

**Statement of Mark Hughes
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**Before the Committee on the Judiciary
Subcommittee on Crime, Terrorism, Homeland Security, and Investigations
United States House of Representatives**

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Good afternoon Chairman Sensenbrenner, Ranking Member Jackson Lee, and distinguished members of the Committee. Thank you for the opportunity to appear before you to discuss recent enhancements to United States Secret Service (Secret Service) policies and procedures that address allegations of employee misconduct and any subsequent disciplinary actions. The Secret Service takes allegations of employee misconduct seriously. Any employee, regardless of rank or position, who engages in misconduct, will be held accountable for his or her actions. This includes employees failing to report an incident, supervisors inappropriately choosing not to act on information reported to them, or any acts taken or threats of retaliation against an employee who reports misconduct.

Our workforce takes great pride in successfully carrying out the vital mission of our agency on a daily basis around the world. Unfortunately, the successes of the many have recently been overshadowed by the unacceptable failures of the few, resulting in significant changes to the way in which the Secret Service adjudicates allegations of employee misconduct.

Very shortly after the misconduct by Secret Service employees in Cartagena, Colombia in April 2012, the Secret Service established a Professionalism Reinforcement Working Group (PRWG) in May 2012. The PRWG, co-chaired by former Director John Berry of the Office of Personnel Management (OPM) and Director Connie Patrick of the Federal Law Enforcement Training Center (FLETC), consisted of a panel of five government executives, supported by approximately 70 subject matter experts from the Office of Personnel Management (OPM), FLETC, the Federal Bureau of Investigation (FBI), the U.S. military, and the Secret Service. The PRWG was tasked with three major responsibilities: 1) review the Secret Service controls on professional conduct; 2) benchmark the Secret Service against other similar agency best practices; and 3) identify any areas where the Secret Service excelled and areas where there is a need for enhancement.

Following an eight-month review, the group found that, while a number of the Secret Service's procedures were identified as best practices, and many more were found to be consistent with its peer organizations, there were areas identified where enhancements could be implemented to

further support its workforce. The PRWG issued seventeen recommendations with the goal of reinforcing professionalism within the workforce. The Secret Service accepted all of the recommendations, many of which were implemented by the end of 2013, and, in accordance with a strategic action plan, all seventeen were fully adopted by the end of 2014.

As the PRWG was winding up its actions, the Department of Homeland Security's (DHS) Office of the Inspector General (OIG) began an audit and issued a report aimed at assessing Secret Service "Efforts to Identify, Mitigate, and Address Instances of Misconduct and Inappropriate Behavior."¹ In its report issued December 19, 2013, the DHS OIG, "did not find evidence that misconduct is widespread in [the] USSS."² However, the report contained recommendations for the agency. Many of these recommendations concerned matters that overlapped with the recommendations of the PRWG, some of which had already been fully implemented by the Secret Service. Regardless, by the middle of April 2014, all recommendations issued by the DHS OIG had been completed and the recommended procedural changes fully established.

Several of the recommendations made by the PRWG and the OIG focused on establishing a robust disciplinary process grounded in transparency, consistency, and fairness. In order to meet these objectives, enhanced training and educational materials emphasizing the expectation of ethical behavior and conduct were made available to all employees. The Secret Service introduced updated training on ethics and standards of conduct; developed new briefings on professionalism that are given prior to major protective events and all overseas protective trips; and issued a user-friendly Ethics Desk Reference Guide for all employees. This guide, published in January 2013, highlights our core values, compliance principles, standards of conduct, security clearance adjudication guidelines, and the expectation that all employees must adhere to standards of ethical conduct.

The recommendations also led to the establishment of an Office of Integrity that focused on issues of integrity and professional standards, a new set of disciplinary policies and procedures, and the development of a Secret Service Table of Offense Codes and Penalty Guidelines (Table of Penalties) to ensure fairness and consistency in the disciplinary process.

Established in December 2013, the Office of Integrity reports to the Office of the Deputy Director and oversees adherence to the Secret Service's code of conduct by impartially adjudicating employee misconduct in a fair, consistent, and timely manner. The Chief Integrity Officer and the Deputy Chief Integrity Officer apply the guidance contained in the Secret Service Table of Penalties developed and implemented in November 2013. The Table of Penalties identifies specific actions that constitute misconduct and the range of discipline associated with

¹ Dep't of Homeland Security Office of Inspector Gen., Adequacy of USSS Efforts To Identify, Mitigate, and Address Instances of Misconduct and Inappropriate Behavior, December 2013.

² *Id.* at 1.

each type of infraction. The Table of Penalties also sets out aggravating and mitigating factors for consideration in assessing an appropriate penalty for a provable offense of misconduct. These enhancements improved the process for reporting and adjudicating allegations of misconduct.

As the process now stands, if an initial complaint is received by a front line supervisor, he/she is required, outside of a limited number of minor violations, to report the allegation through their chain of command to the Secret Service Office of Professional Responsibility (OPR). Pursuant to DHS Management Directive 0810.1 (Appendix A), if the matter concerns an allegation of misconduct against a GS-15 level employee or above, an allegation of criminal misconduct, or other serious non-criminal misconduct, the OPR must refer this matter to the DHS OIG who may accept the case for investigation, refer the case back to the OPR, or choose to work with the OPR in its investigation of the case.

If the case need not be referred to the DHS OIG, DHS OIG declines the case, or once the DHS OIG investigation has been completed, OPR has a responsibility to convene and chair the Secret Service Intake Group (Intake Group) to review the allegations of misconduct. The Intake Group is comprised of the Special Agent in Charge of the Inspection Division; the Chief of the Security Clearance Division or higher; the Deputy Chief Integrity Officer; an attorney from the Office of the Chief Counsel; and a representative from the affected employee's Assistant Director's Office. The Intake Group has a responsibility to examine the allegation to: 1) determine whether further investigation by the Inspection Division is warranted; 2) refer allegations of misconduct where additional information is not warranted to the Office of Integrity for appropriate administrative action; 3) administratively close cases where allegations of misconduct are unfounded, lacking in specificity, or where no violation of Secret Service policy has occurred; and 4) refer the matter to the appropriate management official when appropriate.

Ultimately, substantiated allegations are presented to the Office of Integrity. Once received by the Office of Integrity, the Deputy Chief Integrity Officer will prepare a formal disciplinary proposal to present to the employee. This proposal is based on evidence and information provided to the Deputy during the intake process and through the reports of investigation, if in fact an investigation occurred. The Deputy uses this information in accordance with the Office of Integrity disciplinary policies and the Table of Penalties to prepare his proposed formal action. Consideration is given to a number of mitigating (e.g., acceptance of responsibility) and/or aggravating (e.g., holding a supervisory position at the time of the offense, prior disciplinary action, notoriety of the offense) factors. The Deputy Chief Integrity Officer is also the issuing official for reprimands and the proposing official for all adverse actions.

Once an employee is issued a disciplinary action, the employee facing such action is afforded certain statutory procedural rights pursuant to Title 5 of the United States Code, implemented

through regulations issued by OPM,³ and corresponding Secret Service disciplinary procedures. These rights may include: (1) at least 30 days' advance written notice stating the specific reasons for the proposed action; (2) a reasonable time, but not less than seven days, to answer orally and in representation by an attorney or other representative; and (4) a written decision and the specific reasons therefore at the earliest practicable date.⁴ These procedural safeguards, mandated by Congress in the case of proposed removals, suspensions, and demotions, must be respected and preserved.

It should be noted that, if practicable, an employee is carried in an active duty status prior to and during any mandatory disciplinary notice period and any investigative period that precedes the issuance of the proposal. An employee may be placed in a paid, non-duty status (administrative leave) prior to and during this notice period when the retention of the employee in an active duty status may pose a threat to the employee or others, result in loss or damage to government property, or otherwise jeopardize legitimate government interests, including security. Additionally, where an employee's security clearance has been suspended or where the agency has reasonable cause to believe that the employee has committed a crime for which imprisonment may result, the employee may be proposed for and then placed on indefinite suspension (unpaid suspension) until the underlying matters are resolved.

The Chief Integrity Officer is the deciding official for all adverse actions. He/she hears oral responses, reviews written submissions, and issues final written decisions on disciplinary actions.

In assessing and determining the appropriate penalty to impose for employee misconduct, the Chief Integrity Officer and Deputy Chief utilize the Secret Service's Table of Penalties as instructive guidelines as well as the Douglas Factors, twelve criteria established by the Merit Systems Protection Board (MSPB). The employee is ultimately issued a written decision that provides the specific reasons for the disciplinary decision as required under Title 5, OPM rules, and Secret Service policy. The written decision must also provide the employee notice of his/her appeal rights, which may include the right to grieve the decision to the Secret Service Discipline Review Board (DRB), appeal to the MSPB, file an Equal Employment Opportunity complaint alleging discrimination, or contact the Office of Special Counsel alleging whistleblower reprisal.

After the decision is issued, a non-SES employee may request review before the DRB, which has the authority to vacate, mitigate, or uphold the charge and penalty consistent with the Table of Penalties.⁵ Alternatively, if the disciplinary action consists of a suspension of over fourteen days, a demotion, or a removal action, the employee may appeal to the MSPB.⁶

³ 5 U.S.C. § 7511-7513; 5 C.F.R. § 752

⁴ *Id.*

⁵ An SES-level employee cannot appeal to the DRB.

⁶ 5 U.S.C. § 7701. As noted above, the employee can also file a complaint with the Equal Employment Opportunity Commission or the Office of Special Counsel.

If the employee files an appeal with the MSPB after the employee has been separated from or suspended from Federal service, the burden will be on the agency to prove all facets of the charge against the employee by a preponderance of the evidence, i.e., that the facts underlying the charge occurred, that they constitute misconduct, that the penalty promoted the efficiency of the service, and that the penalty was reasonable given the charges. In order to determine whether the agency has met its burden of proof by preponderant evidence, the MSPB will require the submission of documentary evidence and will allow for a period of discovery, including the opportunity for depositions, interrogatories, document requests, and requests for admissions. Once the period of discovery is closed, the MSPB will attempt to settle the case without a hearing. If unable to resolve the matter at this stage and when requested by the employee, the MSPB is required to hold a hearing where witnesses will provide sworn testimony and be subject to direct and cross examination.

After the close of the hearing record, the MSPB Administrative Judge will issue a written Initial Decision in the matter. If this decision upholds the agency's disciplinary action, the employee may appeal the decision to the full MSPB Board. If the full Board rules against the employee, the employee may bring the case before the United States Court of Appeals for the Federal Circuit.

The statutory, regulatory, and policy system described above protects the rights of government employees and we at the Secret Service work within and respect it.

While aggressively attempting to curtail instances of employee misconduct, the Secret Service will, like any large organization, continue to face isolated incidents requiring an appropriate response. All Secret Service employees must abide by the highest standards of professional conduct, whether on-duty or off-duty, and regardless of whether or not a particular behavior is prohibited in the Table of Penalties. As stated in the Secret Service manual, the absence of an offense code for a particular act does not mean that such an act is condoned, acceptable or that it will not result in adverse action or discipline.

The key to this process is the reporting of misconduct. Incidents may not receive the proper review unless employees are willing to come forward and report what they have done, seen, or heard. The Secret Service provides its workforce a number of avenues to report misconduct including the Secret Service's Ombudsman, the Secret Service's Office of Professional Responsibility, the Secret Service's Inspection Division, the DHS OIG, or the U.S. Office of Special Counsel.

The foundation of this discipline process is strong; however, standards of conduct will need to be periodically reinforced, and, in some instances, adjusted, and the consequences for failing to

meet them will need to be communicated. These functions are core responsibilities of the Office of Integrity beyond meting out discipline. For instance, following the March 4th incident, Director Clancy, in coordination with my office, issued an official message to all Secret Service employees making clear that they are required to report through their chain of command any activities that violate the Secret Service standards of conduct or that otherwise negatively impact the mission of the Secret Service. The official message further stated that failure by an employee to make such notifications may result in disciplinary action.

In addition, policy regarding the use of Government Owned, Leased, or Rented vehicles (GOV) has recently been updated. Effective March 23, 2015, Secret Service employees are prohibited from operating a GOV within ten (10) hours of consuming any amount of alcohol. All previous policies regarding the consumption of alcohol and the operation of a GOV were rescinded insofar as they may have been viewed as inconsistent with this policy. On that same date, in coordination with my office, Deputy Director Magaw issued an official message to all Secret Service employees emphasizing that any employee who violates this policy will be subject to the full range of available disciplinary and adverse actions up to and including removal from employment.

The Secret Service is committed to ensuring a strict code of professional conduct, a transparent process for administering discipline, and accountability regardless of rank or grade. While it is ultimately the individual responsibility of employees to adhere to the standards of conduct, the Secret Service understands that it must provide its employees with clear, comprehensive policies and mechanisms to enforce them. When misconduct is found to have occurred, those within and outside the Secret Service should be confident that there is a mechanism in place to deal with it swiftly, fairly, and consistently.

Chairman Sensenbrenner, Ranking Member Jackson Lee, this concludes my written testimony. I appreciate the opportunity to explain Secret Service disciplinary policy, and I welcome any questions you may have.