Supplementary Submission

PART 1

Insurance

Dr Aleck stated that the since July 2007 *" CASA has been involved with Comcover. We no longer have external overseas underwriters, so we are part of the Commonwealth framework on that score."*

It's not clear what that means.

When I was with CASA we were also involved with Comcover and Comcover provided CASA with insurance for everything except aviation liability (ie liability arising from aviation accidents involving CASA's regulatory function).

The situation then was that Comcover acted as CASA's agent and arranged for commercial insurance of CASA's regulatory function with London underwriters. Comcover arranged the insurance and CASA was named on the policy. But Comcover paid the premiums as part of its agency arrangements (and better bargaining rate as it also arranged insurance for other agencies). CASA then repaid Comcover for the cost of the premiums.

Each year both CASA and Comcover would go to London to meet with Underwriters to make a presentation about risks, upcoming litigation, coronials. In 2005 and 2006 CASA met with Underwriters and expressly discussed the Lockhart River accident and the possible litigation/liability that may arise.

So although Comcover was involved, CASA's insurance was provided by London underwriters.

What do the new arrangements mean?

It's not clear what the new arrangements mean.

What Dr Aleck seems to be suggesting is that Comcover now directly insures CASA for its regulatory function and there is no involvement with London Underwriters. This may be correct, and if it is then that is a good thing – but it needs to be checked because it still may be problematic.

This is because Comcover may still be re-insuring with London Underwriters. During my dealings with Comcover on insurance issues, Comcover used to seek commercial insurance from Underwriters because many of the risks were too large for Comcover to handle – and aviation liabililty insurance for CASA's regulatory function was one of these.

The issue is that if Comcover obtains commercial insurance for itself to cover CASA's aviation liability risks then effectively the commercial insurer still bears

ultimate liability and still has a particular and significant financial interest in how a case may be conducted.

This is entirely different to the situation that Laurie Brereton introduced after Monarch.

Under the Brereton model, the Commonwealth provided an indemnity to CASA (in exchange for a premium) – but the Commonwealth did not re-insure. It self-insured so as to avoid this potential conflict.

That was the whole point of my issue. It matters not that Comcover may be "involved" (whatever that means – as Comcover was always involved). What matters is who will bear the ultimate liability.

The point of this is that if a commercial insurer bears this risk (even as a reinsurer) then they will have a particular view as to how to deal with a matter – and that may not necessarily be in the public interest. If the Commonwealth directly bears this liability then it can decide (without recourse to the insurer) how best to deal with an issue and what tactics may be best in the public interest.

If there was this sort of arrangement in place during the Lockhart coronial, the government may have been inclined (simply as a result of the public interest) not to pursue particular lines of attack. And that is exactly why Minister Brereton took the view he did and introduced those arrangements.

See the attached documents on this issue. One of those shows the problems we had with Aquatic air and the insurance arrangements when CASA tried to be open and accountable and consider the public interest rather than just CASA's interest.

So, I don't think that CASA's response to this issue is as black and white as CASA suggests and in fact may be misleading.

Whose interests?

Dr Aleck also states:

It is difficult for me to imagine many situations in which CASA's interests and the insurer's interests would depart considerably

This response misses the point I was making.

While the insurer's and CASA interests may not be different (after all they are both there to protect themselves from blame) there may be a significant difference between the insurers/CASA's interest and the PUBLIC INTEREST.

This point seems to have escaped CASA. And it is this point that I was trying to emphasise. In some instances the public interest may be better served in taking a less aggressive and legalistic approach – especially in such tragic circumstances as the Lockhart river accident with 15 people dead. The public interest may not be best served by taking an aggressive stance in the coronial, attacking the ATSB and

denying any wrongdoing. But CASA's interests and the insurer's interests may be served by such tactics. And that is the fallacy in CASA's argument. The public interest does not necessarily coincide with CASA's interests in these situations (again see the discussion on this during the Monarch coronial).

So one could legitimately ask why CASA took the approach it did in the Lockhart river coronial. And the answer may be that they were simply looking after their own interests which CASA now admits (and no CASA executive contradicted this) were the same as the commercial insurers. The public interest was something that did not necessarily have any relevance.

In my view, CASA's response displays a lack of understanding of this very important and significant distinction. And it is for this reason that Minister Brereton decided that the Commonwealth should directly indemnify CASA (and not through some re-insurance arrangement with a commercial insurer).

See also the attached letter from Mick Toller in 1998 pointing out the very real problem CASA had with its commercial insurance policy and the desire to be more open and accountable in dealing with accidents.

Legal representation

***Senator O'BRIEN**—…. in the environment where you were privately insured, who selected legal counsel?*

***Dr Aleck**—The insurer would identify the lawyer.*

***Senator O'BRIEN**—So they would select the lawyers?*

***Dr Aleck**—They would. But also if CASA as the insured had a difficulty with that I am confident that our view would be taken into account.*

***Senator O'BRIEN**—Was that ever the case?*

***Dr Aleck**—Not in my experience. But, as I have said, the only matter in which I was directly involved was the Transair coronial proceedings, and the firm that the insurer selected was a member of our legal panel.*

Well yes, CASA's view would be taken into account – but it would not necessarily always prevail. I was certainly involved in at least one case where insurers appointed particular lawyers despite CASA recommending different lawyers. And I was also involved in a situation where the insurers lawyers adopted an approach that was totally different to what we wanted. So it does happen.

Regulatory development

***Mr Byron**—. The only point I would like to make before passing to him for the detail is that one of <u>the impediments</u> that we have had over the last three years is the legal*

drafting process. It effectively stalled the program for some time, because legal drafting is not allowed to be done inside CASA.

It has got to be done externally, and the legal drafters have just not been available. We have a plan to provide drafting instructions for the majority of the high-priority remaining parts, I believe, by the end of this year, which is putting the pressure on, but we have got the capability to do that. Mr Carmody, would you like to give a bit more detail?

***Mr Carmody**—Yes, thank you, I will. There are approximately 60 CASA parts made, planned or under consideration. Of those 60, 32 have been made, 12 are in the Office of Legislative Drafting and Publishing, in that backlog that Mr Byron was referring to, and 16 additional CASA parts are under development. We are working with the OLDP to find ways to accelerate the legal drafting process.*

For example, whilst drafting is their function—that is what they do—
we have funded, with the department, extra drafters that we are paying for ourselves to try to remove the drafting backlog. So, arguably, we are paying twice. I will say that, in the last couple of months, some of our drafting has slipped because the drafters in the Office of Legislative Drafting and Publishing are doing other drafting tasks that are of a higher priority.

The regulation review task force that Mr Byron mentioned agreed that we would get drafting instructions for the outstanding parts to the OLDP by the end of 2008, and that is the target we are working towards. In terms of our current metrics, the point that I am starting to work towards is, once we have issued drafting instructions to OLDP, as far as we are concerned that is almost
as far as we can go; we cannot control the process from there. But we have made progress, Senator, even if it is nowhere near the progress that was foreshadowed.

