National Transportation Safety Board

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Testimony of
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before the
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Aviation Subcommittee
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Reauthorization of the National Transportation Safety Board
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Good afternoon Chairman Costello, Ranking Member Petri, and Members of the Aviation Subcommittee. As Chairman of the National Transportation Safety Board, I am pleased to appear before you today in support of our request for reauthorization.

First, let me say I appreciate this Committee for its support on our last reauthorization legislation and all your assistance during our appropriations process. The Members on this Committee have a great deal of knowledge about our Board and a genuine interest in transportation safety issues.

As you know, the Safety Board has a critical mission: we investigate transportation accidents to determine what happened and why – not so that we can assign blame or determine fault – but rather to advance transportation safety. We do this work so that future accidents can be prevented through what we learn today. The core mission of the Safety Board has remained the same since the Board's inception in 1967. In recent years, we have refocused our efforts and activities on that core mission by examining all of our programs and activities to ensure that we are diligently investigating accidents within our purview and promptly issuing safety recommendations. Transportation accidents are increasingly complex, and the tools and technology required to accomplish modern accident investigations are also growing in sophistication. We intend to ensure that our emphasis remains on quality investigations and timely safety recommendations that help prevent transportation accidents, and reduce the deaths and injuries resulting from accidents that do occur. Our obligation is to work with you to ensure that the Board maintains an expert technical staff and state-of-the art investigative tools to competently and efficiently conduct the thorough and unbiased investigations that you and the public have come to expect.

Volume alone however does not represent the significant advancements made the Board regarding our investigative efforts. For example, in recent years, the Safety Board has taken significant steps to reduce the time to complete a major transportation accident investigation. As a result, the Board has been able to issue needed safety recommendations to the transportation industry much more rapidly. Concurrently, the Board has increased the number of major reports by over 20% even though, due to funding levels, we suffered a staff reduction of 9%. During the same timeframe, the Board has reduced the average time to complete regional aviation accident investigations and has reduced our backlog of open aviation investigations by more 200%.

Safety Board Activity

Let me give you a brief overview of what the Board has accomplished since I last appeared before the Committee on our reauthorization hearing. Since April 2006, the Safety Board has investigated more than 3,200 aviation accidents and hundreds of surface transportation accidents. We have also held 32 Sunshine meetings and 8 public hearings, forums and symposia. We adopted 58 accident investigation reports (19 aviation reports, 8 highway reports, 20 railroad reports, 8 marine reports, and 3 pipeline reports). We published more than 3,900 aviation accident brief reports, and our laboratories read out 179 flight data recorders, 156 cockpit voice recorders, and performed 326 wreckage examinations. Also during this time period, the Board issued more than 345 safety recommendations (about 54 percent pertain to aviation, and the remaining recommendations pertain to surface transportation).

Just last week, on April 15th, the Board held a meeting to consider the runway overrun during landing of Shuttle America doing business as Delta Connection flight 6448, an Embraer ERJ-170, at Cleveland, Ohio, on February 18, 2007. Although there were no serious injuries in that accident, our investigation did reveal serious deficiencies in crew performance and operator fatigue.

Since our last reauthorization, the following significant accident investigations are among those the Safety Board has completed:

- The February 2, 2005, accident involving a Canadair CL-600 corporate jet, at Teterboro Airport in New Jersey. The airplane overran the runway during an aborted takeoff resulting in 4 seriously injured persons;

- The February 16, 2005, accident in Pueblo, Colorado involving a Circuit City Cessna Citation 560 corporate jet. The 2 pilots and 6 passengers were killed in the crash;

- The September 23, 2005, bus fire near Wilmer, Texas, that killed 23 elderly and mobility impaired nursing home residents who were being evacuated due to Hurricane Rita;

- The October 2, 2005, tour boat *Ethan Allen* capsizing in Lake George, New York, which resulted in 20 deaths;

- The December 8, 2005 Southwest Airlines runway overrun at Chicago's Midway airport that killed a six-year-old boy who was a passenger in an automobile on an adjacent roadway;

- The December 13, 2005, natural gas explosion in Bergenfield, New Jersey that killed 3;

- The December 19, 2005, in-flight separation of the right wing on Chalk's Ocean Airways Flight 101, a Grumman G-73T, N2969, at Port of Miami, Florida, that killed all 20 persons aboard;

- The February 8, 2006, fire involving a UPS DC-8 cargo airplane at Philadelphia

International Airport;

- Three accidents on the Washington Metropolitan Area Transit Authority (WMATA) Metrorail system that resulted in 3 employee fatalities (May 14, 2006, November 30, 2006, and January 7, 2007);

- The July 10, 2006, ceiling collapse in the Interstate 90 Connector Tunnel (the so-called "Big Dig"), in Boston, Massachusetts, July 10, 2006, killing one person;

- The July 11, 2006, Chicago Transit Authority train derailment that resulted in the evacuation of 1,000 passengers from the tunnel;

- The July 18, 2006, heeling incident of the Bermuda registered cruise ship *Crown Princess* near Port Canaveral, Florida, in which 298 persons were injured; and

- The October 11, 2006, crash during turn maneuver of a Cirrus SR-20, N929CD, into a building in Manhattan, New York City, (that killed baseball player Cory Lidle and one other person).

