

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Nadine Pellegrino
Harry Waldman
550 South Ocean Boulevard
Boca Raton, Florida 33432

V.

United States of America
Transportation Security Administration
Washington, DC.

TSA TSO Nuyriah Abdul-Malik in her official and
individual capacities

TSA STSO Laura Labbee, in her official and
individual capacities

TSA TSO Denice Kissinger in her official and
individual capacities

John/Jane Doe TSA Aviations Security Inspector De-
fendant in their official and individual capacities

John/Jane Doe TSA Official Defendant,
in their official and individual capacities

Transportation Security Administration
C/O United States Attorney's Office
Eastern District of PA
615 Chestnut Street
Suite 1250
Philadelphia, PA 19106

Transportation Security Administration
Department of Homeland Security
Eastern District of PA
c/o Legal Dept.
2 International Plaza Drive
Suite 640
Phila., PA 19113

YOU ARE HEREBY NOTIFIED TO PLEAD

TO THE ENCLOSED PLEADING WITHIN
TWENTY (20) DAYS FROM SERVICE
HEREOF, OR A DEFAULT JUDGMENT MAY
BE ENTERED AGAINST YOU

TERM, 2009

No.:

Jury Trial Requested

Civil Action (Civil Rights Violations)

CIVIL ACTION COMPLAINT

Jurisdiction

1. This action is for monetary damages and relief pursuant to 42 U.S.C. § 1983, 1985, 1988, 28 USC § 1346 and US Constitutional 1st Amendment, 4th Amendment, 6th Amendment, and 14th Amendment Due Process Clause.
 - A. Plaintiffs have submitted an administrative claim to the TSA on Form 95 on July 28, 2008, in accordance with the Federal Tort Claims Act 28 USC § 2671.
 - B. All conditions of the Federal Tort Claims Act have been met before filing this complaint.
 - C. Venue is properly within this District under 28 U.S.C. § 1402(b) as the acts complained of occurred in the Eastern District of Pennsylvania.
 - D. Plaintiff has submitted a Freedom of Information Act and Privacy Act Request with the (United States Department of Homeland Security) the TSA and the ICE (Immigration Customs and Enforcement) Divisions.
 - E. All required conditions have been met prior to filing this complaint.
 - F. Venue is properly within this District under 5 U.S.C. § 552(a)(3), 28 U.S.C. § 1657; 5 U.S.C. § 552(a)(4)(E).

Parties

At all times relevant hereto, Plaintiffs, Nadine Pellegrino and Harry Waldman hereby allege the following:

PLAINTIFFS

2. Plaintiffs, husband and wife, (hereinafter referred to as “Plaintiff,” “Plaintiffs,” “Pellegrino” or “Waldman”) are residents of Palm Beach County, Florida.
 - A. Plaintiffs were on their way home to FL. from the Phila. Intl. Airport, (PIA), Phila., PA.
 - B. Plaintiffs are experienced travelers and were ticketed 1st class passengers on a USAIRWAYS flight from Phila., PA, to Ft. Lauderdale, FL., scheduled for take off around 8:30 pm on July 29, 2006.
 - C. Plaintiff Pellegrino, is a business and private consultant for over 20 years, a professional speaker, has been a paid consultant to the US government, has been very successful university teacher for 19 years.
 - D. Plaintiff Waldman is a business consultant, an author, a columnist, a recognized and honored and respected industry expert in his field.
 - E. Both Plaintiffs used air travel in the normal course of their personal and professional lives.
 - F. Both Plaintiffs had frequent flyer status with USAIRWAYS, were flying Platinum status (over 75K miles per year), were familiar with TSA security searches/screenings Standard Operating Procedures (SOPs) and aviation security procedures for passengers and had experienced security screenings and baggage searches in many other parts of the world by July 29, 2006.

DEFENDANTS

3. Both The United States of America and its Transportation Security Administration (TSA) are appropriate defendants under the Federal Tort Claims Act.
 - A. TSA Defendant, (hereinafter TSA) is a component agency of the US Department of Homeland Security responsible for security of the nation's transportation systems and has Eastern District of PA Offices in the Phila. area that are associated with passenger travel safety at the PIA and other public transportation venues and has offices at Two International Plaza, Suite 640, Phila., PA., 19113.
 - B. Defendant, TSA Transportation Security Officer (TSO) Nuyriah Abdul-Malik, (hereinafter referred to Defendant (Def.) Abdul Malik) was the Complainant in an unsuccessful malicious prosecution of Plaintiff commencing on 7-29-06 and ending on 3-28-08.
 - B. Defendant TSA Supervisor Transportation Security Officer (STSO) Laura Labbee (hereinafter referred to as Defendant (Def.) Labbee), Badge #8442, was a Complainant in an unsuccessful malicious prosecution of Plaintiff Pellegrino commencing on 7-29-06 and ending on March 28, 2008.
 - C. Defendant Denice Kissinger filed an official Incident Report Witness Summary falsely alleged to have witnessed a [fictitious] assault on Defendant Labbee on 7-29-06, willingly made herself available as a false witness to the Philadelphia Police Department and Commonwealth prosecutors and willingly volunteered to be a false witness that resulted in an unsuccessful prosecution of Plaintiff commencing on 7-29-06 and ending on 3-28-08.
 - D. Defendants Abdul Malik, Labbee and Kissinger (hereinafter referred to as Defendants collectively and by their individual names Def. Abdul Malik, Def. Labbee, and Def. Kissinger) performed their duties as Transportation Security Office Inspectors (TSOs) or Supervisor of Inspectors (STSO) of passengers and their personal belongings at the PIA, Concourse B, Phila., PA., 19153, on 7- 29-06.
 - E. Defs. had the charge and authority to search for explosive devices and prohibited items potentially transported onto public aircraft in passengers' luggage that would jeopardize air passenger safety on 7-29-06.
 - F. John/Jane Doe TSA Aviation Security Inspector(s) (ASI or ASIs) Defendants (hereinafter referred to as John/Jane Doe TSA ASI Defendants) were/are TSA Aviation Security Inspectors who were/are part of the TSA Federal Regulatory Inspections [and Compliance] Dept. working at/around the PIA who were/are involved in, among other things, in regulatory aviation security inspections and initial and comprehensive investigations for TSA Civil Action Enforcements (CAEs) are considered federal employees who are part of the TSA Eastern District of PA with offices located at Two International Plaza, Phila. PA.
 - G. John/Jane Doe TSA Officials (hereinafter referred to as John/Jane Doe TSA Official Defendants) were and are TSA Management Level Officials and Legal Dept. Officials and were or are considered federal employees that are part of the TSA Eastern District of PA with offices located at Two International Plaza, Phila. PA.

- H. John/Jane Doe TSA ASI Defendants and John/Jane Doe TSA Official Defendants while acting within the scope of their employment under the color of law were and are considered to be “law enforcement officers” as they are support personnel for federal and state law enforcement and are considered to be acting as and are treated and characterized as “other law enforcement officers” and thereby given certain statuses, powers, privileges and authorities.
 - I. At all times relevant and material hereto, all above TSA Defendants were acting under color of law and within the course and scope of their employment, pursuant to their customs, policies, practices, ordinances, regulations, standard operating procedures (SOPs) and directives specified for the US of A, the DHS, and the TSA..
 - J. The TSA and its agents are sued as an entity and its agents the above listed Defendants, ASI and Official Defendants are sued in their official and individual capacities for their malicious and unlawful actions and the sum total of their unlawful actions causing intentional injuries, harm, and damages to the Plaintiffs.
4. John/Jane TSA ASI Defendants and John/Jane Doe TSA Official Defendants are known to the TSA.
- A. Their names are not known currently to the Plaintiffs at the time of filing.
 - B. Plaintiffs respectfully request being granted the ability to add their given names to the Complaint once they have been accurately identified and named through Discovery Proceedings.
 - C. The extent, involvement, and participation of the PIA Security Department are currently unclear at the time of filing this Complaint.
 - D. The extent, involvement, and participation of the City of Philadelphia Solicitor’s Office and its agents are currently unclear at the time of filing this Complaint.
 - E. Plaintiffs respectfully request permission to add the given names of these individuals if and only if Discovery Proceedings in this lawsuit reveals their active involvement and participation in civil rights and liberties violations of the Plaintiffs.

FACTS BACKGROUND

5. PLAINTIFF WAS FALLACIOUSLY ACCUSED, FALSELY ARRESTED, UNLAWFULLY IMPRISONED, AND MALICIOUSLY PROSECUTED FOR 18 MONTHS

- A. On July 29, 2006, Defendants (Def.) Abdul Malik and Labbee mean-spiritedly and malevolently conspired together at the PIA to falsely allege criminal conduct on the part of the Plaintiff falsely accusing her of three assaults, physical injuries, unruly conduct, and TSA security screening violations.
- B. Both Defendants knowingly and willingly lied to TSA Officials, insisted on filing fallacious criminal complaints with the PPD falsely accusing Plaintiff in retaliation for knowing Plaintiff intended to file a civil rights violations complaint about their provocative and abusive conduct during the search of her property.
- C. Def. Kissinger willingly joined the conspiracy by voluntarily and fallaciously alleging she witnessed an assault on Def. Labbee she knew she never saw; Plaintiffs believe and aver Def. Kissinger expected to be reported for harassment in the same complaint.
- D. Defendants' fallacious accusations lead to Plaintiff's false arrest, two unlawful imprisonments, and malicious prosecution that lasted 18 months while all three Defendants knew they were fabricating their malicious allegations.
- E. Plaintiff was acquitted of the false charges at trial and found **Not Guilty** after the Judge ruled the TSA did not provide "Brady Material" as required under Plaintiffs Constitutional Rights to Due Process.

6. THE DEFENDANTS REPEATEDLY LIED TO LAW ENFORCEMENT OFFICIALS

- A. The Defendants repeatedly lied to TSA Officials, PPD LEOS/Det., a succession of Phila. DA Prosecutors and Phila. Municipal Court Justices under sworn testimony that falsely incriminated Plaintiff.
- B. Plaintiffs were not told by TSA Officials or the PPD before Plaintiffs false arrest that the Defendants had alleged assaults even after repeated requests to speak with the TSA Official in Charge (OIC).
- C. Plaintiffs believe and aver the driving force behind Plaintiff's false arrest, unlawful imprisonments, and malicious prosecution was Def. Abdul Malik who developed an immediately strong animosity toward Plaintiff Pellegrino without justifiable cause [Plaintiff Pellegrino was twice Def. Abdul Malik's age, and a different race]; Def. Labbee and Kissinger were active, willing participants in joining Def. Abdul Malik in mean-spirited, contemptuous treatment of Plaintiff [who was approximately twice Defendants' Labbee's and Kissinger's individual ages.]
- D. The Defendants' false accusations were put into action in retaliation for Plaintiff's stated intent to report their provocative and abusive treatment of her and her property damages to higher TSA authorities.
- E. [See Exhibit #1 Generic TSA Compliment/Complaint Form -- Waldman was given the form on 7-29-06 by a white shirted, graying TSA Caucasian male who didn't identify himself some time after he presented himself to Pellegrino as the TSA Official in Charge (OIC) at the CKPT table (where she had been unlawfully detained on false pretenses by Def. Labbee after the property damaging search by Def. Abdul Malik that Def. Labbee supervised and witnessed); Plaintiff didn't believe the man was the TSA OIC, made a 2nd request to speak with the OIC and asked for the names of the Defendants on a Complaint Form. He walked away after he refused to provide his name/rank and the Defendants names. The handwriting on the form is believed to be Def. Labbee's.]

7. A PIA PRESS RELEASE DATED 1-05-05, STATES ALMOST 900 DIGITAL RECORDING CAMERAS WERE INSTALLED IN PIA CKPT CEILINGS SUBSIDIZED BY THE TSA

- A. A PIA press release posted on their web site touted PIA was one of the first airports nationwide to use almost 900 digital recording surveillance cameras at its checkpoints subsidized by the TSA that provided access within minutes to surveillance recordings to the TSA and the PPD for instant review and analysis; the press release stated their *invaluable tool* was used extensively. [See PIA Jan 5, 2005 press release Exhibit # 2]
- B. The PIA's *valuable tool* was not used on 7-29-06 by the TSA or the PPD prior to Plaintiff's false arrest, unlawful imprisonments, and malicious prosecution.

8. PLAINTIFF'S AND DEFENDANTS' CONDUCT WAS CAPTURED AND RECORDED BY COMPREHENSIVE OVERHEAD VIDEO SURVEILLANCE CAMERAS FOR 1 AND 1/2 HOURS

- A. At least 4 large fish eye lens cameras and as many 6 additional smaller surveillance cameras [not including 2 CCTV monitors covering each of two conveyor belts] were installed in the ceiling of the PIA Terminal B Security CKPT that comprehensively captured activity during the 1 and 1/2 hours Plaintiffs were detained at the CKPT.

- B. The overhead surveillance cameras digitally and objectively recorded by date and time a comprehensive overview of the CKPT.
- C. TSA Federal Security Manager Richard Rowe and TSA Aviation Security Inspector Osbourne Shepherd and the PPD LEOS Fadgen and McColley had unfettered and immediate access to the captured surveillance recordings, none sought to investigate or review them.
- 9. PLAINTIFF'S ARRIVE AT THE TSA SECURITY CKPT PRIOR TO 7 PM AND OBSERVE A DYSFUNCTIONAL, UNSUPERVISED, UNDERSTAFFED TSA AVIATION SECURITY CREW**
- A. Plaintiffs arrived before 7:00 pm amid light passenger traffic, placed their bags on a conveyor belt without waiting, proceeded through the magnetometer; Pellegrino was told thereafter by a male TSA agent to stand in a detention pen with no further information/instructions; no TSA agent was working in the area to complete the process.
- B. While waiting, both Plaintiffs observed a dysfunctional, unsupervised, understaffed, almost non-existent TSA security crew at the CKPT; no TSA agent was available to perform aviation security functions on the exit side of the magnetometer; supervision was absent; when they appeared, TSA agents failed repeatedly to follow SOPs for screening and search procedures with passengers.
- C. Waldman took possession of their bags, repacked/removed them from the conveyor belt, was in possession approx. 6 min prior to TSO Thos Clemens' appearing and wanting Pellegrino's bags to search.
- D. [Def. Abdul Malik falsely testified on 10/25/06 she removed Plaintiff's bags from the conveyor belt and offered Plaintiff a private search after Plaintiff told her she did not want her bags searched in public because it was embarrassing.
- E. Plaintiff never spoke to TSO Clemens or Def. Abdul Malik about the reason she requested a private search].
- F. TSA TSO Clemens relied on Pellegrino to identify her bags and failed to:
- tie Plaintiff's bags to her while they were still on the conveyor belt
 - advise Plaintiffs of the reason for her detention
 - advise Plaintiff of TSA search procedures for passengers (TSASFPF) prior to the search of her bags.
- G. TSO Clemens left Plaintiff standing in the detention pen, walked her bags to a search table and flipped them hard in backhanded motions onto the table, and then yanked down the zipper of Plaintiff's larger suitcase.
- H. Plaintiff asked for a private search; nothing more was said by Plaintiff or Clemens.
- I. Clemens falsely alleged in his handwritten Incident Report Witness Summary (IRWS) statement that Plaintiff made comments to him about the search process being ridiculous and was rude.
- J. Plaintiffs aver TSO Clemens' allegations are fallacious.
- K. Def. Abdul Malik was assigned to the search after Pellegrino's request while another middle-aged female passenger detained in the public pen after her was processed while she was required to wait; no men were detained.
- L. After a while Def. Abdul Malik appeared, and saying nothing to Plaintiff, went directly for her bags on the table wearing contaminated search gloves; Plaintiff asked Def. Abdul Malik to change her gloves; Def. Abdul Malik immediately exhibited observably strong nonverbal animosity and contempt toward Plaintiff.
- M. Def. Abdul Malik stopped all movement for several moments, shot Plaintiff a hateful menacing glare then without saying a word, seething, then changed her gloves contaminating the new set with the former then transported Plaintiff's three articles behind an open doorway in 2 stages then left the immediate area with Plaintiff standing in the detention pen and did not appear for another while.
- N. According to TSA Discovery Documents dated 7-29-06 and Court Proceedings testimony dated 10-25-06: Def. Abdul Malik thereafter requested different treatment for Plaintiff from other passengers telling TSA STSO Dilworth Plaintiff was *irate* [when no irate behavior existed or was expressed by Plaintiff].
- O. Def. Abdul Malik wanted an additional TSA officer, Def. Labbee, as a witness and an Explosive Device Residue Testing agent, Def. Kissinger, for the screening of Plaintiff's property -- more than typical processing procedures for passengers. because Def. Abdul Malik could tell Plaintiff "was going to be one of those passengers, irate passengers that was going to give me a hard time."
- P. Def. Abdul Malik developed an attitude toward Plaintiff and treated her according to false stereotyping.
- 10. PLAINTIFF IS DIRECTED TO A THIN-WALLED PARTITIONED CUBICLE SEARCH ROOM**
- A. Def. Abdul Malik reappeared by herself, failed to advise Plaintiff of TSASFPF again, directed Plaintiff to follow her into the search room; directed Plaintiff to stand in the corner in front of a pile of debris on the floor next to an empty filthy trash can; Plaintiff complied and looked around the space.
- B. As Plaintiff looked to her left, Def. Kissinger was breathing on her left shoulder; Def. Labbee was standing

directly on Kissinger's left by the wall next to the door opening to her right; both women were large; the search space was overcrowded.

- C. Plaintiff had not seen either Def. until that moment.
- D. On 10-25-06, Def. Labbee testified falsely that she helped bring Plaintiffs belongings into the search room and had conversed outside of it falsely alleging Plaintiff was *upset and feeling harassed* when no such feelings were expressed by the Plaintiff and no such events ever occurred as Defendant Labbee falsely alleged; Def. Abdul Malik testified directly before Def. Labbee that she had transported Plaintiffs bags into the search space by herself.
- E. The search room -- a small, thin-walled partitioned, cluttered and debris filled, entry/exit storage cubicle with a dirty-floor and doors on both sides -- plaintiffs bags were positioned for searching. [See Exhibit #3 photograph of entrance to the search cubicle. The trash can in the photo is not the same one referred to above.]
- F. Plaintiffs aver TSA Discovery Documents fallaciously alleged Plaintiff was advised of a "random search entailing additional screening" and provided with TSASFPs; at no time on 7-29-06 were either Plaintiffs informed or advised of TSASFP nor was either told by any agent of the TSA one was subjected to a 'random search that required additional screening'; nor were Plaintiffs ever told by a TSA agent, Plaintiff would be subjected to a personal screening and bag screening/search after requesting a "private" search.

11. DEFENDANT ABDUL MALIK'S PROVOCATIVE AND ABUSIVE SEARCH TACTICS BEGAN BEHIND CLOSED DOORS

- A. During the screening/search of Plaintiff's handbag, Def. Abdul Malik counted her currency, her coins, read the front/back of her credit cards, insurance cards, library cards, other plastic cards, read personal notes, opened her mints lid, smelled them, then dropped the opened tin into her purse spilling out the contents, smelled her hand sanitizer leaving the cap open, smelled her lipstick, smelled her pen and put her thumbs through the snap closure of a very sentimental change purse after Plaintiff asked her to be careful with it, then yanked the zippers on her handbag closed.

12. DEFENDANT LABBEE OFFICIALLY DETAINS PLAINTIFF AFTER GETTING CAUGHT LYING

- A. Plaintiff was aware TSA TSOs had an official charge to look for items prohibited on public aircraft, the search of Plaintiff's property went excessively beyond that.
- B. Plaintiff asked Def. Labbee to what level of search she was subjected.
- C. Def. Labbee lied to Plaintiff and told her it was an *airline designated search*, was caught in her lie, and thereafter officially detained Plaintiff (not allowed to leave the cubicle) for *arbitrary reasons* telling Plaintiff words to the effect she had the power and authority to detain her arbitrarily for whatever reasons she wanted and for as long as she wanted.

13. DEF. ABDUL MALIK BECAME DEMONSTRABLY MORE PROVOCATIVE AND ABUSIVE WITH PLAINTIFF'S PROPERTY AFTER DEF. LABBEE FORMAL DETENTION

- A. Def. Abdul Malik continued to provocatively damage Plaintiff's personal property by forcing, ramming, and punching Plaintiffs belongings into compartments in front of Plaintiff while Def. Labbee stood by and allowed it.
- B. Plaintiff repeatedly requested that her belongings be left out of her bags so she could repack them after the search concluded; Defs. Abdul Malik and Labbee insisted Plaintiff's bags were going to be repacked *their way*.
- C. Def. Abdul Malik derisively told Plaintiff "File a claim." [for the damages].
- D. Throughout the search from outside the cubicle, Def. Kissinger continued requesting extensive Explosive Devise Testing (EDT) swabs of Plaintiff's property.
- E. Plaintiff Waldman watched Def. Kissinger going to different places on the CKPT with the swabs.
- F. After the search of Plaintiff's rolling tote, Def. Abdul Malik was unable to close the zipper on the bag as she had taken all of Plaintiff's belongings out her suitcase gone through them, commented derisively on Plaintiff's jewelry and property, went through Plaintiff's private and business papers then pushed, forced, rammed, and punched Plaintiff's property back into the compartments of the suitcase in ways that made it impossible to close the zippers without using damaging force.
- G. When the zipper would not close, Def. Abdul Malik used her knee and her body weight to force-compress Plaintiff's belongings in the bag while continuing to force-yank the pulls until the heavy coil gave way and split and the pulls were jammed so they couldn't move in either direction.

- 14. DEF. ABDUL MALIK TWICE INSISTED TO HAVE THE PPD CALLED TO ARREST PLAINTIFF**
- A. When Plaintiff commented on Def. Abdul Malik's abusive treatment of her property and wanted to see the damage, Def. Abdul Malik insisted twice that Def. Labbee call the PPD [to arrest Plaintiff].
- B. Def. Labbee didn't response to Def. Abdul Malik's initial demands and refused to allow Plaintiff to see the damages [the suitcase zipper is permanently damaged, Plaintiff's eye glasses were broken in half, expensive jewelry and other property was damaged].
- C. Def. Abdul Malik put that bag underneath the search table at the far side of the cubicle that held Plaintiff's searched/screened purse and larger suitcase on top.
- 15. PLAINTIFF'S LARGER SUITCASE WAS SEARCHED BY DEF. ADUL MALIK**
- A. Plaintiff Waldman watched Def. Kissinger outside of the search cubicle continue to run extensive EDTs and report back to the cubicle doorway; no explosive residue found; do more EDTs.
- B. Plaintiffs belongings were twice out of her sight for some time during the procedure.
- C. While searching Plaintiff's bag, Def. Abdul Malik repeatedly used her body to block Plaintiff's vision.
- D. Plaintiff repeatedly requested that she be allowed to see what Def. Abdul Malik was doing.
- E. Def. Labbee grudgingly instructed Def. Abdul Malik to allow Plaintiff an unobstructed view of what she was doing.
- F. Defs. Abdul Malik and Kissinger insisted on EDT testing each sandal and protective bag in Plaintiff's suitcase.
- G. Def. Abdul Malik took all of Plaintiff's footwear out of her suitcase, one by one held each in its bag up in the air, let the footwear drop several feet to the search table while laughing mockingly; every sandal and every bag was tested for explosive residue.
- H. When Defs. finished the search and screening and nothing prohibited was found, Plaintiff's sandals and covers were left in a disheveled pile on the search table, the contents of the suitcase in a mess.
- 16. NO PROHIBITED ITEMS FOUND, SEARCH NEEDS TO END, DEF. LABBEE HAS NO LEGITIMATE REASON TO CONTINUE TO DETAIN PLAINTIFF**
- A. Plaintiffs believe and aver Def. Abdul Malik had been using abusive search tactics to provoke Plaintiff into violating TSA security procedures and failed.
- B. Def. Labbee had no legitimate reason to detain Plaintiff any longer and told her she was officially released and free to pack up her belongings and leave [the premises].
- C. Plaintiff chose to remove her belongings to the public area in stages to repack.
- 17. AFTER THE SEARCH ENDS, DEF. ABDUL MALIK BLOCKS PLAINTIFF'S ABILITY TO RETRIEVE AND REMOVE HER SUITCASE**
- A. Plaintiff returned to the cubicle to remove her bag and found Def. Abdul Malik standing at the table in front of it obstructing access.
- B. Plaintiff requested that Def. Abdul Malik move to allow her access; Def. Abdul Malik refused to move. [Def. Abdul Malik lied in court testimony stating Plaintiff hit her with her bag before she could move. Plaintiff never hit her with her bag, Plaintiffs suitcase never left the floor.]
- C. Plaintiff was forced to get down on her arthritic hands and knees, crawl underneath the table on the dirty floor to reach the bag in the far corner while Def. Abdul Malik blocked Plaintiffs easier access.
- D. Plaintiff was able to drag the bag across the floor toward her from underneath the table, pull it toward her, back out from underneath the table, pull the bag out to where she could pull up the handle and wheel the bag behind her out of the cubicle.
- E. As Plaintiff was leaving the closet, Def. Abdul Malik yelled out, that she had been assaulted when no assault ever occurred.
- 18. DEFS. ABDUL MALIK AND LABBEE FALSELY ALLEGE FICTITIOUS ASSAULTS**
- A. Without hesitation Def. Labbee falsely claimed she too had been assaulted before Def. Abdul Malik.
- B. Def. Abdul Malik wanted confirmation from Def. Labbee that she would go along with the fallacious allegations.
- C. Each sought false witness confirmation from the other by using the You- Saw-Her -Hit- Me- Didn't -You? Yeah. And- You- Saw -Her-Hit-Me- Too -Didn't -You? Yeah. Method.
- D. Def. Adbul Malik insisted a 3rd time the PPD was called, Def. Labbee was willing to oblige.
- E. Defendant Abdul Malik falsely testified on 10-25-06 she wanted the police called as she was walking out of the search room.

F. Plaintiffs aver, both Defs. conspired together in the cubicle getting their fallacious allegations straight before Def. Labbee left the search room, re-detained Plaintiff without warrant, confiscated her driver's license, then phoned the PPD having STSO Dilworth summon and notify TSA Officials. [See Exhibit #4 Frank A Dilworth's TSA IDR}

19. PELLEGRINO IS RE-DETAINED WITHOUT WARRANT BY DEF. LABBEE ON FALSE PRETENSES — HER PERSONAL PROPERTY IS THROWN IN THE TRASH CAN BY EITHER DEFS. ABDUL MALIK OR LABBEE OR BOTH.

- A. Waldman watched Def. Labbee exist and approach Plaintiff at the table (while Def. Abdul Malik rearranged the room).
- B. Plaintiff discovered items missing, asked Def. Labbee about them who denied knowing anything; later found her missing property had been thrown in the trash can in the cubicle by Defendants Adul Malik and Labbee; in sworn testimony on 10-25-06, Def. Labbee falsely testified Plaintiff asked Abdul Malik about their whereabouts not her.
- C. Def. Labbee re-detained Plaintiff without warrant or reason, directed her not to touch her belongings or move marginalizing Plaintiff at the table and never returned with her driver's licence.
- D. Def Labbee lied and falsely testified on October 25, 2006, she had not released Plaintiff in the room and wanted information from Plaintiff on the Complaint she intended to file.
- E. On the same day Def Abdu Malik testified Plaintiff had been officially released in the room and was free to leave.

20. PLAINTIFFS ARE DENIED COMMUNICATION WITH THE TSA OFFICER IN CHARGE BY DEF. LABBEE.

- A. As soon as Plaintiff was re-detained without legitimate reason, she requested Def. Labbee to call the TSA OIC to the CKPT; Def. Labbee walked away from Plaintiff.
- B. Plaintiffs made repeated requests to speak with TSA OIC who never appeared during Plaintiff's unlawful detention; TSA STSO Frank A Dilworth's Incident Detail Report (IDR) noted TSA OIC Pete Nowakowski was not notified until 21:25 -- roughly 2 hours after his report indicated Plaintiff was removed from the PIA in handcuffs. [See Exhibit #4 TSOC Time notified 21:25]]
- C. Wanting to know why his wife wasn't leaving the CKPT, Waldman went to her and she told him about the unwarranted re-detainment and civil rights violations; Waldman sought information from Def. Labbee.
- D. When Waldman approached Def. Labbee, she wanted Pellegrino's private medical/medications information (specifically about any mental illness) without Plaintiff's knowledge permission.
- E. Unlawful NCIS and BMVR checks were run on Plaintiffs driver's license and returned negative results.
- F. After TSA Officials arrived, Def. Labbee told Waldman to stay away from their conference

21. PLAINTIFF WALDMAN AND AN UNIDENTIFIED FEMALE PASSENGER EYE WITNESSES WERE NOT INTERVIEWED BY TSA OFFICIALS OR THE PPD ON 7-29-06 OR THEREAFTER

- A. Waldman witnessed Def. Labbee's and Def. Kissinger's whereabouts when/while Plaintiff removed her property from the search cubicle; Waldman saw that no assaults to Def. Labbee ever occurred as the Defendants accused in TSA IRWS statements and sworn Court testimony giving three different versions.
- B. An unidentified middle-aged female passenger present and assembling her belongings on the conveyor belt was looking directly at Pellegrino when her sandals exited the search cubicle; no footwear touched Defendant Labbee who was no where near or around them.
- C. Plaintiff Waldman's eye witness account contradicted and undermined the Def. fallacious accusations.
- D. No TSA Official, no PPD Officer, no PPD Detective, no Commonwealth Prosecutor ever interviewed Waldman or the unidentified female passenger on 7-29-06, or thereafter; TSA Dilworth's IDR dated 7- 29-06, indicates no witnesses were interviewed but several TSA Officials were notified .[see Exhibit #4 Number of witnesses providing statements].
- E. TSA Officials and PPD Officers Fadgen and McColley were summoned to the CKPT by Def. Labbee and STSO Dilworth; none made any attempt to determine whether there were any witnesses and performed no factual investigation; they communicated with the Defendants only; none talked to or interviewed Plaintiffs about the fallacious accusations while unlawfully detained without explanation.

22. USAIRWAY CSR CLEARS PLAINTIFFS FOR FLIGHT

- A. US AIRWAYS representative Sari Salameh summoned to the CKPT by Dilworth [was not allowed to hear what was said during the TSA/PPD/Defendant conference and was told to stay away from Pellegrino], cleared Plaintiffs for flight .

23. TWO TSA MALES TAUNT PLAINTIFF PRIOR TO FALSE ARREST

A. Shortly before Plaintiff's false arrest by the PPD; two male TSA TSOs continued to hang around the table where Plaintiff was unlawfully detained by Def. Labbee and taunted a chant in a provocative tone "You're not going anywhere, Y O U' R E G O I N G T O J _ A _ I _ L." at Pellegrino.

24. PLAINTIFF FALSELY ARRESTED AS A RESULT OF DEF. ABDUL MALIK'S INSISTENCE, DEF. LABBEE, JOINS HER

- A. Prior to Plaintiff's false arrest and unlawful imprisonments, Waldman heard Def. Labbee ask Def. Abdul Malik if she was sure she wanted to go through with it, Def. Abdul Malik insist adamantly on having Plaintiff arrested. Def. Labbee willingly went along with Def. Abdul Malik's insistence.
- B. Plaintiff was arrested at the spot approx an hour after the unlawful detention by Def. Labbee began.
- C. An accusing female African American PPD Officer unlawfully frisked, tightly handcuffed Plaintiff's arthritic shoulder and wrists behind her back, and pushed Plaintiff Pellegrino out of the PIA security CKPT in front of shocked and gawking passengers.
- D. Arresting Officer John Fadgen never said a word to Pellegrino.
- E. Waldman was shocked and horrified after both Plaintiffs made repeated requests to speak with the TSA OIC and were told nothing by TSA Officials or the PPD prior to Plaintiff's [false] arrest.
- F. Waldman watched as his wife was handcuffed tightly without warrant, Waldman visibly shaken, frightened and alarmed that his wife [diagnosed with early onset osteoporosis and arthritis years before] was going to be pushed forward into a fall on the hard floor by the PPD officer with no way to protect herself;
- G. Waldman was not told where his wife was being taken, for how long or for what reasons, Waldman was upset by the way both Plaintiffs had been treated without reason or warrant.
- H. An unidentified, small-statured, well-dressed, well-spoken, light complected African American male TSA Official approached Waldman, offered to help him with their bags; he told Waldman something to the effect of: Nothing to worry about, she'll get her wrists slapped and that will be the end of it. [TSA FSM Richard Rowe or TSA ASI Osbourne Shepherd, named in TSA Dilworth's reports may have been the unidentified male.]
- I. TSA Discovery Documents "500" Report Codes indicate TSA Officials called to the CKPT on 7-29-06, did not believe Defs. Abdul Makil and Labbee had been assaulted, yet allowed Plaintiff to be arrested by the PPD for a 'wrist slapping'.

25. PLAINTIFF IS UNLAWFULLY INCARCERATED TWICE BY THE PPD

- A. As a result of Def. fallacious accusations to the PPD, Plaintiff was unlawfully detained then illegally imprisoned 1st at the PIA PPD Airport Div jail, then transported and tightly handcuffed without a seat belt to inhumane conditions in filthy, putrid, live and dead rat, cockroach infested jail cells with toilets clogged to the brim full of human feces and urine, feces smeared on jail cell walls, food scattered on the floor, horrific sanitary conditions, no soap or running water at the PPD's SW Div. Station for approximately 19 hours having to stand for most of the time; during which Plaintiff was provided with 1/2 pint of water and no food, and told there wasn't enough for everyone. Plaintiff was denied required daily medication.
- B. Plaintiff was horrified and terrified.

26. PLAINTIFFS DENIED COMMUNICATION AFTER FALSE ARREST, UNLAWFUL IMPRISONMENTS

- A. Salameh, not TSA Officials or the PPD, informed Waldman his wife was going to be arrested
- B. Pellegrino was not given a reason until she asked PPD Fadgen who told her on the way to the PPD SW Div. station after the 1st unlawful incarceration; "assault" nothing else.
- C. Waldman was not given a reason until he appeared at the PPD SW Div station wanting to see and talk to his wife and was told by a very rude male behind the window to go home you're wife is being charged with felonies, you'll be lucky if you see her after 48 hours.

27. DEFS. SEEK NO MEDICAL TREATMENT FOR THEIR BOGUS INJURIES, NO DOCUMENTATION IS MADE OF THE DEFS. FICTITIOUS INJURIES, THEY MISS NO WORK TIME

- A. Defs. sought no medical treatment for their fictitious injuries; instead were transported to the PPD SW Div. Station by PPD LEO Micheal Browne to file fallacious Criminal Complaints and act as [false] witnesses for each other with PPD Det. Wm Campbell that resulted in bogus criminal charges and a malicious prosecution of Plaintiff.

- B. Plaintiffs believe and aver no PPD law enforcement officer documented Defendants' phony injuries, PPD Det Wm Campbell wrote down what the Defendants told him; that was the extent of his entire investigation.
- C. Defs. did not miss work as a result of their fictitious injuries, except the time consumed to file false criminal complaints on 7-29-06, appear in Phila Municipal Court proceedings in their TSA uniforms and testify falsely in sworn testimony before Commonwealth of PA Justices.
- 28. 7-30-06 AM — PLAINTIFF FALSELY CHARGED WITH 2 FELONIES AND 8 MISDEMEANOR COUNTS AS A RESULT OF THE FALLACIOUS ACCUSATIONS MADE BY DEFS. ABDUL MALIK AND LABBEE.**
- A. On 7-30-06, Plaintiff was booked, photographed, fingers and palms printed without sanitary measures, arraigned, forced to post bail in cash, the bail bondman's didn't want Plaintiff's husband involved in bail posting, denied communication with her husband during incarceration, and held behind bars until her husband posted bail in cash and then presented the receipts at the SW Div. Station.
- B. Plaintiffs believe and aver the TSA and the PIA had a serious problem once Plaintiff was falsely charged with ten felony and misdemeanor counts instead of *a wrist slapping* — two of the counts were making terroristic threats
- 29. BY 7-31-06 2 BOGUS 'TERRORISTIC THREATS' COUNTS DISAPPEARED FROM CHARGE SHEETS**
- A. Two bogus counts disappeared within a day after three pieces of Plaintiff's checked bags took off without Plaintiffs on board the USAIRWAYS flight from Phila. to Fort Lauderdale [luggage is not allowed to stay loaded on the plane without the passengers on board when it takes off].
- B. The same three un-escorted checked bags returned to Phila. in the following days without Plaintiffs on three separate USAIRWAYS flights from Ft. Lauderdale to Phila. in days following July 29, 2006.
- C. Plaintiffs/PDA were not informed of the disappearance of the counts from the charge sheets until 10-25-06 when Judge DeLeon did not mention them when remanding Plaintiff for trial.
- D. PDA asked for clarification and learned the 'terroristic threats' counts were no longer on the charge sheets.
- 30. FACTUAL EVIDENCE WAS NOT PRESERVED, NO INVESTIGATION OF FACTUAL EVIDENCE BY ANY LAW ENFORCEMENT OFFICER OCCURS**
- A. The Defendants' official TSA IRWS witness statements (the Commonwealth's Discovery and Prosecution Documents) and the basis of the TSA'S Civil Action Enforcement made reference to specific times and events that would have been or were captured by the overhead surveillance recordings.
- B. Once criminal proceedings were initiated by the Defendants, the TSA was required by law to preserve any and all of its evidence.
- C. No PPD LEO, no TSA Official, no Commonwealth Prosecutor sought to pull and preserve the video surveillance recording evidence prior to falsely charging Plaintiff. [The PIA Security Office does not honor civilian requests for preserving and/or copying surveillance recordings; the PIA honored Police, FBI, TSA, Prosecution requests. -- sworn testimony of Renee Tufts, PIA Security Manager and TSA Security Liason, June 4, 2007 testimony under Court Order. .
- 31. ON 8-2-06 PDA IS HIRED AND INSTRUCTED TO GET COPIES OF THE OVERHEAD VIDEO SURVEILLANCE RECORDINGS BEFORE THE TSA DESTROYS THEM**
- A. Plaintiffs hired a defense attorney. (PDA) who was instructed in writing and in spoken words on 8-2-06 to secure copies of the surveillance recordings the same day fearful the evidence would be destroyed by the TSA; a number of follow-up phone communications and written communications continued to stress and reinforce the importance of securing copies of the surveillance recordings before they were destroyed by the TSA. [See Exhibit #5 Plaintiff's email to PDA dated 8-2-06/]
- 32. THE 8-3-06 PRELIMINARY HEARING (PH) IS CONTINUED.**
- A. Plaintiff is required to appear at the Criminal Justice Center on 8-3-06.
- B. The PH was postponed when the Prosecution witnesses did not appear; the hearing was continued to 10-25-06.

33. TSA CAE IS INITIATED AGAINST PLAINTIFF BY 8-7-06 AFTER DEFS.' FALSE ALLEGATIONS REQUIRING AN INITIAL THEN A COMPREHENSIVE INVESTIGATION BY TSA ASIS.

- A. The TSA CAE was a separate and distinct additional process from the Defendants' malicious prosecution of Plaintiff where the TSA had the capability of setting up their own rules.
- B. Prior to the initiation of a CAE an initial investigation is performed by ASIs, once it is underway a more comprehensive and detailed investigation occurs.
- C. In a letter to Pellegrino dated 8-7-06, TSA Asst. Deputy Fed. Security Director for Regulatory Inspections, Celestine Holman, stated a CAE had been initiated; the TSA sought to fine Plaintiff up to \$10K for [phony] TSA Security Screening violations through the CAE; Holman's letter detailed the fallacious allegations listed in the PPD's Complaints maliciously filed by Defs. Abdul Malik and Labbee that falsely incriminated Plaintiff along accusing Plaintiff of fabricated TSA security screening violations and other fallacious accusations.
- D. Plaintiffs faxed the letter to PDA and requested in writing that he get in touch with Ms. Holman pronto to preserve the video surveillance recordings. Plaintiff Waldman followed up with phone communication.
- E. When a CAE is initiated the TSA is required to inform the target in written communication as well as at the conclusion of the investigation; to date the TSA has provided no written communication to Plaintiffs with information on the results of the investigation and the concluding determination.]

34. BEST FACTUAL EVIDENCE DESTROYED DURING COURT AND DISCOVERY PROCEEDINGS BY JOHN/JANE DOE TSA ASI DEFENDANTS

- A. Plaintiffs believe and aver the overhead surveillance recording were the best objective factual evidence and documentation for what happened and didn't happen at the PIA CKPT on the evening of 7-29-06.
- B. Plaintiffs' believe and aver John/Jane Doe TSA ASI Defendants had unfettered access to the overhead video surveillance recordings available in the recording structure at the PIA and didn't need to follow PIA SOP with the PIA Security Office to review the recordings.
- C. Plaintiffs aver the video surveillance recordings evidence did not support the Defendants' fallacious allegations but undermined and contradicted them.
- D. During Court and Discovery Proceedings, PDAs were actively seeking surveillance recordings copies by timely phone and written communications with the TSA, the PIA and the Phila. City Solicitor's Office.
- E. Plaintiffs through their PDA or PDAs) were the only Parties who doggedly sought copies of the overhead surveillance recordings commencing on August 2, 2006, until Court Ordered testimony clearly indicated the TSA Aviation Security Inspectors made a deliberate determination to have them destroyed.
- F. Plaintiffs aver that once viewed, the video surveillance recordings factually contradicted and discredited the fallacious allegations of Defs. Abdul Malik, Labbee, and Kissinger, TSA Clemens, and Dilworth's summary reports and discredited and undermined the Commonwealth's bogus charges and provided Plaintiffs the opportunity to move for dismissal of the phony charges brought by PA Commonwealth ADA Steven Gontkowsky
- G. Plaintiffs believe and aver the dysfunctional conduct of the TSA aviation security crew captured on the surveillance recordings were source of humiliation and embarrassment to the TSA and the PIA.

35. TSA CELESTINE HOLMAN AND TSA PATRICE SCULLY, ESQ., FIELD COUNSEL FOR THE EASTERN DIST. OF PA (FCEDP) FAILED TO RETURN PDA'S PHONE CALLS PRIOR TO THE DESTRUCTION OF THE VIDEO SURVEILLANCE RECORDINGS.

- A. John/Jane Doe TSA ASI Defendants [required by TSA Standard Operating Procedures (SOPs) and Security Policy (SP) to perform a thorough investigation into all surrounding circumstances relevant to a Civil Action Enforcement (CAE) made a deliberate decision to violate in-place SP and SOPs by having the multiple-camera-captured- 1- and- 1/2 hours of video surveillance recordings for July 29, 2006, destroyed instead of pulled and preserved as factual evidence.
- B. Plaintiffs believe and aver John/Jane Doe TSA ASIs Defendants
 - were unable to perform a legitimate, credible, or respectable investigation of any kind after the deliberate destruction of factual evidence
 - destroyed evidence they knew was required by US and PA Constitutional Due Process to be preserved for Court Discovery Proceedings.

36. OFFICIALS OF THE TSA, THE PIA AND PHILA. CITY SOLICITOR'S OFFICE STONEWALLED PDAS DURING COURT DISCOVERY PROCEEDINGS

- A. Plaintiffs believe and aver, the time frame for the fallaciously alleged assaults could not have consumed more than 30 seconds of video surveillance recording time during 1 and 1/2 hours of overhead video surveillance captured and recorded.
- B. For ten months after 8-2-06, John/Jane Doe TSA Officials Defendants, the PIA's Security Manager's Office, and the Phila. City Solicitor's Office stonewalled PDA's Discovery efforts to obtain copies of the recordings guaranteed under Due Process:
 - feeding false, confusing and misleading disinformation that tried to restrict responses to Discovery Proceeding requests to an approximate 30- second time frame during the 1 and 1/2 hours of activity recorded on video surveillance disks,
 - stated no recordings were made, no recordings ever existed, and there were no recordings,
 - misrepresented the actual existence of and withheld information on the destruction of the surveillance recordings.

37. PH 10-25-06 PHILA. ADA NICHOLAS LEIRMAN REFUSED TO DROP BOGUS FELONY CHARGES PRIOR TO PH BECAUSE THE TSA WAS INVOLVED; JUSTICE DISCHARGED THEM AND OTHER MISDEAMEANOR COUNTS FOR LOE AND INSISTED PLAINTIFF SHOUL STAND TRIAL BECAUSE AGENTS OF THE TSA WERE THE COMPLAINANTS

- A. Defs. Abdul Malik and Labbee appearing in their TSA uniforms were accompanied by unidentified TSA Officials who provided support and counsel for their fallacious and malicious accusations.
- B. By 10-25-06 the video surveillance evidence had been destroyed by the TSA while PDA was still seeking it.
- C. Just prior to the PH PDA asked Phila. ADA Nicholas Leirmann to consider dropping the felony charges as the reported facts didn't fit the charges.
- D. ADA Lehman refused to entertain or discuss it because it was "the TSA."
- E. Defendants Abdul Malik and Labbee repeatedly lied under oath.
- F. Both Defendants falsely testified on 10-25-09 that after the search ended Def. Labbee held the search room door open greater than 90 degrees as a courtesy for Plaintiff because the door wouldn't stay open on its own. [See Exhibit #6 -- photograph of the TSA CKPT search cubicle door that stayed open on it's own and could not open 90 degrees or greater due to the coat rack base on the floor]
- G. Justice DeLeon discharged the 2 felony and 4 misdemeanor counts for lack of evidence (LOE), stating he couldn't think of instructions to give a jury to find Plaintiff guilty of Agg. Assault and REAP after hearing Defs. versions of the charges.

38. STARTING 10-25-06 AND CONTINUING THEREAFTER, TSA OFFICIALS ACCOMPANIED DEFENDANTS TO COURT PROCEEDINGS SUPPORTING THEIR MALICIOUS PROSECUTION

- A. Defs. Abdul Malik, Labbee, and Kissinger dressed in their TSA uniforms were accompanied to Court Proceedings each listing by John/Jane doe TSA Official Defendants who offered support, counsel, assistance, to the Defendants false allegations

39. PRIOR TO 1-10-07 — JOHN/JANE DOE TSA OFFICIAL DEFENDANTS CHERRY PICKED THE DOCUMENTS THEY SUBMITTED TO PHILA. DA'S OFFICE/PLAINTIFFS DURING DISCOVERY PROCEEDINGS

- A. Plaintiffs were unaware until court Ordered testimony on June 4, 2007, that Jonh/Jane Doe TSA Official Defendants intended to withhold Dilworth's documents from Commonwealth Prosecutors and Plaintiffs; a TSA Legal Department misstep/blunder handed them over to the Phila. DA's Office who then forwarded them to PDA prior to 1-17-07. [See Exhibit #6. Notes of Testimony transcript TSA Lisa Eckl, Esq. 6-4-07, page 23]
- B. During Discovery Proceedings, John/Jane Doe TSA Official Defendants did not provide IDRs with the IRWS statements for Def. Abdul Malik's, Def. Kissinger's, TSO Clemens;
- C. STSO Dilworth's IDR had significant and pivotal evidential value in preparing a proper defense; it contained the key to understanding the 24 Report Code Categories contained on the Discovery Documents provided without IDRs;
- D. Without the key, the report codes were meaningless to anyone not knowing what the numbers represented;
- E. Dilworth's IDR also reflected what TSA Officials, Airline Officials, and LEOS were notified and when on 7-29-06. [See Exhibit #4 Notifications Section listing when the TSA Federal Security Director, the TSA Asst, Federal Security Director for Security, the TSA Aviation Security Inspector, etc. were notified].

40. TSA LEGAL DEPT.'S GOOF-UP DELIVERS STSO DILWORTH'S DOCUMENTS THE TSA INTENDED TO WITHHOLD FROM PHILA. DA/PLAINTIFFS

- A. Plaintiffs believe and aver without the TSA's Legal Department goof-up in handing over a copy of STSO Dilworth's IDR, Plaintiffs would have been unable decipher the significance of the "500" Report Codes listed on the Discovery Documents.
- B. Plaintiffs believe and aver:
- 1) TSA provided the Discovery documents to support the Commonwealths case, removed, and withheld the documents that didn't
 - 2) Defs. Abdul Malik, and Kissinger's and TSO Clemens IRWS statements did not have IDRs attached and were withheld by the TSA during Discovery Proceedings on purpose.
 - 3) The key on the IDR revealed information that undermined and discredited the Prosecutions assault cases.
 - 4) The TSA Discovery Documents provided to Plaintiffs contained the "500 Report Codes" which signified
 - 5) "Disruptive Unruly Passenger" TSO Clemens statement had no Report Code listed.
 - 6) None of the TSA Discovery Documents contained the "200 Assault of TSA Employee Report Code"
 - 7) All of Dilworth's documents were of significant evidential value to Plaintiffs' defense preparation and were withheld because they were of significant evidential value.
 - 8) The "500 Report Codes" on any TSA documents referring to Plaintiff for 7-29-06 are fallacious and distorted misrepresentations of Plaintiff's conduct;
 - 9) The "500 Report Codes" are repeated indications TSA Officials involved in determining whether any assaults occurred on July 29, 2006, did not believe Defendants Abdul Malik's, Labbee's and Kissinger's false assault allegations against Plaintiff
- C. Plaintiffs believe and aver it is currently unknown how many other documents subjected to Discovery Proceedings were withheld by the TSA, the PIA Security Office, and/or the City of Phila.

41. ON 2-18-07 THE TSA WAS SERVED WITH A SUBPOENA FOR THE PRODUCTION OF SURVEILLANCE RECORDINGS OF 7-29-06

- A. TSA Asst Field Counsel for the Eastern Dist. of PA Eckl responded to PDA by letter on 2-20-07 acknowledging subpoena and stated:
"To the extent you seek information related to this case, please be advised that the Phila. District Attorney's Office has received two TSA witness statements related to this incident. Also be advised that there is no videotape related to this incident."
- B. PDA subpoenaed video surveillance recordings not videotape.
- C. The TSA did not produce the video surveillance recordings or provide information on their destruction.

42. ON 3-15-07 PDA AND PI ARE PROHIBITED FROM COMPLETING A COMPREHENSIVE ON-SITE INVESTIGATION AT THE PIA TSA SECURITY CKPT TERMINAL B

- A. On 2-15-07, during an on-site investigation, TSA Eckl, prohibited Plaintiffs' defense attorney (PDA/ PDAs) and PI from photographing the CKPT ceiling that documented where the surveillance cameras were positioned relative to the search cubicle.
- B. Ms. Eckl would not allow photographs of the search cubicle from inside; the City of Phila., owner and operator of the PIA, Solicitor's Office, permitted PDA and PI motion video recordings and photographing of the area that TSA Legal Counsel Eckl would not allow.

43. TSA ECKL IS REMINDED BY PDA IN 4-2-07 LETTER TSA IS REQUIRED TO PRODUCE EXCULPATORY DOCUMENTS PRIOR TO TRIAL

- A. TSA Eckl response letter dated 4-11-07 does not provide a relevant response to PDA's request to have exculpatory evidence turned over as required.

44. A COURT ORDERED IN-CAMERA HEARING 6-4-07 TO DISCOVER WHAT HAPPENED TO THE OVERHEAD VIDEO SURVEILLANCE RECORDINGS OCCURRED

- A. From 8-2-06 to 6-4-07, Plaintiffs/PDAs were unable to discover what happened to the overhead video surveillance evidence captured on numerous digital cameras on 7-29-06.

- B. At Plaintiffs requests a Court Order and subpoenas were issued to the City of Phila. for the production of documents and testimony to discover the PIA and the TSA actions in what happened to the surveillance recordings. [See Exhibit # 7 Court Order dated June 1, 2007].
- C. Ms. Renee Tufts appeared for the PIA, Sharon Hutchins, Esq. for the City of Phila Solicitor's Office representing the PIA [did not testify], Lisa Eckl, Esq. appeared for the TSA;

45. MS. TUFTS, PIA SECURITY MANAGER AND TSA LIASON TESTIFIED UNDER OATH 6-4-07

- A. Renee Tufts testified:
 - 1) the PIA Security Dept. needed written notification from the TSA to preserve the video surveillance recordings.
 - 2) the TSA did not follow established Security Policy.
 - 3) the TSA did not follow already established PIA SOPs for preserving the video surveillance evidence in Plaintiffs' cases.
 - 4) if the TSA had followed security policy and SOPs, her dept. would have pulled the recordings and preserved them.
 - 5) the only people contacting her office about the preservation of the surveillance recordings were Plaintiffs (via PDAs).
 - 6) the PIA did not honor civilian requests for preservation of surveillance records.
 - 7) anytime Ms. Tufts was contacted to preserve video surveillance recordings, she was required to share that information with the TSA when she did.
 - 8) Ms. Tufts was not aware of any follow-up request from the TSA to view the video recordings 30 days after 7-29-06.
 - 9) Ms. Tufts did not produce any documents during the hearing. and restricted her testimony to the 2 Closed Circuit TV screens connected to the conveyor belts rather than the comprehensive overhead video surveillance at checkpoints touted by the PIA press release dated Jan 5, 2005.
 - 10) Plaintiffs believe and aver the extent of Ms. Tufts and the PIA knowledge and involvement in the preservation and destruction of the overhead video surveillance for 7-29-06 is still not clearly known.

46. TSA LISA ECKL, ESQ. TESTIFIED TSA [AVIATION SECURITY] INSPECTORS DESTRUCTION OF VIDEO SURVEILLANCE EVIDENCE AFTER DELIBERATION

- A. Ms. Eckl testified under oath that:
 - 1) The TSA had initiated a CAE against Plaintiff seeking up to \$10,000.00 in fines for security screening violations on hold until the resolution of the criminal charges.
- B. Regarding the legally required preservation and production of the overhead video surveillance recordings, Ms. Eckl testified that:
 - “the video tape” was not requested by the TSA because “our inspectors did not believe it was necessary in this case.”
- C. Ms. Eckl testimony made it clear that TSA [Aviation Security] Inspectors made a decision to have the video surveillance recordings destroyed. by deciding not to have them preserved.
- D. Ms. Eckl's assertion did not provide legal justification for John/Jane Doe TSA ASI Defendants unlawful actions.
- E. After hearing Ms. Eckl's testimony Justice Gehret questioned the necessity for a criminal versus a civil proceeding.
- F. Ms. Eckl insisted there needed to be both, one following the other, and that the CAE would resume after the resolution of the criminal proceedings.
- G. Phila. ADA Marcia Bracca sat in silence and made no comment.

47. PRODUCTION OF DEF LABBEE'S IRWS, SUPPLEMENTAL REPORT, IDR DOCUMENTS WITHHELD BY THE TSA UNTIL 6-4-07 IN-CAMERA HEARING AND SWORN TESTIMONY

- A. John/Jane Doe TSA Official Defendants did not turn over Def. Labbee's IRWS when it handed over Def. Abdul Malik's, Def. Kissinger's, TSO Clemens' [and STSO Dilworth's documents by goof-up.]
- B. Initially on 6-4-07, Ms. Eckl insisted she turned it over, neither the Prosecution nor the Plaintiffs had a copy.
- C. Upon discovering both ADA Braccia and Plaintiffs had copies of Dilworth's documents, Ms. Eckl blurted out
 - “You shouldn't have the one from Dilworth, Dilworth just reviewed...”.
- D. Justice. Gehret informed Ms. Eckl “He's got it.” [See Exhibit #8 TSA Lisa Eckl, Esq. Notes of Testimony pg 23]
- E. Justice Gehret required Def. Labbee's documents held in Ms. Eckl's several inches thick folder on Plaintiff to be produced and copied in its entirety for both the ADA Braccia and PDA.
- F. Ms. Eckl did not have the opportunity to remove the IDR from Def. Labbee's IRWS and Supplemental Report in front of Justice Gehret;

G Def. Labbee's documents also contained the "500" Report Code on the IRWS statement, her Supplemental report and her IDR.

48. PLAINTIFFS WERE DENIED A COPY OF THE NOTES OF TESTIMONY TRANSCRIPT BY JUSTICE GEHRET on 6-4-07.

A After the "Not Guilty" verdicts Plaintiffs found a copy of the Notes of Testimony transcript for June 4, 2007, in one of the closed case folders in the Quarter Sessions closed case files available to the public after 3-28-08 when "Not Guilty" verdicts were rendered due to TSA violations of Plaintiff's Constitutional rights.

49. PLAINTIFF'S ORAL MOTION TO DISMISS/SUPPRESS EVIDENCE 1-24-08

A. Plaintiffs were not present for the Oral Motion, the hearing had been scheduled for 1-22-08, Justice Gehret and the DA's rep were not prepared to hear and argue the Motion; it was rescheduled for 1-24-07, Plaintiffs had to return to FL.
B. TSA Field Counsel for the Eastern District of Pa, Patrice Scully, Esq., appeared on behalf of the TSA and wanted to include a statement in the record.

C. PDA objected because Plaintiff was not present.

D. Justice Gehret wanted to hear what TSA Field Counsel Scully had to say.

E. TSA Patrice Scully wanted it noted in the record:

- 1) "The cameras are not owned or controlled by the TSA, they are owned and controlled by the airport. The TSA — I would like to make clear — the TSA have to make the request to get the tapes. It's the airport policy. They took over them after thirty days, not the TSA."

F. Phila. ADA Christy Tuttle argued the destruction of the video surveillance recordings did not involve an issue of the "best eviden issue" because there were two witnesses who saw things with their own eyes

G. The two itnesses turned out to bet to be Def. Labbee and Def. Kissinger at Plaintiff's trial].

50. ORDER TO SUPPRESS EVIDENCE IS GRANTED

A Justice Gehret ruled he would only hear testimony on what occurred inside the room; Justice Gehret's Order suppressed all testimony which pertained to outside the room. [See Exhibit 9 Order Granting Motion to Suppress Evidence that would have been recorded on the video surveillance evidence.]

51. PHILA. DA'S OFFICE CONTINUED TO PROSECUTE PLAINTIFF AFTER JUSTICE'S GEHRET'S SUPPRESSION ORDER DECIDED ON 1-24-08.

A. Def Labbee falsely testified on 10-25-06 that she was assaulted outside of the search room.

B. Def. Abdul Malik falsely testified on 10-25-06 that Def. Labbee was assaulted outside the search room.

C. Def. Abdul Malik falsely testified she was assaulted in the search room.

D. Plaintiffs aver nobody was assaulted either inside or outside of the search room by the Plaintiff.

52. ON 3-28-08 PHILA. ADA MARTINO IS UNSUCCESSFUL IN PRESENTING HIS CASES IN CHIEF, PLAINTIFF IS ACQUITTED AND FOUND "NOT GUILTY," "NOT GUILTY"

A. Plaintiffs believe and aver the Defendant's malicious prosecution of Plaintiff continued because of TSA's power and TSA's involvement.

B. Def. Abdul Malik did not appear to testify against Plaintiff; no reason, explanation or information was provided by ADA Martino or the TSA; Plaintiffs currently do not know the reason she did not appear.

C. Plaintiffs believe and aver they don't know what charges Plaintiff was tried on.

D. The ADA Martino's cases against Pellegrino at trial were insufficient yet the Phila DA's Office insisted upon prosecution.

F. Def. Labbee was prohibited by Court Order from testifying about anything that occurred outside the room.

G. ADA Martino and PDA objected consecutively when Def. Labbee testified brazenly and falsely she had been assaulted while standing 1 foot outside of the doorway.

H. Def. Labbee testified "Nothing physical happened inside the search room.

I. Def. Kissinger testified falsely that she saw Plaintiff assault Def. Labbee while Def. Labbee was standing inside the room while holding the door open with her hand outside.

J. ADA Martino's rested the Commonwealth's cases against the Plaintiff after Defs. Labbee and Kissinger provided false and contradictory testimony.

K. Thereafter Plaintiff was found "Not Guilty"

- L. Justice Gehret's ruling indicated the TSA had violated Plaintiff's constitutional rights by not providing the Plaintiff with a copy of the video surveillance recordings
- M. Plaintiff's trial consumed 10 pages of transcript for testimony, objections, sustaining objections, prosecutor questions and clarifications, defense attorney responses, judge's comments and clarification of procedures.
- 53. PLAINTIFF'S SUBMITTED FORM 95 7-28-08, AND CIVIL RIGHT COMPLAINT TO THE TSA**
- A. Plaintiffs submitted a completed Form 95 to the TSA on 7-28-08 including an 11-page description of Civil Rights Violations and submitted it to the TSA and received a response May 22, 2009, TSA denied liability for Plaintiffs basis of claim without speaking to the Plaintiffs.
- 54. On 8-8-08 PLAINTIFFS SOUGHT THE HELP OF THEIR US CONG. REP. RON KLEIN'S OFFICE REQUESTING A FORMAL INVESTIGATION INTO THE CIVIL RIGHTS VIOLATIONS BY THE TSA.**
- A. Plaintiffs signed papers to allow an investigation into their civil rights violations complaint; to date Cong. Klein's office has provided no information on a response from the TSA regarding Plaintiffs complaint.
- B. Plaintiffs returned to Rep. Klein's office on Sept. 17, 2009, again requested an investigation into TSA lack of response to Plaintiffs Civil Rights Violation Complaint.
- C. Plaintiffs are still waiting for notification from their Congressman's Office that the TSA has responded.
- 55. PELLEGRINO FILED A FOIA AND PA ACT REQUEST 5-28-09 WITH THE TSA AND IMMIGRATION AND CUSTOMS (ICE)**
- A. Plaintiff filed Freedom of Information Act (FOIA) and Privacy Act (PA) requests for all TSA documents related to the malicious prosecution and CAE on May 28, 2009.
- B. To date the TSA has provided no documents to the Plaintiffs under that FOIA and PA request.
- C. The Dept. of Immigration and Customs Enforcement (ICE) deny any records exist.
- D. Plaintiff has appealed ICE's response with the Dept of Homeland Security General Counsel.
- E. General Consult has responded they will take up Plaintiff's appeal when they get around to it.
- 56. DURING 6-25-09 TO 11-5-09 PLAINTIFF FILED 4 RIGHT TO KNOW LAW REQUESTS WITH THE PPD**
- A. Pellegrino has filed 4 RTKL requests with the PPD only two items of information have been provided all other requests have been denied; the same information was provided for two different requests.
- 57. ON 7-24-09 THE PHILA. DA'S PRIVATE COMPLAINT UNIT WOULD NOT ALLOW PLAINTIFF TO FILE PRIVATE CRIMINAL COMPLAINTS ABOUT THE DEFENDANTS LISTED IN THIS COMPLAINT**
- A. Phila DA's office would not allow Pellegrino, a crimes victim, to file completed Private Criminal Complaint forms about the Defendants with their office. [See Exhibit # 10 Phila DA Office Private Criminal Complaint Unit]
- B. Ms. Wolfe told Plaintiff she needed to file the Complaints with the PPD Airport Unit (the arresting div.)
- C. Plaintiffs drove to the PIA AU where PPD Airport Division Lt. Gary Neill would not accept the Private Criminal Complaints.
- D. Neill told Plaintiffs to file the Private Criminal Complaints with the Phila. DA's Office, the PPD, telling Plaintiffs the PPD "had no mechanism for accepting Private Criminal Complaints."
- 58. AT THE END OF 3 YEARS OF TRYING TO SEEK ANSWERS TO QUESTIONS, WITH OUT COOPERATION OR APOLOGY, PLAINTIFFS FEEL LIKE TSA "ROAD KILL."**
- 59. AS CRIMES VICTIMS THE ENTIRE SITUATION AND EXPERIENCE HAS TAKEN A TOLL ON THE PLAINTIFFS**
- A. Plaintiffs experiences in the past three plus years have been enormously upsetting and demoralizing, and have taken a physical, emotional, and psychological toll on the Plaintiffs leaving them with sleep disturbance, difficulty concentrating during the day, and has shattered their sense of personal security as citizens of the United States.

CAUSES OF ACTION/REMEDIES

Count I

Civil Conspiracy

60. Plaintiffs allege each and every allegation contained in preceding paragraphs and incorporates them herein by reference as if the same were set forth at length.
61. Plaintiffs believe and aver Defendants Abdul Malik, Labbee and Kissinger, through their malevolent, cruel, reckless actions and callous disregard while acting within the course and scope of their authority intentionally conspired against Plaintiff and was the factual cause of:
- A. malicious and false incrimination Plaintiff
 - B. Plaintiff's false and unlawfully arrest, two incarcerations and malicious and unsuccessful prosecution,
 - C. which ultimately caused Plaintiff's loss of physical liberty and marital companionship, substantial and unnecessary stress and distress, emotional harm, hurt and suffering, psychological injuries and damages, financial expenses and losses incurred from the criminal prosecution process, expenses and costs, damages, personal and professional injuries and lost time from their lives.
62. Defendants' actions were so malicious and displayed such a reckless indifference to the Plaintiff's rights and well being, that the imposition of punitive damages as well as compensatory damages are warranted, and outrageous and completely intolerable in a civilized society and went beyond all possible bounds of decency and fit the definition of criminal behaviors.
63. Under the Federal Torts Claims Act, Defendants United States of America (USA) and the TSA are liable for the above described actions of its agents as they were acting within the scope of their employment for the USA and its TSA when the civil conspiracy was concocted, initiated, and fully carried out by their intentions and actions.
64. WHEREFORE, Plaintiffs demand compensatory damages against the USA and compensatory and punitive damages against the Defendants named above for such sums as would reasonably and properly compensate them in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with interest, Plaintiffs' expenses and costs in money and time, legal costs and attorneys' fees and punitive damages.

Count II

Malicious Prosecution

65. Plaintiffs allege each and every allegation contained in preceding paragraphs and incorporates them herein by reference as if the same were set forth at length.
66. Pellegrino, the victim of Defendants' crimes, was the target of a malicious prosecution initiated and carried out by the Defendants.
67. Plaintiff Waldman, husband and witness to his wife's crime victimizations, was forced to endure her malicious prosecution and other civil liberties and rights violations and injuries.
68. Defendants Abdul Malik's, Labbee's, and Kissinger's unwarranted, unjustifiable and reckless actions undertaken in abuse of power, authority, and abuse of the legal process initiated and brought about a malicious and unsuccessful prosecution of the Plaintiff.
69. Defendants fallacious complaints to the PPD and Phila. DA's Office forced Plaintiff to become the victim of their crimes, victim of an unwarranted false arrest, victim of two unlawful imprisonments, and victim of a malicious 18 month prosecution forcing her to stand trial for crimes never committed.
70. Plaintiff was forced to endure the indignities of being pushed out of the PIA in handcuffs under PPD escort in front of a gawking crowd of gawking passengers, a PPD booking on 10 bogus criminal counts, mug shots, fingerprinting, arraignment on bogus charges, unjustified bail posting [money still withheld by the City of Phila.] required to appear in criminal justice proceedings falsely charged while facing serious incarceration consequences as a result of Defendants' fallacious and malevolent accusations.
71. No TSA Official or PPD Officer or Commonwealth Prosecutor performed any investigations or research other than to accept the Defendants' fallacious accusations as probable cause, because they were considered and classified as "other law enforcement officers" acting under the color of law.
72. No governmental officials sought to preserve the video surveillance recordings that undermined and contradicted the Defendants fallacious accusations; instead agents of the TSA destroyed them.
73. Defendants' intents were concocted, initiated, and followed through to the unsuccessful prosecution of Plaintiff with malicious, reckless, callous disregard for the consequences of loss of physical liberty and marital companionship, substantial and unnecessary stress and distress, emotional harm, hurt and suffering, psychological injuries and damages, financial expenses and losses incurred from the criminal prosecution process, expenses and costs,

damages, personal and professional injuries and lost time from their lives that their malicious intentions and actions inflicted on the Plaintiffs.

74. Defendants actions were:
- the direct cause of Plaintiffs malicious prosecution,
 - violations of law in falsely incriminating Plaintiff Pellegrino,
 - violations of US and PA laws that deprived Plaintiffs of their Constitutional civil liberties and rights.
75. John/Jane Doe TSA ASI Defendants and John/Jane Doe TSA Official Defendants actions:
- A. aided and facilitated the Defendants' malicious actions while aware other TSA Officials and TSA records did not 'code' or 'consider' the fictitious and fallacious incidents as *assaults* in TSA official records,
 - B. aided, assisted, and supported the Defendants including but not limited to destroying the video surveillance evidence, stonewalling Discovery Proceedings, withholding information subjected to Discovery, appearing at scheduled hearings and trial listings from the beginning to the end,
 - C. supported, aided and assisted the Defendants in the abuse of the legal process with the intent to gain a conviction against Plaintiff on bogus charges resulting from malicious and fallacious accusations of the Defendants
 - D. initiated an unwarranted CAE against Plaintiff,
 - E. intended to withhold and withheld exculpatory evidence from the Phila. DA's Office and from Plaintiffs, further abusing the legal process until Court Ordered testimony revealed it,
 - F. were a factual cause in the extent and continuation of the malicious prosecution and caused Plaintiffs' substantial and unnecessary stress and distress, emotional harm, hurt, and suffering, psychological injury, financial costs and expenses from the criminal prosecution process, expenses, costs and damages, personal and professional injuries and lost time from their lives through abuse of the legal process as agents of the TSA acting under the color of law,
 - G. were so malicious and displayed such reckless and callous indifference to the Plaintiff's rights and well being, that the imposition of punitive damages as well as compensatory damages are warranted,
 - H. were outrageous and completely intolerable in a civilized society and went beyond all possible bounds of decency and fit the definition of criminal behaviors.
 - I. were done with callous disregard for what their malicious intentions and actions inflicted on the Plaintiffs.
76. Under the Federal Torts Claims Act, Defendants USA and the TSA are liable for the actions of its agents as they were acting within the scope of their employment under the color of law for the USA and its TSA when the malicious prosecution was initiated and fully carried out by their actions.
77. WHEREFORE, Plaintiffs demands compensatory damages against the USA and compensatory and punitive damages against the Defendants, John/Jane Doe TSA ASI Defendants, and John/Jane TSA Officials Defendants, for such sums as would reasonably and properly compensate them in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with interest, Plaintiffs' costs and time, legal costs, attorneys' fees and punitive damages.

COUNT III

VIOLETION OF 42 U.S.C.A. § § 1983, 1985, 1988

Constitutional Civil Rights and Liberties US and Commonwealth of PA

78. Plaintiffs allege each and every allegation contained in the preceding paragraphs and incorporate them herein by reference as if the same were set forth at length.
79. Defendants Abdul Malik, Labbee, and Kissinger, John/Jane Doe TSA ASI Defendants, and John/Jane Doe TSA Official Defendants actions which were performed under the color of law and:
- A. were undertaken as part of the execution of a custom, a policy, or a practice that violated Plaintiffs' civil liberties and rights.
 - B. exhibited reckless and callous indifference to and disregard for Plaintiffs' US Constitutional Civil Liberties and Rights
 - C. are actions under 42 U.S.C. Section 1983, 1985, 1988 which deprived Plaintiffs of their liberties, rights, privileges and/or immunities secured by the Constitutions and laws of the United States and the Commonwealth of PA including their right to be free from:
 - unwarranted provocation, intentional and negligent infliction of emotional stress and distress, intentional property damage, unlawful invasion of privacy, unlawful confiscation of driver's licence, warrantless detention without probable cause (failure to investigate available factual evidence), unlawful disposal

of Plaintiff's personal property, false arrest, unlawful imprisonments, malicious prosecution, deliberate destruction of the video surveillance evidence (Brady Material) during Court and Discovery Proceedings, intentional withholding of records and documents of evidential value, violation of Plaintiffs rights to Due Process and fair treatment and deprivation of marital companionship without due process under the 5th Amendment.

D. Plaintiffs have the right:

to free speech about abuse without threat of arrest, retaliation, to communicate with each other, to be secure in their persons, their personal property, papers and personal effects, to medical privacy, be free from unwarranted NCIS and BMVR checks, and safe from unreasonable searches and seizures during a TSA searches/screenings that are authorized for the detection of explosive devises and prohibited items on public aircraft (and other forms of public transportation); rights which were violated as there was no probable cause, nothing prohibitive found, and no criminal conduct occurred except the actions of agents and officials of the TSA.

80. The Defendants, John/Jane Doe 'TSA ASI Defendants', and John/Jane Doe 'TSA Official Defendants' actions:
- A. have violated, and unless enjoined will continue to violate, Plaintiffs' constitutionally protected rights, substantive and procedural Due Process and Equal Protection Rights,
 - B. were taken intentionally, willfully, and with deliberate and callous indifference to and reckless disregard for the rights secured to Plaintiffs under the Constitutions of the US and the Commonwealth of PA,
 - C. denied Plaintiffs equal protection of the law in violation of the United States Constitution, the 4th Amendment, the Due Process Clause of the 14th Amendment, and 42 U.S.C. §1983,
 - D. were a factual cause of and caused Plaintiff's substantial and unnecessary loss of physical liberty and marital companionship, substantial and unnecessary stress and distress, emotional harm, hurt and suffering, psychological injuries and damages, financial expenses and losses incurred from the criminal prosecution process, expenses and costs, damages, personal and professional injuries and lost time from their lives.
 - E. were so malicious and displayed such a reckless indifference to the Plaintiff's rights and well being, that the imposition of punitive damages as well as compensatory damages are warranted, and
 - F. were outrageous and completely intolerable in a civilized society and went beyond all possible bounds of decency and fit the definition of criminal behaviors.
81. Under the Federal Torts Claims Act, Defendants USA and its TSA are liable for the above described actions of its agents as they were acting within the scope of their employment under the color of law for the USA and its TSA when Plaintiffs' civil rights and liberties were violated.

82. WHEREFORE, Plaintiffs demand compensatory damages against the USA and compensatory and punitive damages against the Defendants, John/Jane Doe TSA ASI Defendants and John/Jane Doe TSA Official Defendants, for such sums as would reasonably and properly compensate them in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with interest, Plaintiffs' costs and time, legal costs and attorneys' fees and punitive damages.

Count IV

Spoliation/Destruction of Evidence 18 U.S.C. § 1503

(in a pending Criminal Prosecution and Civil Action Enforcement initiated by agents of the TSA)

83. The above paragraphs numbers are incorporated herein by reference as though fully set forth.
84. Spoliation's definition is the willful destruction of evidence or the failure to preserve potential evidence for another's use in pending or future litigation.
- A. The deliberate and unwarranted destruction of the PIA overhead video surveillance recordings by the TSA Aviation Security Inspectors was an unlawful act.
 - B. John/Jane Doe TSA AVI Defendants and John/Jane Doe TSA Official Defendants:
 - 1) knew criminal and CAE proceedings were in process and/or pending against Plaintiff which required by law the automatic securing and preservation of all evidence.
 - 2) had access to the overhead video surveillance recordings of 7-29-06 and made a conscious determination and deliberate decision to violate in-place TSA and PIA Policy and Standard Operating Procedures,
 - 3) actions resulted in the destruction of the video surveillance recordings while PDA was actively seeking those

recordings on behalf of Plaintiffs to be preserved for future subpoena through timely phone and written communications prior to their destruction.

- 4) actions obstructed, impeded, and violated Plaintiffs rights in the due process of law and fair treatment by deliberately destroying objective and best factual evidence of critical/pivotal significance to Plaintiff's defense that would have been used immediately upon production to move for dismissal of all bogus charges
- 5) actions were the direct cause of the destruction of the video surveillance recordings,
- 6) actions thereafter corruptly endeavored to obstruct and impede Discovery Proceedings and Due Process of law and fair treatment under the law by denying the video surveillance evidence ever existed to confuse and throw PDAs and Plaintiff off track from their pursuit of Due Process,
- 7) undermined the basic principles of seeking truth in the malicious prosecution of Plaintiff by Defendants Abdul Malik, Labbee and Kissinger,
- 8) intended to withhold and withheld knowledge, information and documents from Plaintiffs/PDA until Court Ordered sworn testimony 6- 4-07 revealed it,
- 9) actions were undertaken with callous indifference to and reckless disregard for the Constitutions and the Civil Rights of the Plaintiffs,
- 10) actions violated Plaintiffs' Constitutional Rights under Due Process Clause of the 14th Amendment,
- 11) deprived Plaintiffs of their Constitutional rights to Due Process in fair treatment of law, committed intentional destruction/spoliation of evidence and did so through an obstructive abuse of power and callous indifference to the process of law,
- 12) were so malicious and displayed such a reckless indifference to the Plaintiff's rights and well being, that the imposition of punitive damages as well as compensatory damages are warranted,
- 13) are outrageous and completely intolerable in a civilized society and went beyond all possible bounds of decency and fit the definition of criminal behaviors.

85. Under the Federal Torts Claims Act, Defendants United States of America and the TSA are liable for the above described actions of its agents as they were acting within the scope of their employment under color of law for the USA and its TSA when Plaintiffs' civil rights and liberties were violated causing loss of physical liberty and marital companionship, substantial and unnecessary stress and distress, emotional harm, hurt and suffering, psychological injuries and damages, financial expenses and losses incurred from the criminal prosecution process, expenses and costs, damages, personal and professional injuries and lost time from their lives.

86. WHEREFORE, Plaintiff demands compensatory damages against the USA and compensatory and punitive damages against John/Jane Doe TSA AVI Defendants and John/Jane Doe TSA Official Defendants, for such sums as would reasonably and properly compensate them in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with interest, Plaintiffs' costs and time, legal costs and attorneys' fees and punitive damages.

Count V

Withholding Exculpatory and Favorable Evidence in a Criminal Proceeding

Failure to Comply with Discovery Obligations

Withholding and Destroying Evidence (Brady Material) Favorable to Plaintiffs

Violations U. S and PA Constitutions

87. Plaintiffs allege each and every allegation contained in the above paragraphs and incorporate them herein by reference as if the same were set forth at length.

88. The US's and the PA Commonwealth's Constitutional Discovery Rules require production of exculpatory and favorable-to-the-defense evidence in a criminal prosecution.

89. Plaintiffs were entitled to all records and documents from the TSA that were exculpatory and or favorable to Pellegrino under PA Rules of Criminal Procedure.

90. John/Jane Doe TSA ASI Defendants and John/Jane Doe TSA Official Defendants:

- A. had access to or possessed documents that held exculpatory and favorable-to-Plaintiffs evidence they intended to withhold and did withhold from Plaintiffs/PDAs and/or destroyed rather than produce under Discovery Proceedings requirements,

- B. actions deliberately destroyed video surveillance evidence (Brady material) during Court and Discovery Proceedings,
 - C. deliberately withheld records, documents and evidence subjected to Constitutional Discovery Rules,
 - D. withheld information on the existence of, the decision to destroy, and the actual destruction of video surveillance recordings until Court Order testimony demanded revealing of it,
 - E. had intention to withhold documents of evidential value from Plaintiffs in violation their Constitutional Due Process Rights of fair treatment to prepare for a proper defense,
 - F. withheld documents and information until Court Ordered testimony 6-4-07 revealed it [documents that were intended to be withheld from Commonwealth Prosecutors and Plaintiffs]
 - G. actions were a factual cause of the violation of Plaintiffs' Constitutional Due Process rights in fair treatment of the law to prepare for a proper defense.
 - H. actions caused Plaintiffs substantial and unnecessary loss of physical liberty and marital companionship, substantial and unnecessary stress and distress, emotional harm, hurt and suffering, psychological injuries and damages, financial expenses and losses incurred from the criminal prosecution process, expenses and costs, damages, personal and professional injuries and lost time from their lives.
 - I. were so malicious and displayed such reckless indifference to the Plaintiff's rights and well being, that the imposition of punitive damages as well as compensatory damages are warranted,
 - J. are outrageous and completely intolerable in a civilized society and went beyond all possible bounds of decency and fit the definition of criminal behaviors.
91. Under the Federal Torts Claims Act, Defendants USA and its TSA are liable for the above described actions of its agents as they were acting within the scope of their employment under the color of law for the USA and its TSA when Plaintiffs civil rights and liberties were violated.
92. WHEREFORE, Plaintiffs demand compensatory damaged against the USA and compensatory and punitive damages against John/Jane Doe TSA Official Defendants for such sums as would reasonably and properly compensate them in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with interest, Plaintiffs' costs and attorneys' fees and punitive damages.

Count VI
Freedom of Information Act (FOIA) and Privacy Act (PA)
Failure to Produce Documents Requested
5 U.S.C. § 552(a)(3), 28 U.S.C. § 1657; 5 U.S.C. § 552(a)(4)(E)

93. Plaintiffs allege each and every allegation contained in the above paragraphs and incorporate them herein by reference as if the same were set forth at length.
94. Plaintiff followed appropriate steps and procedures for a FOIA Documents and PA requests for all TSA and ICE records and documents.
95. Plaintiffs have a right of access to the requested information under 5 U.S.C. § 552(a)(3), and there is no legal basis for defendant TSA's non production of such access and documents.
96. WHEREFORE, Plaintiffs requests this Court to order Defendant TSA to provide access to the requested documents, produce the documents, and to order expedition of this proceeding as provided for in 28 U.S.C. § 1657; Award Plaintiffs their costs and time and reasonable legal costs and attorneys fees in this action, as provided in 5 U.S.C. § 552(a)(4)(E); and Grant such other and further relief as may deem just and proper.

Respectfully submitted,

Nadine Pellegrino, Plaintiff Pro Se

Harry Waldman, Plaintiff Pro Se

Date: November 17, 2009.