

Tuesday's U.S. Court of Appeals for the Federal Circuit hearing at the University of Chicago

MacLean, Robert

Fri 10/5/2018 1:01 PM

Sent Items

To: Pekoske, David <David.Pekoske@tsa.dhs.gov>; Cogswell, Patricia <Patricia.Cogswell@tsa.dhs.gov>; McNeill, Ha <Ha.McNeill@tsa.dhs.gov>; Maxwell, Kathryn <Kathryn.Maxwell@tsa.dhs.gov>; Powers, Krista <Krista.Powers@tsa.dhs.gov>; Connolly, Liam <Liam.Connolly@tsa.dhs.gov>; Gorham, Ashley L <Ashley.Gorham@tsa.dhs.gov>; Christy, Amy <Amy.Christy@tsa.dhs.gov>; Propis, Ryan <Ryan.Propis@tsa.dhs.gov>;

Cc: Gaches, Michael <michael.gaches@tsa.dhs.gov>; Tom Devine <TomD@whistleblower.org>; Gary Gilbert <gary@gelawyer.com>; Flory, Gillian <Gillian.Flory@tsa.dhs.gov>; Neville Johnson <njohnson@jjllplaw.com>; Peter Noone <pnoone@averydooley.com>; Larry Berger <lberger@lbfedlaw.com>; Yeager, Robert <Robert.Yeager@tsa.dhs.gov>; Piekarsky, Kellie <Kellie.Piekarsky@tsa.dhs.gov>; Bobo, Darci <Darci.Bobo@tsa.dhs.gov>; Mulligan, Scott <Scott.Mulligan@tsa.dhs.gov>; Busch, John <John.busch@tsa.dhs.gov>; Snow, Daniel <daniel.snow@tsa.dhs.gov>; Flockhart, Wendy <Wendy.Flockhart@tsa.dhs.gov>; Porter, Clyde <Clyde.Porter@tsa.dhs.gov>; Jordan, Tangela <Tangela.Jordan@tsa.dhs.gov>; Leeman, Chris <chris.leeman@tsa.dhs.gov>; Han, Peter <Peter.Han@tsa.dhs.gov>; Warfield, Lon <Lon.Warfield@tsa.dhs.gov>; Olson, Amy <Amy.Olson@tsa.dhs.gov>; TSAHotlineComplaints <TSAHotlineComplaints@tsa.dhs.gov>; TSAHotlineComplaints <TSAHotlineComplaints@tsa.dhs.gov>;

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Good afternoon Admiral David Pekoske,

It's unfortunate that you had to end our U.S. Office of Special Counsel (OSC) negotiations due to the fact I do not wish to ever stop serving and protecting my country.

You've been misinformed about Tuesday's U.S. Court of Appeals for Federal Circuit oral argument hearing in Case No. 18-1068 (high-performing whistleblowers' lost within-grade increases and promotions) at the University of Chicago, not to be confused with the now-affirmed Case No. 18-1037 (attorneys' fees—to be soon appealed en banc). The Court panel judges' assertions were lopsided in my favor. The agency's handling of my case and my heroic actions were repeatedly cited by the panel. During his desperation, the U.S. Department of Justice (USDOJ) attorney blurted that the agency rewarded me with a "windfall" of cash. The panel angrily cut off the USDOJ attorney stating that my back-payment was legally owed to me. The panel also reminded that the agency discounted my back-payment for the janitor and roofing money I earned in order to "**put food on the table**" for my stay-at-home spouse and three minor children. The panel asserted that the agency should have "bent over backward" for me because I "**did the right thing**" to "**protect the public**" from a "**dangerous**" cost-savings plan the agency did not implement due to my disclosures to my chain-of-command and later to Congress through the media. I'm 100% certain that the agency rank-and-file and the flying-public will prevail again in this case. Anyone else's assertions to you that the panel was in favor of the agency—would be grossly false.

I've already proven to you that career senior agency leaders provided your predecessor, Admiral Peter Neffenger, with patently false information that he memorialized in his written September 12, 2016 statement to seven

bicameral and bipartisan congressional committee leaders. His statement resulted in embarrassing media articles in Government Executive Magazine and USA Today. Shameful that those senior leaders were so disloyal to such an honorable lifelong public servant such as Admiral Neffenger.

It is false that the agency is exempt from 5 U.S.C. § 3352. The “Wendell H. Ford Aviation Investment and Reform Act” restored whistleblower rights for both U.S. Department of Transportation / Federal Aviation Administration and agency employees. I never asserted to you that 3352 was a mandate, the law gives the agency the opportunity to avoid embarrassing litigation against an employee who will have prevailed in four times in Federal appellate courts—including against the agency’s appeal to the Supreme Court of the United States.

My self-paid relocation to the Washington Field Office saved the agency considerable funds given the fact that it has the highest attrition rate and being top terrorism target priority. Numerous LE/FAMS employees—with three to five years left to retire—often request transfers to the smaller field offices in California in order to raise their “high-three” retirement given the fact that the locality pay rates are the highest in the nation. The great weather is also a major motivator. Honorable Gaches’ assertion that the agency provided me with a great favor will make judges and the flying-public giggle.

The fact remains: My 2006 Deciding Official testified that I was an “**exemplary**” Federal Air Marshal (FAM), the agency arbitrarily rejected all of my 2015 requests to lateral-transfer to understaffed Virginia offices. Those offices were so understaffed that the agency authorized transferring employees there who had off-duty injuries, and was willing to provide paid moves to employees living in California. Before those rejections, the agency also arbitrarily rejected all of my 2015 requests to transfer me out of the agency and avoid the upcoming litigation.

I never admitted to abusing anyone. I admitted to exposing a Federal Air Marshal (FAM)—who the agency fired for failing FAM training standards—for exchanging sexual favors with my 2006 Deciding Official, thus placing him under duress. They made their exchanges on agency property, during duty hours, and in front of agency employees. Instead of being fired, both agency employees were rewarded with highly coveted assignments. One was rewarded with a waiver to remain in a law enforcement position 12 years passed the retirement age—he remains in his Newport Beach, California position. The U.S. Equal Employment Opportunity Commission dedicated this webpage to inform Federal employees and agencies that the two agency employees’ actions are in violation of law:

<https://www.eeoc.gov/policy/docs/sexualfavor.html>

The credibility of most of my accusers and their nuanced and extemporaneous accusations have been shattered by their own tainted past service and long-after-the-fact testimonies to the five (Cc:ed) astigmatic agency Office of Investigations (TSA-INV) Criminal Investigators/Special Agents (S/A). Two of my managerial accusers and retaliators were recently exposed in the agency Office of Chief Counsel’s damning filing with the U.S. Equal Employment Opportunity Commission. The agency no longer defends one of TSA-INV’s most important witnesses against me who is also is one of the primary retaliators against me; this newly-promoted manager committed irrefragable perjury.

I was also charged for exposing the wrongdoing with regards to an **on-duty armed** agency Law Enforcement / Federal Air Marshal Service (LE/FAMS) manager who “**was too scared**” to go into a doorless bathroom to save a

Reagan National Airport (DCA) janitor being bloody-beaten and almost choked to death by a rapist. The current LE/FAMS Director responded to the incident in his agency take-home vehicle. Both agency employees' were subsequently rewarded with paid-moves and promotions. As you already know, the "too scared" manager recently **endangered** two cross-ocean international wide-body flights over a borrowed secondary necklace tactical-badge that does not have an "issued" requirement for FAM missions; the same manager then launched his own disciplinary inquiry in which he attempted to coerce the Seattle Field Office ground-based FAM to reverse his position that he lent his necklace to avoid endangering those two flight missions—that FAM's decision was prophetic given the exceptionally poor judgment and reputation of his manager.

Without my solicitation, I'm very honored that agency Assistant Chief Counsel Michael Gaches cites the Installed Physical Secondary Barrier (IPSB) concept I provided the agency on February 12, 2016. Agency INV Special Agent/Criminal Investigator Robert Yeager (Cc:ed) encouraged me to patent my IPSB concept. I subsequently filed a patent application [<https://go.usa.gov/xQQ8d>] during the period when the agency forced me to exhaust my earned Sick Leave in order to seek and pay for a psychiatric examination in violation of 5 U.S.C. § 2302(a)(2)(A)(x).

You've also been misinformed that Involuntary Directed Reassignments (IDR) stopped in 2015. You asserted this in your testimony before the U.S. House Committee on Oversight and Government Reform last month. An LE/FAMS manager informed me that he's still serving in his October 2016-ordered IDR that relocated him three states away from his family. He exposed an LE/FAMS manager impregnating an I Band FAM. That FAM was rewarded with a promotion to J Band Supervisory Federal Air Marshal and the manager was promoted to Transportation Senior Executive Service as a Supervisory Air Marshal in Charge of a Category X airport, the second busiest in the U.S. The manager serving his IDR has a pending case before the U.S. Office of Special Counsel.

I'm now on my fifth IDR and again sitting in a building, stripped of my law enforcement authority, and on Restricted Duty prevented from further protecting the public as I have since 1988.

With regards to my supervisor's decision to make danger disclosures about my Internet presence: He relied on intelligence and the protective directives the agency provided him. The U.S. Office of Special Counsel (OSC) cannot make such determinations as it is not a law enforcement/counterterrorism agency. OSC solely relied on my supervisor's judgment supported by his years as a U.S. Marine Corps Force Reconnaissance sniper/operator and a U.S. Secret Service Presidential Protection Division counter-sniper. Honorable Gaches' conclusion is misguided.

In closing, the agency's footdragging on the OSC's 5 U.S.C. § 1213 order has gone on for 3 (three) years—not just nine months. I submitted my July 2003 Supreme Court-cited and 2006 OSC re-file disclosure of violation of law and **imminent danger to public health and safety** through my chain-of-command all the way up to LE/FAMS Headquarters in 2015—only to have it ignored. In contrast, the agency dispatched 5 (five) TSA-INV S/As to probe me for my 2010, 2016, and again in 2017 **off-duty disclosures** of agency senior leaders' violations of law to OSC and other oversight Federal agencies. TSA-INV subsequently issued its Report of Investigation within 4 (four) months in order to rush my termination.

I greatly appreciate your valuable time.

Not on my watch—not now, not ever.

Respectfully submitted,

Robert MacLean
Federal Air Marshal
Washington Field Office
Field Office Focus Group Representative
949-344-5222

From: Gaches, Michael
Sent: Monday, October 1, 2018 5:24 PM
To: Tom Devine; Gary Gilbert; David Karman
Cc: Kennedy, Page; Juliano, Jane; Flory, Gillian; MacLean, Robert
Subject: RE: Request for meeting with Administrator Pekoske

Dear Mr. Devine & Mr. Gilbert – This responds to Mr. MacLean’s e-mail, dated September 27, 2018, and represents the Agency’s position on the matters raised in that e-mail. I have included Mr. MacLean on this message.

Mr. MacLean referenced Administrator Pekoske’s testimony before the U.S. House Committee on Oversight and Government Reform (HOCR) and his effort to meet with TSA whistleblowers since his appointment to TSA approximately one year ago. Mr. Pekoske stated to HOCR that he greatly values whistleblower concerns and firmly believes that whistleblowers play a vital role in promoting a “culture of collaboration and engagement in the workplace at TSA.” His comments to HOCR directly correlate to one of TSA’s Strategic Goals, as set forth in the Administrator’s Intent: “By promoting responsiveness and inclusion across the organization through transparent communication channels, we will build a diverse culture where our employees can excel.” Administrator Pekoske’s commitment to support, protect, and encourage whistleblowers is a keystone to his leadership values and vision for the Agency.