The Safety Board is conducting a number of other important accident investigations. For example, the allision of the *Cosco Busan* container ship with the San Francisco-Oakland Bay Bridge in California, and the collapse of the I-35W bridge in Minneapolis, Minnesota. We are also investigating an aircraft incident that occurred last month in which a panel from the wing of a USAirways Boeing 757 separated from the aircraft somewhere over Maryland. The aircraft landed in Philadelphia about 30 minutes later. None of the passengers or crew were injured.

Next week, the Safety Board will hold a public forum on Unmanned Aircraft Systems. The catalyst for this forum was the Safety Board's investigation into a Predator B unmanned aircraft operated by the U.S. Customs and Border Protection that crashed near Nogales, Arizona, in April 2006. At the Board's October 2007 meeting on this accident, we adopted 22 safety recommendations to address deficiencies associated with the civilian use of unmanned aircraft. The upcoming forum will provide an opportunity for the Board and interested parties to understand the safety implications presented by the growing use of these aircraft in the National Airspace System.

In addition to domestic accidents, the Board often sends investigators to other countries to participate in the investigation of foreign aviation accidents. When a U.S.-manufactured, U.S.-registered, or U.S.-operated aircraft is involved in an accident overseas, the Safety Board leads the contingent of U.S. investigators to participate in the investigation. Each year, our investigators participate in about 20 major foreign aviation accidents and provide laboratory support for recorder read-out and material failure analysis for many more foreign investigations. For example, in January 2008, there was a highly publicized crash of a British Airways Boeing 777 at the approach end of a runway at Heathrow Airport in London. Our Safety Board team is fully engaged in that ongoing investigation with our counterpart agency, the UK Air Accidents Investigation Branch, and we remain alert to any possible fleet implications and corrective actions. Also, in August 2007, on the airport ramp in Okinawa, Japan, a China Air Boeing 737

experienced a wing fire while taxiing. Evacuation of 165 passengers was successful before the airplane was destroyed by the resultant fire. Our Safety Board team was immediately dispatched from Washington. Within a few days on scene, the cause of a major fuel leak was identified within the flap retraction system and the manufacturer and the Federal Aviation Administration (FAA) quickly initiated corrective action on a worldwide scale.

Another example was the tragic midair collision in Brazil between a GOL Boeing 737 passenger flight and an ExcelAire Legacy executive aircraft over the Amazon jungle. The Board sent investigators to participate in the on-site investigation. Safety recommendations were made based on our findings, and we continue to be engaged with Brazilian investigators as they work to conclude their investigation.

Our foreign investigation and training efforts are vitally important to aviation safety because some countries may lack the technology and expertise we developed over many years in this business, and it serves the global aviation industry by ensuring a thorough investigation when American-built and American-registered aircraft are involved in accidents in other countries. Also, because many of the accidents that happen in other countries may have implications for aviation in the United States, our participation in these investigations results in major safety improvements for the domestic fleet and the American traveling public.

Each investigation is important, but our goal is preventing future accidents, saving lives, and reducing injuries. That is why we often say that safety recommendations are our most important products. Each year, the Board meets to determine which of its open recommendations should appear on its Most Wanted List of Transportation Safety Improvements. Our 2008 Most Wanted List includes safety recommendations to the FAA urging them to reduce the dangers of in-flight icing, eliminate flammable vapors in transport category airplane fuel tanks, improve runway safety, improve audio and data recorders and require video recorders, and improve crew resource management. The most important safety improvement needed for our country's railroads is positive train control. If the Federal Railroad Administration (FRA) required positive train control systems, it would prevent numerous collisions and overspeed accidents. The Most Wanted List for the highway mode includes enhanced vehicle safety technology for preventing collisions, improving motor carrier safety, preventing medically unqualified drivers from operating commercial vehicles, and enhancing the protection of motorcoach and school bus passengers. Reducing accidents caused by human fatigue is another vital issue. We are urging the FAA, FRA, U.S Coast Guard, and Pipeline and Hazardous Materials Safety Administration to set working hour limits for safety sensitive jobs based on fatigue research, circadian rhythms, and sleep and rest requirements. We also want the FAA and National Air Traffic Controllers Association to develop a fatigue awareness and countermeasures program for air traffic controllers. In addition, our Most Wanted List includes recommendations to the states to enact laws that promote seatbelt usage, ensure child occupant protection, improve youth highway safety, eliminate hard-core drinking driving, require motorcycle helmet use, and improve recreational boating safety.