***Mr Carmody**—I can tell you the 32 that have been done, the 12 that have left us and the 16 that are waiting in the wings.*

This seems typical of CASA. Blame everyone except themselves. There is always an excuse for not delivering on commitments.

They admit themselves that they don't even have drafting instructions ready for most of the major Parts like Part 61, 119, 133A, 133B and 135.

So for 5 years they have not even been able to work out what they actually want and still haven't. Now they find it convenient to blame AGs . The development of instructions has nothing to do with AGs – it is CASA's sole responsibility and they admit they haven't even done that – it is now expected by the end of 2008 – 5 years after Mr Byron took charge.

What parts have been made under Byron's leadership?

And when they refer to the 32 Parts that have been made they are being disingenuous.

***Mr Carmody**—I can tell you the 32 that have been done, the 12 that have left us and the 16 that are waiting in the wings.*

Of these 32 Parts that Mr Carmody states have been done, 30 were completed before Mr Byron took charge ie before the end of 2003. Mr Byron can't take any credit for any of this. But this is not mentioned by Mr Carmody and his answer leaves the Committee with the impression that great progress has been made under the current arrangements.

Also, these completed Parts were the easy bits – so while 32 sounds good, they are <u>not</u> the Parts that have the greatest safety significance. The significant Parts, 61, 91, 66,119, 121, 135 , 145, 147 have simply languished and there has been no output – as detailed in Attachment 4 to my submission.

CASA's response does not address the failure of the regulatory reform program under Mr Byron - but tries to spin doctor it into some sort of progress and success.

What this inquiry is looking at is the administration of CASA since Mr Byron assumed leadership in December 2003.

Let's look at the Parts for which Mr Byron seems happy to claim success.

Before Mr Byron started in CASA in December 2003, the following Parts <u>had already been made and were in force</u>:

Part 1, 21, 22, 23, 25, 26, 27, 29, 31, 32, 33, 35, 39, 45, 60, 65, 67, 92, 101, 139, 143, 171, 172, 173, 200, 201 and 202.

Here is the complete breakdown of the Parts that were made before Mr Byron assumed responsibility for the reform program:

1998

Parts 1, 21, 22, 23, 25, 26, 27, 29, 31, 32, 33, 35, 200, 2001 – made on 15 July 1998 (see Stat Rule 237/1998).

1999

Parts 39 and 202 – made 20 October 1999 (see Stat Rule 262/1999).

2000

Part 45 and 47 – made 24 July 2000 (see Stat Rule 204/2000.

2001

Part 101 – made 20 December 2001 (see Stat Rule 349/2001).

2002

Parts 65, 139, 143, 171, 172, 173 – made 26 August 2002 (see Stat Rule 167/2002).

2003

Part 177 – made 17 July 2003 (see Stat Rule 189/2003).
Part 67 – made 27 August (see Stat Rule 232/2003)
Part 60 – made 11 September 2003 (see Stat Rule 240/2003)
Part 92 – made 18 December 2003 (see Stat Rule 365/2003).

2004

CASA claims Part 13 as one of the Parts that have been made. The reality is different.

"Part 13" was made on 5 February 2004 (see Stat Rule 4/2004) and had nothing to do with Mr Byron – these were the regulations to give effect to the demerit points scheme that I was responsible for as part of the new enforcement procedures. And it is incorrect to say that Part 13 has been made. It has not. We needed somewhere to put the demerit point regulations and as Part 13 is intended to eventually deal with enforcement issues we put them in the vacant Part 13 – but there is no effective Part 13 yet – and to suggest, as CASA has, that Part 13 has been completed is misleading. This is revealed by Mr Byron himself when he told the Aviation law Association in March 2007:

> *Work on the development of Part 13 (Enforcement Procedures) of the CASRs, which has been on hold for a long time, will soon resume, with appropriate consultation with those in the industry with particular interest and expertise in legal and related regulatory procedural areas. The delay in getting Part 13 back on the rails has not been a major problem because most of CASA's enforcement procedures are governed by wider Commonwealth policy, practice and law, which are reflected in current provisions of the Act and the Regulations. However, it is time to reactivate this important work.*

So how can CASA say that Part 13 is one of the 32 Parts that has been completed. It hasn't. It hasn't even been started.

Part 47 (which deals with aircraft registration) was made in June 2004 {but note that Part 47 was previously made and became effective on 1 October 2000, however it was subsequently disallowed by the Senate on 8 November 2000 primarily because of concerns raised by registration holders regarding the interpretation of "ownership" and the way it would impact on other operational responsibilities and perceived asset management). So Part 47 is not new at all as it is effectively a repeat of what was made in 2000.

Part 11 (which deals with administrative issues) was made in December 2004 and Part 137 (which deals with aerial agriculture) was made in March 2007. These are really the only 2 Parts that have been made under Byron.

So for CASA to try to suggest or imply that 32 Parts have been made under Mr Byron's stewardship is being very loose with the truth. However, as CASA appears to be content to provide misleading answers to Parliament in relation to Questions on Notice (I believe their answers to QON 2672 and 2661 are misleading) then their comments about the success of the regulatory reform program comes as no surprise. It makes CASA sound good.

The same is true in relation to the cancellation of Transair AOC. CASA has always given the impression that it cancelled the Transair AOC on the basis of its own actions. But that is not the case. The AOC was cancelled under subsection 27(3) of the Act which provides that:

> **27 AOCs**
>
> (1) CASA may issue AOCs for the purposes of its functions.
>
> (3) If a holder of an AOC makes a request in writing to CASA for the revocation of the AOC, CASA must cancel the AOC.

You will not find this mentioned anywhere by CASA (at least I have never been able to). Instead CASA's statements on the matter give the impression that it was their own actions which resulted in the cancellation.

So the Committee should not be fooled by CASA's statements about the "success" of the reform program. The reform program has been a disaster under Mr Byron – with 2 Parts only being made – and one of those parts simply deals with administrative matters.

Of the Parts that are relevant to aviation safety and which industry has been waiting on (ie the significant Parts, 42, 61, 91, 66,105,119, 121, 135 , 145, 147) NONE have been made. But CASA has been working on them for over 10 years and for the last 5 years under Mr Byron. And they now admit they haven't even managed to prepare drafting instructions for most of these. In fact there is not even a commitment to have the drafting instructions finalised by the end of 2008. What Mr Byron says is that:

> *We have a plan to provide drafting instructions for the majority of the high-priority remaining parts, I believe, by the end of this year…*

One only has to check out all the "plans" and promises mentioned in Attachment 4 to my submission to see how meaningless such plans and promises are.

Drafting instructions end of CASA's involvement?

There is one other troubling aspect of Mr Carmody's statement re the regulatory reform process. He says in evidence:

***Mr Carmody**: In terms of our current metrics, the point that I am starting to work towards vis, once we have issued drafting instructions to OLDP, as far as we are concerned that is almost as far as we can go; we cannot control the process from*

there. But we have made progress, Senator, even if it is nowhere near the progress that was foreshadowed.

This just confirms the comments in my submission that no-one in CASA actually understands the legislative process.. The fact is that the issuing of instructions is not the end of the matter – it is in fact the start of the process and CASA will need to be heavily involved at that point. Having significant experience with CASA's drafting instructions I can say that that are generally incomplete, ambiguous, and require significant work on the part of the drafter to actually work out what CASA wants. To suggest, as Mr Carmody does, that CASA will somehow issue perfect instructions and OLDP can then just sit back and turn them in legislation is completely misconceived.

Aviation rulings

Dr Aleck *The aviation rulings, of which there have never been many, was a notion set up at one time that CASA should be able to articulate a sort of organisational view on what the law means. The problem in Australia, unlike some other jurisdictions, is that we do not know what the law means finally until a court says: 'This is what it means.' We can give our opinion, but our opinion stands no greater force in the face of a tribunal or a court than the opinion of someone who objects to what we say. A number of those aviation rulings are, I think, dubious, to be honest.*

CASA misses the point. To suggest that you don't bother providing guidance and assistance to staff and industry about particular problem areas in the legislation simply demonstrates how much CASA is a reactive agency. Of course only a court can give binding ruling (and ultimately only the High Court) – but does that mean CASA does not have view on the legislation it administers? If CASA had to wait until a court pronounced its views on all the provision in the Civil Aviation legislation CASA would never do anything. That is just a spurious argument.

CASA has to take a view on these issues every day – so it has to have an opinion. The rulings were intended to provide an agency wide view so that there would be some consistency in approach rather than letting every manager decide for themselves. They were also intended to provide industry with some help about particular issues and what CASA's position was on the issue so that industry could rely on a consistent approach from CASA.

The Australian Taxation Office issues taxation rulings on its legislation every day – it does not say, we can't do this because only a court can give a definitive interpretation.

This sort of legal nicety raised is simply an excuse for doing nothing to try to ensure consistency within CASA and giving industry some understanding of CASA's position.

There is nothing dubious about the rulings. We took great care with them and tested them with different lawyers to ensure we were on good ground. While Dr Aleck may have a different opinion, in my view there is nothing "dubious" the aviation rulings.

FAA approach

Dr Aleck - *Finally, I think the only thing I will comment on is that Mr Ilyk made some references to developments in the US and Canada, and I made some references to that myself. There are many similarities and many differences between the regulatory regimes in the United States and Canada and Australia. Certainly as far as the United States' regimes are concerned, I am not unfamiliar with them.*

There is a danger in assuming that everything they do there is right or in assuming that everything they do there is wrong. On the one hand you could say that the FAA has come in for significant criticism these days because of its oversight problems, but you can also say that the dollar amounts of the civil penalty fines that are imposed on operators in the US are in the millions every quarter.

It is a different scheme, though. It is a civil penalty scheme and, if the FAA assesses a $300,000 fine against a major carrier, that matter is not resolved for several years. It is negotiated—the term is 'compromised'—and at the end of that exercise it is oftentimes considerably less than that; not always, but oftentimes. I think it would be ill-advised for Australia to go down that route. If you think the lawyers are overly involved in decision making now, wait till you see what would happen if that kind of scheme were in place. There are lessons to be learned from that and from the Canadian system too, and I think that we are taking those lessons on board fully.

I'm not sure I understand any of Dr Aleck's point here. The FAA civil penalty scheme is irrelevant and it was not raised by me.

I raised the FAA partnership policy and the fact that it was found wanting by the US Congress. The reason I raised it was because Mr Byron has used the FAA as his touchstone – Mr Byron admitted it himself during Estimates hearings in May 2006:

> *I have established quite regular correspondence with … the Americans in particular, on a range of issues such as the changes to the regulatory reform program, the targeted way in which we are conducting our surveillance, the considerations of self-administration that we are looking at talking to industry about and developing those links. I correspond on a regular basis in terms of the future of surveillance activities and regulatory reform*

The point I was making is that CASA has adopted the US partnership approach, uses the same justifications as the FAA in support of the approach and treats its concerned staff in the same way as the FAA. That approach and justification has been rejected by the US Congress and should be rejected here as well. A simple point that has nothing to do with civil penalties.

Partnership policy remains

Despite trying to backtrack on his statements about CASA's partnership with industry and its new approach to enforcement as a result of Senator O'Brien's questioning in Senate Estimate in October 2006, the policy still remains. There has been no retraction at all. If you visit CASA's website you will still find Mr Byron's bold new

sophisticated approach detailed there. It is still the policy and there is nothing on the website to say it has been modified. As detailed in my submission, Mr Byron was still advocating this approach in November 2006, January 2007 and November 2007.

As far as I can tell it is this philosophical approach that CASA is now teaching its new starters. This is the philosophy of the "new CASA".

Disaffected staff

Mr Byron *- Earlier today you heard from some former employees of CASA who were not on the journey with us. Again, it is up to you to decide if you are hearing from disaffected employees and their relative importance in determining whether CASA is moving forward.*

Not a surprising response from Mr Byron.

One thing that needs to be kept in mind is that the failings of most organsiations are often only revealed by staff who have the courage to speak out. This is exactly what happened in the FAA case. The staff in the FAA case were ridiculed, their concerns ignored and they were threatened with dismissal.

In fact, many positive changes come about because of whistleblowers – isn't this what happened in ARCAS?

I think all members of the Committee should read the testimony of Scott Bloch, Special Counsel, US Office of Special Counsel, during the US Congressional hearings in the FAA. (copy attached). See also the testimony of the Committee members and Inspector-General Scovell where he said:

> *The whistleblower was subjected to an FAA investigation based on a vague hotline complaint shortly after he began reporting his concerns to management. According to the CMO manager, he received the complaint from the PMI, who stated that a SWA representative had submitted the complaint. The inspector was removed from his oversight duties for 5 months while he was being investigated.*

The parallels in CASA are striking – particularly if the Committee would have had the opportunity to conduct a thorough review of the treatment by CASA of staff who have raised safety concerns – people like John Niarchos and others.

CASA makes a great deal of its Industry Complaints Commissioner. It is interesting that so much is made of this as it is essentially an invitation for industry to complain about CASA staff. It is actively encouraged. But where is the same commitment by management for CASA staff to report unsafe industry practices, inappropriate management practices. There is no such mechanism anymore. The protected disclosure scheme that I set up has been handed over to HR which I have been informed is active in stopping people raising complaints by counselling them and

dismissing them. And if a staff member attempts to use the scheme, I have been advised that management tries to find out who the person is.