Regarding the requests Mr. MacLean says he has made, under 5 U.S.C. § 3352, to transfer to other positions and duty locations since his return to duty in May 2015, TSA’s position on this issue has been articulated to the Merit Systems Protection Board (MSPB), federal courts, and directly to his attorneys. TSA stands by its position today. This law does not apply to TSA under the Aviation and Transportation Security Act of 2001. Further, it does not require that an employee, to whom the law does apply, be promoted. Even if the law did apply to TSA or to Mr. MacLean, TSA granted his request to transfer from the FAMS Los Angeles Field Office to the Washington Field Office in August 2015, and the law is very clear that it applies “for no more than 1 transfer.” 5 U.S.C. § 3352(e)(1). The law also does not require that an agency, to which it applies, pay for such a transfer.

Indeed, the MSPB has agreed with TSA’s actions in transferring Mr. MacLean to Washington in 2015, and it made clear that the statute “allows an appellant ‘to transfer to a position of the same status and tenure as the position of such employee’...[and] the record reflects that...the appellant was reassigned from the Los Angeles, CA office to the Washington, DC regional office.” MSPB Initial Decision, dated July 18, 2017, 28. TSA understands that Mr. MacLean’s requests for transfer are the subject of his petitions to the Court of Appeals for the Federal Circuit, and the Agency will abide by the Court’s decision on this question once its decision is rendered.

As to the assertion that Mr. MacLean has a “lack of anonymity to fly,” whether or not this issue was raised by his supervisor or any other TSA employee, the Office of Special Counsel specifically requested that Mr. MacLean not be assigned to fly in early-2016. TSA complied with that request, and Mr. MacLean have not been assigned to fly since February of that year.

Regarding Mr. MacLean’s comments about assisting the Administrator in deploying flight deck barriers, TSA understands that Mr. MacLean has sought to obtain a patent on a device he believes would enhance these barriers and has an interest in being a part of any barrier security changes, should they be implemented. TSA received Mr. MacLean’s Office of Special Counsel disclosure about flight deck barriers earlier this year, and the

investigation regarding his concerns is proceeding through the usual course. While the Agency has requested an extension to issue its report, such extensions are commonplace and reflect the Agency's sincere effort to provide the Office of Special Counsel with as comprehensive and thorough a report as possible. Additionally, it is important to note that Section 336 of H.R. 302, the FAA Reauthorization Act of 2018, as passed by the House of Representatives, requires the installation of secondary barriers on new passenger aircrafts.

Finally, as to the Agency's settlement offer, it will expire at 5pm this Thursday, October 4. We have been negotiating settlement, with the assistance of the Office of Special Counsel's Alternative Dispute Resolution Unit, since May, and it appears that the parties have reached the limit of their positions. The Agency understands that Mr. MacLean's decision whether to accept the Agency's final offer may affect his family and him, but the Agency must also take into account the record before it, which includes complaints from several employees who believe Mr. MacLean has harassed them, and admissions on his part as to conduct that the Professional Responsibility office has determined supports a removal. Under these circumstances, Administrator Pekoske does not agree to meet with Mr. MacLean or to have Mr. MacLean shadow him in the TSA Front Office. Until a decision is reached by the deciding official on Mr. MacLean's proposed removal, in accordance with established Agency process, or we are able to reach a settlement, and barring any further allegations of wrongdoing on Mr. MacLean's part, the Agency expects that he will continue to report to the TSA facilities at Metro Park/Walker Lane, completing duties as assigned and his routine training obligations through the online learning center.

Michael Gaches

Assistant Chief Counsel for Administrative Litigation, TSA
Office: 571 227-1874 | Cell: 202 441-6921 | Fax: 571 227-1377

From: MacLean, Robert

Sent: Thursday, September 27, 2018 2:45 PM

To: Pekoske, David; Cogswell, Patricia; McNeill, Ha; Maxwell, Kathryn; Powers, Krista; Connolly, Liam; Gorham, Ashley L; Christy, Amy; Propis, Ryan

Cc: Gaches, Michael; Tom Devine; Gary Gilbert; Neville Johnson

Subject: Request for meeting with Administrator Pekoske

Good afternoon Admiral David Pekoske,

Would you please meet with me at a time and place most convenient for you? Perhaps shadowing you during your duties for an extended period would be even more beneficial.

I'm making this request after your testimony to Congress yesterday about your eagerness to meet with whistleblowers. In 2015, the U.S. Merit Systems Protection Board issued a final ruling designating me a TSA employee whistleblower under the legal authority of 5 U.S.C. § 2302(b)(8).

I frankly believe that you are not being told the truth about me and my motives.

I'm in receipt of your most recent settlement counter-offer and I strongly believe we should meet before I make a final decision that will affect me and my family for many years to come.

I believe our meeting would be enlightening given the fact that the agency denied my repeated requests (April 23, 2015, November 19, 2015, and November 27, 2015) to transfer to an agency outside TSA such as USBP, CBP, ICE, or FLETC—I'm a certified immigration law enforcement officer and FLETC training instructor.

I made these requests pursuant to 5 U.S.C. § 3352 which gives the agency the legal authority to bypass civil service rules, regulations, and law to place me in a position that I'm qualified for.

My 3352-requests requests were immediately subsequent to prevailing against the agency's Supreme Court appeal of my two unanimous U.S. Court of Appeals for the Federal Circuit decisions.

Sir, myself and everyone else predicted the present problems that you inherited.

With regards to the TSA Office of Chief Counsel (TSA-OCC) assertions: In 2015 I also applied for lateral inter-TSA transfers to Virginia offices that had numerous vacancies authorizing paid-moves. Despite the fact that my 2006 deciding official, former Los Angeles Field Office Supervisory Air Marshal in Charge Frank Donzanti, testified that I was consistently an "exemplary" employee, the agency denied my applications asserting that I was not one of the most qualified for those positions. Mr. Donzanti is now the Assistant Federal Security Director for Law Enforcement for Orange County, California (SNA).

I accepted a voluntary transfer to the Washington Field Office only after repeated transfer-denials. I knew that the agency would have no choice but to grant my request to self-fund my relocation to an high-priority field office with a high attrition rate.

