

TESTIMONY OF ROBERT MACLEAN

before the

HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE,

SUBCOMMITTEE ON FEDERAL WORKFORCE, U.S. POSTAL SERVICE AND THE
CENSUS

September 9, 2014

Mr. Chairman:

Thank you for inviting my testimony. My name is Robert MacLean. Currently my Whistleblower Protection Act case is the first involving the Act that will be heard by the Supreme Court. But I am not here to talk about the legal arguments. I want to share why I had to blow the whistle, and what it means for our country to protect the freedom to warn. The timeline below shares a whistleblowing experience I never wanted to have. But it forced me to make the most difficult choices and decisions of my life, about my duty to the country as a public servant and law enforcement officer. The timeline below chronicles a series of events that has changed my life forever, and may have been even more significant for our nation's safety.

1992 — After four years as a nuclear weapons specialist, I was honorably discharged from the Air Force with a Top Secret clearance and the option to reenlist.

1996 — I became a Border Patrol Agent in the San Diego Sector. Not to be confused with a port inspector you see working at land border entry points or airports. I patrolled the vast area between entry points.

32 days after the 9/11 attacks — I was specially recruited to be in the first class of U.S. Federal Air Marshals (Air Marshals) to graduate after the 9/11 attacks.

July 26, 2003 — Four months after the invasion of Iraq, all Air Marshals throughout the country were recalled for mandatory unprecedented in-office emergency suicidal Al-Qaeda hijacking training. We were briefed that terrorists planned to exploit a visa and foreign security screening loophole in which weapons would be smuggled onto aircraft to neutralize the crew and fly jets into east coast cities, Europe, and Australian targets. The scope was far broader, and the consequences could have been far more severe, than 9/11.

But two days after our emergency training and just days before the anticipated hijackings, the Transportation Security Administration (TSA) sent an unsecured, unmarked, unclassified text message to ALL Air Marshals to cancel all hotel room reservations in order to avoid late-cancellation fees. All long distance missions requiring overnight stays by air marshals would be cancelled. TSA chose to send the unlabeled text message to our unsecured Nokia 3310 cellular phones instead of our \$22 million encrypted smart phone system. There were no markings or secrecy restrictions on the message.

I confirmed with other Air Marshals around the U.S. that they received the same text message. We all thought it was a joke given the special training we had just received and the post 9/11 law that nonstop long-distance flights were a priority. I first went to a supervisor who confirmed to me that the agency was financially broke and the national plan was directed by headquarters. But

he said there was nothing I could do, and to just leave it alone.

In the Air Force and Border Patrol every telephone had fluorescent stickers with a 1-800 Inspector General hotline to report "fraud, waste, and abuse." I called the Department of Homeland Security OIG hotline to report I was concerned about the TSA's plan to cancel air marshal coverage during a hijacking threat. I eventually reached a criminal investigator, who also told me there was nothing he or I could do. He also warned me about the possibility of cutting my career short if I pursued the issue further.

I couldn't give up. To get the word to Congress, I reached Brock Meeks of MSNBC, who verified the text message with other Air Marshals around the U.S., contacted Congress, and issued a story about the TSA order on MSNBC's homepage the night of July 29 -- just days before the anticipated hijacking.

The next day President Bush could not defend the action at a morning briefing, and there were press conferences with Senators Hillary Clinton, Chuck Schumer, and Barbara Boxer on CNN, Fox News Channel, and MSNBC. They were mercilessly ripping the TSA's plan.

Senator Boxer said during the new conference: "I want to thank the air marshals who came forward and told the truth about what was going on within their agency and bringing this issue into the spotlight... "

Senator Chuck Schumer of New York said: "Given the potential fallout of another attack that intelligence reports suggest is on the way, it is incredible that the TSA would consider reducing the air marshal presence on these flights simply to save the cost of an overnight hotel room."

After denying the plan for several hours following the MSNBC story, TSA told USA Today that it made "a mistake". Less than 24 hours after the story broke, TSA proceeded to cancel its plan before it ever took effect.

The U.S. Government Accountability Office and the Department of Homeland Security Inspector General later issued reports about TSA's plan. They discovered that I made my disclosure five days before the terrorist attacks were scheduled. The plan had intended to leave nonstop, long distance flights unprotected for two months— August 3, 2003 until September 30, 2003.

A few weeks after, I co-founded the air marshal chapter of the Federal Law Enforcement Officers Association (FLEOA). It was time to unify our voices. TSA would retaliate against my fellow FLEOA air marshal board members, such as Spencer Pickard. Mr. Pickard would eventually be forced to resign after appearing on ABC News 20/20 about a two-year House Committee on the Judiciary investigation we initiated and cooperated with. It titled the report:

"In Plane Sight: Lack of Anonymity at the TSA Federal Air Marshal Service Compromises Aviation and National Security". The report confirmed FLEOA whistleblowing disclosures of mismanagement that caused gross security breaches, exposing the identity of undercover agents. For example, the agency let a hotel chain advertise its undercover Air Marshals as its "guests of the month."