Training

As I said in my testimony, CASA does not provide appropriate training for its staff in relation to regulatory responsibilities, interpreting legislation, exercise of powers etc. A short induction session is hardly sufficient for these purposes.

***Dr Aleck**—Quickly to the remarks about training, one of the longer sessions in that standard induction course has to do with the approach and regulatory framework of CASA. I conduct that session myself, so I am aware of what is in it. One of the things that became clear as a result of that was that, certainly for operational people, a longer period of focused attention on those issues was in order. That has been developed. The only thing we are waiting on now are dates for this to be conducted. So that will add that element to it as well. That will be conducted in the field.*

The suggestion that *"One of the things that became clear as a result of that was that, certainly for operational people, a longer period of focused attention on those issues was in order."* is a very strange response. Is CASA saying it never realised this before? It is a fundamental issue for any regulatory authority – especially one that had shed itself of its experienced staff and replaced them with new industry appointees with no regulatory background. This is what I was doing while in CASA but later management considered unnecessary as they didn't want staff seeking legal advice and understanding the legal responsibilities. Now suddenly it "became clear" that it is necessary. Why wasn't it always clear? It was during my time. And if you dig out the files, you will find that the inspectors all thought that this sort of training was the most meaningful they received.

And what are we now told. Well, no training has actually been undertaken – but we have "developed" some training and are now waiting on dates. Again, in my view it is a knee jerk response to the ICAO audit findings as well as a response to the Committee inquiry.

Enforcement Review

I found it interesting that during the Hearings CASA made such an issue of the Federal Court decision in the Aero Tropic case.

In my opening statement I mentioned that during my time, OLC conducted a detailed review of the new enforcement procedures that were commenced in 2004. That review was undertaken as a result of the Government's commitment that such a review be undertaken after 12 months.

OLC finalised a detailed review in July 2005. In that review we highlighted problems with the serious and imminent risk suspension powers and noted that they weren't working as envisaged and that the process needed to be streamlined and that the Federal Court was probably not the appropriate review body (at that time the Federal Court still hadn't handed down its decision in the Boatman case so we couldn't make a final recommendation on the issue). But the review found that by placing emphasis

on court processes driving the resolution of the matter, rather than limiting court processes to a necessary overlay on CASA's ordinary enforcement processes, the provisions in the Act unduly constrained CASA's actions. These constraints neither served the policy objectives of the legislation nor the broader interests of both CASA and the affected civil aviation authorisation holder in resolving the matter flexibly and efficiently.

That review has languished in CASA and the Department for 3 years. There was obviously no urgency to deal with the matter.

Now, just before the inquiry CASA suddenly digs out the review and says that is has conducted a comprehensive review of the enforcement procedures (see para 96 of the CASA submission). They give the impression that they have just carried out the review. Nowhere do they say that it was carried out 3 years ago in July 2005 and has languished for 3 years only to be resurrected on the eve of the Inquiry..

Again, this just shows the cynical attitude to such important issues.

Had CASA done something with the review when it was first completed in 2005, then maybe they wouldn't have the problem that Mr Carmody has suddenly become so passionate about.

And the Committee should note from the CASA submission that they don't even refer to the serious and imminent risk power in the list of changes that are required to the enforcement procedures. So their concerns about the serious and imminent risk process must be taken with a grain of salt.

As Mr Costello, the Chair of the US Aviation Subcommittee said during the FAA hearings:

> *It is a continuous pattern – the FAA only acts when pushed into action by the Aviation Subcommittee or this full Committee.*

In relation to most of the activities that CASA is suddenly undertaking, the words of Mr Oberstar are equally applicable to CASA as they are to the FAA:

> *I believe it is no mere coincidence that this audit began just after news of our investigation became public, and just prior to us holding this hearing.*

Independent review

One of the outcomes of the Congressional Hearings into the FAA review was that the Department of Transportation has ordered an independent review of FAA safety practices and philosophy. One of the persons the Secretary of Transportation has appointed to that review is:

Malcolm K. Sparrow : *Professor of the Practice of Public Management at the Harvard Kennedy School of Government and Faculty Chair of the Executive Program*

on Strategic Management of Regulatory and Enforcement Agencies. He served 10 years with the British Police Service, rising to the rank of Detective Chief Inspector.

Professor Sparrow is the author of an extremely valuable book called "The Regulatory Craft". Professor Sparrow has visited Australia several times to work with regulatory agencies. Before I left CASA I provided both Mr Gemmell and Mr Mike Mrdak from the Department with a copy of Mr Sparrow's book and suggested that CASA should consider using professor Sparrow to review CASA's regulatory practices and philosophy. Needless to say the suggestion was ignored. However, it would probably be useful for such a review to take place.

The other person who could also be useful would be Justice Moshansky from Canada who has been highlighting Canada's problems. Justice Moshansky was brought out as an adviser in relation to the establishment of CASA after the Monarch accident and he headed the Inquiry into the Dryden accident.

In relation to regulatory development, Tony Broderick, who used to be the FAA Associate Administrator in charge of the FAA rule making pricess would be useful person to see what can be done in relation to CASA;s reform program – if it is considered that there is merit in continuing with the program given the time, effort and costs already expended.

STATEMENT OF THE
THE HONORABLE JERRY F. COSTELLO
HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
HEARING ON
CRITICAL LAPSES IN FAA SAFETY OVERSIGHT OF AIRLINES: ABUSES OF REGULATORY PARTNERSHIP PROGRAMS
APRIL 3, 2008

- I want to thank Chairman Oberstar for holding today's hearing on Critical Lapses in FAA Safety Oversight of Our Airlines: Abuses of Regulatory Partnership Programs.

- In recent weeks, some airline passengers have experienced canceled flights because of safety inspections, making many question the safety of our aviation system.

- Make no mistake – the United States has the safest air transportation system in the world; however, I have said time and again, we must not become complacent about our past success.

- Chairman Oberstar has given a very good description of the problems we are dealing with today – there was a failure on the part of Southwest Airlines to comply with important safety directives and there was a failure on the part of FAA to do its job by allowing Southwest to fly planes that should have been grounded.

- Let me be clear -- what happened in this instance should never have happened and should never happen again.

- The American people expect our airlines to comply with all safety regulations and we expect that the FAA will not simply trust that the airlines are complying – the FAA needs to verify that information through on-site inspections and other safety approaches.

- The FAA and Southwest Airlines both acknowledge safety lapses regarding airworthiness directive compliance and that corrective action had to be taken to address the problem, including a proposed $10.2 million fine against Southwest Airlines.

- However, the broader question is the FAA's ability to adequately oversee air carrier maintenance programs and the associate partnership programs. The incident demonstrates that it is not enough to establish maintenance programs – we must ensure vigorous oversight by the FAA to maintain the highest level of safety.

- While Southwest had a solid safety record until this incident, Southwest was in violation of a safety regulation in 2007. Southwest needs to explain how and why this happened and what procedures they have implemented to catch these and other problems from occurring in the future.

- In addition, the FAA needs to explain how this serious safety breach happened, why the system did not catch a safety inspector's inability to fulfill his duties; why it took the FAA so long to assess a penalty against Southwest; what actions they have taken against the employees and supervisors involved; and what they have done to implement a checks and balance system to prevent this in the future.

- Safety cannot be compromised in an effort to treat airlines like "customers." Rather, the FAA should be vigilant in ensuring air carrier compliance and be willing to take enforcement action when necessary.

- In my capacity as Chairman of the Aviation Subcommittee, I have noticed a pattern with the FAA – the FAA is a reactive agency – not a proactive agency.

- We have seen it in the area of runway safety; improving conditions at our air traffic control facilities; congestion and delays at our airports and in the sky; and now this serious matter.

- It is a continuous pattern – the FAA only acts when pushed into action by the Aviation Subcommittee or this full Committee.

- Congress, the FAA, and air carriers must make safety the top priority. We cannot have the agency responsible for aviation safety rely on the past or blindly trust the airlines to self-police without aggressive oversight and enforcement. The American traveling public deserves no less.

- Again, thank you Mr. Chairman for holding this hearing. I look forward to hearing from our witnesses.

STATEMENT OF
THE HONORABLE JAMES L. OBERSTAR
OVERSIGHT AND INVESTIGATIONS HEARING ON
"CRITICAL LAPSES IN FAA SAFETY OVERSIGHT OF AIRLINES: ABUSES OF REGULATORY 'PARTNERSHIP PROGRAMS'"
APRIL 3, 2008

Today's hearing continues the Oversight and Investigations heritage of this Committee, established by my predecessor, Congressman John Blatnik, when he was appointed by Speaker Sam Rayburn in 1959 to head the Select Subcommittee on Investigation of the Federal-Aid Highway Program.

I myself continued this legacy as Chairman of the Subcommittee on Investigations and Oversight from 1985 through 1989, and as Chairman of the Subcommittee on Aviation from 1989 through 1995.

Aviation issues have been a major focus of this Committee's oversight activities. Nearly one-half of the hearings I conducted as Chairman of the Investigations and Oversight Subcommittee dealt with aviation and aviation safety. One of the first hearings I chaired reviewed the case of the 1985 Galaxy Airlines crash, in which 93 people died. Other hearings looked at near mid-air collisions, and understaffing problems at air traffic control facilities. Our Subcommittee heard from whistleblowers—controllers, flight attendants, mechanics, pilots, and others—many of whom risked their jobs and livelihoods to tell their stories.

Those sources dried up during the next 12 years, as whistleblowers realized that little or nothing would come of their intervention, especially during the time of one-party rule in Washington.

When I won the Chairmanship of this Committee, I made it abundantly clear that vigorous and thorough oversight would once again be a primary activity of the Committee. And the whistleblowers have responded. Over the last 15 months, this Committee and its Subcommittees have engaged in several major investigations, including the Coast Guard's Deepwater program, rail safety, pilot medical records, and now, this aviation maintenance exposé.

Today's hearing continues this long history of in-depth investigations of the administration of the transportation and infrastructure programs we authorize. Many of these investigations have focused on whether the Executive Branch is adequately protecting the safety of those who work on transportation systems or use them.

We will again hear from whistleblowers, dedicated professionals who want to make air travel safer, and are willing to risk what is necessary to do so.
They will present testimony that Southwest Airlines, with FAA complicity, allowed at least 117 of its aircraft to fly with passengers in violation of Federal Aviation

Regulations. The documents they presented to our Committee triggered an investigation that turned up the most serious lapse in safety I have been aware of at the FAA in the past 23 years

I fear that complacency may have set in at the highest levels of FAA management, reflecting a pendulum swing away from vigorous enforcement of compliance, toward a carrier-favorable, cozy relationship.

Meanwhile, more and more airline maintenance is being outsourced with less FAA and airline involvement, much of it to foreign repair stations.

I fully agree that it is impossible for FAA to hire enough inspectors to oversee every single, minute aspect of regulatory compliance given the size of the US commercial air fleet. FAA has about 3000 inspectors overseeing airline compliance, and I doubt even 50,000 would be enough to inspect every plane flying—this is a complicated and highly technical business. Therefore I believe that "partnership programs" with the airlines are a good thing, IF they are conducted under strict guidelines.

The Committee's investigation uncovered a pattern of regulatory abuse and widespread regulatory lapses that allowed 117 aircraft to be operated in commercial

service despite being OUT OF COMPLIANCE with Airworthiness Directives and other mandatory inspections...so that Southwest could conveniently schedule them for inspection without disrupting their commercial schedule.

These overflight violations occurred after Southwest had self-disclosed to the FAA that it had discovered that these planes were not in compliance. The Southwest disclosure claimed that the violations ceased upon the date of disclosure, and by Federal law these aircraft should have been grounded until they were in compliance, but they continued to fly, with full knowledge of the FAA supervisor for maintenance at Southwest.

47 B-737 aircraft continued in service without a fuselage crack check required every 4,500 cycles after the aircraft reaches 35,000 cycles. The check is required because an Aloha Airlines jet lost an 18-foot section of its upper fuselage due to metal fatigue in 1988. One person died, seven more were injured.

The 47 aircraft conducted 1,451 flights, carrying an estimated 200,000 passengers.

These were just the flights that occurred after Southwest disclosed them, but they were actually out of compliance for nearly 30 months and according to FAA's

civil penalty letter sent to Southwest, they actually flew nearly 60,000 flights out of compliance.

The other 70 aircraft that did not receive rudder inspections were out of compliance for at least a year, and they also continued to fly past the Southwest disclosure—the number of flights is unknown, and they were not addressed in the FAA's civil penalty announced March 6. These rudder inspections were required following two fatal accidents involving rudder malfunctions on B-737 aircraft. 25 people died in a crash involving a United Airlines 737 in 1991 at Colorado Springs, and 132 died a USAir crash at Aliquippa, Pennsylvania, in 1994.

We have reason to believe there may have been more such violations, since there is strong evidence of systemic flaws in Southwest's Airworthiness Directive management systems. A required Airworthiness Directive Safety Attributes Inspection at Southwest, due in 2004, was not conducted until 2007, three years overdue.

This investigation, however, is not just about improper activities by one airline and one FAA supervisor in the office directly overseeing that airline. It raises serious questions about whether higher officials in FAA are carrying out their safety responsibilities for the entire industry.

Over at least a 3-year period prior to the overflights mentioned above, the Director of the Regional Flight Standards Division, which oversees the offices supervising Southwest, American, American Eagle, Continental and other operators located in that region, was sent 38 e-mails expressing concerns of inspectors that Southwest was not keeping adequate records of its compliance with airworthiness directives and required maintenance inspections. Nothing was done, and as a consequence neither Southwest nor FAA detected the airline's failure to conduct required fuselage inspections for 30 months. The inspectors raising these issues were never given the dignity of any kind of answer.