Contrary to TSA-OCC's repeated arguments, initially it was my first-line supervisor who expressly complained about my lack of anonymity to fly undercover Federal Air Marshal missions. Supervisory Federal Air Marshal Todd Schumacher not only emailed his concerns to me, but he also called my cellular phone to warn me about the agency intelligence given to him. The emailed detailed the fact that terrorist organizations were using open-source Internet information to establish "kill-lists" targeting U.S. officials.

I know how important it is to you my 2016 re-filing of my 2006 U.S. Office of Special Counsel-disclosure with regards to violations of law (A.T.S.A. Section 104), and the substantial and specific danger to public health and safety. My July 2003 protected disclosures were directly related to this obvious and critical security lapse. Please see below my earlier requests to your staff. I understand that the agency has requested a fourth 60-day extension to issue its report of investigation pursuant to 5 U.S.C. § 1213. I can assist you with making the deployment of flight deck Installed Physical Secondary Barriers a reality—a feat all of your predecessors were unable to accomplish along with the prior Secretaries of the Department of Transportation.

In closing, you need to watch my face and see how sincere I am about our mission. You need to assess for yourself that I'm not a racist, a misogynist, or mentally sick—but a patriot who loves his country and defending it since 1988 when I enlisted in the Air Force. I was also a military dependent. I sincerely hope that believe I've earned your valuable time given my years of perseverance and success with the agency since October 14, 2001.

Not on my watch.

Respectfully and warmly requested,

[Robert MacLean](#)

Federal Air Marshal
Field Office Focus Group Representative
Washington Field Office
Cell: 949-344-5222

From: MacLean, Robert

Sent: Wednesday, September 12, 2018 1:41 PM

To: Pekoske, David; Cogswell, Patricia; McNeill, Ha; Maxwell, Kathryn; Powers, Krista; Connolly, Liam; Christy, Amy; Ashley L Gorham (Ashley.Gorham@tsa.dhs.gov); Bond, Robert; Robert Vogt (Robert.Vogt@tsa.dhs.gov); Ambrose, Edward; Ronan, Edward

Cc: Sarandrea, Eric; Norman Robinson (Norman.Robinson@tsa.dhs.gov); McShaffrey, Richard; Dwain Troutt (Dwain.G.Troutt@tsa.dhs.gov); Clyde Porter (Clyde.Porter@tsa.dhs.gov); Lowell Dimoff (Lowell.Dimoff@tsa.dhs.gov);

Edward Bradford (Edward.Bradford2@tsa.dhs.gov); Krystal Brown (Krystal.Brown@tsa.dhs.gov); Jimenez, Jose; John Muth (john.muth@tsa.dhs.gov); Miller, John; Schumacher, Todd; Lopez, Jeramey; Perez, Joseph; Larbi, Nouri; Bill.Petrak@faa.gov; 7-AEA-RIC-FSDO@faa.gov; Seth.Kaufman@oig.dot.gov; Scott, Edward; RussellW@gao.gov; Duffy, William; Snow, Daniel; Stone, Charles; Darci Bobo (Darci.Bobo@tsa.dhs.gov); Mulligan, Scott; John Busch (john.busch@tsa.dhs.gov); Piekarsky, Kellie; Yeager, Robert

Subject: Documents request for 1/18/2018 5 USC § 1213 order - RE: Danger to flight deck and pilots

Good afternoon to the Transportation Security Administration (TSA) Senior Leadership Team,

This request for documents is being addressed directly to you given the fact that this practice routinely violates Section 104 of the Aviation and Transportation Security Act of 2001—

https://www.tsa.gov/sites/default/files/aviation_and_transportation_security_act_atlsa_public_law_107_1771.pdf

—and **endangers** commercial passenger aircraft (“aircraft”) hundreds of thousands of times a day.

Below is the January 7, 2016 to March 2, 2016 correspondence that led to the pending 5 U.S.C. § 1213-order that the agency shall issue a report of investigation no later than September 17, 2018. Since the 5 U.S.C. § 1213 order was issued on January 18, 2018, the agency requested three 60-day extensions—the third being the final **due this coming Monday**.

I intend to invoke the privilege under 5 USC § 1213(e)(1) to submit my reply-comments to the U.S. Office of Special Counsel (Special Counsel), which in turn the Special Counsel will submit to Congress and the White House:

“Any report required under subsection (c) or paragraph (5) of this subsection shall be submitted to the Special Counsel, and the Special Counsel shall transmit a copy to the complainant, except as provided under subsection (f) of this section. The complainant may submit comments to the Special Counsel on the agency report within 15 days of having received a copy of the report.”

[. . .]

The Special Counsel shall transmit any report submitted to the Special Counsel by the head of an agency under subsection (c) or paragraph (5) of this subsection, any comments provided by the complainant pursuant to subsection (e)(1), and any appropriate comments or recommendations by the Special Counsel to the President and the congressional committees with jurisdiction over the agency which the disclosure involves.”

Would you please consider providing me the following documents in order that the most factual reply gets submitted?

1. **All unredacted documents with regards to the U.S. Army Aberdeen Proving Ground flight deck door study conducted on or about December 14, 2014**

All study reports, memorandums, emails, U.S. Department of Homeland Security (DHS) “Skype® for Business” messages, and DHS cellular phone text message with regards to the aircraft flight deck door (“door”) testing study at the U.S. Army’s Aberdeen Proving Ground, Maryland on or about December 14, 2014 (“2014 Aberdeen study”).

A list of all DHS employees who participated in the 2014 Aberdeen study. A list was provided of the DHS employees involved in the September 28, 2011 Radio Technical Commission for Aeronautics study titled, “*Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures*”(RTCA DO-329).

The door or doors tested, were the typed reinforced prior to the U.S. Department of Transportation (USDOT) / Federal Aviation Administration (FAA) deadline of April 9, 2004—three months and 17 days prior to the issuance of the July 26, 2003 *DHS “Advisory Title: Potential Al-Qaeda Hijacking Plot in the U.S. and Abroad”* (2003 DHS Advisory). For six years, the 2003 DHS Advisory was fully redacted in responses to Freedom of Information Act (FOIA) requests.

