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**STATEMENT OF
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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 complacency 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 Msrs. 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 complacency 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.