On average, it takes recipients of our safety recommendations from 3 to 5 years to implement the recommended changes. The time to closure for our safety recommendations varies based on the type of action recommended; for example, whether we are asking for improvements in education or training programs, federal regulations, or state legislation.

Recommendations to Federal agencies requesting rulemaking can take much longer. The FAA's proposed regulations regarding the Board's fuel tank inerting recommendation, for example, which was issued in 1996, is just now being reviewed at the Office of Management and Budget for final regulatory approval.

Reauthorization Request

The Safety Board is asking for authorized resource levels capable of funding 399 full-time equivalent (FTE) positions in fiscal year 2009, and 475 FTEs in both fiscal years 2010 and 2011. The necessary resource levels for fiscal years 2009-2011 are $87.891 million, $107.208 million, and $113.026 million, respectively.

We began fiscal year 2006 with the equivalent of 416 full-time employees at the Safety Board. That number was significantly more than our fiscal year 2006 budget could support, so we were obligated to reduce the number of employees at the Board. We allowed attrition to steadily reduce the number of employees to a sustainable level. The number of FTEs eventually dropped to 396, and we sustained that number through the remainder of fiscal year 2006. Fiscal Year 2007 appropriations provided us $79.338 million, only $262 thousand below the President's Budget, and allowed us to avoid further cuts, but we were not appropriated sufficient resources to regain the previously lost positions. In fiscal year 2008, Congress recognized our need to recover previous losses, and provided us $1.5 million over the President's Budget. We used that to return 8 FTE investigative personnel back to the agency's ranks. We were also able to achieve significant cost savings within our budget by subleasing portions of the NTSB Training Center building to another Federal agency and consolidating headquarters space and then subleasing a portion of the headquarters facilities to another Federal agency. Through these savings, we were able to return another 5 FTEs to our rolls. Our planning continues to indicate that to carry out the mission of the Safety Board, we will still need 475 FTE staff. Consequently, this is the number that we have proposed for fiscal years 2010 through 2011. We recognize that this represents growth, but this staffing level is needed to allow us to investigate accidents appropriately and issue timely and effective safety recommendations.

Our reauthorization request contains a number of proposals for specific legislative language that we believe would improve the Board's operation. The agency performed a comprehensive review of its statutory authorization structure, and considered various issues that have arisen under the current framework. The Safety Board respectfully asks Congress to consider addressing these suggested amendments, and we have proposed language that might achieve these objectives. We would welcome further dialogue with you or your staff should you wish to discuss these or other proposals in detail.

The Board has proposed a number of what we believe to be realistic, and in practice, modest modifications to the investigative responsibility of the Safety Board, as currently directed by Congress. I will discuss a couple of what we believe are the most important proposals.

First, the Safety Board recommends that Congress modify the Board's authority to investigate marine accidents under 49 United States Code section 1131(a)(1)(E) by granting the Board authority to investigate any accident the Board determines to have sufficient national importance to maritime transportation safety such that the accident is deserving of an

independent investigation by the Board. If approved by Congress, our proposal would permit the Safety Board to "elect" primary Federal investigative jurisdiction for such an accident, as is the case with most of the other modes of transportation.

This change would primarily modify the relationship between the U.S. Coast Guard and the Safety Board. Currently, the Board interacts with the Coast Guard with regard to marine accident investigation under the framework of a National Transportation Safety Board and Coast Guard Memorandum of Understanding (MOU) dated September 12, 2002. That MOU sets out criteria under which either the Safety Board or the Coast Guard will take lead status in a particular marine accident or casualty investigation. While that MOU has provided a solid framework for Safety Board and Coast Guard cooperation, it does not resolve either's authority to direct the course of an investigation should the Safety Board and Coast Guard not agree on how to conduct the investigation. Furthermore, in some instances there is complexity, and some degree of uncertainty by all involved, in working through the MOU framework while incoming information is unknown or initially inaccurate. The Safety Board believes it would benefit the public if the Safety Board were allowed to assert the lead in certain marine accident investigations and manage the evidence being collected.