On January 15, 2002, the FAA publicly announced [<https://go.usa.gov/xPrmb>] its mandate that all doors be retrofitted and reinforced by April 9, 2003 in order—

“to resist intrusion by a person who attempts to enter using physical force [and] to minimize penetration of shrapnel from small arms fire or a fragmentation device”

On April 4, 2004, the FAA also publicly announced [<https://cbsn.ws/2x23icG>] that all doors had been retrofitted and reinforced—three months and 22 days prior to the issuance of the 2003 DHS Advisory. A noteworthy excerpt from the 2003 DHS Advisory states that suicidal terrorists intended to breach the flight decks—

“either shortly after takeoff or shortly before landing[.]”

Given the FAA’s 2003 and 2004 public announcements, the 2003 DHS Advisory warned that hijackers were simply going to wait for the pilots to unlock doors to use the lavatory (“door-transition”) after the aircraft was stabilized in autopilot mode.

In our April 17, 2018 meeting, DHS/TSA Law Enforcement/Federal Air Marshal Service (TSA-FAMS) Headquarters (HQ) Regional Director One Dwain Troutt told me and Program Assistant William Duffy (Cc:ed) that he was a *subject matter expert* on the attacks of September 11, 2001. Regional Director Troutt stated to Program Assistant Duffy and me that at least one or more of hijackers breached the flight deck after an unbeknownst pilot unlocked and opened a door in order to use the lavatory shortly after takeoff.

One goal of the study was to determine what amount of physical force—from individuals and/or a standard galley cart—could a defeat a locked post-April 4, 2003 reinforced door. A flight deck is also known as a “cockpit.”

10 months after the 2003 DHS Advisory, an application for a flight deck steel 12-cable “Secondary Barrier” Patent Application (No. 10/849333) was filed with the U.S. Patent and Trademark Office on May 18, 2004 [<https://go.usa.gov/xUAaf>] “12-cable-IPSB”. 12-cable-IPSBs were deployed on aircraft soon after the 2003 DHS Advisory.

There should be little to no doubt that 12-cable-IPSBs were deployed as a result of the 2003 DHS Advisory:

As a result of the Sensitive Security Information-marked 2003 DHS Advisory’s disclosure, there was significant media, and public commentary and inquiry by members of

Congress. Even a question was posed to President George W. Bush during a July 30, 2003 White House Rose Garden press conference prompting the President to provide a very long and concerning response [<https://go.usa.gov/xPrwn>].

All FAMs had to drive over to their field offices for then-unprecedented emergency briefings and training as a result of the 2003 DHS Advisory.

The 12-cable-IPSBs have mostly been removed and not replaced with another other type of IPSB due them being cost-ineffective and dangerous.

Cost-ineffective—

due to them being damaged from passengers and their roller-bags as the 12-cable-IPSBs need to be installed at the most-travelled choke-point of the aircraft. In order to repair the 12-cable-IPSBs, one or more maintenance teams need to repair or replace the 12-cable-IPSB and the portions of the cabin where it anchors to. This problem causes the aircraft to be out of service for a considerable amount of time if no other maintenance issues exist.

Dangerous—

given the fact that a broken 12-cable-IPSBs can block the exit for emergency egress. Worst of all, the exposure of 12-cable-IPSBs to the main cabin exposes it to sabotage from a carry-on items such as with scissors [<https://go.usa.gov/xPryd>] or with a non-flammable/non-toxic adhesive [<https://www.jbweld.com/products/j-b-extremeheat>].

Another determination-goal of the 2014 Aberdeen study may have involved the penetration of firearm ammunition or a fragmentation device—i.e., improvised explosive device—discharged into the door. Such actions could allow a breach of the flight deck before a Federal Air Marshal (FAM) team, crew members, or passenger could intervene and stop attackers from destroying the aircraft.

2. **An unredacted copy of the RTCA DO-329 listing a FAM and several TSA-FAMS supervisors and managers on the RTCA DO-329's Special Committee 221 (No. SC-221)**

The SC-221 of the RTCA DO-329 concluded that the role-playing airline crew members **and FAMs were unable**—from a substantive distance—to stop role-players from breaching an unlocked flight deck just before or during door-transitions; “just before” refers to doors that open away from the cabin which is a concern cited in the OSC’s January 18, 2018 1213-order.

Door-transitions occur when pilots need to use the lavatory, obtain sustenance, or sleep.

3. **An unredacted copy of the USDOT Office of Inspector General (USDOT/OIG Audit Report) (No. AV2017063) titled, “FAA Has Taken Steps to Identify Flight Deck Vulnerabilities but Needs to Enhance Its Mitigation Efforts”**

The 2017 USDOT/OIG Audit Report—

“concluded that some improvised secondary barriers, such as a flight attendant with a galley cart, were ineffective ‘**as tested [by the RTCA DO-329's SC-221]**,’ and additional enhancements were required to raise the effectiveness of certain barrier methods to an acceptable level.” (*emphasis added*)

It's noteworthy that the RTCA DO-329's air crew and TSA-FAMS role-players were specifically tasked and prepared for simulated rush-attacks during door-transitions. In an actual attack, such preparedness is not optimum due to factors such as a FAM team distracted during a "Quiet Skies" — Special Mission Coverage" (Quiet Skies) flight.

Also notable is the fact that RTCA DO-329's attacking role-players were going at a reduced speed and strength to avoid serious injury to themselves or others. In contrast, suicidal terrorists would attack at full speed and strength with potentially the aid of an easily available narcotic such as Phencyclidine.

