

April 23, 2019

Director Kohl,

The Air Marshal Association would like to thank you for this invitation to discuss FAMS programs.

We believe we are in a unique position to bring you the comments and criticisms of our highly dedicated workforce in a constructive and respectful manner. We are thankful to have leadership that understands our history, our current shortfalls, and our urgent need to evolve.

Finally, we welcome the opportunity to become part of the solution. To this end, please accept this outline of ideas and suggestions from the AMA membership to improve the FAMS agency and our ability to accomplish our critical mission. We look forward to working with you on these, and other matters.

The Air Marshal Association Executive Board

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Congress, Criticisms, and Intelligence

The AMA conversation about risk based methodology began after an internal email dated February 21, 2014 was broadcast to the FAMS workforce wherein FAMS Director Robert Bray, with the concurrence of TSA Administrator John Pistole, made the decision to close six field offices. He claimed the decision was *risk-based and intelligence driven*. However, in the same email he mentioned that the OLE/FAMS budget had declined from \$966M to \$805M over the previous three years which led to 'efficiency measures and a reduction in air marshals through attrition'. More alarmingly, Director Bray indicated that Las Vegas, Seattle and Denver would be 'assessed regularly from the perspective of risk, intelligence, and industry trends'. The AMA first wrote about our concerns on June 14, 2014 in a press release '*Mistakes, Misinformation and Mission Creep: Insights on the proposed \$208 million cut to the Federal Air Marshal Service FY 2015 budget*'.

At this time, there was little employee engagement from senior leadership. The workforce, having specific knowledge regarding the quality of intelligence through recurrent mission briefings, was rightfully concerned that staffing decisions were being made on purely financial grounds rather than intelligence. During the years long AMA lawsuit against the agency, depositions showed that there was *little intelligence basis to the office closures and staffing reorganizations*, ultimately resulting in a settlement with the affected displaced workers.

Concerns began to mount in 2015 as metrics and flight coverage targets continued to be relayed to AMA Delegates through Operations assigned FAMs. This prompted the AMA to seek partners in Congress to legislatively address the lack of curated TSA intelligence as the root cause of excessive fly hours and quality of life issues. In 2016, the GAO released GAO-16-582 May 2016 *Federal Air Marshal Service - Actions Needed to Better Incorporate Risk in Deployment Strategy*. This was a significant step forward in Congressional efforts to focus attention on the intelligence deficiency within the TSA regarding mission decisions.

In 2017, the OIG again criticized the FAMS regarding intelligence use and International mission coverage in report OIG-19-17 *FAMS' Contribution to International Flight Security is Questionable*.

FAMS shifted gears by focusing resources into ground based assignments such as VIPR, however the decision again lacked an intelligence driven focus and resulted in a critical July 24, 2018 OIG report OIG-18-70 *FAMS Needs to Demonstrate How Ground-based Assignments Contribute to TSA's Mission* which indicated a \$272M cost without discernible benefit, while noting 'FAMS cannot ensure it is maximizing its resources to address its highest risks and cannot measure the value of its investments in these ground-based activities.'

On December 19, 2018, the OIG followed up on the 2017 report on FAMS domestic flight operations, specifically evaluating the extent to which FAMS can interdict an improvised explosive device during flight. In this report, the OIG also identified \$394 million in funds that could be put to better use.

Suffice to say, Congress and oversight agencies have continually called into question the agency method of determining missions that needed to be covered. In the initial rush to stand up this agency, FAMS were content to fly the IMPACT based missions because we believed the agency was developing intelligence capabilities which would eventually have FAMS flying intelligence based missions. However, the IMPACT reasoning became institutionally entrenched and evolved into a mere metrics goal instead of a place holder pending the development of TSA intelligence.

The AMA utilized this wave of Congressional interest. In 2017 we partnered with various offices helping to create HR 4467 *Securing Aviation Security Act of 2018* which passed the House on March 22, 2018 with an impressive 408 Yea and 0 Nay result. This achievement represented hundreds of hours by the AMA Legislative Committee in every Congressional office throughout 2017. HR 4467 received its companion in the Senate with our help, and it ultimately passed into law with its incorporation into the FAA Reauthorization Act of 2018. The law specifies that TSA explain its intelligence methodology, and we think that's necessary to move this agency forward and create real change.

However, we believe the FAMS had an alarming initial reaction to the impending intelligence oversight. We saw the QS debacle, and the 17 single factors for QS deployment being touted as intelligence. We saw an increase in flights being labelled SMC with absolutely no intelligence briefings given to the FAMs covering them. There have been a few notable anomalies, such as a real TS intelligence briefing here and there or an actual task for the onboard team at the request of another agency. But overall, merely repackaging flights as 'intel based' does not meet the standard of where we need to be as an agency.

The agency is attempting to put out fires rather than evolve to prevent them. Based on the recent Congressional reports and investigations, TSA now uses the SMC style coverages as the backbone of their 'intelligence' driven system ostensibly forming the basis for overall FAMS CONOPS. There are noticeable deficiencies with this logic:

- In the absence of an intelligence justification, we are continuing to operate under a metrics based system. Since no specific intelligence drives FAM coverage in most cases, we still revert back to the legacy, metric driven system (Flight/ Aircraft characteristics, destination, etc.). This invalidates the agency argument that FAM missions are now intelligence driven, since almost every current SMC missions lacks a specific intelligence briefing.
- We apply almost zero intelligence analysis into our determination of flight coverage, to include our SMC mission. Our current process is to populate missions based upon recommendations made by other agencies, sometimes without vetting any of the information against the need for coverage. In terms of downstream intelligence, the end user (FAM) typically has little to no information on the actual subject and/ or their role in an actual investigation. Flying FAMS are effectively left outside of the investigatory framework.

As FAMS attempts to find a more relevant role in the intelligence and investigatory apparatus, we must also address our shortcomings as it pertains to training. Our surveillance training, in particular, is inadequate to provide a consistent and professional standard to our partners in the law enforcement and intelligence community. This becomes especially problematic if or when any of our surveillance activities become discoverable during a criminal trial, or FAMS are required to give testimony.

FAMS and TSA Intelligence Analysts need to take a much more active role in the vetting and decision-making process regarding surveillance and investigative activities. We should be working in concert with partner agencies to target individuals and organizations based upon sound intelligence, not operating under the assumption that each request we receive justifies the expenditure of a FAM team. Aside from providing limited information while surveillance is being conducted and isolated instances of added value to investigations, FAMS surveillance provides little added value to the overall intelligence and investigative efforts of partner agencies and, when it does occur, is typically a spontaneous and/or random event.

Finally, putting this into practice may necessitate the decentralization of operations as it pertains to determining mission coverage. Field offices need to take a much more active role in how they work with other agencies and what services they can provide based upon their needs.

FAMS Evolution

In the past we've written about evolving to meet the threat, and we would like to talk about our member's vision for this agency. In each conversation the AMA has with Congressional offices, we focus on the evolution of the agency and how to achieve improvements in a cost effective and reasonable way. This solutions driven approach sets us apart from other organizations, and we invite the agency to become part of this conversation.

Specifically, how do we evolve our workforce to be the agency the public expects? How do we reset the conversation? How do we evolve with the threat? How do we properly utilize our human capital? How do we get from A to B within our current limitations? How do we accomplish everything in a fiscally responsible manner?

After discussing these issues in depth with the AMA membership, Congressional offices, and our working groups, we believe we have solutions that enhance FAMS capabilities, are well reasoned, and cost conscious.

TSA needs a single law enforcement entity with multiple collateral duties - During town hall meetings across the country "right-sizing" the agency was discussed at length. A topic that has rarely been broached is the idea of "right-kinding" the agency. Doing business as usual with less people just means that you are going to do less business, and poorly. Ideally the TSA should have only one law enforcement component. We believe TSA erred in the past when it created different OLE components with varying degrees of authority.

- FAMS are the TSA's premiere counter terrorism agents, trained to the highest degree in firearms proficiency, tactical operations, law enforcement work, independent operation across the globe, and are routine problem solvers. FAMS primary mission has historically been on aircraft, but our role has expanded reactively in response to threats and as requirements of the ATSA have been implemented.
- Transportation Security Inspectors (TSIs) are unarmed agents that focus on administrative fines and penalties. There are good people there (some former

FAMs), and the role they play is critical to compel compliance with CFR, but they are not functioning LEOS.

- OOI agents are the TSA's version of Criminal Investigators, focusing primarily on investigating FAMs; essentially a static Internal Affairs unit. The majority of what OOI does is harass FAMs during costly overseas alcohol testing, and conduct nonstandard investigations against FAMs with premeditated outcomes. The OOI program was stood up with scandalous non-competitive promotions during the days of Assistant Administrator Hallinski, and agents routinely violate basic investigative best practices due to poor training.

The TSA must combine the disparate components all its Office of Law Enforcement into one unified LEO position. There needs to be *one* position for TSA OLE – ideally, 1811 Special Agents that have multiple collateral assignments. FAM style aircraft protection, investigations at airports and other transportation sites (a static federal presence), issuing fines for violations and non-compliance, rotating IA assignments for 2 years, and supervising and coordinating all TSA VIPER operations. TSA canine officers may also be a good fit for the revamped OLE office, supporting TSA led law enforcement operations.

Unify components – This has been undertaken before in other agencies, most recently when CBP Officers transitioned into 6c coverage. That transition took years, and old job codes were maintained until the employees ultimately retired or left. In TSA, we have our own unique set of challenges.

- FAMS and TSIs into the 1811 role.

The ATSA already provides FAMS the sole authority for TWIC enforcement against an individual; our predicate crime, if we need one.