On September 9, 2004 I appeared behind a screen on an NBC Nightly News television program about a series on what was not being done to protect the public since the September 11, 2001 attacks. TSA managers conducted an investigation to identify who had blown the whistle. On May 4, 2005, in an interview with DHS criminal investigators, I admitted to being a source of the 2004 NBC Nightly News TV show, as well as the 2003 disclosure to MSNBC. I specifically denied releasing any classified or "Sensitive Security Information."

For almost five months, the TSA took no action against me. It did not place me on restrictive duties, suspend my TOP SECRET security clearance, place me on administrative leave, nor did it revoke my access to an Internet portal with numerous Air Marshal schedules and seating assignments for nine months. But then it officially labeled the unmarked text message as Sensitive Security Information after the fact, and on April 11, 2006, it fired me for breaching national security due to "Unauthorized Disclosure of Sensitive Security Information." I've now spent over eight years in legal battles, seeking to end the punishment for correcting the agency's "mistake" the only way that was left: warning Congress and the public.

I've paid a high price for doing my duty. Not so much in terms of legal fees, because so many have come to my support, from FLEOA to the Government Accountability Project to former Acting Solicitor General Neal Katyal. But in terms of everything else, it has been a disaster to "commit the truth."

So why did I do it? I blew the whistle, because I had to. I could not live with the tragedy risked if I had been the cynical silent observer. When we think about why our movement matters, put yourself in my place and ask yourself, "What if I had remained silent?" I believe that I made a difference by blowing the whistle to defend our country. It would be an honor to work with your committee to make a difference so that whistleblowers can defend themselves.

Robert MacLean was born in a U.S. Air Force hospital on Torrejon Air Base in Spain. His father was a U.S. Air Force commissioned officer and his mother, a citizen of Spain, was a civil clerk for the U.S. Air Force. His entire upbringing involved his parents and stepparents' military service in the military and federal civil service in the continental U.S. and overseas. Right after she naturalized as a U.S. Citizen, Robert's mother enlisted in the U.S. Navy Reserve and spent the rest of her career in federal civil service.

After graduating from his overseas military base high school as President of the Student Council, Robert scored very high on his military entrance exam and enlisted in the Air Force's intercontinental ballistic missile corps where had to maintain a Top Secret clearance and "Personnel Reliability Program" certification in order to access nuclear systems. After his four-year enlistment, he chose to enter the active Air Force Reserve. He was honorably discharged for both terms with the option to reenlist. He is a recipient of the Air Force Basic Training Honor Graduate uniform ribbon and Good Conduct Medal.

In 1996, Robert became a federal law enforcement Patrol Agent with the Border Patrol and stationed near the U.S./Mexico border in San Diego County. After five and a half years of unblemished service, serving both as a national recruiter and instructor training new Patrol Agents, he was chosen to be in the first class of thirty-five Department of Transportation / Federal Aviation Administration Civil Aviation Security Specialists to graduate after the September 11, 2001 attacks. His position would later be re-classified as a Department of Homeland Security / Transportation Security Administration ("TSA") Federal Air Marshal.

Only after one year, Robert was given an accelerated promotion to the highest level for a non-supervisory Federal Air Marshal. He was given a cash award for disrupting multiple illegal alien smuggling operations aboard U.S.-flagged aircraft. He also exposed a foreign law enforcement agent who approached him about smuggling firearms from the U.S. to another country. The official who ordered Robert's removal would later testify that MacLean's service in the TSA was "exemplary."

Robert co-founded the first TSA Federal Air Marshal Service Agency Chapter with the Federal Law Enforcement Officers Association ("FLEOA"). FLEOA is not a union, but a professional organization of 25,000 managerial and field-level federal police officers and special agents who wish to form one voice before members of Congress and agencies' senior executives. Robert served as the Agency Executive Vice President from 2003 until the TSA removed him in 2006 for the single charge of "Unauthorized Disclosure of Sensitive Security Information," an unclassified secrecy marking any TSA employee can apply. He is currently defending two unanimous favorable U.S. Court of Appeals for the Federal Circuit decisions before the U.S. Supreme Court (Docket No. 13-894).

Robert is now a commission-only door-to-door salesperson for residential solar systems in southern California. He is married with three children.

Committee on Oversight and Government Reform
Witness Disclosure Requirement – “Truth in Testimony”
Required by House Rule XI, Clause 2(g)(5)

Name:

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2011. Include the source and amount of each grant or contract.

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2010, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

I certify that the above information is true and correct.

Signature:

Date:
