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**Analysis of Disclosures, Agency Investigation and Report,
Whistleblower Comments, and Comments of the Acting Special Counsel**

OSC File No. DI-08-1905

Summary

Kevin Toth, Transportation Security Inspector (TSI), U.S. Department of Homeland Security, Transportation Security Administration (TSA), Dallas Fort Worth International Airport (DFW), Office of Inspections, Coppell, Texas disclosed that TSA management expressly directed TSA inspectors to disregard security policies by not requiring aircraft operators to search [REDACTED] could be used to store prohibited items. Mr. Toth also alleged that the louvered blinds located outside seven gates in Terminal B at DFW are susceptible to having prohibited items passed through them into the sterile area.

The Office of Special Counsel referred Mr. Toth's allegations to the Honorable Michael Chertoff, former Secretary of Homeland Security, on July 2, 2008. Secretary Chertoff delegated the authority to conduct the investigation to the Honorable Kip Hawley, former Assistant Secretary, TSA. Assistant Secretary Hawley tasked the TSA Office of Investigation (OI) with conducting the investigation. OSC received a report dated January 5, 2009. The OI investigation substantiated Mr. Toth's allegations. OSC received Mr. Toth's comments on the report on March 4, 2009. OSC finds that the agency's report contains all of the information required by statute and that its findings appear to be reasonable.

The Whistleblower's Disclosure

Mr. Toth alleged that on April 19, 2006, Aviation Security Supervisor Wes Crow and Assistant Federal Security Director for Inspections Philip Zagloul instructed TSA inspectors to overlook airlines' failures to search [REDACTED] Mr. Crow and Mr. Zagloul told inspectors that they were to ask air carriers to inspect [REDACTED] After he received these instructions, Mr. Toth e-mailed Mr. Crow on April 20, 2006, to confirm the accuracy of these instructions. Mr. Toth believed the instructions contradicted Aviation Security Directive SD 1544-01-10Z, dated September 27, 2004, which requires a [REDACTED]

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[REDACTED] Mr. Crow replied promptly to the e-mail, acknowledged the accuracy of the instructions, and carbon copied Mr. Zaglool on the message. In his reply, Mr. Crow wrote, “[s]ometimes wisdom is knowing when to turn a blind eye! The air carriers are expected to comply with the SD’s [Security Directives] & EA’s [Emergency Amendments]. That’s it! . . . We need to let this topic take a rest!”

Mr. Toth also alleged that a vulnerability to airport safety exists outside of gates B17, B19, B22, B24, B27, B33, and B35 in DFW Terminal B by which members of the public may pass prohibited items to passengers in the sterile area. The public areas are separated from the sterile areas by a locked door or wall. The louvered blinds are located directly above the locked doors and walls and proceed at a 45 degree angle slanted towards the public side. Mr. Toth explained that members of the public may readily access the public side of this division and passengers, who have passed through the security checkpoint, may reach the sterile side of this division. The individual blinds may be separated to allow an item over twelve inches wide to pass through the blinds. While he has never seen any items passed through in this manner, Mr. Toth explained that there is no security mechanism in place to prevent this type of occurrence.

Report of the U.S. Department of Homeland Security

Secretary Chertoff delegated authority to David Nicholson, Acting Chief of Staff, TSA, to provide the report to OSC. The report includes a two page letter from Mr. Nicholson, a 15 page TSA OI Report of Investigation, and 34 exhibits to the report.

Before the investigation commenced, OI learned that Mr. Zaglool retired on July 1, 2008, and Mr. Crow was out of the office on extended sick leave. OI did not attempt to contact Mr. Zaglool, because the allegations against him were administrative, he was no longer an employee, and he could not be compelled to discuss the issues. Mr. Crow was unavailable to be interviewed during his doctor-approved extended sick leave. After his sick leave usage, Mr. Crow retired on August 29, 2008, prior to his interview. OI chose not to attempt to interview Mr. Crow after his retirement for the same reasons it chose not to interview Mr. Zaglool. The report treated Mr. Zaglool and Mr. Crow’s instruction to employees to disregard security policies, [REDACTED]

[REDACTED] as three separate allegations. The louvered blinds were the fourth allegation addressed by the report.