- 1801-1811 Transition Course – FAMS could readily utilize current curriculum taught at FLETC by the Department of Interior. The DOI Investigator Training Program provides a ready-made course for FAMS to transition the 1801 series to 1811. This course builds upon the basic law enforcement curriculum that has already been learned and applied over the course of a career and supplements it with basic investigatory

practices. This “bridge” course is approved by FLETC and held at the Glynco, GA facility.

- Consider requiring the FAM attend this training to sign a time in service agreement after the completion of training (precedential USSS). If the time in service requirement is not met, the FAM will pay the entire cost of the training back to the government (Precedential USPIS). This could alleviate possible issues:
- Any FAMS nearing retirement may not be willing to attend given the time in service requirement. This will allow for continued mission coverage in the field.
- FAMS that are considering leaving the agency may not be willing to attend because of the time in service and/ or cost defrayment.
- FAMS that were considering leaving may be willing to stay with the agency given the new opportunity; reduction in “brain drain” of experienced FAMS.
- TSIs meeting the age cutoff can apply for the new 1811 position. They will be required to complete all academies.
- Understandably, all of our current FAMS and TSI’s will not qualify for 1811 positions, and may not wish to take on these enhanced duties in the final years of their careers. These employees can be left in their current positions to finish their careers until aging out or becoming eligible for retirement. The position will retire when the last ones leave.
- Retraining for current OOI agents can commence immediately for little cost, and they can rotate into mission assignments as soon as they pass the FAMS training.

A single OLE LEO position would take some years to consolidate, but streamlining OLE will lead to efficiencies and cost savings across the board as will be discussed below. Our recommendation would be a pilot program of smaller classes to determine deficiencies and establish best practices. A representative sample population of field and HQ personnel would be beneficial to judge the impact to operations and allow scalability.

Attrition – We all know we are at the edge of the retirement cliff: the FAMS will suffer an attrition rate of approximately 700 to 1100 FAMS by 2023 as our workforce ages and becomes eligible for retirement. The CONOPS evolution and movement towards intelligence based deployments will naturally see FAMS flying less (the reason for our recent law and movement to define the agency's intelligence methodology) thereby relieving the agency of the urgent need to replace existing workers. Reduced missions and coverage ultimately leads to lower FAM program costs; our budget goes farther.

Health, wellness, and morale – a job with rotating assignments and various LEO collateral duties will end the 20 year physical punishment the FAM workforce currently endures. The expanded law enforcement role will exercise the full range of skills and abilities leading to much greater job satisfaction and increased morale. The failed TSA pay for performance model has led to \$30,000+ differences in pay across otherwise equal FAMS based on favoritism alone and needs to be addressed. The Administrator approving GS scale for the new position (or the administrative duplication of GS under the ATSA) will eliminate the inconsistent, time consuming and rigged evaluation process for raises. The 17 year continual deployment of our FAMS is taking a critical toll on lives and families, and has led to an unconscionable amount of suicides and health conditions.

The agency is invited to partner with us in our legislative effort to obtain a DOJ psychological grant for the FAMS.

Cost savings – One of the big questions in Congress when we have pitched a workforce evolution is how do we offset the cost of converting everyone into a GS position? Or sending everyone to CI school? We believe this is achievable through cost savings, right sizing the workforce, and resulting staffing/support reductions across all current components. At worst, the projected attrition and retirements coupled with real intelligence based flights will make it cost neutral.

- Our FAMS HDQ support roles (travel, ticketing, and passport) will scale down with the flight reductions realizing further cost savings.
- Management positions will be consolidated, and some SFAMs may choose to convert into the new position.
- A single OLE position will expand current OOI employee functionality, with the only conversion cost borne internally at the FAM training center.
- Absorbing TSIs and their fines and penalties will further reduce superfluous staffing, as these duties can become collateral assignments for the new OLE position.
- One OLE position for all TSA LEO functions, while right sizing the respective departments, will dramatically reduce TSA's OLE program costs while increasing efficiency.
- Field offices can consolidate and be combined in time (OOI, TSI and FAM offices are redundant), and telework options can attach to the new position realizing greater options and cost savings.
- During the conversion process, FAM trained OOI agents can start mission assignments allowing TSA to get any eligible legacy FAMs and TSIs through CI school.
- The workforce evolution would also address hidden unfunded liabilities: with an increase in morale and job satisfaction there will be a reduction in EEOC filings, court cases, and grievances. Happy, satisfied workers = efficient government.
- Right sizing to intelligence only based flights will also reduce another FAM program "hidden cost" to government – the airlines currently write off the value of our seats, usually at the same day purchase cash price rate (get your next ticket at a kiosk and hit 'print receipt', I think you'll be surprised at how airlines value your seat for tax purposes/tax write off).

Working group between all components –

This is a necessary conversation that everyone needs to participate in. The AMA has received input through our dedicated email at future@airmarshal.org, and we have received excellent feedback from local management via our officers and Delegates.

We would like the agency to consider facilitating a conversation between FAMS, OOI, TSI, and K9 representatives to explore the possibilities of a single TSA OLE position with collateral assignments into each respective area.