On May 3, 2007, a hotline complaint went to FAA headquarters about what had occurred at Southwest, and that the FAA supervisor of maintenance had allowed the fuselage inspection overflights. This was just a few weeks after the incidents were discovered by the whistleblowers. It remains unclear exactly when the Associate Administrator for Aviation Safety became aware of the issue, but it is likely that it was very shortly after.

There was an internal FAA headquarters investigation. It was marked "closed" on July 12 2007. However, this should have set off major alarms at the top of the agency, and led to a much broader investigation of: 1) why this had occurred at

Southwest; 2) the compliance problems going back more than 3 years; 3) whether Southwest had failed to take other required actions; and 4) whether there was a record keeping system in place to prevent these problems in the future. Most importantly, it should have alerted FAA management to the need for investigations of other FAA offices overseeing other carriers to be sure they did not show a similar pattern of abuse of regulatory partnership programs.

So far as we know, no compliance audits were undertaken by FAA at Southwest until October, 2007 when FAA learned that this committee was conducting an investigation. Most disturbing, it was not until March 13, 2008 an entire year later, that FAA finally did initiate compliance audits nationwide and did indeed learn of other problems at Southwest and at other airlines supervised by other regional offices.

There is also the question of when the FAA Administrator and Deputy Administrator were notified of these problems, and what they have done about them. We are told that when Aviation Subcommittee Chairman Jerry Costello and I sent a letter to Acting Administrator Bobby Sturgell on October 5, 2007 to request FAA records on these issues, the Acting Administrator was unaware of the matter. We also know that FAA inspectors implicated in these cases are continuing to serve as FAA inspectors.

FAA needs to rethink its relationship with the airlines and the other aviation entities which it regulates. I was shocked to learn that in its mission statement for aviation safety, FAA has a "vision" of "being responsive to our customers and accountable to the public." This suggests that FAA regards the airlines and other companies it regulates as its "customers." This approach is seriously misguided. The "customers" of FAA safety programs are the persons who fly on the airplanes FAA regulates. FAA's bedrock responsibility is to ensure that these "customers" travel safely.

FAA needs to clean house, from the top down, and take corrective action. It needs to hire more inspectors, and give them a safety mission.

Congress should enact legislation to establish a long "post-service" cooling off period for FAA inspectors before they are allowed to go to work for the airlines.

I also believe that FAA should take a serious look at routinely rotating inspectors between airline oversight offices as at least a partial countermeasure to a "cozy relationship" developing between the regulators and the regulated.

Above all, FAA senior management MUST also develop a better way to monitor local airline oversight offices, to avoid another major lapse in compliance such as those at Southwest.

Reports of the shocking lapse at Southwest have sent chills through the airline industry and the regulatory offices at FAA. The airlines and the agency all scrambled to review maintenance records and bring fleets into compliance. American, United, U.S. Airways, and Delta, as well as Southwest, have all grounded planes and cancelled flights in the past four weeks due to this special review. Just yesterday, United grounded its fleet of 52 Boeing 777 widebody airliners, due to an inspection lapse.

I believe it is no mere coincidence that this audit began just after news of our investigation became public, and just prior to us holding this hearing.

Thank goodness that this is all happening BEFORE a fatal accident, which is as it should be, NOT AFTER a tragedy.

Doubtless some will argue that these compliance violations offered no serious threat to the flying public. No crash happened, no one died. But that is an irresponsible argument. It would be consistent with the "tombstone mentality" that I have been fighting in FAA and other agencies my entire career.

The fundamental reason our air transportation industry is so safe today is that we have, historically, been OBSESSIVE about compliance with the Federal Aviation Regulations. We insist on wide margins of safety. Non-compliance with these regulations erodes these margins, and makes air travel less safe.

In this hearing we will look beyond the specific violations turned up by our investigation and the FAA's recently completed safety audit. We will examine the regulatory culture that allowed these violations to occur, and seek answers as to how compliance with Federal air safety regulations can be assured in the future.

In the past, many of our hearings have led to important reforms that have enhanced transportation policy. I hope that is the case with today's hearing as well.

I look forward to the testimony of our witnesses.

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THE HOUSE COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE

STATEMENT OF

THE HONORABLE SCOTT J. BLOCH

SPECIAL COUNSEL

U.S. OFFICE OF SPECIAL COUNSEL

Before The:

UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Hearing On:

CRITICAL LAPSES IN FAA OVERSIGHT OF AIRLINES: ABUSES OF REGULATORY PARTNERSHIP PROGRAMS

Thursday, April 3, 2008

Washington, DC

Chairman Oberstar, Ranking Member Mica, and members of the Committee. Thank you for this opportunity to appear before you to discuss the work of the U.S. Office of Special Counsel as it relates to the subject of today's important hearing.

The U.S. Office of Special Counsel (OSC) is an independent investigative and prosecutorial agency with jurisdiction over statutes which protect federal employees and the Merit System, encompassing whistleblower disclosures and protection, prohibited personnel practices, the Hatch Act and the Uniformed Services Employment and Reemployment Rights Act (USERRA).

The French have a saying that I like: *La plus ça change, la plus c'est la même chose.* Roughly translated that is: the more things change, the more they stay the same. While this is useful bucket philosophy for everyday living, if we use it as a mission statement for our air safety system in the United States, we compromise safety and expose our citizens to the risk of unsafe incidents and even death.

Based on my experiences with the Federal Aviation Administration (FAA) in my over four years as the U.S. Special Counsel, things have changed in air travel with the number of flights way up, but too much has stayed the same in the way of lax safety compliance and oversight. While aviation safety demands have changed significantly, the FAA has remained far too static. Instead, I believe a culture of convenience and of complacence has evolved. Management has helped to foster this.

Through the efforts of my office, this committee, and the Inspector General of the Department of Transportation, it is my hope that things will not remain the same, but will change for the better – with better compliance, greater transparency, and a new system of oversight reporting within FAA.

In the past few years, several whistleblowers have come forward to disclose that officials and employees of the U.S. Department of Transportation (USDOT), and FAA have engaged in conduct which constitutes a violation of law, rule or regulation, gross mismanagement, abuse of authority, and substantial and specific danger to public safety. Among those making the disclosures are individuals who will appear before you today.

When a federal whistleblower makes a disclosure to OSC, it is my first responsibility to determine whether I can make a finding that there is a substantial likelihood that the information discloses wrongdoing. Upon making such a finding, I am required to advise the appropriate agency head, who is then mandated under the law to conduct an investigation of the allegations and prepare a report.

I made such findings in July 2007 following disclosures from Anne Whiteman, an air traffic controller at Dallas/Fort Worth. She and other FAA whistleblowers presented credible information that FAA managers at Dallas/Ft. Worth were systematically covering-up operational errors made by air traffic controllers. These operational errors include loss of separation between aircraft, incorrect flight instructions to pilots, and other dangerous situations. Instead of taking action to address these errors, the incidents are marked as pilot errors, allowing the air traffic controllers, and their managers, to escape accountability. The USDOT Inspector General has been conducting a thorough investigation and we expect his final report within the next two months.

As a means of avoiding culpability, FAA has developed a pattern of simply renaming many clear losses of aircraft separation as non-events or designated them as "proximity events," a new category created by the FAA in 2007 to track minor losses of separation. If you commit an operational error, just by a flip of the tongue, calling it something else, like pilot error or "proximity event," or just a "non-event," you become like the King of Hearts in Alice in Wonderland – words mean precisely what I say they mean. Except in our current context, safety regulations mean precisely what I say they mean – and that compromises safety.

Moreover, many of these problems were disclosed by whistleblower Ms. Whiteman, in 2004. They were then investigated by the USDOT Inspector General, whose report noted that her disclosures exposed a 7-year management practice of underreporting operational errors.

For her efforts to disclose this serious danger to the flying public, she has been the object of continuous harassment and retaliation by management and by the union. She has been subjected to disparate unfavorable treatment, and her work environment has been made hostile in the extreme due to her continuing whistleblowing. At great personal and professional cost, she has held FAA's feet to the fire at Dallas/Fort Worth.OSC recognized this courageous woman as our "Public Servant Award for 2005."

It is my hope that because of these hearings, and the greater public attention to these serious safety concerns, the USDOT will take decisive action to prevent a similar relapse and investigation upon investigation with no real change. This is of great concern at present because of the number of new disclosures I have received from FAA employees in the last year, a few of whom are again filing disclosures with OSC because the situation at FAA has not changed.

OSC has received new disclosures from a former manager of a Flight District Standards office, Gabriel Bruno, alleging that unqualified mechanics remain employed by the aviation industry because a program to reexamine them is inadequate. Mr. Bruno, and another whistleblower, came forward in 2003 with closely-related allegations. OSC referred these allegations to the USDOT and they were investigated by the Inspector General, who in 2005,

recommended that the FAA re-examine the St. George Aviation-certified mechanics, and reported that the FAA was taking steps to conduct re-examinations.

Mr. Bruno now alleges that, despite the earlier USDOT IG investigation and FAA assurances, the risk to the public remains. I have referred this matter to the USDOT for investigation.

In December, I found that there is a substantial likelihood that information provided to OSC by FAA Aviation Safety Inspectors Charalambe "Bobby" Boutris and Douglas E. Peters disclosed a violation of law, rule or regulation, gross mismanagement, abuse of authority, and a substantial and specific danger to public safety, involving FAA's inspection of Southwest Airlines.

As you know, Mr. Boutris and Mr. Peters disclosed that the FAA Principal Maintenance Inspector for Southwest Airlines knowingly allowed the airline to operate aircraft in passenger service in an unsafe or unairworthy condition.

Among numerous details provided by these FAA employees in their disclosures was a report by Southwest Airlines that some of their aircraft had not been inspected according to the mandatory requirements of an FAA Airworthiness Directive. This directive required fuselage inspections to, "…find and fix fatigue cracking of the skin panels, which could result in sudden fracture and failure of the skin panels of the fuselage, and consequent rapid decompression of the airplane."

Despite their report of non-compliance with the Airworthiness Directive, Southwest Airlines, with the knowledge and approval of FAA officials, continued to fly these aircraft in passenger service until they could be routed to a maintenance base to complete the overdue inspections. The inspections revealed fuselage skin cracks. Recently, under public pressure, Southwest Airlines grounded about 38 airplanes to inspect for fuselage cracks.

Even after it came to light that the charges of Mssrs. Boutris and Peters had been referred for investigation, even after you called for this hearing, Mr. Chairman, and announced your intention to really hold FAA's feet to the fire, FAA was … I believe… covering up its wrongdoing and trying to get out ahead of the story by leading the public to believe a deception – that Southwest, and Southwest alone, was to blame for flying unsuspecting passengers in planes with cracks in the same area covered by the Airworthiness Directive, the vulnerable fuselage area behind the cockpit. It levied a record $10.2 million fine and caused a large hoopla to ensue – all to shift the blame from the FAA to the Airlines. Sound familiar? *La plus ça change*…. Nothing changed there now did it? It is just as easy to shift the blame to an entire airline as it is to that airline's pilot.

Where was the FAA when its own trained aviation safety inspectors were trying to take action against Southwest to prevent these safety problems? They were standing in their way. When Mr. Boutris tried to bring enforcement actions against Southwest, he was prevented by his supervisor, the Principal Maintenance Inspector (PMI) of the facility. He was not permitted to write "Letters of Investigation" as required by FAA policy and procedures. Instead, he was told to write "Letters of Concern" to Southwest. This is not part of FAA regulations or policy and procedures. Mr. Boutris eventually went to his supervisor's boss, the Office Manager and got relief to send the proper notices to the airline. Management at the Regional level did not support the Office Manager however, and Mr. Boutris was again directed to work through the PMI and send "Letters of Concern." Does covering up, inventing a new category of non-investigation such as "Letter of Concern" sound like the cover-up of the Air Traffic Control error? The more things change, Mr. Chairman.

The attitude was and is: let's not upset our "customer," the airlines. That is what FAA has taken to calling the airlines they are charged to oversee and force into compliance when safety issues are ignored. The managers want to get letters from their customers saying how well the FAA has done for them in helping them make millions of dollars, and not grounding them, and not making their lives harder, but easier. With all due respect to these widely used terms for the oversight functions, it is not the FAA's job to please those over whom they exercise oversight. If your goal is to please the airlines, it is easy to see why management has insisted on fewer inspections and investigations, and why it has suppressed compliance with airworthiness directives.

The problem is, the FAA is charged with assuring the public that air carriers and air traffic controllers are acting in the interests of public safety, and that the rules and regulations governing safety, including the airworthiness of airplanes, must be observed. When cover ups take place, and planes are allowed to fly that are in violation of those safety directives – the public is at risk. While it may be hard to quantify that risk in the absence of a disaster, it is no less a real safety problem.

The allegations in this case are among the most serious received by OSC, and bring to mind horrible images of an Aloha Airlines 737 making an emergency landing on Maui in April 1988 with a section of the fuselage ripped off between the cockpit and the wings, exposing about six rows of passengers. The aircraft, with 90 passengers and five crew members, had taken off from Hilo en route to Honolulu and just reached its flight altitude of 24,000 feet when a small section of the roof ruptured, leading to decompression that ripped off the large section of roof. The decompression pulled the chief flight attendant through a hole in the fuselage. Through the heroic actions of the flight crew, and passengers, what could have been a disaster, resulted in a single death and seven serious injuries. The National Transportation Safety Board found discrepancies in the inspection procedures of the airline.

In the Southwest case, at least six, and perhaps more aircraft were allowed to fly in revenue service with fuselage cracks in the very area covered by the directives written in response to the Aloha Airlines incident. Once the Airworthiness Directive was ignored, and the FAA allowed Southwest to fly those planes for at least two weeks beyond the time they knew of the fuselage cracks – you may as well have thrown safety directives in the trash can for how much they were worth. Every one of those violations and the permission to commit them were given by FAA, and each of the perpetrators who approved this behavior over them should be disciplined appropriately.

We know about the 38 Southwest Airlines 737s that were grounded recently, as well as the 80 American Airlines MD-80s, grounded last week for other inspections. How many others from other airlines were also flying in violation of airworthiness directives, and for how long? How many of those planes had these dangerous cracks?

Mr. Boutris and Mr. Peters disclosed that Southwest's non-compliance continued even after fuselage cracks were found in aircraft, and that a supervisory principal maintenance inspector was not only aware of the non-compliance, but he permitted it.

While disclosures made to us by FAA personnel address conditions that they witness in the course of performing their duties, often suggesting problems in specific locations, our concern is that some of these may be broader in scope.

For example, some of the elements of the investigation into air traffic control matters at Dallas/Ft. Worth suggest the possibility that we are seeing only the tip of an iceberg of problems, and that what the whistleblowers report is happening at Dallas/Ft. Worth reflects a national problem.

It is apparent to me, based on information provided by Mr. Bruno, Mr. Boutris, Mr. Peters, and Ms. Whiteman that FAA management may be encouraging cover-ups and lax enforcement of critical safety standards, even when they have unequivocal knowledge that a problem exists.

The culture of complacence and cover up goes very high in management circles, and was even echoed by the now former Administrator who, when asked last summer about the near-misses of airplanes at airports in the New York area, told a news reporter, "Sometimes it could be the air traffic controller. Frequently it is the pilot, what we call a pilot deviation, a pilot error." Thus, echoing what has been occurring on a wide scale at Dallas Fort-Worth International Airport. The Administrator of FAA downplayed near misses of aircraft that had been directed to their positions by FAA's controllers. Those should not be just words. We need to reflect on the message that sends. The more things change, Mr. Chairman.

The airlines charged with complying with the directives, certainly deserve to be fined – we do not exonerate them of their duty. But we also believe the fine is based in deception because FAA failed to use regulatory authority and its findings of non-compliance, to keep the airlines in check.

I welcome the scrutiny of this Committee; it is essential to determine whether there are system-wide problems at the FAA in order to find concrete solutions to ensure that the flying public is not at risk. We have to take oversight and compliance more seriously. There needs to be a serious discipline and shakeup of the FAA in order to send the proper message inside what seems to be a very insular organization, that these frauds and deceptions on the public will not be tolerated; that we will not wait for death of passengers and people on the ground to happen before we are willing to stop the violations of serious safety regulations and compliance requirements; and that we will no longer allow safety inspectors and controllers to act as bureaucrats, but to step up to the plate and join the many within the FAA who are solid employees who do take these matters seriously.

We also will not tolerate the culture of retaliation against those who have a conscience to report – as the law requires them to do – any serious violations like we have seen here. The courageous whistleblowers in this case with Mssrs. Boutris and Peters, as with Ms. Whiteman, and several others who have come forward recently following the wide publicity of last year's operational error cover-up, as with others OSC has championed many times in the last decade against the FAA, have been mistreated and retaliated against by managers and rank and file in the FAA.

A whistleblower in this case, Mr. Boutris, was the object of reprisal for whistleblowing. After he blew the whistle on management's suppression of airworthiness directive non-compliance, he was slapped with a bogus investigation that caused him to have to sit out of work for seven months wondering what would happen to him. More recently, he has been threatened. Others are waiting in the wings, afraid to blow the whistle on similar cover ups, but they want to see that OSC and this committee, and the Inspector General will stand behind them all the way.

Whistleblowers are those who go outside of an organization to report wrongdoing, often because their warnings are not heeded by their supervisors. As an advocate for whistleblowers, I believe managers and supervisors should recognize whistleblowers are really early warning systems for organizational problems and even dangers to public safety. They are not unlike canaries in the coal mines. They should not be ignored nor their concerns pushed aside. Employees are an organization's sensory system; they are the eyes and ears, and their concerns over what they see or hear should be regarded as early warnings and treated accordingly.

In the past few weeks, there has been a sudden focus on aircraft maintenance by the airlines and the FAA. This attention on the sudden need for aircraft to be inspected for fuselage,

instrumentation, fuel and electrical systems seems to lead back to the disclosures made by Messrs Boutris and Peters through the attention they brought to the failure of the FAA to enforce its own regulations to ensure Southwest Airlines was properly inspecting aircraft. Of course, the visibility you provided to this matter, Mr. Chairman, is likely also a factor in this sudden surge in maintenance.

The public is watching to see whether Congress and the FAA will take safety seriously. The employees of the FAA are watching to see if we will protect whistleblowers. Will they just lose their jobs or possibilities of promotion like so many before and get the short end of the stick because they took their oaths seriously, keeping the faith with the American public? OSC is doing everything in its power to keep FAA and DOT's feet to the fire, but even we are encountering serious resistance to the notion that the whistleblower should be protected, that those who retaliate should be disciplined.

FAA lied to OSC and the Inspector General in the 2004-05 investigation, and during this new one, they disregard the seriousness of the charges that operational error numbers were lowered by covering them up and blaming the pilots instead. The more things change, the more they stay the same in FAA.

I am recommending that this committee establish an expert commission to examine how the FAA from, a systemic standpoint, from a management standpoint, and from an organizational standpoint, could allow these cover ups and frauds to occur on the flying public. Such a commission should also investigate the complicity of the airline industry, in combination with the FAA, or separately, and to make concrete recommendations for comprehensive reform of oversight and airline safety for the next decade. Finally, I am recommending that this committee work with the Department of Transportation and FAA to restructure funds and the agencies themselves, to allow for greater audits and no-notice inspections by a better financed and staffed air transportation unit at the Office of Inspector General (OIG) of the Department of Transportation. The OIG has the independence and knowledge necessary to ensure better oversight and compliance, but currently lacks sufficient resources to do so. These proposals are far-reaching; but I believe they are justified and safety demands them.

The U.S. Office of Special Counsel is deeply engaged in our role to ensure information from whistleblower disclosures is completely investigated and that whistleblowers are protected. When we receive the reports of the Secretary of Transportation, we will transmit to the President and to the appropriate committees of the Congress, our findings and recommendations.

I thank you for conducting this hearing, and am prepared to take your questions.