The report substantiated the allegation that Mr. Zaglool and Mr. Crow directed TSA inspectors to disregard security procedures by not requiring aircraft operators to search [REDACTED] for prohibited items. Mr. Toth learned that [REDACTED] was [REDACTED]

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not searching [REDACTED] in late summer of 2005. He later learned that other air carriers engaged in similar conduct. Mr. Toth sent at least six e-mail messages to TSA Headquarters, but did not receive a response. On April 19, 2006, Mr. Toth attended a meeting with Mr. Crow and Mr. Zagloul. [REDACTED] were discussed. Employees were told that [REDACTED] were to be searched [REDACTED]. On April 20, 2006, Mr. Toth asked Mr. Zagloul and Mr. Crow to confirm these instructions via e-mail. Mr. Crow's reply message stated in its entirety:

Kevin,

Sometimes wisdom is knowing when to turn a blind eye! The air carriers are expected to comply with the [Security Directives] & [Emergency Amendments]. That's it! I'm sure that if the [TSIs] don't make the issue a point of intense observation neither will the air carriers. Let's give [TSA Headquarters] some breathing room on this issue and see if they affect any changes. In a month or so we can give Steve J. [Steve Jenkins]¹ a call and see what has come of the subject. We need to let this topic take a rest!

Mr. Toth and Mr. Zagloul were the only recipients of this message, but Mr. Toth forwarded the e-mail to three TSIs whom he was mentoring at the time. These recipients were Angela Lowry, Arnulfo Salinas, and Gregory Gayden.

The report examined the extent to which any TSIs followed Mr. Crow and Mr. Zagloul's instruction not to require air carriers to search [REDACTED]. All 12 TSIs who were assigned to the aviation function of inspections at DFW in 2006 were interviewed to determine if they currently require assigned air carriers to search [REDACTED] and whether they have always done so. Of the four recipients of Mr. Crow's e-mail, Mr. Toth and Mr. Gayden always required air carriers to search [REDACTED]. Ms. Lowry and Mr. Salinas did not require searches or [REDACTED] between the date of Mr. Crow's email, April 20, 2006, and May 2008, which was when Mr. Zagloul and Mr. Crow left the office. They now require [REDACTED] to be searched [REDACTED]. Six of the remaining eight TSIs have always required air carriers to search [REDACTED] while Aaron Dietz and Efraim Longoria admitted there was a period of time

¹ Steve Jenkins is Branch Chief, Commercial Airlines Sector, Office of Transportation Sector Network Management, TSA.

during which they did not require air carriers to search [REDACTED]. Currently, all 12 TSIs require [REDACTED] to be searched.

The report also addressed the extent to which any TSIs followed Mr. Crow and Mr. Zaglool's instruction not to require air carriers to search [REDACTED]. All 12 TSIs, who were interviewed [REDACTED] were asked whether they have always required and currently require such searches. Of the four TSIs who received Mr. Crow's e-mail, none of them required air carriers to search [REDACTED] between April 20, 2006, and May 2008. They now require such searches. Of the other eight TSIs, seven have always required air carriers to search [REDACTED]. The remaining TSI, Mr. Longoria, was unaware of the requirement to search [REDACTED] until Mr. Toth was assigned as his mentor. Mr. Longoria noted that Mr. Zaglool instructed him to [REDACTED] at one point, because Mr. Zaglool was tired of seeing violations opened in the Performance and Results Information System. All 12 TSIs currently require searches [REDACTED].