The 2017 USDOT/OIG Audit Report cited that the—

"FAA has not effectively communicated the guidance to air carriers and inspectors. Despite the important recommendations from the RTCA report, only 5 of 63 air carrier representatives and none of the 34 FAA inspectors we interviewed were aware of either the RTCA study or FAA's guidance. According to FAA, this is because none of the airlines we interviewed had requested new blocking procedures, and inspectors were under the impression the guidance only applied to new procedures. As a result, critical information contained in the study was ineffectively communicated to the field to address safety risks as called for in FAA's Safety Management System." (*emphasis added*)

The USDOT/OIG's sensitive treatment of its 2017 Audit Report is irrefragable evidence of how dangerous door-transitions are without IPSBs:

The 2017 USDOT/OIG Audit Report is unpublished and a heavily-redacted version is only available upon FOIA requests. Only redacted FOIA response copies of the 2017 USDOT/OIG Audit Report are provided to FAMs who hold active non-interim Top Secret security clearances.

One of the TSA-FAMS members on the RTCA DO-329's SC-221, is Supervisory Air Marshal in Charge (SAC) Rose Tancredi. SAC Tancredi and Deputy Supervisory Air Marshal in Charge (DSAC) Donald Anderson recently traveled to several TSA-FAMS field offices to brief FAMs about Quiet Skies. Numerous current and former TSA-FAMS employees have informed me that SAC Tancredi, DSAC Anderson, and other TSA-FAMS senior leaders are to the effect inferring to numerous FAMs—that if they do not collectively make Quiet Skies successful, the TSA-FAMS agency may suffer a budget reduction and FAMs could be relocated as a result of *Involuntary Redirected Assignments* or be subjected to a *Reduction in Force*.

*****END OF DOCUMENTS REQUEST FOR 5 U.S.C. § 1213 ORDER REPLY*****

Given the fact that I am a FAM, the 5 U.S.C. § 1213-order's complainant, and hold an active non-interim Top Secret security clearance—I have a "need to know" basis to view these documents for my reply-comments to be submitted to Congress and the White House.

I appreciate your time, effort, and consideration of this exceptionally substantial and specific danger to public health and safety.

Respectfully requested,

[Robert MacLean](#)
Federal Air Marshal

Washington Field Office
Field Office Focus Group Representative
949-344-5222

From: MacLean, Robert

Sent: Monday, April 30, 2018 12:45 PM

To: Perez, Joseph <Joseph.Perez1@tsa.dhs.gov>

Cc: Miller, John <john.s.miller@tsa.dhs.gov>; Sarandrea, Eric <Eric.Sarandrea@tsa.dhs.gov>;
McShaffrey, Richard <Scott.McShaffrey@tsa.dhs.gov>

Subject: Study reports—relative to tactics—not disseminated to FAMs

PDF ATTACHED

SFAM Perez,

Recently during training, a current and a former trainer each made an assertion that conflicted with each others'.

When asked what the agency's position is on what flying FAMs' "primary tactical focus expectation" should be with regards to a suicidal attacker's "end-game" in a non-hidden-IED scenario, this is what the two responses were:

Current trainer: Locked flight deck ("cockpit") doors can be broken-down with a galley-cart, or the door can be shot with a firearm at until it unlocks; and that there's a likelihood that scared pilots will unlock the door—under hostage/murder duress—in order to allow killers to take over the controls to commandeer the aircraft to another country, i.e., Cuba 1960s.

Former trainer: The agency was involved in a study conducted at Aberdeen Proving Grounds, Maryland on or about December 14, 2014. The study concluding that all of the cockpit doors are impenetrable barring a substantive impact tool/machine or an explosive.

It was unanimous that if such elaborate cockpit-breach plans have been years in the planning, a lone-wolf attacker would simply wait for the pilots to notify the flight attendants that they're about to unlock the cockpit—then rush in after. The 2011 Radio Technical Commission on Aeronautics (RTCA) DO-329 study—with the participation of numerous FAMs—not only proved that the *flight attendants/galley-cart* and the *flight attendants/no galley-cart* methods "were ineffective." The RTCA also concluded that the prepared FAM DO-329 test-team was unable to stop a rush-attack on the cockpit, even when the attacker began to sprint dozens of feet from the cockpit—the exact distance was designated as SSI.

Last year, the Department of Transportation Office of Inspector General (DOT-OIG) confirmed the DO-329's 2011 findings in its unpublished Audit Report (No. AV2017063), that was so sensitive, that it will not allow FAMs with Top Secret clearances to view its UN-redacted SSI version.

Attached is the heavily redacted version that DOT-OIG was willing to provide me in a FOIA request that I got back in a record amount of time.

Here are two citations from the 2017 DOT-OIG Audit Report:

“the [RTCA] report concluded that some improvised secondary barriers, such as a flight attendant with a galley cart, were ineffective ‘as tested,’ and additional enhancements were required to raise the effectiveness of certain barrier methods to an acceptable level.

[. . .]

“FAA has not effectively communicated the guidance to air carriers and inspectors. Despite the important recommendations from the RTCA report, only 5 of 63 air carrier representatives and none of the 34 FAA inspectors we interviewed were aware of either the RTCA study or FAA’s guidance”

FAMs are concerned that such critical information—relative to FAMs' primary tactics—is also being withheld from them.

In closing, if the 2011 RTCA, the 2014 Aberdeen Proving Grounds, and the 2017 DOT-OIG study reports—ALL never disseminated to the vast majority of training and rank-and-file FAMs—are accurate and factual, this significantly impacts what our primary tactical focus should be. Compounding the concern is the new SMC CONOPS plan that draws attention away from the cockpit and redirects our resources to one person who does not warrant being on the “No Fly List.” Such a change is substantive given the fact that aircraft size, routes, and locations have always been our strategic priorities per law, specifically 49 U.S.C. § 449179b):

“[Deploying FAMs on] nonstop, long distance flights, such as those targeted on September 11, 2001, should be a priority”

Several field offices had to be closed due to the agency deeming the threat to their flight routes and locations had been reduced.

I look forward to learning more during my next training classes.