The second suggested amendment to the Safety Board's accident investigation charter from Congress is the Board's request for explicit authority to investigate incidents. Congress has given the Safety Board a broad direction to investigate accidents, but the language is not explicit when it comes to incidents. As this Committee is fully aware, the Board already investigates many transportation incidents, even if there is no loss of life or damage to property. One example would be runway incursions that come quite close to causing a significant accident. This investigation practice, which has been a part of NTSB activities throughout the history of the agency, reflects the consensus of most concerned that there is value in using things such as safety indicators, self-reporting mechanisms, and incident investigation as a way to proactively bolster transportation safety instead of doing so solely in a reactive fashion by limiting ourselves to post-accident analysis. The International Civil Aviation Organization is also urging member nations to adopt this as a standard practice under their aviation accident investigation structure.

There are some other practical benefits to this proposed change. It would permit the Safety Board to assert its authority in a timely manner to provide independent investigation of certain events that otherwise might only be examined under a process internal to the owning agency or entity. One hypothetical example we give is a "lost link" situation (interruption of communications) between the ground station and an Unmanned Aerial Vehicle (UAV) that results in uncontrolled intrusion by the UAV into the National Airspace causing loss of separation with one or more commercial airliners and other aircraft. If the communications link with the UAV is subsequently reestablished and the UAV is brought back to a safe landing, there is no requirement for the owning agency to report the incident and the agency could argue that the Safety Board has no authority to insist upon examining that sequence of events or the underlying safety mechanisms in place for the vehicle. This proposed legislation explicitly authorizing the Safety Board to investigate incidents would remedy that, and in the process, direct in law what we believe is already almost certainly the desire and expectation of Congress.

The next distinct topic in our reauthorization request that I would like to discuss is the

Board's request that Congress more clearly articulate the Board's right to access critical information related to an accident during a Board investigation. Currently, the Board has the ability to request information related to an accident, has a right of access to places and things that is enforceable in Federal Court, and has subpoena authority that is again enforceable in Federal Court. We believe it clear that Congress intended and has always intended that the Board investigate the accidents it was charged to investigate and to have the necessary powers to thoroughly collect all relevant factual material.

In rare instances, the Board has received resistance from counsel for some entities with whom we have interacted in an investigation resisting the Board's authority to subpoena records or things in an investigation, particularly medical records. We are also concerned about our statutory authority to gain access to personal financial records. It is the interplay between our investigative directive from Congress and statutes that provide appropriate protections for the financial and medical privacy of individuals that create the occasional complication, mainly because when these other statutes were drafted, it appears the drafters did not contemplate the important transportation accident safety investigations that the Board is also directed by Congress to conduct. While we fully recognize the important societal interests represented by these privacy statutes, there is an equally important societal interest at play in accident investigation, namely the identification of probable cause(s) and the issuance of recommendations to prevent similar accidents from happening in the future.

Specific examples of the types of records the Safety Board could deem relevant to the human factors analysis in an investigation might be the medical records of a ship's captain, master, or pilot to examine his fitness for duty, accuracy of his medical certificate application, and the propriety of the licensing and medical oversight process administered by the Coast Guard; the credit card records of a pilot involved in a commercial aircraft disaster for the information they might shed on the activities of that crewmember the night before or even 24-72 hours prior to the accident; or the financial records of a sole proprietor of an aviation business to determine if there were financial pressures on the owner as a result of the charter business operations under a particular operating certificate. We believe we currently have such authority, but the ability to subpoena medical records is addressed in the rather obscure Federal Register passages related to the Department of Health and Human Services Notice of Proposed Rule Making efforts under the Health Insurance Portability and Accountability Act (HIPAA), and possibly requires assistance from Federal Court to access individual financial records.

Accordingly, the Safety Board has made several proposals that would clarify the authority of the Safety Board to access such records by subpoena by 1) clearly stating, for any Federal Court that might review a Safety Board investigation subpoena in the future, the Board's authority to issue such an investigative subpoena; 2) instructing that the Board may obtain financial records via subpoena using the same procedure law enforcement investigators can, and 3) clearly stating the Board's authority to obtain medical records via a request, to include via subpoena, under HIPAA. We appreciate your support in this regard.

As I close, I want to assure you that we are working hard to ensure that the people and resources of the Board are well managed. In fact, I am proud to tell you that in each of the last five fiscal years, our timely and accurate financial statements have received clean audit opinions.

We have also achieved a more efficient and cost effective structure, and have engaged in continuing strategic and operational planning across the agency.

As I said at the beginning of my testimony, every day the Safety Board is serving the American public with dedicated work, thorough investigations, and sound technical analysis. But we continue to need the support of Congress to ensure that we have the resources and statutory structure needed to accomplish our mission as Congress intends.

I thank you for the opportunity to appear before you today, and I am happy to respond to any questions you may have.