how well trained and able are they?

And if you look at the training, they are probably, in a tactical sense, the best trained in federal law enforcement. They need to maintain that level of training so they can respond and they can do what the public expects them to do and maintain that public confidence through superior training, proper scheduling, taking care, and addressing health issues, and keeping the workforce at a size that is workable, where we don't hit the wall and suddenly collapse.

Mr. CARNEY. Very good.

I want you all to know that this committee and subcommittee is very open to working with you. We want to make sure that the flying public is safe. And we know that there are sometimes constraints on candor, in terms of actually saying publicly what you need, in addition to what you are allowed to have, but don't ever hesitate to let us know that.

With that, Mr. Bilirakis?

Mr. BILIRAKIS. Just wanted to thank the presenters on a very productive, informative hearing. Great questions from the panel, as well. And we will pursue this, and we want to continue the conversation.

Thank you very much.

Mr. CARNEY. Mr. Green, any further questions?

Mr. GREEN. No further questions, but I do appreciate the opportunity to express my gratitude to those who serve and to Mr. Bray. Tough job, difficult circumstances. Great appreciation for what you

do. And, of course, I am always in awe of what the people who monitor, Mr. Lord, are capable of providing by way of intelligence.

I thank you, each of you.

And, Mr. Adler, thank you for your comments, as well.

Mr. CARNEY. Ms. Kilroy?

Ms. KILROY. —communicated and ask that you communicate that to the air marshals who do the job, who fly every day. I understand sometimes there may be morale issues or they may think they are anonymous and unseen and unappreciated, but at least today let them hear from us that that is far from the case.

Thank you.

Mr. CARNEY. Okay, thank you.

And I do want to thank all three of you for your valuable testimony and certainly members for their questions. As Mr. Bilirakis said, there were good lines of questioning today.

The members of the subcommittee may have additional questions for you. And if they do so, please respond in writing quickly. Don't let it hang out there. We get a little bit antsy about stuff like that.

But with that, we stand adjourned. Thank you.

[Whereupon, at 11:50 a.m., the subcommittee was adjourned.]

#### FOR THE RECORD

PREPARED OPENING STATEMENT OF THE HONORABLE BENNIE G. THOMPSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI, AND CHAIRMAN, COMMITTEE ON HOMELAND SECURITY

Since the tragic events of 9/11 and the increased dependence on the Federal Air Marshal Service, the Service has faced a series of personnel challenges including:

- Staffing up from 33 Marshals to thousands;
- Putting effective and well communicated personnel policies in place that empower and aide the Marshals, not hinder;
- Recognizing the variety of skill sets and experiences the employees bring to FAMS and ensuring the effectiveness of their training;
- Ensuring the workforce can report waste, fraud, abuse and concerns without fear of retaliation; and
- Confronting on-going quality of life issues for the growing workforce.

Addressing these challenges has not been easy. But I think it's safe to say that the FAMS has come a long way.

After a downward spiral with countless complaints and concerns, the Service realized that they needed to turn the corner and fix the considerable damage that had been done to its workforce morale and reputation.

Steps have been taken to engage the workforce and also to produce better policies on schedules, flight check-ins and boarding, dress codes and other matters. While better, there is always room for improvement.

Now, we are faced with charting a way forward.

To do so, the Service needs to properly oversee the execution of its improved policies and refine them as necessary. FAMS must have a proper and fair personnel system, with clear policies and adequate tools and resources. They must continue to recruit the best and the brightest and diversify its ranks—not only among the Air Marshals but in Management positions.

Further, the connection and collaboration between Headquarters and Field Offices should strengthen and stovepipes must be abolished. FAMS must continue to communicate, engage and empower its employees.

And lastly, I would be remiss if I did not raise the fact just two weeks ago the Full Committee passed the Transportation Security Workforce Enhancement Act. This bill would provide employee protections and rights to ALL employees of TSA, including the Air Marshals. All TSA workers need to have whistleblower protections in the name of security—so that they are able to report security concerns without fear of losing their jobs or retaliation. They also deserve the right to collectively bargain over items such as uniforms, access to training, leave selection procedures and overtime—this affords them an active voice in their workplace while providing and

maintaining the needed flexibility for scheduling and other matters by management. Nearly 69,000 federal law enforcement officers currently have these rights.

I look forward to listening to our witnesses' testimony today and understanding their thoughts about the progress FAMS has made in regards to its workforce and workforce policies. But most importantly, I hope to learn and engage in a discussion on where we can all go from here.

Thank you.