Respectfully,

[Robert MacLean](#)

Federal Air Marshal
Washington Field Office
Cell: 949-344-5222

Cc:

Acting FAMS Director Eric Sarandrea
Assistant FAMS Director for Field Operations, Scott McShaffrey
SFAM John Miller (first-line)

Subject: RTCA report on secondary barriers

MacLean, Robert

Sent: Thursday, January 07, 2016 12:23 PM

To: Schumacher, Todd E.

Dear Supervisory Federal Air Marshal Schumacher,

I respectfully request you please provide me with an UNREDACTED copy of the September 28, 2011

Radio Technical Commission for Aeronautics (RTCA DO-329) "Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures" report?

I have been informed copies containing Sensitive Security Information results can be provided by the Federal Aviation Administration's Flight Standards Office (AFS-007).

The report has results of flight deck attack simulations while a pilot opens the flight deck door during inflight lavatory usage or crew changes.

The RTCA "Special Committee 221" for this report had officials from our Agency who may also be able to provide me with an unredacted report:

- Edward Bradford
- Krystal Brown
- Rose Tancredi
- Lowell Dimoff (Supervisory Air Marshal in Charge, TSA Training Center, Atlantic City, New Jersey)
- Jose Jimenez (Washington Field Office)

I have a need to know as flying Federal Air Marshal (FAM), as a FAM Team Leader on a January 10, 2015 flight mission to the Arabian Peninsula, and any other upcoming missions as a FAM Team Leader.

I greatly appreciate all of your time and effort.

Respectfully submitted,

Robert MacLean

--

Robert MacLean

Federal Air Marshal

Staff No. 438

Transportation Security Administration

Washington Field Office

Personal cell/text: 949-344-5222

Government cell/text: 210-840-6001

Robert.J.MacLean@ole.tsa.dhs.gov

RE: Request for SSI-marked 9/28/2011 RTCA DO-329 report: "Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures"

Nouri.Larbi@faa.gov

Sent: Wednesday, February 17, 2016 7:30 AM

To: MacLean, Robert

Cc: Schumacher, Todd E.; Troutt, Dwain G.; McCann, Dan

Good morning Mr. MacLean,

I was out of the office since Friday and I was not able to reply sooner. I understand your regional office will be

Addressing your request. Again, I am sorry for not replying sooner.

Thank you
Nouri Larbi

Senior Liaison
Department of Homeland Security
TSA Office of Security Policy & Industry Engagement
202-351-9480/202-360-8861 (Mobile)
571-227-5492/202-267-4084 (Office)
Nouri.Larbi@tsa.dhs.gov
Nouri.Larbi@faa.gov

From: Robert.J.MacLean@ole.tsa.dhs.gov [mailto:Robert.J.MacLean@ole.tsa.dhs.gov]
Sent: Friday, February 12, 2016 7:21 AM
To: Nouri.Larbi@tsa.dhs.gov
Cc: Todd.E.Schumacher@ole.tsa.dhs.gov; Petrak, Bill (FAA)
Subject: Request for SSI-marked 9/28/2011 RTCA DO-329 report: "Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures"
Importance: High
Dear Mr. Larbi,

I was originally given the email address Nouri.Larbi@faa.gov to contact you, but I found this @tsa.dhs.gov account also.

I have a "need to know" as an active duty Federal Air Marshal who flies and/or supervises mission flights as a Team Leader to have a copy of the UNREDACTED Sensitive Security Information (SSI) designated September 28, 2011 Radio Technical Commission for Aeronautics (RTCA DO-329) "Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures" report.

Appendix B; B-2 of this report specifically states:

"FAA Flight Standard Division, AFS-007, will manage the SSI document. AFS-007 and TSA will determine if the requestor has met the need to know standards for SSI information related to the SC-221 Committee's work." (emphasis added)

Per Title 49 of the Code of Federal Regulations § 1520.15 (b), SSI is exempt from Freedom of Information Act requests:

"SSI disclosed by TSA or the Coast Guard.

(a) In general. Except as otherwise provided in this section, and notwithstanding the

Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and other laws, records containing SSI are not available for public inspection or copying, nor does TSA or the Coast Guard release such records to persons without a need to know." (*emphasis added*)

<http://1.usa.gov/1LbpcsB>

In conclusion, your office shall provide me an SSI version of this report through secured means. I would like to respectfully request an SSI version of this report. If your regional office does not have access to one, please direct me to the office that can. According to the report, that would be the Flight Standards Office (AFS-007).

I have Cc'ed my direct supervisor, Supervisory Federal Air Marshal Todd Schumacher. I appreciate all of your valuable time, effort, and patience with me.

Respectfully submitted,

Robert MacLean

Cc:

Bill Petrak, FAA

Todd Schumacher, TSA Supervisory Federal Air Marshal

--

Robert MacLean

Federal Air Marshal

Staff No. 438

Transportation Security Administration

Washington Field Office

Personal cell/text: 949-344-5222

Government cell/text: 210-840-6001

Robert.J.MacLean@ole.tsa.dhs.gov

From: Bill.Petrak@faa.gov [Bill.Petrak@faa.gov]

Sent: Wednesday, February 10, 2016 2:36 PM

To: MacLean, Robert

Subject: FW: SSI-marked 9/28/2011 RTCA DO-329 report: "Aircraft Secondary Barriers and

RE: Request for SSI-marked 9/28/2011 RTCA DO-329 report: ...