The report substantiated Mr. Toth's allegation that the louvered blinds at seven checkpoints in Terminal B at DFW posed a security vulnerability because items could be passed from the public to the sterile side. Mr. Toth reported this vulnerability to Mr. Crow in 2005. Mr. Crow told Mr. Toth that the blinds had been there for years and the airport would not do anything about the issue. Mr. Toth was removed from the inspection team shortly after the incident. Federal Security Director (FSD) Cedric Alexander was unaware of this vulnerability until learning about Mr. Toth's allegation in May 2008. Mr. Alexander, who became FSD in September 2007, ordered a controlled test to determine if a prohibited item could be passed through the blinds. Mr. Gayden performed the test in May 2008, and successfully passed a prohibited item through the louvered blinds into the sterile side. After the test, Mr. Alexander met with an unidentified number of airport officials to discuss the problem. The airport constructed a single fixed wall and planned to address the remaining louvered blinds during a remodeling scheduled in the next six months to one year period. On July 29, 2008, OI personnel inspected the louvered blinds at the seven checkpoints. The vulnerability at one of the checkpoints had been addressed by building a wall, but the other six were still vulnerable. Alan Paterno, Senior Area Inspector, TSA Office of Security Operations, advised Michael Donnelly, Assistant Federal Security Director for Operations, that the situation must be addressed immediately, waiting between six months and one year for a remodel is unacceptable, and an interim fix must be put in place immediately.

By August 31, 2008, three fixed walls had been erected and plans were in place to put plexi-glass on top of the remaining louvered blinds until fixed walls could be erected at those

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checkpoints. By October 29, 2008, all seven checkpoints were secure and in compliance with Aviation Security Directives. Five of the checkpoints now have fixed walls. One has doors and a fixed wall, and the other checkpoint is used 16 hours per day and has a guard posted there during the other eight hours.

A copy of the report was sent to the Office of Security Operations (OSO) and Transportation Security Network Management (TSNM) to review additional issues that were identified during the course of the investigation. These issues included the lack of consistency by air carriers in their self-inspections [REDACTED] whether these inspection issues are a national issue, the receipt of differing opinions from Principal Security Inspectors (PSIs) at TSA Headquarters, [REDACTED] claim that it had an approved aircraft search program that did not include searching [REDACTED] and the existence of outdated search plans.

The response by TSNM was a December 16, 2008, memorandum from John Sammon, Assistant Administrator, TSNM, and Lee Kair, Assistant Administrator, Security Operations. The memorandum is contained in exhibit 34 to the report. To address the inconsistent air carrier self-inspections, a PSI team in coordination with a TSI team is to develop changes to Chapter 12 of the Aircraft Operator Standard Security Program (AOSSP). There was no indication that the event was a national issue. An e-mail address was created to allow TSIs to submit inquiries to PSIs at TSA Headquarters. The system is also designed to prevent TSIs from receiving differing opinions from TSA Headquarters. Members from the OSO, TSNM, Office of Chief Counsel, and Office of Global Services will meet at least once per week to discuss and resolve the submitted issues. The answers from these meetings will be posted on a webboard. TSA Headquarters did not receive the required reports of noncompliance regarding [REDACTED]. The process changes already discussed were intended to solve this issue as well. Because air carrier plans have been shown to be impractical, the AOSSP team will ensure that all areas covered in search plans are incorporated into Chapter 12 of the AOSSP.

The Whistleblower's Comments

Mr. Toth provided comments on the agency's report. He addressed numerous concerns, including some that fell outside the scope of OSC's referral. Mr. Toth believed that Acting Supervisory Transportation Security Inspector Aaron Dietz was an active participant in Mr. Zaglool and Mr. Crow's actions and that TSA management at DFW fostered a hostile work environment. While Mr. Zaglool and Mr. Crow have retired, he questioned the competencies of the personnel who replaced them. To support his allegation that TSA management is not competent, Mr. Toth referenced the failure of the Assistant Federal Security Director for

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Operations to order immediate corrective action upon learning of the safety vulnerability of the louvers.

Mr. Toth suggested that the improper aircraft inspection may be a systemic problem. He disagreed with TSA's assertion that the problems are isolated to DFW. Regarding the TSA's claim that revisions to procedures have taken place in response to this matter, Mr. Toth wrote that he is not aware of any such changes. He noted that no changes were made in the inspection language in Chapter 12 of the February 16, 2009, AOSSP revision.

Acting Special Counsel's Findings

Based on my review of the original disclosure, the agency's report, and the whistleblower's comments, I have determined that the agency's report contains all of the information required by statute and the findings appear to be reasonable.

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