<https://mail.ole.tsa.dhs.gov/owa/,DanaInfo=mail.ole.tsa.dhs.gov...>

2 of 6 4/3/16, 5:10 PM

Alternative Flight Deck Security Procedures"

Hello Mr. MacLean,

I work in the FAA Headquarters in AFS-1000. We are the keepers of the SSI for DO 329. I received your request from one of our field offices requesting the SSI from DO 329. One of my primary functions in the office is to be the liaison between the Flight Standards organization and the TSA. My counterpart in TSA is Mr. Nouri Larbi. He is the TSA's liaison to the FAA and has an office in our agency. To help ensure efficiency and proper procedures, he filters information and requests from the

TSA to the FAA. Please route your request for this SSI through him so we can properly process your request. He can be reached at Nouri.Larbi@faa.gov

Bill Petrak
Aviation Safety Inspector
Federal Aviation Administration
Aviation Special Activities and Security Division, AFS-1000
800 Independence Ave, SW
Washington, D.C., 20591
(202) 267-9531

-----Original Message-----

From: 7-AEA-RIC-FSDO (FAA)
Sent: Monday, February 08, 2016 12:33 PM
To: MacLean, Robert
Subject: RE: SSI-marked 9/28/2011 RTCA DO-329 report: "Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures"

Mr. MacLean,

Thank you for the clarification regarding the FOIA not providing an un-redacted version of the document you seek. I have found out that AFS-007 is no longer office to assist in making the determination as stated below. The FAA's Flight Standard Service now has AFS-1000, Aviation Special Activities and Security. I have forwarded your request to those folks and they will handle it in accordance with proper protocol.

Regards,

Jeff Slaughter
Manager
Richmond Flight Standards District Office (EA-21)
804-222-7494 tel
804-222-4843 fax

-----Original Message-----

From: MacLean, Robert [<mailto:Robert.J.Maclean@ole.tsa.dhs.gov>]
Sent: Monday, February 08, 2016 11:20 AM
To: 7-AEA-RIC-FSDO (FAA)
Cc: Schumacher, Todd E.
Subject: SSI-marked 9/28/2011 RTCA DO-329 report: "Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures"
Importance: High

Dear Mr. Slaughter,

I appreciate your instructions, but with all due respect, I already have a copy of the Sensitive Security Information-(SSI)-redacted September 28, 2011 Radio Technical Commission for Aeronautics (RTCA DO-329) "Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures" report. Appendix B; B-2 of this report specifically states:

"FAA Flight Standard Division, AFS-007, will manage the SSI document. AFS-007 and TSA will determine if the requestor has met the need to know standards for SSI information related to the SC-221 Committee's work." (*emphasis added*)

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"SSI disclosed by TSA or the Coast Guard.

(a)In general. Except as otherwise provided in this section, and notwithstanding the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and other laws, records containing SSI are not available for public inspection or copying, nor does TSA or the Coast Guard release such records to persons without a need to know." (emphasis added) <http://1.usa.gov/1LbpcsB>
I have a "need to know" as an active duty Federal Air Marshal who flies and/or supervises mission flights as a Team Leader.

In conclusion, your office shall provide me an SSI version of this report through secured means. I would like to respectfully request an SSI version of this report. If your regional office does not have access to one, please direct me to the office that can. According to the report, that would be the Flight Standards Office (AFS-007).

I have Cc'ed my direct supervisor, Supervisory Federal Air Marshal Todd Schumacher.

Respectfully submitted,

Robert MacLean

--

Robert MacLean
Federal Air Marshal
Staff No. 438
Transportation Security Administration
Washington Field Office
Personal cell/text: 949-344-5222
Government cell/text: 210-840-6001
Robert.J.MacLean@ole.tsa.dhs.gov

From: 7-AEA-RIC-FSDO@faa.gov [7-AEA-RIC-FSDO@faa.gov]

Sent: Wednesday, February 03, 2016 2:40 PM

To: MacLean, Robert

Subject: RE: Message from www.faa.gov: Richmond FSDO Information

Mr. MacLean,

Please use the website link below to request the documents you seek. These would be items that may

be released under the Freedom of Information Act.

<https://www.faa.gov/foia/>

Thank you,

Jeff Slaughter

Manager

Richmond Flight Standards District Office

804-222-7494

-----Original Message-----

From: Robert.J.Maclean@ole.tsa.dhs.gov [mailto:Robert.J.Maclean@ole.tsa.dhs.gov]

Sent: Tuesday, February 02, 2016 8:03 PM

To: 7-AEA-RIC-FSDO (FAA)

Subject: Message from www.faa.gov: Richmond FSDO Information

This email was sent through the Federal Aviation Administration's public website. You have been contacted via an email link on the following page: http://www.faa.gov/about/office_org/field_offices/fsdo/ric/contact/

Message:

To whom it may concern:

I respectfully request you please provide me with an UNREDACTED copy of the September 28, 2011

Radio Technical Commission for Aeronautics (RTCA DO-329) "Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures" report?

I have been informed copies containing Sensitive Security Information results can be provided by the Federal Aviation Administration's Flight Standards Office (AFS-007).

The report has results of flight deck attack simulations while a pilot opens the flight deck door during inflight lavatory usage or crew changes.

The RTCA "Special Committee 221" for this report had officials from my Agency.

I have a need to know as flying Federal Air Marshal (FAM), as a FAM Team Leader on a January 10, 2015 flight mission to the Arabian Peninsula, and any other upcoming missions as a FAM Team Leader.

I greatly appreciate all of your time and effort.

Respectfully submitted,

Robert J. MacLean

Federal Air Marshal

Staff No. 438

Transportation Security Administration

Washington Field Office

Personal cell/text: 949-344-5222

Government cell/text: 210-840-6001

Robert.J.MacLean@ole.tsa.dhs.gov

RE: Request for SSI-marked 9/28/2011 RTCA DO-329 report: ...
<https://mail.ole.tsa.dhs.gov/owa/,DanaInfo=mail.ole.tsa.dhs.gov...>
6 of 6 4/3/16, 5:10 PM

FAM Reference Material Regarding Aircraft Secondary Barriers and
Alternative Flight Deck Security Procedures
Schumacher, Todd E.
Sent: Wednesday, March 02, 2016 11:47 AM
To: 18Squad11

The WFO has a copy of the DO 329 report "Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures" and the SSI information that was redacted from the original document. These documents are available in the office in hard copy only. They cannot be sent electronically and cannot be reproduced or taken out of the office. Please see me at your convenience to review the documents.

The FAA has also covered the report with an advisory circular http://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_120-110.pdf (see attachment AC_120-110).

Please let me know if you have any questions.

Thanks,
Todd

Todd Schumacher
571-216-5264
Todd.Schumacher@dhs.gov